

PROCEDURAL HISTORY

On March 12, 2009, police arrested Mr. Johnson in connection with Tyleigh Perkins' September 8, 2008 shooting death. On March 23, 2009, police arrested Mr. Johnson's co-defendant, Jerome Samuels (CP-51-CR-0011743-2009).

On September 25, 2009, the Commonwealth filed an *Information* charging Mr. Johnson with murder and an assortment of firearms offenses.

On November 8, 2011, Mr. Johnson pled not guilty and proceeded to a jury trial before the Honorable Carolyn Engel Temin ("trial court"). Joseph Santiguida represented Mr. Johnson at trial.

The jury deliberated for three days and asked several questions before finding Mr. Johnson guilty of first-degree murder and conspiracy on November 15, 2011.

On January 4, 2012, the trial court sentenced Mr. Johnson to life imprisonment for the murder conviction and 20 to 40 years imprisonment for the conspiracy conviction. The jury, however, could not reach a verdict regarding Jerome Samuels' charges.¹

Mr. Johnson timely appeal (347 EDA 2012), but on March 12, 2013, the Superior Court affirmed.

¹ When the Commonwealth retried Jerome Samuel in January 2013, a jury convicted Samuels of first-degree murder as well.

Mr. Johnson filed a timely *Petition for Allowance of Appeal*, but it was denied on August 28, 2013, meaning Mr. Johnson's conviction became final 90 days later on November 26, 2013.

On January 4, 2014, Mr. Johnson filed a timely *pro se* PCRA petition.

STATEMENT OF FACTS

A. The Shooting and Investigation

In September 2008 Devon Edwards and Shawn Jacobs fought one another. Tyleigh Perkins and Torey Pugh broke up the fight, but Perkins allegedly took Jacobs' cell phone once the fight ended.² Carl Johnson is Jacobs' brother. Jacobs saw Perkins take the cell phone and, according to Pugh, threatened Perkins by saying, "[Y]ou better have your vest on. I ain't playing you. You better make sure you have your vest on."³ Jacobs gave the cell phone to Darrell Williams' mother who apparently gave the phone to Mr. Johnson the same day of the fight.

On September 14, 2009, a few days after the fight between Jacobs and Edwards, at approximately 1:00 a.m., Perkins and Tyrone Edgefield were sitting on Perkins' front porch steps at 2230 West Harold Street when a car stopped directly in front of the porch steps with the driver's side of the car closest to the porch. Moments later the driver's side window came down and Edgefield saw the driver

² NT, Trial, 11/8/2011, pp. 47-49, 50; NT, Trial, 11/9/2011, pp. 24-25.

³ NT, Trial, 11/9/2011, p. 26. Counsel had 99% of the pre-trial discovery, but he is missing Edgefield's September 27, 2008 and March 3, 2009 statements. As a result, counsel cites the Activity Sheets summarizing both interviews.

and a person in the passenger's seat. Three to four seconds later the driver leaned back and the passenger opened fire fatally striking Perkins.

Edgefield was the only eyewitness to the shooting. On September 27, 2008, detectives interviewed Edgefield, who described the car as a "small... grayish blue... Acura-2000 or 2002."⁴ Edgefield told detectives he saw "the passenger... reach over the driver and point a... black... firearm and fire... at [Perkins]."⁵ Edgefield said the passenger "fired multiple shots"⁶ and also said "he did not know the male who did the shooting but described him as brown skinned."⁷ Edgefield told detectives he did not see the driver because the driver leaned back and he did not get a good look at the gunman.⁸ Detectives showed Edgefield an 8-man photo array that included Jerome Samuels' photograph, but not Mr. Johnson's. Edgefield told detectives he could not identify the driver or passenger from the photo array. Detectives did not show him a separate 8-man photo array with Mr. Johnson's photograph.⁹

On March 3, 2009, Edgefield "came forward with additional information" when he voluntarily went to Homicide to discuss the case.¹⁰ Edgefield summarized the shooting again and said when the driver's side window came down "the driver

⁴ Ex. 1.

