CASE NO. 18-9149

ORIGINAL

IN THE

SUPREME COURT OF PENNSYLVANIA

JOHN DAVID BROOKINS, PRO SE

petitoner

- VS -

SUPERINTENDENT GRATERFORD SCI, ET AL.

respondents

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

name of the court that last ruled on merits of case

PETITION FOR WRIT OF CERTIORARI TO

Respectfully Submitted by:
John David Brookins, Pro se
SCI-Phoenix I.D.[BW-7444]
P.O. BOX 244
Collegeville, PA 19426

QUESTIONS PRESENTED FOR REVIEW

[I] THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE LOWER STATE AND FEDERAL COURT DENIED THE PETITIONER OF MEANINGFUL APPELLATE REVIEW.

SUBTITLES

A. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED IN REFUSING TO OVERRULE THE COMMONWEALTH'S PEREMPTORY CHALLENGES OF THE ONLY TWO BLACK JURORS THAT WERE VOIR DIRED OUT OF EIGHTY-NINE PROSPECTIVE JURORS.

B. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN IN THE ALTERNATIVE GIVE A CAUTIONARY INSTRUCTION WHEN THE PROSECUTOR IN HER OPENING STATEMENT MADE THE STATEMENT THAT "THE PERSON AND/OR PERSONS WHO MURDERED SHEILA GINSBERG HAD LEFT AND BEEN LONG GONE."

C. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED IN REFUSING TO ORDER A MISTRIAL WHEN A COMMONWEALTH WITNESS DETECTIVE POTTS TESTIFIED THAT THE PETITIONER STATED THAT HE HAD GIVEN THE PHONY NAME BECAUSE "HE AND HIS FRIENDS HAD BEEN SMOKING CRACK IN THE HOUSE."

D. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED WHEN IT REFUSED TO ORDER A MISTRIAL WHEN THE COMMONWEALTH LEARNED THAT SANDRA WILSON HAD :BEEN IN THE BUCK COUNTY PRISON AT THE TIME WHEN SHE TESTIFIED THAT SHE HAD MADE CERTAIN OBSERVATIONS.

E. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COMMONWEALTH KNOWLEDGE OF PERJURED TESTIMONY MADE REFERENCES IN COMMONWEALTH CLOSING ALL DEFENSE WITNESSES SHOULD BE VIEWED AS TAINTED, THE COURT ERRED BY REFUSING TO GRANT MISTRIAL OR GIVE CAUTIONARY INSTRUCTION TO THE JURY

F. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED IN NOT GRANTING THE PETITIONER'S MOTION TO EXCLUDE NEGROID HAIRS AT THE CRIME SCENE, AS THESE HAIRS WERE FRAGAMENTS AND WERE NOT SUITABLE FOR COMPARISON TO ANY OTHER NEGROID HAIRS OR TO ONE ANOTHER

G. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED IN NOT SUPPRESSING STATEMENTS ALLEGEDLY MADE BY THE PETITIONER ON APRIL 2, 1991, MAY 2, 1991, AND JUNE 14, 1991, THE PROCEDURE AND PRACTICE OF MIRANDA WARNINGS WERE NOT GIVEN NOR PRACTICE, AND OBSTRUCTED JUSTICE

H. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COMMONWEALTH REFERRED TO ANOTHER DEFENSE WITNESS WHO HAD BEEN GIVEN ON HUNDRED DOLLARS BY A PRIVATE INDIVIDUAL TO TALK TO THE POLICE, THE COURT ERRED BY REFUSING TO GRANT A MISTRIAL OR GIVE CAUTIONARY INSTRUCTION TO THE JURY

I. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN DURING D.A. GIBBONS' CLOSING THE COMMONWEALTH APPROACHED THE DEFENDANT ON ELEVEN OCCASIONS SHAKING AND POINTING FINGER WHILE MAKING CLOSING REMARKS IN THE COURTROOM BEFORE THE JURY, AND A MOTION FOR A MISTRIAL WAS OVERRULED, AND NO CAUTIONARY INSTRUCTION WERE GRANTED

J. THE PETITIONER'S CONSTITUTIONAL RIGHT OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED DURING THE COMMONWEALTH'S CASE, THE DEFENSE ATTEMPTED TO CROSS-EXAMINE BARRY GINSBERG ABOUT HIS SISTER SHARON GINSBERG VIOLENT ACTS TOWARD THEIR MOTHER SHEILA GINSBERG THE COURT SUSTAINED COMMONWEALTH OBJECTION AFTER SIDE-BAR

K. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COMMONWEALTH COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO PRESERVE ORIGINAL POLICE NOTES AND REPORTS THAT DEFENSE REQUESTED PRIOR TO TRIAL WHEN ORIGINAL POLICE NOTES AND REPORTS EXISTED, INTENTIONALLY DESTROYED NOTES AND REPORTS

L. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN TRIAL COUNSEL EGREGIOUSLY ADVISED THE PETITIONER NOT TO TESTIFY ON HIS OWN BEHALF

M. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN TRIAL COUNSEL'S SECOND JOB AS TOWNSHIP POLICE COMMISSIONER CREATED A CONFLICT OF INTEREST

N. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE EVIDENCE IN THIS CASE CIRCUMSTANTIAL AND NOT SUFFICIENT TO ESTABLISH FIRST DEGREE MURDER BEYOND A REASONABLE DOUBT

LIST OF PARTIES

B. ALL PARTIES DO NOT APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. A LIST OF THE PARTIES TO THE PROCEEDINGS IN THE COURT WHOSE JUDGEMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

JILL M. GRAZINO, ADA: DISTRICT ATTORNEY'S OFFICE
BUCKS COUNTY JUSTICE CENTER
100 Main St.
Doylestown, PA 18901

JOSH SHARPIRO: PENNSYLVANIA ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
STRAWBERRY SQUARE, 16th Floor
Harrisburg, PA. 17120

TABLE OF CITATIONS

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APPENDIX "A", OPINION/ORDER OF THE THIRD CIRCUIT, REHEARING

APPENDIX "B", OPINION/ORDER OF THIRD CIRCUIT, COURT OF APPEALS UNPUBLISHED

APPENDIX "C", MEMORANDUM/OPINION OF THE U.S. DISTRICT COURT UNPUBLISHED

APPENDIX"D", REPORT & RECOMMENDATION OF THE U.S.DISTRICT COURT UNPUBLISHED

STATE COURTS:

APPENDIX "E", PCRA PROCEEDING - OPINION/ORDER OF THE PA SUPREME COURT (C.E.R.T. TEAM DESTROYED DOCUMENT DURING TRANSFER FROM SCI-GRATERFOR TO SCI-PHOENIX)

APPENDIX "F", PCRA PROCEEDING OPINION/ORDER OF PA SUPERIOR COURT UNPUBLISHED

APPNEDIX "G", PCRA PROCEEDING OPINION/ORDER OF THE PA COURT OF COMMON PLEAS UNPUBLISHED

APPENDIX "H", PCRA PROCEEDING OPINION OF THE PA SUPERIOR COURT REMAND (C.E.R.T. TEAM DESTROYED COOURT DOCUMENTS DURING TRANSFER FROM SCI-GARTERFORD TO SCI-PHOENIX)

APPENDIX "I", PCRA PROCEEDING OPINION/ORDER OF PA COURT OF COMMON PLEAS UNPUBLISHED

APPENDIX "J", DIRECT APPEAL OPINION/ORDER OF THE PA SUPREME COURT (C.E.R.T. TEAM DESTROYED COURT DOCUMENTS DURING TRANSFER FROM SCI-GRATERFORD TO SCI-PHOENIX)

APPENDIX "K", DIRECT APPEAL OPINION/ORDER OF PA SUPERIOR COURT UNPUBLISHED

APPENDIX "L" TRIAL COURT OPINION/ORDER OF PA COURT OF COMMON PLEAS UNPUBLISHED

JURISDICTION

[C] FOR CASES FROM FEDERAL COURT:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DECIDED THE PETITIONER CASE WAS ON: 1/28/2019. A COPY OF THAT DECISION APPEARS AT APPENDIX "B".

[D] A TIMELY PETITION FOR REHEARING WAS DENIED BY THE THIRD CIRCUIT COURT OF APPEALS: 4/1/2019. . A COPY OF THAT DECISION APPEARS AT APPENDIX "A".

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1), AND UNDER TITLE 5 U.S.C. 552.

[D] FOR CASES FROM STATE COURT:

THE DATE ON WHICH THE HIGHEST STATE COURT DECIDED THE PETITIONER'S CASE WAS ON: 2/4/1999. (C.E.R.T. TEAM DESTROYED COURT DOCUMENTS DURING TRANSFER TO SCI-PHOENIX).

