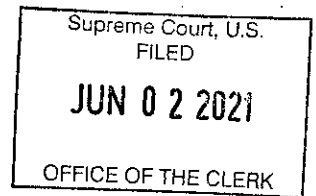


No. 20-1783



IN THE
SUPREME COURT OF THE UNITED STATES

JACOB CHRISTINE — PETITIONER
(Your Name)

vs.

SUPERINTENDANT OF SCI ALBION — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jacob Christine (HQ-1431)
(Your Name)

SCI GREENE 175 Progress Dr.
(Address)

Waynesburg, PA 15370
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Certiorari is sought re the erroneous denial of a C.O.A. or Reargument in the 3rd Cir. Ct. of Appeals, perhaps most notable among the questions presented, is if this court's ruling in *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011), bars a rehearing re Brady material that was unavailable in the St. Ct. where the ADA Pled the 5th, and access to the ADA file was denied, because *Jones v. Bagley*, 696 F.3d 475 (6th Cir. 2012) ftnote 4, ref. at 486, states Brady is an exception to "Pinholster," but other huge questions of significant public importance that are as of yet unprecedented have also been presented:

1) REGARDING WHEN A C.O.A. IS TO BE ISSUED, HAVE THIS COURT'S HOLDINGS IN *Barefoot v. Estelle*, 463 U.S. 880 (1983), AND *Miller v. Cockrell*, 537 U.S. 332 (2003) BEEN OVERRULED, OR HAS THE U.S. COURT OF APPEALS FOR THE 3rd Cir. ERRED IN FAILING TO ISSUE A C.O.A. OR REARGUMENT IN THE INSTANT MATTER?

2) ARE PCRA'S FILED BY THE DECLARANT AND COUNSEL, AND TESTIMONY FROM HIS COUNSEL REVEALING A BRADY VIOLATION AND TRIAL PERJURY, A HEARSAY EXCEPTION WHEN THE DECLARANT IS UNAVAILABLE?

WHEN THE ADA PLEADS THE 5th IN RESPONSE TO THE ACCUSATION OF A BRADY VIOLATION, DOES IT HAVE ANY EVIDENTIARY VALUE AS AN ADMISSION IN THE CIVIL SETTING OF A PCRA HEARING?

WHEN THE PCRA DECLARANT SUBSEQUENTLY BECOMES AVAILABLE AND ISSUES AFFIDAVITS ADMITTING THE BRADY VIOLATION, IS A REHEARING BARRED BY "PINHOLSTER," 563 U.S. 170 (2011), WHEN ACCESS TO THE ADA FILE WAS DENIED AT FIRST HEARING, AND "BAGLEY," 696 F.3d 475 (6th Cir. 2012) footnote 4, ref. at 486, STATES BRADY MATERIAL IS A BRIGHT LINE EXCEPTION TO "PINHOLSTER."

3) WHERE THE JURY RETURNED FROM DELIBERATIONS REQUESTING THE SELF-DEFENSE INSTRUCTION BE REPEATED AND WERE ERRONEOUSLY INSTRUCTED DEFENDANT HAD A DUTY TO RETREAT FROM HIS OWN "DWELLING,"

THE DEFENDANT'S DUE PROCESS RIGHTS VIOLATED WHERE THE DIST. DISPOSED OF THE CLAIM BY ADOPTING A MISREPRESENTATION BY THE ST. CT. THE DUTY WAS NOT EXCUSED FROM A "DWELLING" UNDER THE STATUTE AT THE TIME OF TRIAL, WHEN IT WAS (5th and 14th Amendment U.S. Const. Due process),

AND DOES A PRISONER HAVE A RIGHT TO STAND HIS GROUND IN HIS ASSIGNED CELL?

4) WHERE THE JURY RETURNED FROM DELIBERATIONS REQUESTING THE SELF-DEFENSE INSTRUCTION BE REPEATED AND WERE ERRONEOUSLY INSTRUCTED IF THE DEFENDANT ACCIDENTALLY INJURED THE VICTIM IN SELF-DEFENSE, HE "COMMITTED THE CRIME" AND THE JURY "NEED NOT CONSIDER JUSTIFICATION,"

DID THIS MISINSTRUCTION INFECT THE ENTIRE TRIAL WITH UNFAIRNESS WHERE UNDER STATE LAW, SELF-DEFENSE AND ACCIDENTAL INJURY ARE NOT MUTUALLY EXCLUSIVE UNDER *Childs*, 142 A.3d 823 (2016), AND WAS IT CONSTITUTIONAL FOR THE DISTRICT TO CLAIM THIS MAY HAVE BEEN A "SCRIVNER ERROR"?

5) IS PROCEDURALLY DEFAULTING A DEFENDANT FOR FAILURE TO RELITIGATE A FULLY EXHAUSTED DIRECT APPEAL CLAIM ON PCRA UNDER THE ALTERNATIVE LEGAL THEORY OR ALLEGATION ON AN "EX-POST-FACTO" VIOLATION CONSTITUTIONAL WHEN THE STATE PCRA ACT EXPRESSLY FORBIDS SAID RELITIGATION UNDER 42 Pa. C.S. § 9544(a)(2), see *Collins*, 888 A.2d 564 (2005) Headnote 3, and 586 Pa. 56, AND, IS THE DIST. PERMITTED TO LEAVE CLAIMS AND DISPUTED MATTER UNADDRESSED?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
-

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I. ISSUE A) (RE QUESTION #1)

HAS THE THIRD CIR. CT. OF APPEALS ERRED IN FAILING TO ISSUE A C.O.A. OR REARGUMENT IN THE INSTANT MATTER WHERE THE PETITIONER PRESENTED A BRADY VIOLATION, TWO JURY INSTRUCTION ERRORS, AND AN EX-POST-FACTO VIOLATION, MET ALL CRITERIA FOR ISSUANCE OF C.O.A. AND EVEN RAISED NUMEROUS UNANSWERED QUESTIONS OF EXCEPTIONAL IMPORTANCE WITHOUT PRECEDENT _____ 12

(i) GROUND ONE (RE QUESTIONS #2)

A VIOLATION OF BRADY WHERE THE ADA AND COMMONWEALTH WITNESS TESTIFIED NO DEAL WAS OFFERED IN EXCHANGE FOR HIS TESTIMONY AT TRIAL, BUT AFTER, HE FILED TWO PCRA'S, ONE AMENDED BY HIS COUNSEL, CONFESSING THERE WAS A PRE-TRIAL DEAL TO REDUCE HIS BANK ROBBERY SENTENCE; AS A RESULT HE SENTENCE WAS REDUCED BY TWO YRS.—I FILED A PCRA, AT THE HEARING THE ADA PLED THE 5th, ACCESS TO ADA FILE WAS DENIED, DECLARANT WAS UNAVAILABLE, BUT HIS COUNSEL TESTIFIED THERE WAS A PRE-TRIAL SECRET DEAL—RELIEF WAS DENIED; DECLARANT LATER BECAME AVAILABLE AND ISSUED AFFIDAVITS ADMITTING PRE-TRIAL SECRET DEAL, BUT A HEARING WAS DENIED, DIST. CITED "PINHOLSTER" AS BARRING A REHEARING DESPITE 6th CIRCUIT CASE "BAGLEY" HOLDING BRADY IS EXCEPTION; APPEALS COURT FAILED TO ISSUE C.O.A. OR REARGUMENT _____ 13

(ii) GROUND TWO (RE QUESTION #3)

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO OR CORRECT ERRONEOUS JURY INSTRUCTION No. ONE, WHERE AFTER THE JURY RETURNED FROM DELIBERATION REQUESTING THE SELF-DEFENSE INSTRUCTION BE REPEATED, THEY WERE TOLD A THIRD TIME I HAD A DUTY TO RETREAT FROM AN ARMED TRESPASSING ATTACKER IN MY OWN DWELLING—LOWER COURTS ERRED IN ADOPTING A MISREPRESENTATION BY THE ST. CT. THAT THE SELF-DEFENSE STATUTE DIDN'T EXCLUDE A DUTY TO RETREAT FROM ONE'S "DWELLING" AT THE TIME OF MY TRIAL, WHEN IT DID, AND TRIAL COURT FAILED TO EXCLUDE SAID DUTY MY ASSIGNED JAIL CELL; THE 3rd Cir. Ct. OF APPEALS FAILED TO ISSUE C.O.A. _____ 20

(iii) GROUND THREE (RE QUESTIONS #4)

WHERE I TESTIFIED THAT I INJURED THE VICTIM ACCIDENTALLY WHILE DEFENDING MYSELF AND AND THE JURY RETURNED FROM DELIBERATIONS REQUESTING THE SELF-DEFENSE INSTRUCTION BE REPEATED, MY TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CORRECT THE ERRONEOUS INSTRUCTION THAT IF THE JURY BELIEVED THAT I ACCIDENTALLY INJURED THE VICTIM IN SELF-DEFENSE, THAN, "THERE WAS NO JUSTIFICATION EITHER, BECAUSE THE DEFENDANT COMMITTED THE CRIME," AND THE LOWER CT. ERRED IN HOLDING THIS MASSIVE ERROR DID NOT INFECT THE ENTIRE TRIAL AND ALLEGING IT MAY HAVE BEEN A "SCRIVNER ERROR." _____ 24

