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NO.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

V.

TRISTAN STAHLEY,

Petitioner.

PETITION FOR ALLOWANCE OF APPEAL FROM THE SUPERIOR TO THE SUPREME COURT

Petition To Allow An Appeal From The December 19, 2018 Judgment Of The Superior Court Of Pennsylvania (No. 3109 EDA 2017) Affirming The August 28, 2017, PCRA Order of the Court of Common Pleas of Montgomery County Criminal Division, No. CP-46-CR-0005026-2013.

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January 18, 2019

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I. REFERENCE TO THE OPINIONS DELIVERED IN THE COURTS BELOW

The opinion that the Superior Court of Pennsylvania issued on December 19, 2018, is attached hereto as Appendix A. The trial court's opinion, issued pursuant to Pennsylvania Rule of Appellate Procedure 1925(a), is attached hereto as Appendix B, and the trial court's order, which the Superior Court affirmed, is attached hereto as Appendix C.

II. THE ORDER IN QUESTION

On December 19, 2018, the Superior Court of Pennsylvania issued an opinion that concludes: "Order affirmed." (*See* App. A32.) The Superior Court held that trial counsel was not ineffective in failing to introduce readily available evidence establishing intoxication at the time of the defense to support a defense of voluntary-intoxication/diminished capacity. Further, it held that trial counsel was not ineffective for failing to introduce readily available evidence of voluntary intoxication at the time of his post-arrest statement to provide a basis for a successful motion to suppress. Finally, the court held that *Batts II* did not announce a new substantive rule, nor did it establish a watershed procedural rule requiring retroactive application.

III. QUESTIONS PRESENTED

1. Did the Superior Court err in affirming the dismissal of Mr. Stahley's challenge to the legality of his sentence under *Batts II*?

   Suggested Answer: Yes

2. Is the right to effective assistance of counsel, as provided by Article I, Section 9 of the Pennsylvania Constitution, violated where counsel fails to introduce a viable claim of voluntary intoxication, supported by lay and expert testimony, in a homicide case, and where counsel fails to explain the defense of voluntary intoxication to the minor defendant and his family?

   Suggested Answer: Yes.

IV. STATEMENT OF THE CASE

On May 25, 2013, the Commonwealth charged Appellant Tristan Stahley with the murder of his girlfriend, Julianne Siller. Leading up to the offense, the two teenagers were walking in the park and began to argue over their relationship. Mr. Stahley was only sixteen years old at the time.

Immediately after the offense, Mr. Stahley confessed to his mother and threatened to kill himself. His parents had to restrain and disarm him to keep him from hurting himself. After the police arrived, Mr. Stahley took them to the location of the crime. After being treated for minor injuries at a local hospital, Mr. Stahley

gave a statement admitting what had happened.

Prior to trial, defense counsel prepared to present a diminished capacity defense. Counsel hired experts to evaluate Mr. Stahley and collected evidence indicating that he was heavily intoxicated during the crime. However, on the day of trial (September 29, 2014), Mr. Stahley agreed to a stipulated bench trial. At this trial, he stipulated to the Commonwealth's evidence. The only question at Mr. Stahley's guilt-phase proceeding was whether he committed first- or third-degree murder. Trial counsel presented no evidence on Mr. Stahley's behalf.

As alleged in Mr. Stahley's PCRA, trial counsel failed to introduce readily available evidence, from both lay and expert witnesses, which would have established Mr. Stahley's intoxication at the time of the crime and which would have supported a defense of voluntary intoxication/diminished capacity. The evidence that trial counsel failed to present was substantial:

- Mr. Stahley's post-arrest statement, wherein he acknowledged drinking a "handle" of vodka and being "drunk" at the time of the crime.[1] (Post-Arrest Statement 5/26/13, p. 4-5.)

- The recovery of an empty vodka container during the post-arrest search of Mr. Stahley's bedroom. (N.T. PCRA 7/25/17, p. 11:2-6.)[2]

- The testimony of paramedic Todd Evans, who transported Mr. Stahley to the hospital after his arrest. According to Paramedic Evans, Mr. Stahley was crying and sobbing uncontrollably and possibly under the influence. (N.T. PCRA, p. 48-51.) During this interaction, Mr. Stahley

[1] "Handle" is a colloquial term for a half gallon of any liquor.
[2] "N.T. PCRA" refers to the notes of testimony from Mr. Stahley's PCRA hearing.

also told Evans he had been drinking. (N.T. PCRA, p. 48-49.)