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257(a).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION:

1ST. AMENDMENT: CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCE.

4TH AMENDMENT: THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

5TH AMENDMENT: NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITOUT JUST COMPENSATION.

6TH AMENDMENT: IN ALL CRIMINAL PRSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE

STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

8TH AMENDMENT: EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED.

14TH AMEMDMENT: SECTION 1. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUJECT 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 THE LAW.

UNITED STATES STATUES:

28 U.S.C. § 2253 (c): A CERTIFICATE OF APPELABILITY MAY ISSUE UNDER PARAGRAPH (1) ONLY IF THE APPLICANT HAS MADE A SUBSTANIAL SHOWING OF THE DENTIAL OF A CONSTITUTIONAL RIGHT

28 U.S.C. § 2254: THE SUPREME COURT, A JUDGE THEREOF, A CIRCUIT JUDGE, OR A DISTRICT COURT SHALL ENTERAIN AN APPLICATION FOR A WRIT OF HABEAS CORPUS IN BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT 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.

FEDERAL RULES OF EVIDENCE:

RULE 402: ALL RELEVANT EVIDENCE IS ADMISSIBLE EXCEPT AS OTHERWISE PROVISION BY THE CONSTITUTION OF THE UNITED STATES, BY ACT OF CONGRESS BY THESE RULES OR BY OTHER RULES PRESECRIBED BY THE SUPREME COURT PURSUANT TO STATUTORY AUTHORITY. EVIDENCE WHICH IS NOT RELEVANT IS NOT ADMISSIBLE

RULE 403: ALTHOUGH RELEVANT EVIDENCE MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE, CONFUSION OF THE ISSUES, OR MISLEADING THE JURY, OR BY CONSIDERATIONS OF UNDUE DELAY AND WASTE OF TIME, OR NEEDLESS PRESENTATION OF CUMULATIVE EVIDENCE.

RULE 404(b): EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS IS NOT ADMISSIBLE TO PROVE THE CHARACTER OF A PERSON IN ORDER TO SHOW ACTION IN CONFORMITY THEREWITH. IT MAY, HOWEVER, BE ADMISSIBLE FOR OTHER PUROSES, SUCH AS PROOF OF MOTIVE, OPPORTUNITY, INTENT, PREPARATION, PLAN, KNOWLEDGE, IDNETITY, OR ABSENCE OF MISTAKE OR ACCIDENTS, PROVIDED THAT UPON REQUEST BY THE ACCUSED THE PROSECUTION IN A CRIMINAL CASE SHALL PROVIDE REASONABLE NOTICE IN ADAVENCE OF TRIAL, OR DURING TRIAL IF THE COURT EXCUSES PRETRIAL NOTICE ON GOOD CAUSE SHOWN, OF THE GENERAL NATURE OF ANY SUCH EVIDENCE IT INTENDS TO INTRODUCE AT TRIAL.

RULE 704(b): NO EXPERT WITNESS TESTIFYING WITH RESPECT TO THE MENTAL STATE OR CONDITION OF A DEFENDANT IN A CRIMINAL CASE MAY STATE AN OPINION OR INFERENCE AS TO WHETHER THE DEFENDANT DID OR DID NOT HAVE THE MENTAL STATE OR CONDITION CONSTITUTING AN ELEMENT OF THE CRIME CHARGED OR OF DEFENSE THERETO. SUCH ULTIMATE ISSUES ARE MATTERS FOR THE TRIER OF FACT ALONE.

PENNSYLVANIA RULES OF CRIMINAL PROCEDURES:

RULE 122(c)(3): WHERE COUNSEL HAS BEEN ASSIGNED, SUCH ASSIGNMENT SHALL BE EFFECTIVE UNTIL FINAL JUDGEMENT, INCLUDING ANY PROCEEDING UPON DIRECT APPEAL. SEE ALSO: COMMENTS.

PROCEDURAL AND FACTUAL HISTORY

PROCEDURAL HISTORY:

MONTHS/DAYS/YEARS:	PROCEEDING & OUTCOMES:
6/20/1991	the petitioner was Arrested
9/12/1991	the petitioner's Preliminary Hearing
7/24/1992	the petitioner was Found Guilty
6/17/1997	the petitioner was Sentence
7/07/1997 - 5/28/1998	filed direct Appeal to Pennsylvania Superior Court, Affirmed
6/10/1998 - 2/04/1999	filed Allowance of Appeal to Pennsylvania Supreme Court, Denied
1/13/2000 - 10/18/2005	filed PCRA Petitioner, Denied without final Order, Pro se
2/03/2006 - 9/13/2006	filed PCRA Appeal to Pennsylvania Superior Court, Remanded, Pro se
9/13/2006 - 6/27/2012	PCRA Court of Common Pleas, Denied
7/19/2012	filed PCRA Appeal to Pennsylvania Superior Court, Affirmed
2/20/2013	filed Pro Se PCRA Brief to Pennsylvania Superior Court, and
3/11/2013	Superior Court forwarded Pro Se PCRA Brief to Fired Attorney Charles D. Jones
4/29/2013	Fired Attorney Charles D. Jones filed his Brief, never forwarded petitioners a copy
9/13/2013	Pennsylvania Superior Court, Denied
10/17/2013 - 3/24/2014	filed Allowance of Appeal to Pennsylvania Supreme Court, Denied
5/7/2014	filed Writ of Habeas Corpus, U.S. Court Eastern Dist. of PA, Pro se
6/30/2017	United States Dist. Court for the Eastern Dist.of Pennsylvania Report & Recommendation
9/14/2017	Petitioner's filed his Objects to the U.S. Dist Magist. Report & Recommendation
6/18/2018	Writ of Habeas Corpus is. Denied in United States Dist. Court Eastern Pennsylvania

7/9/2018	notice of appeal proof of service to United States Court of Appeals
7/25/2018	Affidavit Accompanying Motion for permission to Appeal in forma pauperis
11/28/2018	Certificate of Appealability in United States Court of Appeals for the Third Circuit
1/17/2019	United States Court of Appeals for the Third Circuit Denied, Certificate of Appealility
2/11/2019	Pro, se requests 14 days extension of time to file En Banc Rehearing in United States Court of Appeals for the Third Circuit
4/01/2019	Pro se Motion for En banc rehearing in United States court of Appeals for the Thrid Curcuit

FACTUAL HISTORY:

On 12/20/1990, the petitioner gone to Sheila Ginsberg's apartment to wait for her daughter Sharon Ginsberg and to help Sheila get the apartment ready for her son Barry Ginsberg flying in from Florida. After being at Sheila's apartment for a few hour Sharon had not shown up yet.

The petitioner in informed Sheila he had to go to Rodney Simmons house to take him to work and the petitioner would be right back. The petitioner arrived at Rodney Simmons house, and Rodney did not have to go to work that night, but he ask the petitioner to come back the next morning, and taken him to pickup his check.

The the petitioner arrived back at Sheila's apartment Sharon Ginsberg was standing over her mother screaming and stomping in her chest. However, instead of investigatining Sharon Ginsberg the police and the Commonwealth only investigated, and charged the petitioner after Sharon Ginsberg bragged to many people about killing her own mother.

A. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED IN REFUSING TO OVERRULE THE COMMONWEALTH'S PEREMPTORY CHALLENGES OF THE ONLY TWO BLACK JURORS THAT WERE VOIR DIRED OUT OF EIGHTY-NINE PROSPECTIVE JURORS.

The prosecution utilized two of its peremptory challenges to exclude the only two black jurors who were reached during the jury selection of this case. In Batson V. Kentucky, 106 S.Ct. 1712, 1723, 90 L.Ed.2d 69 (1986), the United States Supreme Court set forth the standard for establishing a prima facie showing of purposeful discrimination in the jury selection process. The Pennsylvania Supreme Court in Commonwealth V. Dinwiddie, 529 Pa. 66, 601 A. 2d. 1216 (1992), in applying the rationale of Batson, supra, stated:

> To establish such a case, a defendant first must show that he is of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race. Second, the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits "those to discriminate who are of a mind to discriminate." Finally, the defendant must show that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen for the petit jury on account of their race.... Dinwiddie at 71, quoting Batson, (citations omitted).