⁵ Ex. 1.

⁶ Ex. 1.

⁷ Ex. 1.

⁸ NT, Trial, 11/9/2011, p. 143.

⁹ NT, Prelim. Hrg., 9/15/2009, pp. 18-19.

¹⁰ Ex. 2.

eased back and the passenger fired 4 to 5 times[.]”¹¹ Edgefield also told detectives he had, in fact, recognized Samuels as the gunman when they showed him the 8-man photo array with Samuels’ photograph on September 27, 2008, but refused to identify Samuels because he was scared.¹² Detectives showed Edgefield the same 8-man photo array they showed him on September 27, 2008. This time Edgefield identified Samuels as the gunman.¹³ Having developed Mr. Johnson as a possible suspect by this point, detectives also showed Edgefield an 8-man photo array with Mr. Johnson’s photograph. Edgefield identified Mr. Johnson as the driver.¹⁴

Days later, on March 8, 2009, detectives interviewed Darnell Williams who supposedly said that shortly after the fight between Edwards and Jacobs a “boy named Carl-Carl” had been canvassing the neighborhood looking for the person who “jumped” his “brother.”¹⁵ Carl-Carl approached Williams and asked him who jumped Jacobs and who took Jacobs’ phone.¹⁶ The days following the fight Williams said he saw Carl-Carl “driving around” the neighborhood in his black Monte Carlo “looking for” Perkins. Williams said the black Monte Carlo had tinted windows. Williams said he saw Carl-Carl’s black Monte Carlo in the neighborhood 4 hours before the shooting and that after seeing the black Monte Carlo he went to

¹¹ Ex. 2.

¹² NT, Prelim. Hrg., 9/15/2009, pp. 19.

¹³ Ex. 2.

¹⁴ NT, Prelim. Hrg., 9/15/2009, pp. 18-19.

¹⁵ Ex. 3.

¹⁶ Ex. 3.

Perkins and told him, “Yo, you better watch cause Carl and that black Monte Carlo was up the block.”¹⁷ Detectives showed Williams an 8-man photo array with Mr. Johnson’s photograph. Williams identified Carl-Carl as Mr. Johnson.¹⁸

B. Legal Proceedings

Edgefield testified at the September 15, 2009 preliminary hearing and identified the driver as Carl-Carl (aka Mr. Johnson) and the passenger as Rome (aka Jerome Samuels). Edgefield knew Carl-Carl and had seen him before:

Prosecutor: Had you ever seen either of them before?

Edgefield: I seen Carl Carl before.

Prosecutor: Where do you know Carl from?

Edgefield: Back then like in school, I think like in middle school.¹⁹

Edgefield, though, said he had never seen Samuels before.²⁰

Edgefield said Mr. Johnson (the driver) “leaned back” and “that’s when Rome came over and start[ed] shooting.”²¹ When the prosecutor asked him about his September 27, 2008 statement, Edgefield said he did not “tell the police

¹⁷ Ex. 3.

¹⁸ Ex. 3.

¹⁹ NT, Prelim. Hrg., 9/15/2009, pp. 12-13.

²⁰ *Id.*, p. 35.

²¹ *Id.*, p. 14.

everything [he] knew.”²² Edgefield said he did not identify Samuels because he “wasn’t in [the] right state of mind” and he “was scared[.]”²³

Despite the fact it was dark when the shooting occurred, Edgefield said he was able to see the driver’s and passenger’s faces because there was a street light directly above the car.²⁴ Later, though, Edgefield said it was dark inside the car.²⁵ On cross-examination, Edgefield also said he viewed their faces for 10 seconds from a distance of 10 feet and that he recognized Mr. Johnson from middle school.²⁶ Edgefield could not remember the driver’s and passenger’s clothing, but recalled the gunman wearing a hat and having facial hair, while the driver had neither.²⁷

Later during cross-examination, Edgefield said he recognized the gunman in the photo array detectives showed him on September 27, 2008, but chose not to identify anyone because he was scared.²⁸ Edgefield also said that a “couple days” after the shooting someone from the neighborhood approached him and told him the gunman was Rome (aka Jerome Samuels).²⁹ When Samuels’ trial counsel asked how this person knew Rome was the gunman, Edgefield said, “I guess [Rome] ran

²² *Id.*, p. 18.

