



4. Because the pre-trial discovery contained no witness statements supporting Mr. Graves's self-defense claim, *trial counsel advised* Mr. Graves to plead guilty to third-degree murder. In *trial counsel's view*, proceeding to trial and claiming self-defense when the interviewed witnesses supposedly did not see Boone with a gun, was extremely risky, especially when facing a first-degree murder conviction and life without parole prison sentence. Consequently, based on the statements and facts contained in the pre-trial discovery, Mr. Graves chose to plead guilty to third-degree murder based on trial counsel's learned advise.

5. Based on Clark's affidavit, though, his pre-trial statement was coerced and false. According to Clark's affidavit, he told detectives that James Boone was armed when Mr. Graves fired at Boone. If true, the facts alleged in Clark's affidavit renders Mr. Graves's guilty plea unknowing and unintelligent. Again, Mr. Graves based his decision to plead guilty on the finite facts presented to trial counsel in the pre-trial discovery. These facts mentioned nothing about James Boone being armed. Thus, the process by which trial counsel assessed the pre-trial evidence was impermissibly and unconstitutionally skewed to the Commonwealth's advantage. Stated differently, trial counsel cannot effectively represent and advise his client regarding the plea process and trial process if he is deprived of materially exculpatory evidence due to the Commonwealth's misconduct. Likewise, a criminal defendant cannot make a truly intelligent and knowing decision to plead guilty if the Commonwealth suppresses materially *exculpatory* statements from key eyewitnesses.<sup>1</sup>

6. Clark's affidavit contained new facts that Mr. Graves did not know. Yes, Mr. Graves obviously knew what he, *i.e.*, Graves, saw when he fired at James Boone on January 5, 2005, *i.e.*, Graves saw Boone with a gun and this is why he fired at Boone in self-defense. In the Court's 907 notice opinion, though, the Court nonchalantly said Mr. Graves could have raised the self-defense issue at trial because he saw Boone with a gun. The Court's analysis is too binary, too simplistic, and it completely undervalues the risk assessment trial counsel makes when determining whether to advise their client to plead guilty or go to trial. Yes, Mr. Graves obviously could have gone to trial and claimed self-defense, but if he had done so, the only evidence supporting his self-defense claim would have been his own testimony. The likelihood of success under these circumstances was, not surprisingly, tremendously low.

---

<sup>1</sup> Counsel is cognizant that under *United States v. Ruiz*, 536 U.S. 622 (2002), the Commonwealth had no obligation of disclosing "impeachment" evidence to Mr. Graves before he pled guilty. The facts alleged in Jeremiah Clark's affidavit, however, represent materially "exculpatory" evidence because they support Mr. Graves's self-defense/justification defense.

7. Keep in mind, the likelihood is so low only because the Commonwealth suppressed Clark's materially exculpatory statement that James Boone was, in fact, armed when Mr. Graves fired at him in self-defense. Consequently, not only did the Commonwealth's misconduct tilt the scales in its favor during the pre-trial proceedings, the same misconduct is now tilting the scales in the Commonwealth's favor during these PCRA proceedings.

a. By suppressing materially exculpatory evidence, that would have bolstered Mr. Graves's self-defense claim, the Commonwealth hoodwinked Mr. Graves into a catch-22 situation during the pre-trial proceedings: either plead guilty to third-degree murder to avoid a likely LWOP sentence or go to trial and claim self-defense based on his own self-serving testimony. Mr. Graves obviously chose the safe and reasonable avenue when he pled guilty to third-degree murder.

b. Once Mr. Graves pled guilty, though, the Commonwealth could no longer be snake-bitten by its own misconduct regarding Clark's coerced and false statement. Some explanation is needed. According to the Court's legal analysis, if an eyewitness came forward *after* Mr. Graves pled guilty and alleged that they saw James Boone with a gun, this eyewitness statement, according to the Court, could never be considered after-discovered or newly-discovered evidence because Mr. Graves saw Boone with a gun. In short, based on Mr. Graves's guilty plea, the Commonwealth can no longer be held accountable for illegally suppressing Clark's materially exculpatory statement.

c. Consequently, by gaming the system to its advantage, the Commonwealth not only deprived Mr. Graves of his constitutional rights to exculpatory evidence, effective trial counsel, and a fundamentally fair pre-trial process, it insulated its misconduct from the courts during the direct and collateral review.

8. In short, the facts alleged in Clark's affidavit, which the Court must presume are true at this stage of the PCRA process, raise material issues of disputed fact regarding the legality of Mr. Graves's guilty plea, whether Mr. Graves received effective assistance of trial counsel, and whether the Commonwealth adhered to his *Brady* obligations. Had Mr. Graves known that Clark saw Boone with a gun, Mr. Graves would not have pled guilty, but would have gone to trial and presented a self-defense defense based on his testimony as well as Clark's testimony.

9. A PCRA court "shall order a hearing" when the PCRA petition "raises material issues of fact." Pa.R.Crim.P. 908(A)(2); accord *Commonwealth v. Williams*, 732 A.2d 1167, 1189-1190 (Pa. 1999). A hearing cannot be denied unless the PCRA court is "certain" the petition lacks "total" merit. *Commonwealth v. Bennett*, 462 A.2d 772, 773

(Pa. Super. 1983); accord *Commonwealth v. Rhodes*, 416 A.2d 1031, 1035-1036 (Pa. Super. 1979). Even in “borderline cases Petitioners are to be given every conceivable legitimate benefit in the disposition of their claims for an evidentiary hearing.” *Commonwealth v. Pulling*, 470 A.2d 170, 173 (Pa. Super. 1983). Thus, an “evidentiary hearing should... be conducted where the record does not clearly refute the claim of an accused that his plea was unlawfully induced.” *Id.* (citing numerous guilty plea cases).

10. Here, even if Mr. Graves’s case is a “borderline case,” which it is not, the Court was required to hold an evidentiary hearing.

Respectfully submitted this the 12<sup>th</sup> day of **October, 2016**.

*/s/Craig M. Cooley*  
Cooley Law Office  
1308 Plumdale Court  
Pittsburgh, PA 15239  
647-502-3401 (cell)  
[craig.m.cooley@gmail.com](mailto:craig.m.cooley@gmail.com)  
[www.pa-criminal-appeals.com](http://www.pa-criminal-appeals.com)

#### **Certificate of Services**

On **October 12, 2016**, ounsel filed this pleading with the Philadelphia County e-filing system. The Philadelphia County District Attorney’s Office received email notification and a PDF copy of the pleading.