EX-POST-FACTO AND 14th AMENDMENT VIOLATION WHERE PA SUPREME CT. OVERRULED PRECEDENT CASE AND ALTERED THE RULES OF EVIDENCE IN VIOLATION OF THE U.S. CONST. AND APPLIED THE CHANGE EX-POST-FACTO DENYING ME A NEW TRIAL UNDER THE ORIGINAL RULE ALLOWING THE VICTIM'S PRIOR ASSAULT CHARGE TO ADMITTED AT TRIAL, BUT THEY CHANGED THE RULE AFTERWARD; CHIEF JUSTICE ISSUED SCALDING DISSENT—DIST. ERRED BY PROCEDURALL DEFAULTING CLAIM FOR FAILURE TO RELITIGATE ON ST. PCRA DESPITE 42 Pa. C.S. § 9544(a)(2) and PA SUPREME CT. PRECEDENT Collins, 888 A.2d 564 (2005) Headnote 8, EXPRESSLY PROHIBITING SAID CONDUCT AND THIRD CIR. APPEALS CT. FAILED TO ISSUE C.O.A. _____

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CONCLUSION _____

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EXHIBITS WITH INDEX _____

(Attached)

APPENDIX WITH INDEX _____

(Attached)

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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 judgment 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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

(I AM UNSURE)

The opinion of the United States district court appears at Appendix C,D.& E to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

(I AM UNSURE—IT WON'T COME UP ON OUR COMPUTERS)

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1/8/21.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 3/29/21, and a copy of the order denying rehearing appears at Appendix A.

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

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT U.S. Const.,

"No person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment of a 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 offense 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, without just compensation."

SIXTH AMENDMENT U.S. Const.,

"In all criminal prosecutions, 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 case 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."

FOURTEENTH AMENDMENT U.S. Const. (sec. 1),

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of 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 laws."

28 U.S. (c)(1),

"Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) The final Order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final Order in a proceeding under section 2255 (28 USCS § 2255).

18 Pa. C.S. § 302, General requirements of culpability,

"(a) **Minimum requirements of culpability**—Except as provided in section 305 of this title (relating to limitation on scope of culpability requirements), a person is not guilty of an offense unless he acted intentionally, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense.

18 Pa. C.S. § 501, Definitions, (2010 Edition), prior to 2011 Amendment.

"**Dwelling**,"—Any building or structure, though moveable or temporary, or a portion thereof, which for the time being is the home or place of lodging of the actor."

18 Pa. C.S. § 505, Use of Force in self-protection, (b)(2)(ii)(A),

(see next pg.)

"the actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be."

(THE ENTIRE STATUTE IS ATTACHED AS Exh. I AND APPENDIX P)

18 Pa. C.S. § 2702, "Aggravated Assault," (a)(1), Offense Defined,

"attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life."

18 Pa. C.S. § 4902, "Perjury," (a) Offense Defined,

"A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true,"

18 Pa. C.S. § 4904, Unsworn Falsification to authorities,

(a) **In General.**—A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function, he:

- (1) makes any written false statement which he does not believe to be true.
- (2) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (3) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false."

(b) **Statements "under penalty."**—A person commits a misdemeanor of the third degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statement made therein are punishable.

42 Pa. C.S. § 5552, "Other offenses,"

(a) **General Rule.**— Except as otherwise provided in this subchapter, a prosecution for an offense must be commenced within two yrs. after it is committed.

(b) **Major Offenses.**— A prosecution for any of the following offenses must be commenced within five years after it is committed:

- (1) Under the following provision of Title 18 (relating to Crimes and offenses):

Section 4902 (relating to Perjury) through section 4912 (relating to impersonating a public servant).

(APPENDED IN ITS ENTIRETY AS APPENDIX Q)

42 Pa. C.S. 5941(a), Person who may be compelled to testify,

(a) General Rule.— Except defendants actually upon trial in a criminal proceeding, any competent witness may be compelled to testify in any matter, civil or criminal; but he may not be compelled to answer any question which, in the opinion of the trial judge, tend to incriminate him; nor may the neglect or refusal of any defendant, actually upon trial in a criminal proceeding, to offer himself as a witness, be treated as creating any presumption against him, or be adversely referred to by court or counsel during the trial.

42 Pa. C.S. 9544 (a)(2),

(a) Previous litigation.—For purposes of this subchapter, an issue has been previously litigated if.

2) the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or

Pa. Standard Jury Instruction 9.501 sec. 1, c., (1),

(1) retreating, but that (he)(she) failed to do so. (However, the defendant is not obliged to retreat from (his)(her) own dwelling, that is, any building or structure though movable or temporary, or a portion thereof, including the doorway, that is, at least for the time being, the defendant's home or place of lodging, unless (he)(she) was the initial aggressor in the incident) (or) (However, the defendant is not obligated to retreat from (his)(her) place of work unless (he) (she) is attacked there by someone the defendant knows also works in the same place);(or)...

(THE ENTIRE JURY INSTRUCTION IS ATTACHED AS Exh. H, AND APPENDIX R)

Pa. Rules of Evidence, 405 (b)(2), "Methods of Proving Character,"

(a) By reputation. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation. Testimony about the witness's opinion as to the character or character trait of the person is not admissible.

(2) In a criminal case, on cross examination of a character witness, inquiry into allegation of other criminal conduct by the defendant, not resulting in conviction, is not admissible.

(ATTACHED IN ENTIRETY AS APPENDIX S)

Pa. Rules of Evidence, 609, Impeachment by Evidence of a Criminal Conviction.

(a) In General. For purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime, whether by verdict or by plea of guilty or nolo contendere, must be admitted if it involved dishonesty or false statement.

(b) Limit on Using the Evidence After 10 years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(Attached in its entirety as APPENDIX T).

Pennsylvania Rules of Evidence, 804,

"Exceptions to the Rule against Hearsay when declarant is unavailable as a witness,"

Sec. (a), "A declarant is considered unavailable if the declarant:

5) Is absent from the trial or hearing and the statements proponent has been unable, by process or other reasonable means to procure (the declarant's attendance)."

Sec. (b), "The following are not excluded by the Rule against Hearsay if the Declarant is unavailable as a witness:

(3) A statement against interest

(A) The statement had such great a tendency to invalidate the declarant's claim against someone else, or expose the declarant to civil or criminal liability, and...

(B), (The statement) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(6) A statement offered against a party that wrongfully caused the declarant's unavailability.

(A), statements offered against a party that wrongfully caused or acquiesced in wrongfully causing the declarant's unavailability as a witness, and did so intending that result."

(ENTIRE RULE ATTACHED AS APPENDIX U)

STATEMENT OF THE CASE

On 6/8/09 I was housed in Northampton County Prison and assigned to cell B2-3 as my living quarters, Id. 10/6/10, 44:5-6, (I was on ATA from a PA St. prison to Appeal a traffic offence).

While inside my assigned cell, I was attacked by another prisoner who had transferred from a NJ St. prison, TOM MISERO, who trespassed from his assigned cell, B2-5, Id. 10/5/10, 56:12.

* MISERO had been serving time, a New Jersey State prison, Crim. Case #06000394, Id. Fed. East. Dist. Disp. Case #12-7081, Id. 16:1-23.

MISERO was an old acquaintance of mine from the city of Easton whom I'd met in a Juvenile Detention center, Id. 10/6/10, 47:3-11.

At trial I testified that I was attacked in my own assigned cell, by MISERO, who first threw hot coffee and then tried to slash me with a razor blade, a struggle ensued where I was able to disarm him, but when he renewed his attack, in the subsequent struggle I accidentally cut him with the razor, Id. 10/6/10, 45-50.

* Five photos were also taken of injuries I sustained as a result of his attack, including a blow to the back of the head, but they were not admitted at trial, See Exh. A, of Superior Ct. PCRA brief at 337 EDA 2017.

At trial MISERO testified I had pulled him inside my cell and cut him, but did not dispute the incident occurred in my assigned cell, Id. 10/5/10, 59-95, and he testified he did not know me and had never met me, Id. 59:24-61:2 and 94:19-21.

* However, Juv. Probation Off. MATT GARVEY testified both MISERO and myself spent seven months together in a Juvenile Det. center that housed only 24 youths on 2 pods, Id. 10/6/10, 71-74.

Contrary to MISERO's version of events, defense witness CHRIS BOASE testified MISERO was not "pulled inside," but seen entering voluntarily "looking hostile," Id. 10/6/10, 76:2-12.

* MISERO had also revealed at trial that he was pursuing a lawsuit against the prison re the incident, Id. 10/5/10, 92:17-23 (Case No. 12-7081, Fed. East. Dist.).

DAN RICE was originally a defense witness set to be called to verify that MISERO had not been pulled inside my cell, but entered freely with a hot cup of coffee, Id. 10/6/10, 24-26.

* He originally told P.I. STAHR that he saw MISERO enter my assigned cell—that he wasn't pulled inside, original P.I. report attached, **Exh. D**.

But, at trial DAN suddenly changed his position to a prosecution witness, now testifying that after the incident I told him I cut MISERO over a \$20.00 debt, **Id. 10/6/10, 18:17-22**.