- The hospital records from Mr. Stahley's admission to the emergency room where he was diagnosed with "alcohol intoxication." These records verified his admission that he drank a half gallon of vodka. (Dr. O'Brien's Report, p. 5-6.)

- The testimony of Appellant's mother, Heather Stahley, who observed her son "swaying" after he returned from the park where the crime occurred. (N.T. PCRA, p. 53:11-17.) At the time, Mr. Stahley also told his mother that he had been drinking and that he had taken "Molly."[3] (N.T. PCRA, p. 53:22-25.) He also possessed a water bottle that smelled of alcohol. (N.T. PCRA, p. 79:25-80:5.) Mrs. Stahley also informed the arresting officers that her son had been drinking. (N.T. PCRA, p. 74:11-13, 81:11-18.)

- The testimony of Mr. Stahley's father, Brian Stahley, who wrestled a knife away from his son to prevent him from acting on his threats to kill himself. According to Brian Stahley, his son smelled of alcohol during this struggle. (N.T. PCRA, p. 87:3-15.)

- The testimony of Dr. John O'Brien, a psychologist who concluded that, due to a number of factors including his intoxication at the time of the incident, Mr. Stahley "was not able to premeditate, deliberate, and formulate the intent to kill Julianne Siller." (N.T. PCRA, p. 17:2-4.) Among the factors considered by Dr. O'Brien was the post-mortem examination of the decedent's wounds, which were characteristic of situations where an assailant acts in an unreflecting state of rage. (N.T. PCRA, p. 16-17.)

Besides counsel's failure to submit ample evidence regarding Mr. Stahley's intoxication, counsel did not explain the defense of voluntary intoxication/diminished capacity. At his PCRA hearing, Mr. Stahley testified that trial counsel failed to explain that intoxication could negate a finding of the specific

[3] "Molly" is a colloquial term for the drug ecstasy. (N.T. PCRA, p. 99:9-12.)

intent required for a first-degree murder conviction. (N.T. PCRA, p. 102:3-11.) Both of Mr. Stahley's parents also testified that trial counsel failed to explain this potential defense. Both parents emphasized counsel's repeated statement to them that intoxication is not a defense. (N.T. PCRA, p. 54:10-55:6, 87:16-88:7.) Trial counsel so informed them despite the availability of evidence which would have established Mr. Stahley's intoxication at the time of the crime.

At the conclusion of the stipulated bench trial, the court convicted Mr. Stahley of first degree murder.

On December 17, 2014, the lower court sentenced Mr. Stahley to life without parole, under 18 Pa.C.S. § 1102.1(a). It is undisputed that the sentencing court did not have the benefits of *Montgomery v. Alabama* or *Batts II* when sentencing Mr. Stahley.[4] The sentencing court only considered the factors listed in Section 1102.1(d). The sentencing court did not (1) apply a presumption against life without parole; (2) place the burden on the Commonwealth to rebut that presumption; (3)

[4] In its Answer, the Commonwealth did not contest that the trial court failed to presume a life sentence was improper and failed to require proof of incorrigibility beyond a reasonable doubt. Instead, the Commonwealth contended that the *Batts II* requirements were not retroactive. (Commonwealth's Answer & Motion to Dismiss Defendant's Amended PCRA Seeking Relief Pursuant to *Commonwealth v. Batts* at 2.) In addition, the Commonwealth argued that "the totality of the circumstances" demonstrated Mr. Stahley's incorrigibility. The only "circumstances," though, were the "horrific murder" and his purported lack of remorse. (*Id.* at 4-5.) Even in denying Mr. Stahley's PCRA petition, the court did not contest that it failed to presume against life and failed to require proof beyond a reasonable doubt. The court simply ruled that *Batts II* "did not apply retroactively in the PCRA context." (Order, 8/28/17.)

require the presumption to be rebutted beyond a reasonable doubt; or (4) find that Mr. Stahley is one of the rare and uncommon children that can never be rehabilitated. *See Batts II*, 163 A.3d at 415-16.