²³ *Id.*, pp. 18, 21.

²⁴ *Id.*, p. 23.

²⁵ *Id.*, p. 34.

²⁶ *Id.*, pp. 23, 24, 31.

²⁷ *Id.*, pp. 30, 33.

²⁸ *Id.*, p. 45.

²⁹ *Id.*, pp. 35-38.

his mouth.”³⁰ Edgefield said he told detectives about Rome during his September 27, 2008 interview and that the detectives told him they had created a photo array based on what he (Edgefield) told them (detectives).³¹

At trial, during opening statements, the prosecutor conceded Edgefield was the “only... human being” to witness the shooting and that the Commonwealth’s case rested heavily on his identifications of Mr. Johnson and Samuels.³² The prosecutor, therefore, spent much of his opening statements explaining away Edgefield’s initial statements to detectives that he “didn’t get a good look at anyone.”³³

Edgefield testified and described the car as a small silver car with tinted windows. When the windows came down, he saw the driver and passenger for 3 to 4 seconds before the passenger leaned across the driver and fired 5 to 6 shots. The car, Edgefield said, was 8 to 10 feet from where he was sitting on the front porch steps.³⁴ During the 3 to 4 seconds he saw the driver and gunman, Edgefield said he made “eye contact” with the driver.³⁵ Edgefield said he went to the hospital with Perkins. At the hospital, Edgefield only described the gunman as a “light skinned

³⁰ *Id.*, p. 36.

³¹ *Id.*, pp. 42-44.

³² NT, Trial, 11/8/2011, pp. 29-30.

³³ *Id.*, pp. 29-33.

³⁴ NT, Trial, 11/9/2011, pp. 91-97, 125.

³⁵ *Id.*, pp. 94-95.

fat boy.”³⁶ He said he did not give a “full” description because he “live[d] in the neighborhood” and feared his safety if he identified someone.³⁷

Edgefield told the jury he did not identify the gunman from the 8-man photo array he viewed on September 27, 2008, but said he, in fact, recognized Samuels as the gunman, but chose not to identify him because he was scared.³⁸ Edgefield then told the jury he voluntarily returned to Homicide in March 2009, viewed two 8-man photo arrays, and identified Mr. Johnson as the driver and Samuels as the gunman.³⁹ Edgefield said he came forward in March 2009 because he “couldn’t live with the... burden” of knowing the truth and not reporting it to detectives.⁴⁰

Edgefield said he had never seen the driver or gunman before:

Q. Up until this point, up until the day the window rolled down and you looked in the car and you saw them, were these people you knew from the neighborhood?

A. No, I haven't.

Q. Did you know their names?

A. No, I haven't.

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³⁶ *Id.*, p. 100.

³⁷ *Id.*, p. 100.

³⁸ *Id.*, pp. 105-109.

³⁹ *Id.*, pp. 109-112.

⁴⁰ *Id.*, p. 108.

⁴¹ *Id.*, p. 100.

When the prosecutor asked Edgefield who he saw when the window rolled down, Edgefield said Carl-Carl and Rome.⁴² When the prosecutor asked how he knew the names Carl-Carl and Rome, Edgefield said he learned them from the street, which prompted trial counsel to object. The trial court overruled the objection and asked Edgefield to “tell us how... you learn[ed] the names.”

THE COURT: In other words, don't tell us what people told you, but tell us how did you learn the names.

THE WITNESS: How did I learn the

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names? Because they told -- like I don't -- I'm not sure. Put it like this, I'm not sure what they names were. It just that I knew they faces. I couldn't put a name to them. They name could be anything at that time. I didn't know. But when I heard the names, it was like, Okay, it's that. But I don't know if that's the same names that add up to these faces.