The ADA, PATRICIA MULQUEEN then elicited testimony from DAN that he was receiving **no deal** in exchange for his altered testimony from the Prison OR DA Office, **Id. 23:19-23**.

Closing arguments were then made and the ADA, MULQUEEN told the jury THREE times that DAN was receiving **no deal** in exchange for his modified testimony, **Id. 10/7/10, 28:4-31:18**.

The trial judge STEVEN BARAITTA, then TWICE instructed the jury that I had a duty to retreat from my assigned cell before using force in self-protection, **Id. 10/7/10, 73:23-74:21**.

* The jury then returned requesting the self-defense instruction be repeated, **Id. 10/7/10, 77:23-78:2**.

* The jury was then again instructed I had a duty to retreat from my own dwelling before using force in self-protection, **Id. 10/7/10, 91:22-23**, and my counsel never objected despite both the Self-Defense Statute, 18 Pa. C.S. § 505 AND Pa. Stand. Jury Inst. 9.501 excusing a duty to retreat from one's "dwelling."

* Additionally, the jury was told that if I injured the victim accidentally, then I, "committed the crime," "there was no justification either," "so (they) don't have to consider justification," **Id. 10/7/10, 88:13-15**.

As a result I was found guilty of Agg. Assault SBI and sentenced to 20yrs. imprisonment at only 22 yrs. of age.

On Direct Appeal a request for a new trial was fully exhausted re the trial court's refusal to admit the victim's prior assault conviction, where the PA Rules of Evid. at the time allowed it's admission pursuant to **Com. v. Beck, 402 A.2d 1371 (1979)**, holding all assault convictions admissible "there is no need to compare facts."

But, the PA Supreme Ct. overruled the rule, altered the PA Rules of Evid. and denied me a

new trial, applying the change "ex-post-facto," *Com. v. Christine*, 129 A.3d 394 (2015), Dissent filed by Chief Justice—Op. MAP 2015, attached as **Appdx K**, in St. Ct. Rec. at #63.

In 2016 a PCRA was filed on my behalf, where counsel JAMES MADSEN determined that DAN RICE had filed a PCRA after my trial that he signed and certified to be true under 18 Pa. C.S. § 4904.

Therein, he confessed that both the ADA and the Prison investigator agreed before my trial to reduce his sentence in exchange for modifying his testimony at my trial, said PCRA was also amended by his counsel, MICHAEL CORCORAN, who realleged the same information after meeting with the ADA.

In DAN's 4/8/11 filed PCRA, attached **Exh. A**, in St. Rec. at 122, he confessed,

"PATRICIA MULQUEEN (ADA) said I would receive a sentence reduction in return for my testimony in an attempted murder trial and I never received the reduction after I testified,"
Id. pg. 3, Sec. B, lines 3-6.

"Also, an agreement between me and PATRICIA MULQUEEN (ADA) in regards to my testimony in an attempt murder trial in exchange for a sentence reduction," **Id. pg. 3, sec. C, lines 5-7.**

"C.O. Naugle Northampton County Prison guard was present during my interview with D.A. PATRICIA MULQUEEN. A sentence reduction was offered for my testimony,"
Id. pg. 6, sec. 12.

"Records of my testimony against JACOB CHRISTINE's trial for attempt murder (sic),"
Id. pg. 6, sec. 13.

"I DANIEL RICE do hereby verify that the facts set fourth in the above motion are true and correct to the best of my knowledge information and belief, and any false statements herein are subject to the penalties of **Sec. § 4904** of the Crimes Code 18 Pa. C.S. § 4904," (last pg.).

Then see DAN's counseled, 6/9/11 Amended PCRA realleging the same Brady violation, attached **Exh. B**, St. Ct. Rec. # 123,

"ADA MULQUEEN spoke directly with petitioner about testifying at one JACOB CHRISTINE's trial to Attempt Homicide," **Id. pg. 2, sec. 9.**

"Petitioner (DAN RICE) reluctantly agreed to assist the Commonwealth, in consideration for the petitioner's cooperation, ADA MULQUEEN for the Commonwealth would intervene on his behalf and secure a reduced sentence with the Honorable ANTHONY BELTRAMI," **Id. pg. 2, sec. 9.**

"Petitioner, DAN RICE did in-fact testify on behalf of the Commonwealth, ADA MULQUEEN represented to PCRA counsel that petitioner's testimony was 'vital' to its case in chief. Petitioner's testimony did in-fact arise in the Commonwealth securing a conviction against JACOB CHRISTINE," **Id. pg. 3, sec. 11.**

On 5/11/16 a PCRA hearing was held where my counsel alleged a Brady violation re the material in these PCRA's and requested access to the ADA's file for evid. in support, but was denied.

* Id. 5/11/16, 3:1-4:3, access to ADA's file was expressly denied when counsel's Omnibus-Motion, was denied in Court, see motion at #72 in St. Rec. requesting, "The contents of the Dist. Attorney's file on JACOB CHRISTINE, including 'work product,' prior to the filing of the instant PCRA petition," (pg. 5(v) 34(a), "and the contents of the Dist. Attorney's filed on DANIEL RICE's case, CR-48-4051-2009," (pg. 5(v) 34(b)).

At this same hearing the ADA "pled the 5th" in response to the Brady allegation, Id. 5/11/16, 16:12-24, and she did it again at a subsequent hearing, Id. 7/11/16, 4:24-5:5.

Next, my counsel called DAN's counsel CORCORAN as a witness who read into the record relevant Brady material from the aforementioned PCRA's, Id. 66-69.

CORCORAN testified he had in-fact been told by DAN ~~there was~~ a pre-trial secret deal to cut DAN's prison sentence, that his PCRA had been drafted based on phone calls and letters where DAN told him this, Id. 67:17-19.

CORCORAN then agreed with my PCRA counsel that in summary of all the PCRA material was the averment by DAN RICE that, "there ~~was~~ a deal for (DAN's) testimony in the JACOB CHRISTINE case," Id. 68:25-69:16, 7/11/16.

CORCORAN then admitted that as a result of the PCRA's, DAN's sentence on his bank robbery was cut from 4-8 to 3-6 by the judge named by MULQUEEN in the PCRA, BELTRAMI, Id. 72.

* See Attached Exh. C, St. Rec. #121, DAN's re-sentencing N.T. in case CR-4051-2009 where his sentence was reduced per "the agreement," after filing the two PCRA's alleging the Brady violation.

CORCORAN also related that after being assigned to the matter, "he first approached ADA MULQUEEN and outlined to her some of the representations in DAN's PCRA;" that she never denied them, but stated only, "she would work with (CORCORAN) to achieve the sentence reduction," Id. 77:23-78:5.

Finally, my counsel attempted to call DAN RICE as a witness, and he had contracted a local P.I. BARRY GOLAZESKI, to serve DAN with a subpoena, however, GOLAZESKI testified that he was unable to locate DAN to serve him the subpoena, Id. 82-85.

At this time DAN was "unavailable" at the hearing, and the ADA "acquiesced" in that unavailability stating only, "I have nothing judge," in response to GOLAZESKI's testimony that he couldn't locate DAN to serve the subpoena, Id. 7/11/16, 84:19-85.

The PCRA court, and Superior Ct. denied relief on the Brady violation citing the PCRA's as "hearsay" due to the declarant's unavailability, and never addressed the material demonstrating the PCRA's and CORCORAN's testimony was hearsay exception, or the ADA's Pleading the 5th, as being probative of the violation, See Superior Ct. Op. 337 EDA 2017.

As a result, once a timely § 2254 petition was filed in the Fed. East. Dist., a new P.I. located DANIEL RICE in the County Jail, initially he would not cooperate with the investigation, but once released, he issued the following confessions affidavit which each have a corresponding P.I. report re the genesis of the Affidavit from P.I. JEN CYR:

"Everything in my PCRA was true and I met with ADA MULQUEEN prior to CHRISTINE's trial and she offered me time off my sentence in exchange for testimony against CHRISTINE...I agreed to change my testimony for a reduced sentence," 4/12/18 Affidavit, attached Exh. E, in Dist. ECF at #17, attached to "Traverse."

After more meetings with P.I. CYR, he issued more affidavits recanting his trial testimony:

"My trial testimony was false," 8/28/18 Affidavit with P.I. report, Exh. E.

"Jacob was defending himself against MISERO," 9/15/18 Affidavit with P.I. report, Exh. G.

* Affidavits located in Fed. East. Dist. ECF at #21, 22, & 23, hearing request fully exhausted to Superior Ct. at 3555 EDA 2018, Op. located in Dist. ECF at #22.

The issues related to these facts were timely raised and fully exhausted all the way up to the Third Cir. Court of Appeals, but in various order, in summary was, ISSUE A) A Brady violation, B) Jury erroneously instructed defendant had retreated duty from assigned cell, C) Jury erroneously instructed if defendant accidentally injured victim in self-defense he committed the crime so they need not consider justification, and D) An Ex-Post-Facto-Violation.