In the case, the petitioner's is a member of the black race which is a cognizable racial group. It is also clear tha the prosecutor exercised two peremptory challenges to remove the only two prospective jurors who were also black. The Superior Court in Commonwealth V. McCormick, --Pa. Super--, 519 A.2d 442, 446, (1986), stated that "that fact that all of the black veniremen reached on voir dire were peremptory stricken by the Commonwealth raises the inference that the peremptory challenges were used to discriminate." Therefore, defendant has established a prima facie case of purposeful discrimination.

Once the defendant makes a prima facie showing, the burden shifts to the prosecution to provide a race-neutral explanation for challenging

the jurors in question. Batson, 106 S.Ct. at 1723, 90 L.ED 2d at 88. The black venire member was a 19 year old female who was employed as a salesclerk. Following the voir dire, the prosecution exercised a peremptory challenge which was objected to by the defendant. As a result of the objection, the prosecution gave the explanation: See: (N.T., 6/24/92, p.129). The Court determined that these were sufficient reasons and overruled defendant's objection.

A review of the record reveals that several young females were stricken but most were for cause. Although the Court found that the Commonwealth had stricken other young females, the petitioner dose not believe this was a sufficient justification. The second reason was also insufficient since the juror stated the she could put her feelings aside and also because this question was only asked of the black jurors which is clearly inappropriate. The third reason is also not an appropriate justification for striking this prospective juror.

The second black juror who was stricken was a middle-aged man who was an airline pilot for a major commercial airline. The defense objected and the prosecution stated the reasons for the challenges. See: (N.T., 6/24/92. pp. 277-78).

The petitioner argues, this is not a proper basis for striking a juror. The prosecution purposely checked the civil dockets and investigated this juror because he was a black airline pilot in an attempt to establish justification for striking this juror. A pending civil matter is certainly not sufficient justification to strike a juror especially when he is on of only two black jurors out of ninety-eight (98), prospective jurors. Therefore, the Court erred in overruling the petitioner's objection to the peremptory challenge of this juror.

B. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN IN THE ALTERNATIVE GIVE A CAUTIONARY INSTRUCTION WHEN THE PROSECUTOR IN HER OPENING STATEMENT MADE THE STATEMENT THAT "THE PERSON AND/OR PERSONS WHO MURDERED SHEILA GINSBERG HAD LEFT AND BEEN LONG GONE."

During the opening statement by the Commonwealth, the prosecutor stated "that person and/or persons who murdered Sheila Ginsberg had left and been long gone." (N.T., 7/2/92, p. 18). There was no conspiracy charges in this case and the prosecutor's statement severely prejudiced the petitioner. This statement was objected to the petitioner during a sidebar conference following the prosecutor's opening. (N.T., 7/2/92, p. 27). The law provides that "a new trial is required when the effect of the District Attorney's comments 'would be to prejudice the jury, forming in their minds fixed bias and hostility toward the petitioner so that they could not weight the evidence objectively and render a true verdict." Commonwealth v. Faulkner, 528 Pa. 57, 595 A.2d 28 (1991), (citation omitted).

In this case, the reference to a conspiracy placed the dense in the position of having to overcome the additional hurdle of not just proving the petitioner was not the murderer but also that he had no involvement in this murder if, in fact, it was committed by another person. This reference to a conspiracy was a total surprise and extremely prejudicial to the petitioner.

C. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE WERE VIOLATED WHEN THE COURT ERRED IN REFUSING TO ORDER A MISTRIAL WHEN A COMMONWEALTH WITNESS DETECTIVE POTTS TESTIFIED THAT THE PETITIONER STATED THAT HE HAD GIVEN THE PHONY NAME BECAUSE "HE AND HIS FRIENDS HAD BEEN SMOKING CRACK IN THE HOUSE."

During the course of the trial, it was clear from reading Detective Potts' report that the potential for error and prejudice existed. As a result, defense counsel requested that the witness be cautioned not to

mention anything about drug usage regarding the petitioner. (N.T., 7/10/92, p.2). The witness was then instructed by the prosecution outside the courtroom not to mention the fact that the petitioner admitted to using crack on April 2, 1991, which was a lie by Detective Potts.

During the Commonwealth's questioning of Detective Potts, occurred: See: (N.T., 7/10/92, p.15). This testimony was in violation of the instructions given to this witness concerning the defendant's the petitioner's drug use. "In general, the admission of testimony which details or from which the jury may reasonably infer past criminal conduct on the part of the defendant constitutes reversible error." Commonwealth v. Davis, 308 Pa. Super. 398, 454 A.2d 595, 598 (1982) (citations omitted).

D. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED WHEN IT REFUSED TO ORDER A MISTRIAL WHEN THE COMMONWEALTH LEARNED THAT SANDRA WILSON HAD BEEN IN THE BUCK COUNTY PRISON AT THE TIME WHEN SHE TESTIFIED THAT SHE HAD MADE CERTAIN OBSERVATIONS.

During the Pre-Trial hearing, Sandra Wilson, a witness for the defense. At the time of trial Sandra Wilson failed to honor a subpoena, and defense counsel requested that her testimony from the Pre-Trial hearing be read into as evidence. The prosecution agreed to this procedure, and the proceeding testimony was read into the record. On rebuttal, the Commonwealth called Clark Fulton, the correctional program specialist at the Bucks County Department of Corrections. He testified that Sandra Wilson was incarcerated from October 23, 1989 until March 5, 1991. Therefore, this evidence showed that Sandra Wilson could not have been a deceased apartment on the night she was killed. As a result of this testimony, defense counsel objected and asked for a mistrial. The

prosecution admitted that "over the weekend I had a computer printout from the prison that indicated that Sandy Wilson's date of birth is 6/5/69; was admitted into Bucks County Prison on October 24th of 1989 and released 3/5/91." (N.T., 7/16/92, p. 69).

The Commonwealth knew at the time Sandra Wilson's testimony was read into the record that she had been incarcerated at the time of the murder and therefore could not have witnessed Sharon Ginsberg outside the apartment with blood on her hands.

The petitioner contends that the Commonwealth violated Pa.R. Crim.P. 305 by not informing defense counsel of this newly discovered evidence before they permitted the witness' testimony to be read into the record. Pa.R.Crim.P. 305(D) provides:

> (D)- Continuing Duty to Disclose. If, prior or during trial, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party shall promptly notify the opposing party or the court of the additional evidence, material or witness.

The petitioner's discovery motions filed in this case requested any information which the Commonwealth had regarding records which would help or hinder the defense's case. When the prosecution learned of the incarceration of Sandra Wilson, they were obligated to divulge such information. This is especially relevant since the Commonwealth knew exactly what the witness' testimony was going to be.

The United States Supreme Court in Brady v. Maryland, 373 U.S. 83, 87, S.Ct. 1194, 1196, L.Ed. 2d 215 (1963) held "that suppression by the prosecutor of evidence favorable to an accused upon request violates due process where the evidence material either to guilt or to punishment,

irrespective of the good faith or bad faith of the prosecution." In addition, "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence, 'nondisclosure of evidence affecting credibility falls within this general rule." Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972), Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555 (1995).

In cases where the prosecutor can reasonably predict possible defense outcomes of strategies and evidence, he must also be held to reasonable anticipation of what evidence in his possession might be material in rebuttal. See Commonwealth v. Jenkns, 476 Pa. 467, 383 A.2d 195 (1978); Commonwealth v. Jackson, 457 Pa. 79, 319 A.2d 161 (1974). In Commonwealth v. Thiel, 323 Pa. Super 92, 470 A.2d 145 (1983), the Commonwealth had evidence which clearly impeached the testimony of the defendant which they failed to disclose. The Commonwealth presented this testimony on rebuttal and destroyed the the petitiner's credibility. The Superior Court found that this tactic "at least has the appearance of baiting the petitioner into perjury, then exposing the perjury by introducing surprise evidence." Id. at 149. Since the trial court overruled the defense objection, the Superior Court found that the only appropriate remedy was to grant a new trail.

In this case, the prosecution had the evidence that clearly impeached the testimony of Sandra Wilson. When she failed to appear at trial, the prosecution did not reveal this evidence and permitted defense counsel to read perjured testimony into the record. Since this witness was unavailble, the defense has no opportunity to remedy the extreme prejudice that occurred when the Commonwealth introduced undisclosed evidence. The Supreme Court in Commonwealth V. Ulen --Pa--, 650 A.2d 416

418 (1994) stated "our cases have made it clear that, as a matter of due process, it is error to fail to provide evidence that will be used to impeach the credibility of defense witnesses." (citations omitted). The failure to disclose this evidence requires a new trial. See Commonwealth v. Shelton, 536 Pa. 559, 640 A.2d 892 (1994); Commonwealth V. Moose, 529 Pa. 218, 602 A.2d 1265 (1992).

E. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COMMONWEALTH KNOWLEDGE OF PERJURED TESTIMONY MADE REFERENCES IN COMMONWEALTH CLOSING ALL DEFENSE WITNESSES SHOULD BE VIEWED AS TAINTED, THE COURT ERRED BY REFUSING TO GRANT A MISTRIAL OR GIVE CAUTIONARY INSTRUCTION TO THE JURY.

The petitioner essentially incorporates by reference the argument above and wishes to emphasize to this court the prejudicial effect of the nondisclosure. The prosecution during her closing argument at: (N.T. 7/16/92, p. 13 lines 1-2), (N.T., 7/16/92, p. 16 line 1); (N.T. 15 lines 10-19). With regard to the syringe (needle) when arguing about a conversation between Pam Nettle and Pam Simmers the Commonwealth further argued See: (N.T., 7/16/92, p. 21 lines 16-21).

Although a prosecutor, in his closing argument, may comment on the evidence introduced at trial as well as the legitiamte inferences arising therefrom, the comments in this case were not appropriate. See Commonwealth V. Rush, 538 Pa. 104, 646 A.2d 557, 563 (1994). The Commonwealth used the perjured testimony of one witness to impeach the testimony of all of the defense witnesses. This was highly prejudicial to defendant and should not be permitted. "Because a jury tends to attach special importance to the Commonwealth's arguments, we are compelled to guard against utterances which unduly inflame and prejudice those members." Commonwealth v. Johnson, 516 Pa. 527, 533 A.2d 994, 996 (1987).

F. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED IN NOT GRANTING THE PETITINER'S MOTION TO EXCLUDE NEGROID HAIRS AT THE CRIME SCENE, AS THESE HAIRS WERE FRAGAMENTS AND WERE NOT SUITABLE FOR COMPARISON TO ANY OTHER NEGROID HAIRS OR TO ONE ANOTHER.

The petitoner contends, several partial negroid hairs fragments were found in the deceases' apartment on or around the deceased. Although fourteen negroid hair fragments were found, none of the fragments were suitable for comparison. Prior to trial, the defense sought to preclude the introduction of this evidence because the hairs were not suitable for comparison but highly prejudicial. The Court permitted the introduction of this evidence finding that it was part of the scene (N.T., 7/1/92, p. 64).

The petitioner argues, that Special Agent Chester E. Blithe, with the Federal Bureau of Investigation, testified as an expert for the Commonwealth in hair and fiber examination. "Once a defendant was developed, there were no hairs that were identified being in that racial group that were suitable for comparison; that is, they were either such small fragments or they were not head hair or pubic hairs."

Evidence which tends to establish some fact material to the case or which tends to make a fact at issue more or less probable is relevant. Commonwealth v. Scott, 480 Pa. 50, 389 A.2d 79 (1978). The Commonwealth believed that evidence of fourteen hair fragments of negroid origin was relevant to establish what??? The petitioner admitted to being in the deceases' apartment. There was also testimony that other black men had been in the deceases' apartment. Therefore, there was no relevance to this expert testimony. Commonwealth v. Hargrave, 745 A.2d 20 (Pa.S.2000)

The petitioner argues, assuming this evidence was relevant, the law provides that "relevant evidence is subject to exclusion if its

probative value is substantially outwieghted by the danger of unfair prejudice or confusion." Commonwealth v. Foy, 531 Pa. 322, 612 A.2d 1349, 1352 (1992). The expert in this case testified that the hair fragments were not capable of identifying any individual. The probative value, if any, of this testimony was substantially outweighted by the prejudice to the petitioner. Furthermore, in the Commonwealth's closing argument reference was made regarding the hair fragments toward the petitioner (N.T., 7/16/92, p.11, lines 6-10). It was therefore an error ¢to deny petitioner's request to suppress this testimony.

G. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED IN NOT SUPPRESSING STATEMENTS ALLEGEDLY MADE BY PETITIONER ON APRIL 2, 1991 May 2, 1991, AND JUNE 14, 1991, THE PROCEDURE AND PRACTICE OF MIRANDA WARNINGS WERE NOT GIVEN NOR PRACTICE, AND OBSTRUCTED JUSTICE.

The petitioner argues, the job of the prosecutor is to obtain evidence and then prosecute the true perpetrator. The County Detective Robert Potts was assigned to assist the Bristol Township PD., on this case. His expertise was needed. During the petitioner's arrest the Miranda warnings voided and not implemented.

No yellow card signed as per Bristol Township PD's process. During the interrogation Captain Rudy Heierling and Bucks County Detective Robert Potts were present to properly access and review the case in its fact finding stages. No Miranda warnings read, No video taken, No audio taken, and No sign statement given not taken nor any handwritten notes available at trial because the investigators destroyed this evidence.

The petitioner contends, all these layers of professional training and years of experience and protocol in which these trained individuals use as a practice were present at this point in time, yet... Under the

instruction and/or guidance of the prosecutor Diane Gibbons who was present. Neither none these procedures were properly implemented even in her presence. (Pre-trial, 7/1/92, p. 40, lines 11 thru 23). See: Miranda v. Arizona, 384 U.S. 436 (1996).

The petitioner argues, how could these normal practices & procedures which are encompassed in major murder cases, but to be omitted from fact finding process (while the lead investigator and fact finder was present?). All safeguards of protection was lost in a blink of an eye the three (3) individuals that was presence on that day that could have practice procedure and secured Miranda Rights were the Bucks County District Attorney Diane Gibbons, Bucks County Detective Robert Potts and Bristol Township Police Captain Rudy Heierling acting as Detective. All layer of protection for both the State and the defense were omitted and not secured but forgotten? The lack of professionalism and proper procedures were not started nor ever completed on the night the petitioner's wrongful kidnapping. The petitioner convey the events as they took place. McQuiggin v. Perkins, 133 S.Ct. 133 (2013)

The petitioner contends, prior to trial, a suppression hearing was held regarding the alleged statements that petitioner had given to the deteictives. The initial interview in question occurred on April 2, 1991 at approximately 9:00 pm at the home of Sharon Ginsberg. When the detectives entered the home plain clothes weapons were visible every interview. Detective Rudy Heierling would pull jacket back to display gun on his hip, Detective Robert Potts, placed his foot on the coffee table to display his gun on his ankle, and upon entering the home they would put the petitioner again the wall, padded him down, and put their hands in the petitioners packets to empty the contents on table every

interview. Prior to this interview, the detecives had information that three of the fingerprints found in the deceases' apartment were those of the petitioner. Detective Potts testified that as of the interview, the petitioner was a prime suspect in the investigation. (N.T., 6/30/92, p. 37). During the interview, the petitioner was asked when was the last time he had been in the deceases' apartment. Detective Potts further testified (N.T., 6/30/92, p. 45). Captain Heierling also testified that the petitoiner was a prime suspect in the murder. (N.T., 6/30/92, p.58). There was also testimony that the petitioner had been using crack that evening. (N.T., 6/30/92, p. 60).

The petitioner argues, that these detectives Potts and Heierling knowingly used and give false and fabricated statements, the Detectives specifically ask the petitioner about the months prior to Sheila Ginsberg murder when the petitioner was there, then they ask the petitioner did you touch anything on that day, the petitioner said no. The investigators Potts or Heierling never ask the petitioner specifically was he their the day Sheila was murdered. The petitioner never told detectives he was using crack. The investigators knowingly fabricated that story. These professional investigators knew exactly what they were doing when they intentionally destroyed their handwritten notes. U.S. Const. 1st, 4th, 5th, 6th, 8th, and 14th Amendments.

The petitioner was again questioned on May 15, 1991 Captain Heierling came to Sharon Ginsberg residence approximately 8:am and forced his way into the residence, standing at the bottom of the steps screaming for the petitioner to come down and go with them. The petitioner ask Captain Heierling why did he not knock on the door instant of forcing the door open, Captain Heierling stated "because he can." Kept demanding that the

petitioner go with them, the petitioner ask where are they taking him going, Captain Heierling stated do not worry about it lets go. The petitioner wanted to take a shower, Heierling said no, The petitioner told Heierling he had to wake up Sherri L. Carsillo to let her know where the petitioner was going, but Ms. Carsillo came out of the room saying who's that screaming downstairs the petitioner said the cops.

The petitioner was seized, then searched (his body padded down & pockets emptied) then placed in the unmarked car. Instant of taking the petitioner to the Bristol Township PD, which was 3-minutes from the residence were they had video, audio equipment, they took the petitioner for a 15-20 minutes ride to the back of a building in Levittown through the backdoor interrogation room lasted approximately nine (9) hours from 8:am after 4pm. Not as detective related in (N.T., 6/30/92, p.95).