The sentencing court never "addressed the question *Miller* and *Montgomery* require a sentencer to ask: whether [Mr. Stahley] was among the very rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Tatum v. Arizona*, 137 S. Ct. 11, 12 (2016) (mem.) (Sotomayor, J., concurring) (quotation marks omitted). The Commonwealth relied solely upon evidence regarding the offense and victim impact testimony in seeking life without parole and provided no evidence to establish that Mr. Stahley was incapable of rehabilitation. (Amended PCRA Seeking Relief Pursuant to *Commonwealth v. Batts* at 5-6.)

On December 21, 2015, Mr. Stahley filed a timely *pro se* petition for post-conviction relief pursuant to *Montgomery v. Louisiana*. On July 20, 2017, the Montgomery County Public Defender's Office filed a timely second amended PCRA petition, seeking resentencing under the requirements set forth in *Batts II*. *See* 163 A.3d 410. On August 28, 2017, the lower court denied all requested PCRA relief.

After a timely appeal, the Superior Court issued its opinion on December 19, 2018, affirming the lower court's denial of PCRA relief. *Commonwealth v. Stahley*, ___ A.3d ___, 2018 WL 6658013 (Pa. Super. Ct. Dec. 19, 2018).

V. THE PETITION FOR ALLOWANCE OF APPEAL SHOULD BE GRANTED

A. This Court Should Grant Review To Ensure *Batts II* Is Given Full Effect Throughout The Commonwealth

This petition is necessary to ensure this Court's ruling in *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter *Batts II*] is given effect for every juvenile convicted of homicide, ensuring no child is unconstitutionally sentenced to die in prison. Due to the lapse in time between *Miller v. Alabama* and *Batts II*, a group of children were sentenced to die in prison despite being part of the protected class, i.e., juveniles presumed to be eligible for parole and who the Commonwealth cannot prove beyond a reasonable doubt are incapable of rehabilitation. Whether these individuals should be spared death in prison due to the arbitrary fact that their appeals were final at the time *Batts II* was decided is a question of first impression and one of substantial public importance.

Mr. Stahley's case is the first and only appeal to date which raises the question whether *Batts II* is retroactive. The panel below was split on this question; two judges denied Mr. Stahley relief, but the dissent would have remanded Mr. Stahley's case for resentencing pursuant to *Batts II*. *Commonwealth v. Stahley*, ___ A.3d ___, 2018 WL 6658013, at *16, 17 (Pa. Super. Ct. Dec. 19, 2018). The Superior Court's majority failed to recognize that *Batts II* fundamentally altered the class of persons protected and the due process rights that attach to this class. *Id.*, at *14-16. Under

either test announced in *Teague v. Lane*, 489 U.S. 288 (1989), and its progeny, *Batts II* requires application on collateral review. Under *Teague*'s first test, *Batts II* created a substantive change in the law by creating a class of individuals that the Commonwealth cannot lawfully sentence to life without parole. The dissent recognized that "*Batts II* prohibits punishment against a class of persons, *i.e.* those juveniles whom the Commonwealth has not proven beyond a reasonable doubt to be permanently incorrigible." *Stahley*, 2018 WL 6658013, at *17 (Strassburger, J., concurring and dissenting) (citing *Batts II*, 163 A.3d at 476). Alternatively, *Batts II* satisfies *Teague*'s second test by creating a watershed rule of criminal procedure. *Batts II*'s requirements are "necessary to prevent 'an impermissibly large risk'" of inaccuracy in a juvenile homicide sentencing, and "alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (first quoting *Schriro v. Summerlin*, 542 U.S. 348, 356 (2004); then quoting *Tyler v. Cain*, 533 U.S. 656, 665 (2001)).[5] Consideration of the question of the retroactivity of *Batts II* is essential as this Court should be the final arbiter of the retroactive application of its ruling to Mr. Stahley and similarly situated applicants for post-conviction relief.

[5] The Supreme Court has recognized that sentencing is a critical component of the trial process, and thus directly affects the accuracy of criminal trials. *See, e.g.*, *Witherspoon v. Illinois*, 391 U.S. 510, 523 n.22 (1968) (retroactively applying a decision on a jury selection process that related to sentencing because it "necessarily undermined 'the very integrity of the . . . process' that decided the [defendant's] fate".