The Thirst Cir. denied a C.O.A. on 1/8/21, a timely Rehearing request (Panel or Enc Banc) was denied on 3/29/21, and this timely Certiorari request follows to the U.S. Supreme Ct.:

REASONS FOR GRANTING THE WRIT

I. (QUESTION #1) REGARDING WHEN A C.O.A. IS TO BE ISSUED, HAVE THIS COURT'S HOLDINGS IN *Barefoot v. Estelle*, 463 U.S. 880 (1983), AND *Miller v. Coker*, 537 U.S. 332 (2003) BEEN OVERRULED, OR HAS THE U.S. COURT OF APPEALS FOR THE 3rd Cir. ERRED IN FAILING TO ISSUE A C.O.A. OR REARGUMENT IN THE INSTANT MATTER?

ISSUE/A) HAS THE THIRD CIR. CT. OF APPEALS ERRED IN FAILING TO ISSUE A C.O.A. OR REARGUMENT IN THE INSTANT MATTER WHERE THE PETITIONER PRESENTED A BRADY VIOLATION, TWO JURY INSTRUCTION ERRORS, AND AN EX-POST-FACTO VIOLATION, MET ALL CRITERIA WARRANTING ISSUANCE OF C.O.A. AND EVEN RAISED NUMEROUS UNANSWERED QUESTIONS OF EXCEPTIONAL IMPORTANCE WITHOUT PRECEDENT.

The standard for the issuance of a C.O.A. (or Reargument) under 28 U.S.C. § 2253(c)(2) has been previously well settled, where in the U.S. Supreme Ct., in *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983), holding that petitioner need not show that he would prevail on the merits, but simply must, "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues (in a different manner); or that the questions are "adequate to deserve encouragement to proceed further."

Also, in *Miller v. Coker*, 537 U.S. 322, 338 (2003), it was affirmed that the standard does not require the petitioner to show he is entitled to relief, and need not even show he will prevail.

Additionally, this court's precedent regarding a ground that was dismissed on procedural grounds is that the C.O.A. should issue if it's debatable if the ground is procedurally defaulted, *Slack v. Daniel*, 529 U.S. 473, 483-484 (2000).

Despite this being the current established precedent for the nation, the 3rd Circuit Ct. of Appeals of the U.S. failed to issue a C.O.A. in the instant matter even though the issues presented met all the aforementioned criteria and raised multiple questions of exceptional national importance that were left unanswered and have left a "gray area" in this nation's law.

Additionally, the denial of the C.O.A. finalized a judgment by the District Ct. that rendered decisions in direct conflict with other Circuit Courts, and the U.S. Supreme Ct., conflicts that this great high court should resolve.

Therefore, I ask this great honorable court determine if the Appeals Ct. erred in denying a C.O.A. or Reargument, and present the following issues and subquestions in support:

(i)(QUESTION-2): Are PCRA's filed by declarant and his counsel, and testimony from his counsel revealing Brady violation and trial perjury a hearsay exception when the declarant is unavailable?

When the ADA Pleads the 5th in response to the accusation of a Brady violation, does it have any evidentiary value as an admission in the civil setting of a PCRA hearing?

When the PCRA declarant subsequently becomes available and issues affidavits admitting the Brady violation, is a rehearing barred by "Pinholster," 563 U.S. 170, 181 (2011), when access to ADA file was denied at first hearing, and "Bagley," 696 F.3d 475 (6th Cir. 2012), at footnote 4, ref. at 486, states Brady material is a bright line exception to "Pinholster."

*** GROUND ONE:** A VIOLATION OF BRADY WHERE THE ADA AND COMMONWEALTH WITNESS TESTIFIED NO DEAL WAS OFFERED IN EXCHANGE FOR HIS TESTIMONY AT TRIAL, BUT AFTER, HE FILED TWO PCRA'S, ONE AMENDED BY HIS COUNSEL, CONFESSING THERE WAS A PRE-TRIAL DEAL TO REDUCE HIS BANK ROBBERY SENTENCE; AS A RESULT HIS SENTENCE WAS REDUCED BY TWO YRS—I FILED A PCRA, AT THE HEARING THE ADA PLED THE 5th; ACCESS TO ADA FILE WAS DENIED, DECLARANT WAS UNAVAILABLE, BUT HIS COUNSEL TESTIFIED THERE WAS A PRE-TRIAL SECRET DEAL—RELIEF WAS DENIED; DECLARANT LATER BECAME AVAILABLE AND ISSUED AFFIDAVITS ADMITTING PRE-TRIAL SECRET DEAL, BUT A HEARING WAS DENIED, DIST. CITED "PINHOLSTER" AS BARRING A REHEARING DESPITE 6th CIRCUIT CASE "BAGLEY" HOLDING BRADY IS EXCEPTION; APPEALS COURT FAILED TO ISSUE C.O.A.

This issue is one of significant importance that contains unanswered and even completely unaddressed questions of exceptional national importance to society that beg answers.

Where a Brady violation is demonstrated by two PCRA's filed by a Commonwealth witness (one amended by his counsel) where he admitted a pre-trial secret deal that was hidden from the jury, and as a result received the benefit of the deal (sentence reduction), should this Brady violation be ignored as hearsay, or should an exception apply due to the evidence admitting perjury, the declarant's unavailability, and access to the ADA file seeking more evidence being denied?

Where the ADA pled the "5th" in response to the Brady accusation at the PCRA hearing, which has been held to be "civil in nature," should this have evidentiary value as a default admission?

And where the evidence of the Brady violation was ignored by the lower courts due to the declarant's unavailability, should the appellant be barred a rehearing on Affidavits provided by the declarant upon his subsequent availability two yrs. later admitting the Brady deal and the perjury? Should this evidence too be ignored based on "Pinholster," 563 U.S. 170, 181 (2011) when "Bagley," 696 F.3d 475 (6th Cir. 2012) footnote 4, states Brady is an exception to "Pinholster," and at the first hearing, the declarant was unavailable and access to the ADA file was denied?

Therefore please consider if the C.O.A. denial was in error for these reasons:

**THE TWO PCRA'S AND THE DECLARANT'S COUNSEL'S TESTIMONY ADMITTING THERE WAS A BRADY VIOLATION
WAS A HEARSAY EXCEPTION**

Where the Com. witness DAN RICE alleged in his 4/8/11 filed PCRA, attached **Exh. A**, in St. Rec. at #122, attached to Dist. Hab. at #1, and 3rd Cir. COA Req. at #21, on pgs. 3, 6, and 9, that there was a pretrial secret deal to reduce the sentence on his Bank Robbery hidden from the jury, and where his counsel then Amended the petition, admitting the same in his 6/9/11 filed PCRA, on pgs. 2 and 3, attached **Exh. B**, in St. Ct. Rec. at 123, Dist. ECF #1, and 3rd Cir. at #21, and then the attorney admitted it was all true at my 7/11/16 PCRA hearing, Id. 66-80, this material was all a hearsay exception under U.S. Supreme Ct. precedent, because all the material indicated the declarant admitted he committed perjury when he testified at my 10/6/10 trial he was receiving no deal in exchange for his testimony knowing he was, Id. 23:19-21, and the ADA alleged the same, 10/7/10, 28:18-21, 28:4-31, and 30:1-14.

Chambers v. Mississippi, 410 U.S. 284, 300 (1973), at Headnote 16 and 710, "contrary to penal interest hearsay exception," where a declarant admits he committed a crime.

* The "contrary to penal interest hearsay exception" is also codified under PA law, Pa. R. Evid. 804 (b)3, (A) & (B), due to (a)5, a "declarant's unavailability," and is considered even stronger when "made to a member of the BAR," such as the aforementioned scenario, see **Com. v. Statum**, 769 A.2d 476 (2001) at prg. 19 & 22.

* In the instant case, the PCRA declarant was declared unavailable where my PCRA counsel JAMES MADSEN, hired a licensed P.I., BARRY GOLAZESKI, to locate and serve DAN RICE with a subpoena, but BARRY testified he couldn't locate DAN, Id. 7/11/16, 82-85.

* Furthermore, the ADA "acquiesced" the declarant's unavailability, Id. 7/11/16, 84:19-85, which under state law is another hearsay exception in Pa. R. Evid. 804 (b)(6).

* The statements in the PCRA's were certified to be true under penalty of law, 18 Pa. C.S. § 4904, and both the PCRA statements dated 4/8/11, and those made to his attorney no later than 6/9/11 were all made before the statute of limitation PA. Const. Statute § 5552, had expired on perjury, 18 Pa. C.S. § 4904, therefore the statements were contrary to his "penal interest."

**WHERE THE ADA PLED THE "5th" IN RESPONSE TO THE ACCUSATION THERE WAS A BRADY VIOLATION
SAID SILENCE HAD EVIDENTIARY VALUE AS A DEFAULT ADMISSION**

At my 5/11/16 PCRA hearing Id. 3:1-4:3, when my PCRA counsel called the ADA as a witness re the Brady material, she plead the "5th" and refused to testify, then she did it again on

my 7/16 PCRA hearing, Id. 4:24-5:5.

Additionally, DAN's counsel CORCORAN, also testified that before he drafted his Amended PCRA corroborating there was a Brady violation, "(he) first approached (the ADA) and outlined to her some of the representations in DAN's PCRA," and that "she never denied them," but stated only, "she would work with (CORCORAN) to achieve the sentence reduction." Id. 7/11/16, 77:23-78:5.