The petitioner maintains, when the Captain forced his way in the home during the course of the conversation, between the petitioner and Captain Heierling, the petitioner informed the Captain, he just ingested six(6) Xanax's pills, drank a large quantity of alcohol.

During the questioning, the petitioner informed the investigators that he did not commit this crime. As the petitioner became lethargic the investigator was yelling at the petitioner to stay awake, striking the petitioner in back of the head & hands to stay awake. Then yelled at the petitioner to confess; Detective Potts was walking back and forth in the room opening, closing and twisting a large pair of scissors in the air.

At one point during this interrogation Captain Heierling gave the petitioner a piece of paper and pen, then Detective Robert Potts placed

his hand over the petitioners hand then tried to write for the petitioner. See: Affidavit of John David Brookins for complete events.

The petitioner argues, this is another reason why these investigators destroyed their handwritten notes so no one can see the truth. Detective Potts testified (N.T., 6/30/92, p. 134). The suppression hearing, the Court denied the defense request to suppress these statements. (N.T., 7/1/92, p.59).

The petitioner asserts, the June 19, 1992 interrogation, is as followed: The statements which was attempted to be suppressed, were the statements made the by unlicensed investigators they took the petitioner words then twisted the fact to fit there case. (N.T., 7/1/92, p.59).

The petitioner maintains, On June 19, 1992, Valerie Lynch and the petitioner were leaving his cousin's apartment as Valerie and Petitioner walked across the parking lot, a man jumped out of a parked car pointing a gun in petitioner's face saying "are you John-are you John?" I replied NO. This gunman did not I.D. himself, the petitioner ran back to cousins apartment.

The petitioner maintains, that their was a raid on Sharon Ginsberg house which allowed the Jamaican posses to operate, before the house got raided the Jamaican's just up, left the drugs and money, the petitioner need something to eat so the he took all the drugs and money with him. Then after the house was raided the words on the streets was the Jamaicans had a hit out on the petitioner.

The petitioner maintains, this gunman jumped out of the car with weapon, wearing large amount of gold around neck, wrist, short sleeve shirt unbutton to expose all the gold just like the Jamaicans', saying

"are you John-are you John?" During trial the petitioner found out this gunman was Detective Alfred Eastlack. If the detective would not have failed to identify (I.D.) himself as Detective Alfred Eastlack, if so the petitioner would have identified himself and never ran to his cousins' apartment. No miranda warnings were given. See: Petitioner's Affidavit 3/23/09, p. 5-8.

The petitioner maintains, after entering his cousins' apartment he walked into the bedroom, then a few seconds later which seemed like minutes. The petitioner heard voices at the door someone was begging Matt Walker to let him in, then the petitioner step back into the closet and squatted in the corner, then a few second later a gun stuck in the closet, the petitioner immediately showed his hands were empty. No miranda warnings given.

The petitioner maintains, upon standing and out of the closet, then detective's came into the room Alfred Eastlack standing to my rights side, Detective Robert Potts standing to my left backside, then it was Captain Heierling standing next to Potts, and the uniformed Officer was standing next to Heierling, at this time somebody should be telling the petitioner why everyone is standing still in this bedroom stairing at each other, at that moment Eastlack pulled out a gun threw it on the bed.

The petitioner maintains, that detective Potts pushed him over toward the bed, the petitioner took a slow step backwards, at that very moment Viola Jackson came down the hallway talking loudly and very upset, then everyone just looked at the bedroom door where Viola Jackson stood and the it was grab him, they pushed the petitioner over the gun, pull down his pants, then one detectives said where's the cuff. Miranda v. Arizona U.S. Supreme Court ruling. See: petitioner's Affidavit 3/23/09, p. 7-8).

The petitioner maintains, if Viola Jackson did not come in when she did he the petitioner may very well be dead today.

The petitioner maintains, upon arriving at the police station they fingerprinted both hands, the Potts, Heierling took the petitioner to a office started asking him question do you know what you are here for? The petitioner replied NO, the petioner have NO idea, what's doing on here. The Heierling and Potts stated they knew the petitioner was a the murder scene. NO Miranda warnings nor Miranda warning information to sign. See: Miranda v. Arizona, U.S. Supreme Court established rights.

The petitioner maintains, that he informed Heierling and Potts when the he left Sheila apartment to go take Rodney Simmons to work Sheila Ginsberg was still alive, also at this moment there were other people standing at the door listening. Then Heierling and Potts moved the petitioner to a room around the corner where one else can here the conversation. See:(Affidavit of John Brookins, 3/23/09, p.9). No Miranda warnings, nor Miranda information signed.

The petitioner maintains, upon entering the next office he advised the Captain Heierling and Detective Potts, when arrived back at Sheila apartment Sharon Ginsberg her daughter was standing over her mother Sheila Ginsberg cursing her and appeared to be stomping in her as she lie, the petitioner stepped in and pushed Sharon down and what are you doing? Sharon replied, the bitch needed to be dead or die." See: (Affidavit of John Brookins 3/23/09, p. 9). No Miranda warnings given.

The petitioner maintains, after he explained to Captain Heierling and Detective Potts, what happen, Heierling stated that the petitioner did not see anyone at the apartment, the replied yes, he did Sharon. The Captain Heierling said "Eastlack did not want one of his girls going to

jail for murder, that why you must take this case." Robert Potts & Rudy Heierling said "We will pickup your brother Sam Brookins for murdering his family." U.S. Const. 1st, 4th, 5th, 6th, 8th, 14th Amendments.

The petitioner maintains, he told Heierling and Potts the fire that broke out in the Sam Brookins house was an accident, Sam tried to save his family and suffered burns, these investigators threaten the children of the petitioner girlfriend at the time of the murder Oretha Green, the petitioner's family by referring accidents can happen to them too if the petitioner tell anyone what happen in Sheila's apartment. See (Affidavit of John Brookins, 3/23/09, p. 11). No Miranda warnings given.

The petitioner maintains, at the end of this interrogation Potts and Heierling made the petitioner say he wrapped the afghan around Sheila head, there was blood running down his hand when the body was found no one else was here. The Detective Potts took the petitioner to the holding cell, then Potts kept coming to the cell laughing, and telling the petitioner they are going to use lethal injection to kill the him, Detective Potts did this over, over, and over again tell the petitioner how he was going to die. The last time Detective Potts came to the holding cell Potts said "If the petitioner give them information on the drug dealers the Jamicans, all the charges can go away." The petitioner said NO, then Detective Potts "told the petitioner there is NO way out for you then." See: (Affidavit of John Brookins, 3/23/09, p. 12). Miranda v. Arizona, U.S. Supreme Court established rights.

The Pennsylvania Supreme Court in Commonwealth v. Holcomb, 508 Pa. 425, 498 A.2d 833 (1985) reviewed the "focus of the investigation" test set forth in Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed. 2d 977 (1964) and the subsequent decision in Miranda v. Arizonia, 384

U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1964). In so doing, the Supreme Court stated that "Miranda warnings are necessary only when a suspect is undergoing actual interrogation, with the issues of the focus of the investigation only a relevant factor in determining custody." 498 at 840 - Among the factors the court must consider are: the basis for the detention; the duration; the locatin; whether the suspect was transferred against his will, how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicions. Commonwealth v. Douglass, 372 Pa. Super. 227, 245, 539 A.2d 412, 421 (1988).

In this case, the testimony by the investigating officer was that the petitioner was clearly a suspect during any of these interrogation and an arrest was inevitable. The Captain and Detective stated they had the petitioner's fingerprints prior to the first interrogation but never informed the petitioner. U.S. Const. 14th Amendment.

The second interrogation involved forced escorting of the petitioner by Captain Heierling, force his way in the home then demanded the petitioner to go with them and refused to tell him what the detectives wanted, then took the petitoner in the opposite direction of the Bristol Township PD, where video, audio equipment was available, instead Captain Heierling and unknown person with hat pulled down to dark shades, jacket zipped all the way to his neck, they took the petitioner for an 15-20 ride through an back of a building in Levittown to an interrogation room to hit-beat the petitioner and had questioned the petitioner for nine(9) hours. The formatted questions which were asked were clearly designed to elicit statements from the petitioner to be used against him at a later time and day. On this forced interrogation the petitioner paid for his own food and drink, but did not eat it. There was never any food or

drink offered by Potts nor Heierling. See: perjured statements on stand: (pretrial 7/1/92, p. 16 line 3, p. 31 lines 23-25, p. 32 lines 1-8).