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Edgefield said he based his identifications of Mr. Johnson and Samuels on what and who he saw the night of the shooting, not on the neighborhood gossip identifying Carl-Carl and Rome as the driver and gunman.⁴⁴ On August 26, 2009, Edgefield viewed a live line-up that included Mr. Johnson. Before viewing the line-up, Edgefield completed a “witness description form.” Edgefield testified he completed the form, but admitted that the descriptions he provided in the form

⁴² *Id.*, p. 95.

⁴³ *Id.*, pp. 100-101.

⁴⁴ *Id.*, pp. 113, 116.

were not based on his recollection of the shooting, but from the “two photo spreads” the detectives showed during his March 3, 2009 interview with detectives.

Q. You filled out description, height, weight, complexion, mustache. You even indicate there's a scar on the top of the head. You recall that?

A. Yes.

Q. How were you able -- when you filled this out, what information were you drawing from?

A. To be honest with you, off the two photo spreads that I been showed. That's how I described all that.

Q. This is based upon not just your memory, but on the pictures you had seen?

A. Yes.

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Edgefield viewed the line-up, identified Mr. Johnson as the driver, and at trial said he was “certain” of his identification.⁴⁶

Darnell Williams also testified and denied ever having told detectives that he saw Mr. Johnson driving around the neighborhood 4 hours before the shooting.⁴⁷ The prosecutor, though, impeached Williams with his statement.⁴⁸

Mr. Johnson’s trial attorney presented no witnesses on his behalf.

⁴⁵ *Id.*, p. 117.

⁴⁶ *Id.*, pp. 116-118.

⁴⁷ *Id.*, pp. 58, 61, 64, 87.

⁴⁸ Ex. 3.

STATE AND FEDERAL CLAIM

Claim One: Trial counsel was ineffective for not presenting his alibi witness. Trial counsel's ineffectiveness prejudiced Mr. Johnson because the absence of the alibi witness' testimony undermines confidence in his conviction. U.S. Const. admts. 6, 14; Pa. Const. art. 1 §§ 8, 9.

Mr. Johnson has a right to effective trial counsel. *Strickland v. Washington*, 468 U.S. 668, 688 (1984). Trial counsel's purpose is to "test[] the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged." *Martinez v. Ryan*, 566 U.S. 1, 12 (2012). The right to effective representation, consequently, is "the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." *United States v. Cronin*, 466 U.S. 648, 656 (1984). Trial counsel, as a result, "has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." *Strickland v. Washington*, 468 U.S. at 688. Thus, unless a defendant receives effective representation, "a serious risk of injustice infects the trial itself." *Cuyler v. Sullivan*, 446 U.S. 330, 343 (1980). In short, the right to effective representation is the "great engine by which an innocent man can make the truth of his innocence visible[.]" *Luis v. United States*, 136 S. Ct. 1083, 1089 (2016) (quotations and citation omitted).

To prevail on an ineffectiveness claim, Mr. Johnson must demonstrate that trial counsel performed deficiently and the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. at 687. The deficiency prong “requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed [to] the defendant by the Sixth Amendment.” *Strickland v. Washington*, 466 U.S. at 687. The prejudice prong requires showing “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. A reasonable probability “is a probability sufficient to undermine confidence in the outcome,” *id.*, which it is “not a stringent” standard to satisfy because it is “less demanding than the preponderance standard.” *Hall v. Kyler*, 190 F.3d 88, 110 (3d Cir. 1999).

Under state law, a petitioner must show (1) the underlying legal claim is of arguable merit, (2) trial counsel’s action or inaction lacked a reasonable basis designed to effectuate his interest(s), and (3) prejudice. *Commonwealth v. Pierce*, 527 A.2d 973, 975–976 (Pa. 1987). The *Pierce* standard is substantively identical to the *Strickland* standard: deficient performance and prejudice. *Commonwealth v. Spatz*, 870 A.2d 822, 829 (Pa. 2005).