According to Federal precedent, this silence was a default admission, U.S. v. Lafferty, 503 F.3d 293 (3rd Cir. 2007)(Headnote 11)("adoptive admission"), and U.S.v. Watson, 552 Fed. Appdx 480 (6th Cir. 2012)(14a0038n.06)(12-2218)("admission by silence"), also under PA St. law, Com. v. O'Kicki, 597 A.2d 152, 164 (1991)("implied admission").

* Additionally, the PA Supreme Ct. has ruled that a PCRA hearing is "civil" in nature, see, Com. v. Haag, 809 A.2d 271, 284 (2001)(at 14), and PA law holds that an "adverse inference" may be specifically inferred from a "5th Amendment" invocation in a "civil" setting, Frompovicz v. W.C.A.B. (Palsgrove), 642 A.2d 638 (1994).

* It's also relevant that at the time the ADA "pled the 5th" at my 5/11/16 and 7/11/16 PCRA hearing, the 5 yr. statute of limitations under 42 Pa. C.S. § 5552 for Perjury, 18 Pa. C.S. § 4902 was already expired, and therefore, the ADA had no 5th Amendment privilege for perjury committed at 2010 trial over 5 yrs. prior.

Therefore, under 42 Pa. C.S. § 5941 (a), she was compelled to testify, but refused, and this statute is specific that the only time a refusal to testify may not create a presumption against, "is to a "defendant actually upon trial in a criminal prosecution."

WHEN THE DECLARANT SUBSEQUENTLY BECAME AVAILABLE TWO YRS. AFTER MY PCRA HEARING AND ISSUED SWORN AFFIDAVITS ADMITTING THE BRADY VIOLATION, A HEARING WAS NOT BARRED BY "PINHOLSTER"

Attached as Exhs. D, E, and F, are Affidavits issued by the PCRA declarant DAN RICE admitting the Brady violation, and attached to each affidavit is a P.I. report detailing how the Affidavit's previously unavailable.

The State barred a PCRA hearing on these affidavits and I exhausted that request to the Superior Ct. at 3555 EDA 2018, the District also denied a hearing citing that it couldn't consider the new evidence because I was already granted a "full and fair hearing" in the State, Id. R&R pgs. 13-14, citing Cullen v. Pinholster, 563 U.S. 170, 181 (2011).

This ruling was contrary to a decision from the 6th Cir., and I request this honorable court answer the question if this opinion should apply in all Circuits.

Jones v. Bagley, 696 F.3d 475, (6th Cir. 2012) at footnote 4, referenced at 486,

"If petitioner were able to show a Brady violation, introduction of new evidence not considered by the State Court would not violate the rule announced in Cullen v. Pinholster."

Additionally, a decision from the 3rd Cir. is indicative that the holding of Bagley, should apply through the whole country, Dennis v. Sec. of Corrections, 834 F.3d 263 (3rd Cir. 2016), at 290-294,

"The U.S. has never recognized an affirmative due diligence duty of defense counsel as part of Brady, let alone the exception to the mandate of Brady this would clearly be."

* In the instant case, the District, has placed a due diligence duty on defense counsel to procure the PCRA declarant at my PCRA hearing to corroborate the Brady violation already demonstrated by the PCRA's and his subsequent sentence reduction; said decision was contrary to "DENNIS."

Lastly, because "Pinholster," only held a hearing is barred when a defendant already had a "full and fair hearing," Id. 181, "Pinholster" wouldn't bar a hearing on the affidavits in the instant case because one, the declarant was unavailable at my 7/11/16 PCRA hearing when my counsel's P.I. testified he couldn't find him; Id. 82-85, my counsel was expressly denied access to the ADA's relevant files, Id. 5/11/16, 3:1-4:3.

* Id. 5/11/16, 3:1-4:3, my counsel's Omnibus motion, St. Rec. #72, requesting, "the contents of the District Attorney's file on JACOB CHRISTINE, including 'work-product,' prior to the filing of the instant PCRA petition," and "the contents of the District Attorney's file on DANIEL RICE's case, 4051-CR-2009," Id. Pgs. 5(v), 34(a) & (b), was expressly denied by the PCRA judge.

* Even the District denied a subsequent Discovery request at #21 from 5/3/19.

In the instant case my rights were violated under the 5th, 6th, and 14 Amendment of the USCS, and the lower courts have not followed the mandate of Brady v. Maryland, 373 U.S. 83 (1963), there is also indication the lower court's rulings were contrary to Napue v. Illinois, 360 U.S. 264 (1974).

* In Napue, the defense attorney who used to be a DA, filed motion requesting a sentence reduction for his client who he alleged he'd promised a sentence reduction to in exchange for his testimony at a trial where he was the prosecutor.

The jury was never apprised of this in that case; the defendant found out and a hearing was held where the attorney and the witness testified the allegation was false, but because it was alleged on paper the U.S. Supreme Ct. vacated and dismissed the case.

Please allow me to review the facts,

At trial the ADA elicited testimony from the Com. witness DAN RICE that he was receiving **no deal** in exchange for his testimony from the DA Office or the prison, Id. 10/6/10, 23:19-23.

The ADA also made it a key part of her closing arguments testifying multiple times that DAN RICE was receiving **no deal** in exchange for his testimony, Id. 10/7/10, 28:4-31:18.

But after my trial, DAN RICE filed two PCRA's, one which was Amended by his counsel, where he confessed he committed perjury at my trial, that he **did** in fact receive a pre-trial sentence reduction deal in exchange for his testimony at my 10/6/10 trial.

See, Dist. Ct. ECF# 1, Hab. Memorandum. Exh. C, #122 in St. Record, DAN's pro-se PCRA where he reveals the Brady violation and his perjury, doc. attached **Exh. A**,

"(the ADA) said I would receive a sentence reduction in return for my testimony in an attempted murder trial and I never received the reduction after I testified,"
Id. pg. 3, sec. B, Line 3-6.

"Also, an agreement between me and (the ADA) in regards to my testimony in an attempted murder trial in exchange for a sentence reduction,"
Id. pg. 3, sec. C, line 5-7.

"Northampton County Prison Guard was present during my interview with D.A...A sentence reduction was offered for my testimony," Id. pg. 6, sec. 12.
Id. pg. 6, sec. 12.

"Records of my testimony against JACOB CHRISTINE's trial for an attempt murder,"
Id. pg. 6, sec. 13.

"I DANIEL RICE do hereby testify that the facts set fourth in the above motion are true and correct to the best of my knowledge and information and belief, and any false statements herein are subject to the penalties of sec. § 4904 of the crimes code 18 Pa. C.S. § 4904,"
Id. Last pg. pf PCRA.

Then see Dist. ECF #1, Hab. Mem. Exh. D, #123 in St. Rec., attached as **Exh. B**, DAN's counsel MICHAEL CORCORAN, filed an Amended PCRA on 6/9/11 realleging the same Brady material,

"ADA MULQUEEN spoke directly with petitioner about testifying at one JACOB CHRISTINE's trial to attempt homicide,"
Id. pg. 2, sec. 9.

"Petitioner (DAN RICE) reluctantly agreed to assist the Commonwealth, in consideration for the petitioner's cooperation, ADA MULQUEEN for the Commonwealth would intervene on his behalf and secure a reduced sentence with the honorable ANTHONY BELTRAMI,"
Id. pg. 2, sec. 10.

"Petitioner, DAN RICE did in-fact testify on behalf of the Commonwealth, ADA MULQUEEN represented to PCRA counsel that petitioner's testimony was 'vital' to its case in chief. Petitioner's testimony did in-fact arise in the Commonwealth securing a conviction against JACOB CHRISTINE,"
Id. pg. 3, sec. 11.

As a result on 9/30/11, DAN's sentence on his Bank Robbery was reduced by 2 yrs. see N.T., DAN's 9/30/11 resentencing hearing in case # 4051-CR-2009, attached to Initial Hab. at Dist. ECF #1, in St. Ct. Rec. at #121, attached here as **Exh C**.

On 5/11/16 a PCRA hearing was held where my PCRA counsel alleged a Brady violation re the material in DAN's PCRA's and he requested access to the ADA's files for Evid. in support, but he was denied, Id. 3:1-4:3, (Omnibus motion requesting discovery was denied, motion at #72 in St. Ct. Rec.).

At this same hearing the ADA "Pled the 5th re the Brady violation, Id. 5/11/16, 16:12-24, and she did it again at a subsequent hearing, Id. 7/11/16, 4:24-5:5.

* The District adopted R&R didn't dispute this, see R&R pg. 11, footnote 5, acknowledging, "this was one peculiar aspect of the PCRA proceedings that bears mention," but failing to address the evidentiary value as an admission.

* Also, see. pg. 5, prg. 3, line 2-4, of Superior Ct. PCRA Denial Appeal Op. 337 EDA 2017, acknowledging, "we are particularly troubled by attorney MULQUEEN's decision to invoke the 5th," but also failing to address the evidentiary value as an admission.

Then, 7/11/16, DAN's counsel CORCORAN clarified explicitly that DAN told him there **was a secret deal** to cut his prison sentence made by the ADA in exchange for his testimony, Id. 67:17-19 and 68:25-69:16, he also admitted that it **was** because of the PCRA's that DAN's sentence was reduced on 9/30/11, Id. 72, and that he authored the Amended PCRA Petition, Id. 66-69.