The need for clarity from this Court is heightened by the fact that, since *Batts II*, trial courts have resolved the issue of *Batts II* retroactivity differently. While Mr. Stahley's PCRA was denied, two trial courts granted resentencing relief in accordance with the requirements of *Batts II*. *See Commonwealth v. Clark*, No. 2005 MDA 2014, 2015 WL 6828057 (Pa. Super. Ct. July 21, 2015) (non-precedential) (affirming Mr. Clark's life without parole sentence), *appeal denied*, 132 A.3d 456 (Pa. 2016) (PCRA was subsequently granted by the trial court and Mr. Clark was resentenced in July 2018 to 45 to life on his homicide per docket CP-22-CR-0002723-2013), *appeals docketed*, No. 1668 MDA 2018 (Pa. Super. Ct. Oct. 10, 2018) and No. 1509 MDA 2018 (Pa. Super. Ct. Sept. 12, 2018); *Commonwealth v. Street*, No. 952 WDA 2015, 2016 WL 5854506 (Pa. Super. Ct. August 24, 2016) (non-precedential), *appeal quashed*, 163 A.3d 399 (Pa. 2016) (PCRA subsequently granted by trial court and resentencing scheduled for January 14, 2019 per docket CP-02-CR-0011095-2009). This leaves Mr. Stahley and only two other individuals who have been denied the constitutional protections enumerated in *Batts II*. [6] Otherwise, *Batts II* has been applied to all individuals who were on direct appeal after their resentencing under *Miller* or original sentencing under Section 1102.1,

[6] *See Commonwealth v. Dekeyser*, No. 675 MDA 2016, 2017 WL 587324 (Pa. Super. Ct. Feb 14, 2017) (non-precedential) (affirming Mr. Dekeyser's life without parole sentence) (counsel cannot locate an appeal of the Superior Court's decision); *Commonwealth v. Seagraves*, 103 A.3d 839 (Pa. Super. Ct. 2014), *appeal denied*, 116 A.3d 604 (Pa. 2015).

ensuring that children are afforded their constitutional rights before imposing the harshest sentence available.[7]

Mr. Stahley did not receive these protections or the recognition of his diminished culpability merely because he was prosecuted under Pennsylvania's *Miller*-fix statute and his sentence was finalized prior to *Montgomery* and *Batts II*. Access to justice—and the possibility of ever being released from prison—should not be dictated by the legislature's failure to foresee Supreme Court precedent or by the date of one's sentence. If Mr. Stahley's sentence was still on appeal when *Batts II* was issued, he would have received the same relief provided to Mr. Batts and others who had been sentenced to life without parole. However, failing to apply the standards retroactively would subject him to a disproportionate sentence and violate equal protection. Without guidance from this Court, there is too great a risk that children will unconstitutionally die in prison without the requisite due process to ensure that the sentence is free of error. Therefore, this Court should grant Mr. Stahley's Petition for Allowance of Appeal.

[7] *See, e.g., Shabazz-Davis*, 172 A.3d 1112 (Pa. 2017); *Commonwealth v. Stern*, No. 1959 MDA 2016, 2017 WL 5944095 (Pa. Super. Ct. Nov. 22, 2017) (non-precedential) (vacated life without parole sentence and remanded for resentencing); *Commonwealth v. Moye*, No. 1924 WDA 2016, 2017 WL 4329780 (Pa. Super. Ct. Sept. 29, 2017) (vacated life without parole sentence and remanded for resentencing).

B. This Court Should Grant Review To Determine If The Right To Effective Assistance Of Counsel Is Denied Where A Viable Claim Of Voluntary Intoxication Is Not Presented Despite The Presence Of Lay And Expert Witnesses Available To Support Such A Defense, And Where Such A Defense Was Not Explained To A Minor Defendant

Trial counsel failed to introduce readily available evidence, from both lay and expert witnesses, which would have established Mr. Stahley's intoxication at the time of the crime and which would have supported a defense of voluntary intoxication/diminished capacity. The evidence that trial counsel failed to present was substantial:

- Mr. Stahley's post-arrest statement, wherein he acknowledged drinking a "handle" of vodka and being "drunk" at the time of the crime. (Post-Arrest Statement 5/26/13, p. 4-5.)