To obtain relief on a claim trial counsel failed to present a witness, Mr. Johnson must establish: (1) the witness existed; (2) the witness was available to

testify; (3) counsel knew, or should have known, about the witness; (4) the witness was willing to testify; and (5) the absence of the witness's testimony denied him a fair trial. *Commonwealth v. Sneed*, 45 A.3d 1096, 1108-1109 (Pa. 2012). Mr. Johnson satisfies these requirements.

Before trial, Mr. Johnson told trial counsel he did not commit the shooting because he was with his aunt at the time of the shooting on September 8, 2008. Mr. Johnson's aunt's name is Veronica Thomas and his address is 220 East Mermaid Lane, #138, Philadelphia, Pennsylvania 19118. Mr. Johnson also told trial counsel Veronica Thomas was available and willing to testify on his behalf at trial. Trial counsel, though, never called Veronica Thomas as an alibi witness, but he did not have a reasonable basis for not presenting her alibi testimony.

When assessing whether trial counsel had a "reasonable basis" for a particular act or omission, the question is not whether there were other courses of action available, but "whether counsel's decision had any basis reasonably designed to effectuate his client's interest." *Commonwealth v. Williams*, 141 A.3d 440, 463 (Pa. 2016). Put differently, the issue is "whether counsel made an informed choice, which at the time the decision was made reasonably could have been considered *to advance and protect [the] defendant's interests.*" *Commonwealth v. Dunbar*, 470 A.2d 74, 77 (Pa. 1983) (emphasis added). Trial counsel's action or omission will be considered unreasonable if the petitioner establishes "that an

alternative not chosen offered a potential for success substantially greater than the course actually pursued.” *Commonwealth v. Howard*, 719 A.2d 233, 237 (Pa. 1998).

Presenting Veronica Thomas presented an alternative defense that offered a potential for success substantially greater than the course actually pursued. Trial counsel for Mr. Johnson and Jerome Samuels successfully cross-examined Tyrone Edgefield by exposing the many inconsistencies with his statements and questionable identifications of Mr. Johnson and Samuels. These inconsistencies raised a certain level of doubt. Presenting Veronica Thomas, then, would have substantially increased the likelihood of an acquittal because Thomas’ testimony would have further undermined Edgefield’s identification of Mr. Johnson because Mr. Johnson could not have been two places at once. By further undermining Edgefield’s identification and credibility, trial counsel would have raised sufficient doubt for an acquittal. Mr. Johnson is entitled to a new trial or at the very least an evidentiary hearing where trial counsel and Veronica Thomas can testify.

RIGHT TO AN EVIDENTIARY HEARING

The PCRA court “shall order a hearing” when then the petitioner’s 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 PCRA petition lacks “total” merit. *Commonwealth v. Bennett*, 462 A.2d 772, 773 (Pa. Super. 1983). 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, the PCRA court must grant a hearing on those claims that are “not clearly refute[d]” by the record. *Id.*

Mr. Johnson’s PCRA petition raises disputed issues of fact, namely whether Mr. Johnson was the driver of the car. Mr. Johnson, therefore, is entitled to an evidentiary hearing.

WITNESS CERTIFICATIONS FOR EVIDENTIARY HEARING

If the Court grants Mr. Johnson a hearing, he intends to present the following witnesses:

1. Joseph Santiguida: Santiguida will testify and explain his reasons for not presenting Veronica Thomas’ alibi testimony.
2. Veronica Thomas: Thomas will testify and explain that Mr. Johnson was with her at the time of the shooting on September 8, 2009.

CONCLUSION

WHEREFORE, Mr. Johnson respectfully requests the Court to grant him a new trial or in the alternative to grant him an evidentiary hearing where trial counsel and Veronica Thomas can testify.

Respectfully submitted this the 7th day of March, 2017.

/s/Craig M. Cooley
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CERTIFICATE OF SERVICE

On April 7, 2017, counsel e-filed Mr. Johnson's amended PCRA petition and the Commonwealth received e-service of this brief.