CORCORAN also related that he, "first approached ADA MULQUEEN and outlined to her some of the representations in DAN's PCRA," and the **she never denied them**, Id. 77:23-78:5.

And although my PCRA counsel did secure a licensed P.I. BARRY GOLAZESKI, to locate DAN RICE and serve him with a subpoena to appear, he testified he could not locate DAN to serve him with the subpoena, Id. 82-85, and the ADA "acquiesced" in that unavailability," Id. 84:19-85.

When all State courts denied relief on the Brady violation, (but having never addressed the relevant hearsay exception and ADA's pleading the 5th being a default admission claims), my family contracted a new P.I. to locate the Brady witness DAN RICE.

* The State Superior Ct. denied relief Jan. 2018, that same month a new P.I. was contracted.

The new P.I. JEN CYR was able to locate DAN RICE in the County Jail because he had been arrested on a new case, he was initially uncooperative, but once he was released he issued three affidavits confessing, (this was approx. 12yrs. after my initial PCRA hearing),

"Everything in my PCRA was true and I met with ADA MULQUEEN prior to CHRISTINE's trial and she offered time off my sentence in exchange for testimony against CHRISTINE...I agreed to change my testimony for a reduced sentence,"
Id. 4/12/18 Affidavit, attached **Exh. E**, located in Dist. ECF at # 17, 21, 22 & 23.

"My trial testimony was false,"
Id. 8/28/18 Affidavit, attached **Exh. F**, Dist. ECF location, #21, 22 & 23.

"Jacob was defending himself against MISERO,"
Id. 9/15/18 Affidavit, Attached **Exh. G**, located Dist. ECF# 21, 22 & 23.

* P.I. report is attached to each affidavit indicating genesis and previous unavailability.

* A hearing request in the St. Ct. on the affidavits was fully exhausted on 4/26/19 to Pa. Superior Ct. at 3555 EDA 1018, Op. in Dist. EFC at #22, hearing request to Dist. at #21 was denied at #27.

The aforementioned material demonstrates a Miscarriage of Justice in the form of a Brady violation, but both the State and District failed to address the salient questions of the claim, and issued a ruling contrary to Fed. Cir. Ct. & U.S. Supreme Ct. precedent, and U.S. Const.

Additionally, the Dist. and State failed to grant a hearing on the Brady issue upon the declarant's subsequent availability contrary to **Jones v. Bagley**, 696 F.3d 475 (6th Cir. 2012), footnote 4, ref. at 486, (holding "Pinholster" does not bar rehearing on Brady material).

Subsequently, the 3rd Cir. Ct. of appeals erred contrary to **Miller-el v. Cockeril**, 537 U.S. 322 (2003) in failing to grant C.O.A. or Reargument and I request Certiorari issue in this matter.

* There is surely even more evidence of this Brady violation (and maybe more) just sitting in the DA Office files, but because the State Ct. unlawfully refused to turn the files over, I can't get the evidence without a Rehearing in the Federal Ct., this couldn't possibly have been the intention of "Pinholster," and that is why "Bagley" ruled Brady material an exception.

(ii)(QUESTION #3): WHERE THE JURY RETURNED FROM DELIBERATIONS REQUESTING THE SELF-DEFENSE INSTRUCTION REPEATED AND WERE ERRONEOUSLY INSTRUCTED THE DEFENDANT HAD A DUTY TO RETREAT FROM HIS OWN DWELLING, WERE THE DEFENDANT'S DUE PROCESS RIGHTS VIOLATED WHERE

THE DIST. DISPOSED OF THE CLAIM BY ADOPTING A MISREPRESENTATION BY THE STATE COURT THE DUTY WAS NOT EXCUSED FROM A "DWELLING" UNDER THE STATUTE AT THE TIME OF TRIAL WHEN IT WAS, AND DOES A PRISONER HAVE A CONSTITUTIONAL RIGHT TO STAND HIS GROUND IN AN ASSIGNED JAIL CELL FROM AND ARMED, TRESPASSING ASSAILANT?

* **GROUND TWO:** TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO OR CORRECT ERRONEOUS JURY INSTRUCTION No. ONE, WHERE AFTER THE JURY RETURNED FROM DELIBERATION REQUESTING THE SELF-DEFENSE INSTRUCTION BE REPEATED THEY WERE TOLD A THIRD TIME I HAD A DUTY TO RETREAT FROM AN ARMED TRESPASSING ATTACKER IN MY OWN DWELLING—LOWER COURTS ERRED IN ADOPTING A MISREPRESENTATION BY THE ST. CT. THAT THE SELF-DEFENSE STATUTE DIDN'T EXCLUDE A DUTY TO RETREAT FROM ONE'S "DWELLING" AT THE TIME OF MY TRIAL, **WHEN IT DID**, AND TRIAL COURT FAILED TO EXCLUDE SAID DUTY FROM MY **ASSIGNED** JAIL CELL: THE THIRD CIRCUIT OF APPEALS THEREFORE ERRED IN FAILING TO GRANT A C.O.A.

At trial it was undisputed that the incident took place in my assigned cell, Id. 10/6/10, 44:5-6, I was assigned to cell #3, the place of the incident, Id. 10/5/10, 56:12, whereas the alleged victim was assigned to cell 5, and admitted the incident took place in my assigned cell, Id. 56-59.

I testified that the victim trespassed in my assigned cell, threw hot coffee and attacked me with a razor blade, at which time, during the struggle I injured him with his own weapon, Id. 10/6/10, 44-47; witness CHRIS BOASE also corroborated the victim trespassed in my cell, Id. 75:23-76:9.

However, the jury was instructed three separate times that I had a duty to retreat from my own assigned cell before defending myself, Id. 10/7/10, 73:23-74:1, 74:17-21, and the third time was after jurors returned from deliberation requesting the instruction be repeated, Id. 91:22-23.

* The jury returned from deliberations requesting the instruction be repeated for self-defense Id. 10/7/10, 77:23-78:2, however, they received the wrong instruction a **third time**, creating criminal liability where none existed.

This is a misinstruction that created criminal liability where there was none—the applicable Self-Defense instruction in place at the time of my 2010 trial was from 2005, Pa. Stand. Jury Inst. 9.501, attached Exh. H, and it excluded a duty to retreat from one's own "dwelling," as did the Self-Defense Statute 18 Pa. C.S. § 505 since 1972, attached Exh. I, ex. rel., see Pa. Stand. Jury Inst. 9.501, pg. 3, sec. 1. c. (1), 2005 Ed.—pre 2011 Amendment, excluding duty to retreat from one's own "dwelling" and adding stand your ground law, (I'm quoting the 2005 Edition here on the next pg. so you can see the retreat duty **was** excluded from one's "dwelling"),

"a defendant is **not** obliged to retreat from his/her own dwelling; that is **any** building or structure, though moveable or temporary or a portion thereof, including the doorway, that is at least for the time being, the defendant's home or place of lodging," **Exh. H.**

Also see, 18 Pa. C.S. § 505, sec. (b)(2)(ii)(A), Ed. from 2010, pre-2011 Amendment,

"The actor is **not** obliged to retreat from his dwelling or place of work," **Exh. I.**

The 6th Cir. granted a new trial for this very same issue in **Berrirer v. Egeler**, 583 F.2d 515, 518 (6th Cir. 1978).

Also ex. rel. is **Davis v. Strack**, 270 F.3d 111 (2nd Cir. 2001) at headnote 6,

"finding that defendant was deprived of instruction to which he was entitled to under state law is first step in determination that error denied petitioner due process," (COA granted).

And it is well settled relief can be granted for counsel's failure to correct an erroneous jury inst. that created crim. liability where there was none, **Real v. Shannon**, 600 F.3d 302, 309 (3rd Cir. 2010)(counsel's duty to correct faulty inst.) and **Strickland v. Washington**, 466 U.S. 688 (1984) ineffectiveness generally.

The lower court erred in failing to exclude a duty to retreat from my assigned cell (see, R&R pg. 21, prg. 2), and the 3rd Cir. should've granted a COA re this issue, where by statute, my assigned jail cell couldn't be excluded from the definition of a "dwelling," under 18 Pa. C.S. § 501, 1972 Ed., latest before my 2010 trial.

"subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words or phrases, when used in this chapter **shall have**, unless the context **clearly indicates otherwise**, the meanings given to them in this section," **Id.** prg. 1, 18 Pa. C.S. § 501, "definitions," 1972 Ed. attached **Exh. J.**

a, "'dwelling,' is **any building or structure** though moveable or temporary or a portion thereof, which for the time being is the home or place of lodging of the actor," attached **Exh. J.**, 1972 Ed. latest Ed. before my trial; does **not** say need be private.

* At the time of my trial this was PA law protected under the 14th Amendment of the U.S. Const. and it held that one's jail cell cannot be excluded from this definition because it is a "building or structure" which for the time being was my "home or place of lodging."

* 18 Pa. C.S. § 501 also specifies; meaning **cannot** be taken outside of the context of the definitions provided therein unless it "clearly indicates otherwise," therefore the St. cannot legally exclude a jail cell from the definition where the statute does **not** make such exclusion.