Immediately following the third interrogation, an tainted arrest warrant was issued for the petitioner. Therefore, the petitioner was clearly entitled to be informed of his rights prior and during these three (3) interrogations. "Although Miranda warnings are not required before interviewing all possible witnesses to the crime, they are required "whenever an individual is questioned while in custody or while the object of an investigation of which he is the focus." Commonwwealth v. O'Shea, 456 Pa. 288, 291, 318 A.2d 713, 714 (1974). See also, Commonwealth v. Horner, 497 Pa. 565, 442 A.2d 682, 685 (1982).

The law further provides that Miranda warnings are called for if the police questioning constitutes interrogation that is, likely or expected to elicit a confession or other incrimination statements. See Commonwealth v. Bracey, 501 Pa. 356, 461 A.2d 775 (1983). During all three interrogations, the petitioner was not asked direct questions, but misleading question concerning the last time he had been in the deceases apartment. These statements were then used at trial against him.

In addition, the formatted questions asked during each interrogation were clearly designed to elicit a confession. After asking him the series of questions, Detective Potts said: "If the petitioner give them the Jamicans' all charges can go away." Not as he related in (N.T. 7/10/92, p. 92). It is clear that at this point in time, Detective Potts was attempting to elicit confession from the petitioner without having informed the petitioner of his constitutional rights. Although the Potts and Heierling testified that these were not custodial interrogations, "the test for custodial interrogation does not depend upon the

subjective intent of the law enforcement officer interrogator." Commonwealth v. Medley, 531 Pa. 279, 612 A.2d 430, 433 (1992).

The petitioner argues, this point: the Prosecutor Diane Gibbons Detective Robert Potts, and Captain Rudy Heierling these trained individuals (professionals) were all available and present at time of the petitioner arrest and interrogation, how could three highly trained professionals simply disregard such an important factor? How and why would not at least 1 of these 3 individuals not insist on the importance of securing this recording? They had it, they did it for other witnesses in this case. A video tape or recorded statement would have aided in exposing of the truth! U.S. Const. 1st, 4th, 6th, 8th Amendments.

The police in this case interrogated the petitioner on three (3) separate occasions after determining he was the prime suspect in this case. At no time was the petitioner advised of the evidence the police had nor was he ever informed of his constitutional rights. To allow the police to interrogate prime suspects without informing them of their rights is in clear violation of the law. "Miranda warnings were designed to shield an accused from the coercive aspects of custodial interrogations, i.e., from incommunicado interrogation in a police dominated atmosphere, which resulted in allegations of self incriminating statements without full warnings on constitutional rights." Commonwealth v. Fento, 363 Pa. Super. 488, 526 A.2d 784, 787 (1987), citing Commonwealth v. Ziegler, 503 Pa. 555, 561, 470 A.2d 56, 58 (1983); Miranda v. Arizona, supra. U.S. Const. 5th Amendment.

H. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COMMONWEALTH REFERRED TO ANOTHER DEFENSE WITNESS WHO HAD BEEN GIVEN ONE HUNDRED DOLLARS BY A PRIVATE INDIVIDUAL TO TALK TO THE POLICE, THE COURT ERRED BY REFUSING TO GRANT A MISTRIAL OR GIVE A CAUTIONARY INSTRUCTION TO THE JURY.

During the cross-examination of the defense witness, Pamela Holden

the prosecutor presented evidence that this witness had accepted $100.00 from the police for information, which the Police used to get a search warrant. (N.T., 7/14/92, p. 169). Then during her closing argument, the prosecutor continued to make statements. (N.T., 7/16/92, p.21 lines 3-6) (N.T., 7/16/92, p. 22 lines 12-16).

I. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN DURING D.A. GIBBONS' CLOSING THE COMMONWEALTH APPROACHED THE DEFENDANT ON ELEVEN OCCASIONS SHAKING AND POINTING FINGER WHILE MAKING CLOSING REMARKS IN THE COURTROOM BEFORE THE JURY, AND A MOTION FOR A MISTRIAL WAS OVERRULED, AND NO CAUTIONARY INSTRUCTIONS WERE GRANTED.

During the Commonwealth's closing the prosecutor approached the petitioner on eleven (11) occasions shaking and often pointing directly at him while at close proximity. A cautionary instruction was requested but denied. The petitioner alleges that the prosecutor's actions unfairly prejudiced him.

J. THE PETITIIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COURT ERRED DURING THE COMMONWEALTH'S CASE, THE DEFENSE ATTEMPTED TO CROSS-EXAMINE BARRY GINSBERG ABOUT HIS SISTER SHARON GINSBERG VIOLENT ACTS TOWARD THEIR MOTHER SHEILA GINSBERG THE COURT SUSTAINED COMMONWEALTH OBJECTION AFTER SIDE-BAR

During cross-examination of the deceases' son Barry Ginsberg, the defense attempted to ask the witness questions regarding specific incidents of violent behavior of Sharon Ginsberg.(N.T., 7/2/92,p. 54-56) The Commonwealth objected to these questions as being beyond the scope of direct examination. "your sister attacked you with a knife?" (N.T., 7/2/92, p. 54). Although the Commonwealth agree that the defense could recall this witness, when the defense attempted to do so, the prosecution's objection to this testimony was sustained on the grounds that the prior bad acts were too remote in time.

The petitioner argues, that Sharon Ginsberg, daughter bragged openly about killing her mother Sheila Ginsberg the prosecution have statements from witnesses stating the actual history of the violate behavior that exist between mother and daughter.

The petitioner argues, which prior bad acts the prosecution is attempting to coverup is it: 1) when Sheila Ginsberg stabbed her daughter Sharon Ginsberg years ago, 2) when Sharon Ginsberg took an axe to a friends car, 3) was it the iron Sharon Ginsberg beat her son Ricky Moody in the head with when he was under 8 years old that blinded him 4) was it the witnesses that lived around her and talked to Sheila everyday such as Agnes Wilkie, Daniel Lyden, Roy Jennings & Abbie Jerrel who gave testimony that the history of violates between mother & daughter was active, ongoing for years until her death.

The petitioner argues, that these witnesses would have supported everything Barry Ginsberg could have said about his sisters violence toward their mother. This would not have been a theory, but facts from individuals who knew Sharon Ginsberg and the deceased, but the Court and the Commonwealth did not allow this witness to speak.

The law provides that "accused has a fundamental right to present evidence so lone as the evidence is relevant and not excluded by an established evidentiary rule." Commonwealth v. Ward, 529 Pa. 506, 605 A.2d 796, 797 (1992). citing Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d. 297 (1973). The petitioner is stating that he witnessed the daughter murdering her mother and violent incidents which her brother witnessed were clearly relevant. "It is well established that proof of facts showing the commission of the crime by someone else is admissible." Commonwealt v. Boyle, 470 Pa. 343, 368 A.2d 661, 669 (1977).

K. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE COMMONWEALTH COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO PRESERVE ORIGINAL POLICE NOTES AND REPORTS THAT DEFENSE REQUESTED PRIOR TO TRIAL WHEN ORIGINAL POLICE NOTES AND REPORTS EXISTED, INTENTIONALLY DESTROYED NOTES AND REPORTS.

The petitioner contends, court appointed counsel requested police notes because multiple police witnesses testified that their testimony **were not** a verbatim account of what he allegedly said, but was based on police notes, which constitutes **"hearsay testimony."**

The petitioner contends, that trial court appointed counsel was prevented from effectively cross-examining the police witnesses who testified as to what the petitioner allegedly said to (police) when the trial court refused to compel the Commonwealth and/or police to provide the defense with all police notes that were testified to by police witnesses.

The petitioner argues, just as any other witness, police witnesses' credibility is on the line when the are testifying in a criminal case even more so because they are law enforcement officers. These police notes would have proved that the police witnesses lied on the stand. In other words, these police notes would have revealed something totally contradictive than what the testifying police witnesses testified too at trial. But, until these police notes are given to the petitioner, we will never know what probative value they possess.

The petitioner argues, the Commonwealth intentionally destroyed and failed to preserve the original police notes and reports is because they contained the truth of what actually happen, because the commonwealth knew all along they were going to obstructed justice and mislead the court. See: Commonwealth v. Jones, 13 Pa. D. & C. 4th 351 (1992), Franks v. Delaware, 438 U.S. 154, 171 (1978), relating Detective Potts failure

to disclose constituted a reckless disregard for the truth which tended to mislead the issuing authority.