- The recovery of an empty vodka container during the post-arrest search of Mr. Stahley's bedroom. (N.T. PCRA 7/25/17, p. 11:2-6.)

- The testimony of paramedic Todd Evans, who transported Mr. Stahley to the hospital after his arrest. According to Paramedic Evans, Mr. Stahley was crying and sobbing uncontrollably and possibly under the influence. (N.T. PCRA, p. 48-51.) During this interaction, Mr. Stahley also told Evans he had been drinking. (N.T. PCRA, p. 48-49.)

- The hospital records from Mr. Stahley's admission to the emergency room where he was diagnosed with "alcohol intoxication." These records verified his admission that he drank a half gallon of vodka. (Dr. O'Brien's Report, p. 5-6.)

- The testimony of Appellant's mother, Heather Stahley, who observed her son "swaying" after he returned from the park where the crime occurred. (N.T. PCRA, p. 53:11-17.) At the time, Mr. Stahley also told his mother that he had been drinking and that he had taken "Molly."

(N.T. PCRA, p. 53:22-25.) He also possessed a water bottle that smelled of alcohol. (N.T. PCRA, p. 79:25-80:5.) Mrs. Stahley also informed the arresting officers that her son had been drinking. (N.T. PCRA, p. 74:11-13, 81:11-18.)

- The testimony of Mr. Stahley's father, Brian Stahley, who wrestled a knife away from his son to prevent him from acting on his threats to kill himself. According to Brian Stahley, his son smelled of alcohol during this struggle. (N.T. PCRA, p. 87:3-15.)

- The report of Dr. John O'Brien, a psychologist who concluded that, due to a number of factors including his intoxication at the time of the incident, Mr. Stahley "was not able to premeditate, deliberate, and formulate the intent to kill Julianne Siller." (N.T. PCRA, p. 17:2-4.) Among the factors considered by Dr. O'Brien was the post-mortem examination of the decedent's wounds, which were characteristic of situations where an assailant acts in an unreflecting state of rage. (N.T. PCRA, p. 16-17.)

- The testimony of trial counsel, a the PCRA Hearing, noting that Mr. Stahley had told him he was intoxicated at the time of the crime. (N.T. PCRA, p. 9:12-23.)

Besides counsel's failure to submit ample evidence regarding Mr. Stahley's intoxication, counsel did not explain the defense of voluntary intoxication/diminished capacity to Mr. Stahley or his parents. (N.T. PCRA, p. 54:10-55:6, 87-88, 101-02.) Trial counsel informed them the defense was unavailable despite the availability of evidence which would have established Mr. Stahley's intoxication at the time of the crime.

At the conclusion of the stipulated bench trial, the court convicted Mr. Stahley of first degree murder. The court was never presented with a single piece of evidence related to Mr. Stahley's intoxication; while using a deadly weapon on a vital organ

permits a first-degree inference, such an inference is not obligatory. Pennsylvania has repeatedly recognized that the same facts can support a finding of third degree malice. *See, e.g.*, *Commonwealth v. Truong*, 36 A.3d 592, 597 (Pa. Super. Ct. 2012) ("Malice [for third degree murder] may be inferred from the use of a deadly weapon on a vital part of the victim's body." (quoting *Commonwealth v. Gooding*, 818 A.2d 546, 550 (Pa. Super. Ct. 2003)); *Commonwealth v. Cruz-Centeno*, 668 A.2d 536, 540 (Pa. Super. Ct. 1995) (same); *Commonwealth v. Lee*, 626 A.2d 1238, 1241 (Pa. Super. Ct. 1993) (same); *Commonwealth v. Ventura*, 975 A.2d 1128, 1142 (Pa. Super. Ct. 2009) (same); *see also Truong*, 36 A.3d at 593 (defendant/son stabbed victim/father after domestic argument); *Commonwealth v. Johnson*, 631 A.2d 639, 639 (Pa. Super. Ct. 1993) (defendant shot his girlfriend during course of argument); *Commonwealth v. McFadden*, 559 A.2d 58, 62 (Pa. Super. Ct. 1989) (defendant killed girlfriend whom he believed was unfaithful); *Ventura*, 975 A.2d at 1132 (victim killed during fight over defendant's girlfriend); *Commonwealth v. Bullock*, 948 A.2d 818, 821 (Pa. Super. Ct. 2008) (killing occurred after victim insulted defendant's girlfriend); *Commonwealth v. Mercado*, 649 A.2d 946, 950 (Pa. Super. Ct. 1994) (killing occurred during heated argument over money). Although each defendant acted with malice, they were not found to have consciously formed a specific intent to kill.