This District Ct. also erred in adopting the **misrepresentation** by the PCRA Ct. that,

"The Superior Ct. reiterated that 18 Pa. C.S. § 505 was not amended until 8/27/11 and that that expanded definition of 'castle' to include one's 'dwelling, residence or place of work' was not in affect at the time of Christine's trial," Id. R&R, pg. 21, 1st prg. at the "#17."

* This was an adoption by the PA Superior Ct. of the PCRA Court's misrepresentation re the content of the self defense statute § 505 prior to the Amendment that the Dist. adopted.

This was a mistake that has been overlooked, and was **never addressed** by the lower courts, undeniably **there was** an exclusion of a duty to retreat from one's "dwelling" **and** "place of work" at the time of my trial prior to the 2011 Amendment, see **Exh. I**, 18 Pa. C.S. § 505 1972 Ed., **Exh. H**, Pa. Stand Jury Inst. 9.501, and the post 2010, 2011 Amended 18 Pa. C.S. § 505, last pg., last prg., "Amendment notes," sec. (b)(2)(ii), "the actor is **not** obliged to retreat from his own "dwelling," was **already** in the statute **before** the Amendment, see **Exh. K**.

* The only edition made to 18 Pa. C.S. § 505 in 2011 was the "stand your ground" rule that added an exclusion of a duty to retreat for confrontations **outside** one's "dwelling."

Lastly, in addition to a 14th Amendment U.S. Const. right to the Application of the State law instruction, this issue has raised a question of **significant public importance** where the District on pg. 21, prg. 3, lines 6-8 of the R&R presented, "there is no precedent extending the 'Castle Doctrine' to a prison cell," this has raised the question:

Does a prisoner in his **assigned** cell have a U.S. Const. right to stand his ground from an armed trespassing attacker, or is his health and safety of such a diminished value he must first attempt a retreat and risk an uncertain fate outside of his cell?

Current precedent from the U.S. Supreme Ct. is indicative that abridging such a basic human right is contrary to the holding in **Lombard v. Louisiana**, 373 U.S. 267, 275 (1963), (Douglas J. concurring),

"The principle that a man's home is his 'castle' is basic to our system of jurisprudence."

* At trial a record was made that my assigned cell was my "dwelling," and "home," Id. 10/6/10, 44:3-5,

(Quote on next page)

Counsel: "On June 8th, 2009, where were you **living**?"

Myself : "I **was living in cell B2-3** in Northampton County Prison."

This issue constitutes a **Fundamental error**, and warrants Certiorari from this great high Ct. both due to the flagrant legal error, but also because this is an issue that has raised a question of significant public importance that begs an answer.

It is well known and widely accepted that prison is a dangerous place, and a prisoner's cell is his one safe zone from other prisoners, it is where he sleeps, keeps his belongings, where the mail arrives, where he uses the bathroom, it's the one place he has a little privacy, and where other prisoners **are not** permitted to freely enter, **and** the door is lockable, and I ask this great honorable court, to **please** answer whether or not there really should exist a criminal liability for failing to retreat from this one safe zone from an armed trespassing attacker.

This issue is one of even greater importance in our society because this was in the County jail, and in our society, everyday citizens are sent to jail on a regular basis even for infractions as small as a Summary Offense such as Disorderly conduct or Driving under a suspended license, and therefore, I believe this issue is one of even greater importance to decide to what degree a prisoner's U.S. Const. right to self protection is protected.

For these reasons the 3rd Cir. Court of Appeals erred contrary to **Miller-el v. Cockerell**, 537 U.S. 322 (2003) in failing to issue a C.O.A. or Reargument and I request Certiorari issue.

* Although I am aware it is rare that relief is granted this high level for Jury Inst. errors, I ask this honorable court please take into consideration, the serious nature of this error, the questions of public importance that have been raised, **and**, the fact that the jury was obviously considering these questions heavily when it returned from deliberations requesting the instruction be repeated, **Id. 10/7/10, 77:23-78:2**; and where I have demonstrated the content of the actual State law instruction which couldn't have excluded a prison cell, has been flagrantly misrepresented and adopted by the lower courts.

(iii)(QUESTION #4): WHERE THE JURY RETURNED FROM DELIBERATIONS REQUESTING THE SELF-DEFENSE INSTRUCTION BE REPEATED AND WERE ERRONEOUSLY INSTRUCTED IF THE DEFENDANT ACCIDENTALLY INJURED THE VICTIM IN SELF-DEFENSE, THAT HE, "COMMITTED THE CRIME," AND THE JURY "NEED NOT CONSIDER JUSTIFICATION," DID THIS MISINSTRUCTION INFECT THE ENTIRE TRIAL WITH UNFAIRNESS, WHERE UNDER ST. LAW SELF-DEFENSE AND ACCIDENTAL INJURY ARE NOT MUTUALLY EXCLUSIVE UNDER **Childs, 142 A.3d 823 (2016), AND WAS IT CONSTITUTIONAL FOR THE DIST. TO CLAIM THIS MAY HAVE BEEN A "SCRIVNER ERROR?"**

(ISSUE ON NEXT PAGE)

* **GROUND 3:** WHERE I TESTIFIED THAT I INJURED THE VICTIM ACCIDENTALLY WHILE DEFENDING MYSELF AND THE JURY RETURNED FROM DELIBERATIONS REQUESTING THE SELF-DEFENSE INSTRUCTION BE REPEATED, MY TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO CORRECT THE ERRONEOUS INSTRUCTION THAT IF THE JURY BELIEVED THAT I ACCIDENTALLY INJURED THE VICTIM IN SELF-DEFENSE THAN, "THERE WAS NO JUSTIFICATION EITHER BECAUSE **THE DEFENDANT COMMITTED THE CRIME**," AND THE LOWER COURT ERRED IN HOLDING THIS MASSIVE ERROR DID NOT INFECT THE ENTIRE TRIAL AND ALLEGING IT MAY A "SCRIVNER ERROR" WHICH IS NOT COGNIZABLE.

At trial I testified I had injured the victim with his own razor blade accidentally in self-defense, as he fought with me, *Id.* 10/6/10, 49:2-15, ex. rel. 10-15.

When the jury left to deliberate, they returned with questions requesting the self-defense instruction be clarified and repeated, *Id.* 10/7/10, 77:23-78:2.

At this time the jury was explicitly instructed,

"If you accepted the defendant's testimony, that in defending himself, accidentally the victim was slashed, then there is **no** justification **either**, because **THE DEFENDANT COMMITTED THE CRIME**, so you **don't** have to consider justification," *Id.* 88:13-15.

This is a massive error that created criminal liability where there was none, and if the jury believed me, this instruction error, forced them to render a guilty verdict contrary to law.

* See, 18 Pa. C.S. § 302(a), "a person is **not** guilty of an offense unless he acted intentionally," (statute related to "general culpability requirement" of any crime).

* And, 18 Pa. C.S. § 2702(a), also requiring intent, "A person is guilty of Agg. Assault if he...causes (bodily injury) **intentionally**."

Also, this instruction error negated self-defense as a whole, stating, "there is NO justification **EITHER** because the defendant **COMMITTED THE CRIME**, so **YOU DON'T HAVE TO CONSIDER JUSTIFICATION**," which is untrue; where PA law holds explicitly that accidental injury **is justified**, if done in self-defense, see *Com. v. Childs*, 142 A.3d 823 (2016), (decided after my trial, affirming rule established before my trial in *Com. v. McFadden*, 587 A.2d 740, 742 (1991)), and also *Com. v. Buska*, 655 A.2d 576 (1994)(at Headnote 14), accidental stabbing and self-defense **not** mutually exclusive), (all these cases held the two defenses are **not** mutually exclusive).

Reversal due to a jury inst. is warranted if the instruction is confusing, misleading or prejudicial, *U.S. v. Sassak*, 881 F.2d 276, 279 (6th Cir. 1989).

I also have a right to effective assistance of counsel re incorrect instructions, *Real v.*

Shannon, 600 F.3d 302, 309 (3rd Cir. 2010), and Strickland v. Washington, 466 U.S. 688 (1984).

The District's resolution that, "this type of isolated error does not infect the entire trial resulting in a conviction that violated due process," was unreasonable, and reasonable jurists would've disagreed; **this is a fundamental error** (see R&R, pg. 26, prg. 2, line 6-8, for Dist. resolution).

* Where is was only one word that meant the difference between a verdict of guilty v. not guilty, how could an erroneous instruction stating accidental conduct done in self-defense is a crime when by law it is **not**, not infect the entire trial with unfairness **when it was given as a final corrective instruction when the jury returned from deliberations requesting the very inst. be repeated?**

Lastly, Id. pg. 25 of R&R, there is also an allegation this may have been a transcription or "scrivener error,"—I can attest that **it is not**, but more relevant, that is not a cognizable defense, *Neu v. Grant*, 548 F.2d 281 (10th Cir. 1977), right before 287,

"matters not appearing on the record will not be considered by the court of appeals."

And this allegation has also raised a **question of exceptional public importance**, is this a new precedent allowing fundamental jury instruction error to be dismissed as "scrivener errors?"