The petitioner argues, that the credibility of these police witnesses' is at question here, thereby, during every interrogation he witnessed Detective Potts and Captain Heierling taking handwritten notes regarding the facts of this case, as the petitioner detailed the facts for them. The professionals assigned to this case are known to: Tamper with court documents, tampering with witnesses, give false testimony, concealment of the truth, threatening witnesses, this is in reference to all police detectives, Capt. assigned, anyone who had anything to do with this case.

The petitioner contends, the District Attorney Diane E. Gibbons admitted that these police witnesses' falsified documents to obtain an affidavit of probable cause. See: (July 1, 1992, pretrial page 71 line 10-11). Is District Attorney Diane E. Gibbons it admitting the affidavit of probable cause is inaccurate and not valid; it states the petitioner was found with instrument of crime; to wit a pair of scissors. This is inaccurate and impossible, as the instrument if crime was embedded in the deceases chest. Noted: When the Medical Examiner Halbert Fillinger removed the instrument of crime, these police witnesses' was presence at that moment with the Medical Examiner, why?

The petitioner maintains, that if these police witnesses' did not falsely state the facts of this case, they would have never been able to obtained an affidavit of probable cause to arrest him, because of these police witnesses' knowingly signing off on an tainted affidavit of probable cause, then submitted this document as true-facts to higher authorities to rely on.

The petitioner argues, this is why it's vital to procure the original reports & notes from these investigators because they are known to omit the true facts: See: Police witnesses' criminal records. See: Detective Potts cited in Commonwealth v. Jones, See: Paul Lindenmuth cited in Nightclub lawsuit called The Mines. According to U.S. District Judge Caputo (M.D.Pa.), also, former Bristol Township Detective Lindenmuth is sighted for misrepresenting himself on a search warrant this detective worked on the petitioner case with Diane E. Gibbons.

Pursuant to Rule 305 of the Pennsylvania Rule of Criminal Procedure Pre-Trial Discovery and Inspection, pursuant to Section B, disclosure by the Commonwealth (mandatory) it is clear that the Commonwealth was obligated to preserve the original police notes which were specifically requested and were in existence at the time the request was made by defense counsel: "the refusal to preserve original notes of all officers even after subpoena and discovery request of 10/31/91." See: (pretrial testimony July 1, 1992, page 70 line 3-13), defense counsel states: "I subpoenaed the Bristol Township police original notes of all officers. Notwithstanding my discovery request that I file on 10/31/91, I delivered a subpoena to the Bristol Township Police Department requesting that they bring their original notes if they exist, for all officers who had anything to do with the investigation whether or not they testified and so forth."

The petitioner asserts, Yet the Commonwealth intentionally failed to preserve any of their original police notes many of which were deemed vital to the defense, especially since the Commonwealth police witnesses testified that the statements made by the petitioner and related to the Court were not verbatim and were transcribed from the police witnesses notes. See: Affidavit John Brookins, 3/23/09, p.1-12, (citing verbatim).

Therefore, all prior counsels should have argued and introduced as evidence the reasons why the commonwealth did not charge the petitioner with PIC, and raised the issue of actual innocence and miscarriage justice. Because the jury had a right to know this information before determining the petitioner's guilt or innocence. However, all prior counsels failed to do so. There is no way possible that all prior counsel had a reasonable basis for failing to do so. See: Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2051 (1984)

Additionally, in order to be constitutionally valid under the 14th Amendment of the U.S. Constitution, a warrantless arrest must be supported by probable cause. See: In Interest of O.A., 717 A.2d 490 (Pa. 1998); Commonwealth v. Barnett, 484 Pa. 211, 398 A 2d 1019 (1979). It's well settled that in determining whether probable cause exist to justify a warrantless arrest, the totality of the circumstances must be considered. See: Commonwealth v. Banks, 540 Pa. 453, 658 A.2d 752 (1995)

The totality of the circumstances test finds its roots in the U.S. Supreme Court opinion enunciated in Illinois V. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983). And under the totality of the circumstances test, as refined by more recent cases, (probable cause exist where the fact and circumstances within the officer's) knowledge are sufficient to warrant a person of reasonable caution in the belief that a crime has been or is being committed. See: In Interest, supra, Commonwealth v. Gibson, 536 Pa. 123, 130, 683 A.2d 203, 206 (1994). And mere suspicion is not a substitute for probable cause. See: Commonwealth v. Kelly, 487 Pa. 174, 178, 409 A.2d 21, 23 (1979).

The petitioner avers, the circumstances surrounding the his warrantless arrest this court must consider the above relevant facts

when deciding whether the warrantless arrest was justified by [reasonable] probable cause. Commonwealth v. Evans, 546 Pa. 417 685 A.2d 535 (1996). And according to the totality of the circumstances of the petitioner's case NO reasonable officer can legitimately demonstrate and/or state sufficient probable cause to justify arresting him without a warrant. Because every factual basis stated in the affidavit of probable cause by the arresting police witnesses' was unbelieved by the court jury and dismissed for lack of credibility.

L. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN TRIAL COUNSEL EGREGIOUSLY ADVISED THE PETITIONER NOT TO TESTIFY ON HIS OWN BEHALF

The petitioner contends, prior to trial he had informed trial counsel Marc I. Rickles, that he want to testify and tell everyone he did not commit this crime, but walked in on Sharon Ginsberg. When it came time for the petitioner to give testimony. Trial counsel told the petitoiner that he (Trial Counsel) felt the petitioner could not add anything to his trial. Then told the petitioner that he counselor Marc Rickles would present to the jury the petitioner's account of the events that occurred

The petitioner asserts, that he only accepted Counsels Rickles advice not to testify because Rickles told the petitioner that he would tell the jury that Sharon Ginsberg Killed her own mother. But counsel Rickles failed/refused to do so. Thus, rendering any colloquy null and void because the petitioner did not knowingly voluntarily, intelligently agree to waive his right to testify on his own behalf. Had the petitioner testified he would have informed the jury what Sharon Ginsberg did to her own mother, and what the police witnesses' did during the investigation. However, Counsel Marc Rickles deprived the petitioner of his rights and the jury of this information.

The petitioner maintains, that under the 5th, 6th Amendments of the U.S. Constitution he has the right to testify on his own behalf. The right to testify is a basic right, and there is an obligation on the of the court and trial counsel to inform the petitoiner of his rights to testify. If he so desires. Further, it's there duty to assure that the exercise of this right by the petitioner is a free, meaningful decision.

The petitioner maintains, that because of the threats from the detective Robert C. Potts and Captain Rudloph Rudy Heierling toward the petitioner's family and children of Orether Green. During the Colloquy the petitioner was asked specific questions and in each question Counsel Rickles GESTURED to the petitioner to say YES or NO to the questions being ask, and because of the threats of harm to petitioner family he felt he had no choice but to respond in kind. Because Counsel Rickles worked with the same detectives that threaten the petitioners family.

The petitioner maintains, that during the colloquy these specific question was not for the petitioner's benefit, but these specific questions were geared to protect trial counsel Marc Ricles cover his ineffectiveness during trial and on direct appeal. Why else would counel have a colloquy with so much evidence that proves the petitioner's innocence and not use it, unless somebody's covering up something or protecting someone. U.S. Const. 1st, 4th, 6th, 8th Amendments.

In this case, the necessity for the petitioner to testify was given greater than usual because when the Commonwealth presented its case against the petitioner it presented a number of witnesses, and a lot of circumstantial evidence. However, when the petitioner's opportunity Came, No defense was offered; not even the petitioner took the stand to deny his guilt. In view of this situation, with all the evidence on one

side, none on the other, it was not surprising that the jury concluded that the petitioner was guilty. Poe v. United States 233 F.Supp. 173 (1964). U.S. Const. 1st, 4th, 6th, 8th Amendments.

In addition, PCRA counsel should have raised Trial/Direct Appeal counsels' ineffectiveness, and raise this claim for appellate review. However, PCRA counsels' failed to do os, and had no reasonable basis for not doing so. As a result, all prior counsels actions and omissions deprived the petitioner of his constitiutional right (State & Federal): Pa. Const. Art. 1 § 9; and U.S.C.A. Const. 6th Amentment - Effective Assistance of Counsel, and 14th Amendment. Strickland v. Washington, 466 U.S. 668, 104 S.Ct 2052 (1984).

M. THE PETITIONER'S CONSTITOINAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN TRIAL COUNSEL'S SECOND JOB AS TOWNSHIP POLICE COMMISSIONER CREATED A CONFLICT OF INTEREST

The petitioner contends, that trial counsels second job as Bristol Township Police Commissioner and former District Attorney in Bucks County, created a conflict of interest. Consequently, depriving the petitioner of his constitutional rights. Trial counsel gave the petitioner gestures to say YES or NO to specific Question. See: (N.T. 6/25/92, p. 146-147), trial counsel stated he was responsible for the hiring and firing of police officers. See: (N.T. 6/25/92, p. 142-143). This created a serious conflict of interest.