After stipulating to the Commonwealth's evidence—including Mr. Stahley's

responsibility for Ms. Siller's death—counsel had no strategic basis for withholding the abundant evidence of Mr. Stahley's intoxication. At that point, the only legal question remaining was his degree of guilt as it related to his intent. There can be no strategic reason to forego the presentation of readily available physical evidence and lay and expert testimony to support a diminished capacity defense and conviction for a lesser degree of homicide.

On collateral review, the prejudice analysis under *Strickland* is guided by three principles. First, in determining the reasonable probability of a different outcome, a *PCRA court must independently weigh the evidence rather than engage in a sufficiency of evidence review. Williams v. Taylor*, 529 U.S. 362, 397-98 (2000); *Breakiron v. Horn*, 642 F.3d 126, 140 (3d Cir. 2011); *Saranchak v. Secretary Pa. D.O.C.*, 802 F.3d 579, 599 (3d Cir. 2015). Only by weighing the evidence can the PCRA court determine if there is a reasonable probability that the correction of trial counsel's errors would cause *an "objective factfinder" to reach a different outcome. Saranchak*, 802 F.3d at 599. Second, as the Third Circuit explained in *Saranchak*, "the prejudice inquiry focuses on 'the effect the same evidence would have had on an unspecified, objective factfinder' rather than a particular decisionmaker in the case." *Id*. at 588. Third, before a collateral review court can determine there is no *Strickland* prejudice, that court must conclude there is no "reasonable probability that at least one juror," if given the new information withheld because of counsel's

errors, would have reached anything less than a "subjective state of certitude of the facts in issue." *Wiggins v. Smith*, 539 U.S. 510, 537 (2003); *In re Winship*, 397 U.S. 358, 364 (1970).

When these principles are applied here, the reasonable probability of a different outcome is clear. A substantial body of evidence established Mr. Stahley's extreme intoxication at the time of the crime. Based upon that evidence, a reputable expert was prepared to testify regarding the impact of Mr. Stahley's intoxication on his ability to form the specific intent required for a first-degree conviction. However, counsel failed to present any of this evidence and had no strategic purpose in failing to do so.

Thus, whether trial counsel was ineffective by refusing to present overwhelming evidence that would support an argument for a lesser degree of homicide is a question of substantial public importance that should not be settled by an intermediate court. Particularly as juveniles have a diminished ability to assist counsel in crafting their own defense, counsel's failure to explain or argue voluntary intoxication is egregious. *See*, *Graham v. Florida*, 560 U.S. 48, 78 (2010). Finally, the intermediate appellate court departed from accepted judicial practices in its *Strickland* and post-conviction analysis such that its opinion constitutes an abuse of discretion. The Superior Court dismissed the ineffective assistance of counsel claim based on their determination that the evidence would not have established a defense

of voluntary intoxication. *Stahley*, 2018 WL 6658013, at *9. However, in doing so, the Superior Court acted as a fact-finder which is improper and applied the wrong standard. The Superior Court should have recognized that under these circumstances, there is a reasonable probability that "an unspecified, objective factfinder" would have arrived at a different outcome, had trial counsel presented the abundant evidence of diminished capacity.

VI. CONCLUSION

For the foregoing reasons, this Court should grant the instant Petition for Allowance of Appeal and reverse the order of the Superior Court.

Respectfully submitted,

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VI. CONCLUSION

For the foregoing reasons, this Court should grant the instant Petition for Allowance of Appeal and reverse the order of the Superior Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 1115(f) of the Pennsylvania Rules of Appellate Procedure. This brief contains 3,891 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

Dated: January 18, 2019

/s/ Marsha L. Levick
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