* I respectfully present that to entertain a claim this is a "scrivener error" in order to deny me relief has set a frightening and unconstitutional precedent, opening a Pandora's box, where any Constitutional violation can be dismissed as a "scrivener error."

With respect to this issue, my rights were violated under the 5th, 6th, and 14th Amendment of the U.S. Const., and the 3rd Cir. Appeals Ct. erred in failing to grant a COA or grant Reargument contrary to *Miller-el v. Cockeril*, 537 U.S. 322 (2003).

* It was also error that the 3rd Cir. failed to grant a C.O.A. re this issue where pursuant to *Breakiron v. Horn*, 642 F.3d 126, 131 (3rd Cir. 2011, "De Novo" review was supposed to be conducted due to the fact the State Superior Ct. at 337 EDA 2017 (2018WL268519) never addressed this issue.

* The R&R even acknowledged on pg. 25, fnote 8, that the Superior Ct., "failed to otherwise discuss the issue of this alleged error."

The R&R did claim, "the court incorporated by reference the PCRA court's resolution of the realted Castle Doctrine alleged inst. error," however, the castle doctrine error and the aforementioned, are very distinct claims, abd because the latter was not addressed, this is another reasons the 3rd Cir. erred in not issuing a C.O.A.

(iv)(QUESTION #5): IS PROCEDURALLY DEFAULTING A DEFENDANT FOR FAILURE TO RELITIGATE A FULLY EXHAUSTED DIRECT APPEAL CLAIM ON PCRA UNDER THE ALTERNATIVE LEGAL THEORY OR ALLEGATION OF AN "EX POST FACTO" VIOLATION CONSTITUTIONAL WHEN THE STATE PCRA ACT EXPRESSLY FORBIDS SAID RELITIGATION UNDER 42 Pa. C.S. § 9544(a)(2), see *Collins*, 888 A.2d 564 (2005) Headnote 3. AND IS THE DISTRICT PERMITTED TO LEAVE CLAIMS AND DISPUTED MATTERS UNADDRESSED?

* **GROUND FOUR:** EX-POST-FACTO AND 14th AMENDMENT VIOLATION WHERE PA SUPREME CT. OVERRULED PRECEDENT CASE AND ALTERED THE RULE OF EVIDENCE IN VIOLATION OF THE U.S. CONST. AND APPLIED THE CHANGE EX-POST-FACTO DENYING ME A NEW TRIAL UNDER THE ORIGINAL RULE ALLOWING THE VICTIM'S PRIOR ASSAULT CHARGE TO BE ADMITTED AT TRIAL, BUT THEY CHANGED THE RULE AFTERWARD; CHIEF JUSTICE ISSUED SCALDING DISSSENT—DIST. ERRED BY PROCEDURALLY DEFAULTING CLAIM FOR FAILURE TO RELITIGATE ON ST. PCRA DESPITE 42 Pa. C.S. § 9544(a)(2) and PA SUPREME CT. PRECEDENT *Collins*, 888 A.2d 564 (2005) Headnote 8, EXPRESSLY PROHIBITING SAID CONDUCT AND THIRD CIR. APPEALS CT. FAILED TO ISSUE A C.O.A.

At trial, because I was presenting a self-defense claim, the PA R. of Evid. provided that the alleged victim's assault conviction was admissible to show a "propensity for violence," *Com. v. Beck*, 402 A.2d 1371 (1979), holding ALL prior assault convictions admissible, and at 402, "there is no need to compare facts."

However at trial the alleged victim's prior assault was not allowed admitted, the issue was fully preserved an appealed, but the PA Supreme Ct. overruled the precedent of "Beck," and altered the PA. R. of Evid., holding now, prior assaults are only admissible based on "Similarity," *Com. v. Christine*, 129 A.3d 394 (2015), Op. inest. Rec. at #63 in direct contrast to "Beck."

However, the Chief Justice issued a scalding dissent in favor of reversal quoting,

"Appellant, and MISERO were the only witnesses to testify about who did what in appellant's cell: on 6/8/09, MISERO testified that appellant ambushed him with the razor blade. Appellant testified that MISERO initiated the fight by throwing coffee at him and coming at him with the razor blade. Clearly, the evidence of MISERO's assaultive character would persuade a jury to believe appellant's version of events. As such we cannot deem this to be harmless error," prg. 3, 8 MAP 2015, in St. Ct. rec. at #63, *Com. v. Christine*, 129 A.3d 394 (2015).

The Dist. erred in "procedurally defaulting" this fully exhausted claim re the St's "Ex-Post Facto" application of an alteration to the R. of Evid. ex-post-facto, R&R, 26-28, the Dist. proc. defaulted this claim for failure to relitigate the fully exhausted claim of being denied the admission of the victim's prior assault charge under Ex-Post-Facto grounds on PCRA.

Because said relitigation of a fully exhausted claim under an "alternative legal theory" or "allegation," is expressly barred under the PA PCRA Act, 42 Pa. C.S. § 9544 (a)(2), See PA

PA Supreme Ct. precedent, *Com. v. Collins*, 888 A.2d 564 (2005) Headnote 3, and at 585 Pa. 56,

"Section 9544(a)(2) at the most basic level, prevents the relitigation of the same legal ground under alternative legal theories or allegations."

* The issue couldn't have been raised under ineffectiveness of counsel either, because it would've been impossible for appellate counsel to predict the PA Supreme Ct. would commit an Ex-Post-Facto violation in the future before such an outcome was ever indicated.

Procedurally defaulting this issue in this way has created a precedent that makes it impossible to raise an ex-post-facto violation by the high State Ct. unless the Appellant can predict it will happen in the future and raise it on Direct Appeal before it has ever been thought of.

* See SAYLOR's dissent, pg. 1, prg. 1, the Chief Justice commented that the PA Supreme Ct. didn't even adopt the "evidentiary rule implemented by the trial ct.," instead, they, "implemented an entirely new countervailing bright line approach," pg. 2, prg. 2--this is why this issue was impossible to predict, the proper approach was what I did, raise the Ex-Post-Facto violation on Reconsideration with the PA Supreme Ct. (the R&R even acknowledged I did this, ftnote 10, pg. 27).

The Dist. also erred, Id. R&R pg. 27, alleging the, "ex-post-facto clause doesn't apply to judicial decision making," where this is completely contrary to, *Carnell v. Texas*, 529 U.S. 513, 522 (2000), holding where a decision alters the Rules of Evid., "ex-post-facto" clause applies, citing *Calder v. Bell*.

* Also see State law, *Com. v. Allshouse*, 36 A.3d 163 (2012), at 183 & at Headnote 21, "ex-post facto clause of U.S. Const. Art. 1, sec. 10, if it...(4) alters the legal rules of evidence."

The Dist. also erred in failing to address one aspect of this claim where on pg. 58, prg. 2, of my Hab. at ECF #1, I also challenged the evidentiary change itself of "Beck" under the 14th Amendment of the U.S. Const., and I also reiterated this on pg. 16, prg. 1, line 8-9 of my objections, stating in addition to the Ex-Post-Facto challenge, I was, "also challenging the constitutionality of the actual decision as well," but this was never addressed.

If the evidentiary change itself to "Beck" violated St. law, then said claim is protected under the 14th Amendment of the U.S. Const., and the 3rd Cir. Ct. of Appeals also failed to grant a C.O.A. re this.

See pg. 2, of Chief Justice SAYLOR's dissent, he cited that the court's decision was contrary to Pa. R. Evid. 405 (b)(2), "sanctioning the admission of evid. of specific instances of

conduct to prove character trait of victim," where evid. would otherwise be inadmissible, he also cites, *Com. v. Mouzan*, 53 A.3d 738, 741 (2012).

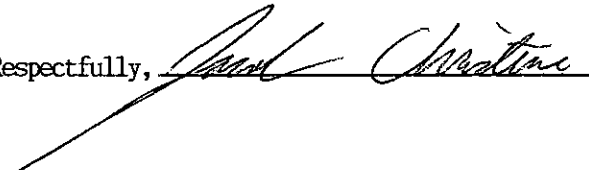
I also presented in my Hab., Pa. R. Evid. 609 and *Com. v. Hoover*, 107 A.3d 723 (2013), hold- in ALL "criminal falsi" conviction are admissible to show that character trait, therefore, to place a limit based on "similarity" only on violent convictions, violates the 14th Amendment U.S. Const.

Failing to address this claim was contrary to *Clisby v. Jones*, 960 F.2d 925, 935-936 (11th Cir. 1998) holding Dist. must address all claims.

Therefore, my rights were violated under the 5th, 6th, and 14th Amendment of the U.S. Const., the 3rd Cir. U.S. Ct. of Appeals erred contrary to *Miller-el v. Cockerll*, 537 U.S. 322 (2003), by failing to issue a C.O.A. and I request this honorable court grant Certiorari, (rights were also violated under Art. 1, sec. 10, of U.S. Const., Ex-Post-Facto clause).

CONCLUSION

These issues have presented not mere technicalities, but violations that severely prejudiced the fairness of my trial, and have presented multiple, as of yet, unanswered and unprecedented questions, that are truly of an exceptional importance to the public, and this case may also warrant this court's providence to make correction based on error, therefore I respectfully ask this petition for writ of Certiorari be granted.

Respectfully,  6/1/21