The petitioner argues, that 16 officers, (9 of whom were involved in this case), these officers were involved in a lawsuit in which Bristol Township Civil service commission nullified their promations the commission voided their promotions in 1986 stating that the Bristol Township council failed to follow proper testing procedures and failed

to name every officer who passed a promotion test and appointed officers to position for they which they had not been tested or certified. This commission decisions was upheld by Buck County Judge William Hart Rufe III in 1989.

The petitioner contends, These officers were given ranking promotions and salary increases without being properly tested. For example Paul Lindenlmuth went from patrol officer to Detective. Testing undetermined See: (newspaper article 12/14/1990) in the Bucks County Courier Times PA clears the way for demotion of officers. In case number: 199 cd 1990, Court appointed attorney Marc I. Rickles and Trial Judge William Hart Rufe III, was named in this lawsuit. Both above were directly involved with the lawsuit and the petitioner's case. Both are a conflict of interest!

The petitioner argues, that in (N.T., 6/25/92, p.142 line 16 thru 20). Court appoint attorney Marc Rickles stated that he had nothing to do with representing these Police witnesses', but his name appears on their court documents. See: (42 Pa.C.S.A.§ 2522), (citing Oath of Office)

The petitioner maintains, that Marc I. Rickles, esq. is named in this civil action suit with the Commonwealth of Pennsylvania according to commonwealth's docket sheet case number 843-CD-1992 in which the following officers, (who were involved in the petitioner case) were named (but not limited to): Lt. Richard Bilson, Det. Samuel Wisnewski, Lt. Walter Swartz, Sergeant Thomas Mills, Lt. James Swope, Captain Rudy Heierling, Det. Michael McDonough, Det. Paul Lindenmuth, Det. Alfred Eastlack, Civil Service Commission Marc I. Rickles Esq.

The petitioner maintains, this began in 1986. In 1989 Bucks County Common Pleas Court, Judge William Hart Rufe III, (is the same Judge

during the petitioner's trial) Judge Rufe ruled that the promotions of these officers had to be thrown out. Judge Rufe III, ordered the promotions process, with an exam, to begin again. In December, 1990 the Commonwealth court upheld Rufes Decision. (The same month of Sheila Ginsberg's murder).

The officers were to be given brand new civil service commission test with the affected officers do not pass they were to be demoted. It should be noted that as of November, 1991 this process of testing still has not yet been complete. If the officers named above did not pass their exams they were to be demoted. Many of the officers named above testied during the petitioner's trial and/or on completed paperwork with regards to the investigations conducted during the petitioner's case.

Marc I. Rickles (their solicitor-lawyer for the Bristol Township Civil Service Commission) was the very same attorney representing the petitioner during the officers civil proceeding! The officers were handed promotions while not properly tested and were therefore not yet qualified to properly process the fact of the petitioner's case.

The petitioner argues, that several officers also testified under oath, naming themselves at their ill begotten promotional titles. This case was closed 6/22/1993, by both Marc I. Rickles, Judge William Hart Rufe III, the above named police were directly involved in the petitioner's case. Cuyler v. Sullivan, 446 U.S. 335,100 S.Ct.1708(1980).

The petitioner argues, that Judge William Hart Rufe III, knew that these Detectives and Police witnesses credentials are at question at the time of the petitioner's interrogations, and when the Affidavit of Probable Cause was signed by these unqualified, uncertified detectives that intentionally misconstrued that fact of this case. And still Judge

William Hart Rufe III allowed known tainted evidences to be entered into the record, for the Higher Courts to rely on. See: (42 Pa.C.S.A.§ 2522).

In this case, can there be any disagreement that the integrity of the courtroom is paramount? Any judicial or pseudo-judicial ac t that undermine the integrity of the courtroom, court records are despicable. "The operations of the courts and the judicial conduct of Judges are matters of utmost public concern." Landmark Communication v. Virgina, 98 S.Ct. 1534, 435 U.S. 829. "Our adversary system depends on a most jealous safeguarding of truth and candor." Jones v. Clinton, 36 F.2d 1118 (E.D.Ark. 1999) citing United States v. Shaffer Equip. Co., 11 F.3d 450, 463 (4th Cir. 1993). See: 18 Pa. C.S. 4911.

The petitioner maintains, that he have a right to presume that in all judicial proceedings the court will search for TRUTH, and will not distort or alter facts presented to the court. A court that "manages" admissibility of evidence neglects its duty to search for Truth. A court that alters the record to remove admissible evidence conceals truth and commits "conflict of interest crimes" the petitioner justice is unattainable without Truth. Supervisors v. United States ex rel, 71 U.S. 435, 4 Wall 435; United States v. Thomas, 15 Wall 337; United States v. Lee, 106 US 196, 1 S.Ct. 240.

In reporting these crimes conforms with the Rules of Professional Fraud, by definition, is an intentional perversion of truth. Fraud may be by direct falsehood, or innuendo, or suppression of truth, by speech or by silence, etc. Black's Law Dict. 6th Ed., p. 660. Fraud violates due process of law, and terminates the "intangible right to honest services" promised to the people. 18 U.S.C. § 1346.

The petitioner maintains, a "fraud on the court" occurs when a

prosecutor enters into the record a "false" or counterfeit doucumet [See: Affidavit of Probable Cause], or when a prosecutor knowingly and intentionally misrepresents material fact [See: Clark Fulton N.T., 7/16/92, p. 69], or law to the court. A fraud on the may also occur when lower forward documents to appellate court for rreview, when the lower court [Judge] knows that the record is incomplete or inaccurate as a result of "Tampering with official record." [See: Affidavit of Probable Cause and police/detectives credentials]. 18 Pa. C.S.§ 4911.

N. THE PETITIONER'S CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW WERE VIOLATED WHEN THE EVIDENCE IN THIS CASE CIRCUMSTANTIAL AND NOT SUFFICIENT TO ESTABLISH FIRST DEGREE MURDER BEYOND A REASONABLE DOUBT.

The petitioner maintains, this case is an deplorable state of affairs is the product of many factors. Law enforcment officials have made too many arrest that lack probable cause. Clearly after viewing the upon facts circumstantial evidence is not enough to link the petitioner as the killer of this crime beyond a reasonsble doubt. Commonwalth v. Boyle 470 Pa. 343, 368 A.2d 661, 663 (1977) (citations omitted).

The petitioner have been victimized by prosecutors who overcharge withhold key evidence, and engage in a myriad of other forms of professional misconduct. Refused to call petitioner's (Alibi witnesses) Kyles v. Whitley, 514 U.S. 419 (1995), Imbler v. Pachtman, 424 U.S. 409 427, n.25, 96 S.Ct. 984 (1976).

Although the evidence in this case clearly circumstantial rather than direct. The combination of the evidence do not link the petitioner to the crime beyond a reasonable doubt. The errors committed during trial so prejudiced the petitioner that the evidence presented in his defense was meaningless.

The petitioner contends, the U.S. District Judge also concluded that this claim lacked merit. The District Judge cannot lawfully rule this claim to be procedurally barred and lack merit. He has to choose what

premise it's denying the petitioner habeas corpus relief, so the petitioner can know what he is actually appealing.

CONCLUSION

In conclusion, the State Courts' Order/Opinion proves that all of the petitioner's claim were presented in his PCRA, and the claims that court appointed counsel were presented, Direct Appeal were properly preserved.

The Magist. Judge stamped the petitioner's properly preserved claims as procedurally defaulted, deprived the him of a fundamental fair and meaningful habeas corpus review.

The petitioner argues, the record shows that he was deprived of a meaningful fair jury trial when he was denied effective assistance of counsel, and he was prejudice during trial when trial court allowed inadmissible and prejudicial evidence to be introduced to an all white jury, when trial court prevent the defense from obtaining and presenting vital evidence to prove his actual innocence. Had it not been for the multiple constitutional rights violation, the denial of effective assistance of counsel, and prosecutorial misconduct he would not have been convicted, or at the very least not sentenced to life in prison. No reasonable jurist can honestly say the petitioner was not deprived of fundamental fair jury trial, that his constitutional rights were not violated. (Art. 1 §§ 1, 9, 20, 26; U.S. Const. 1st, 6th, 14th Amendment

Wherefore, the petitioner is entitled to a new trial or habeas corpus relief or vacate all judgement of sentence or appropriate relief required

Date: 4-30-19

Respectfully submitted

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