UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

TYRONE WILLIAMS **Petitioner-Defendant,**	)	
v.	)	**3:18-cv-1004**
THERESA DELBALSO, Warden **Respondent-Plaintiff**	)	

Amended 2254 Petition

Tyrone Williams, through counsel, Craig M. Cooley, respectfully submits his *Amended 2254 Petition*, which is presented in good faith and based on the following facts and authorities.

INTRODUCTION

On May 5, 2009, Ronald Burton sold Brandon Granthon crack. Preston Burgess arranged the drug deal between Burton and Granthon. Shortly after purchasing the crack, Granthon believed Burton had shorted him, meaning Burton had given him a lesser amount of crack than what he had paid for. Angered by being shorted, Granthon called Burgess demanding he (Burgess) contact Burton and tell him (Burton) that he (Granthon) wanted his money back. Granthon returned to Burgess's house looking for Burton, but Burton was not there. Granthon had on all black and black gloves when

he went to Burgerss's house looking for Burton. Granthon left Burgess's house in search of Burton to get his money back. Shortly thereafter, Burton and Mr. Williams arrived at Burgess's house so Burton could refund Granthon his money, but Granthon had already left in search of Burton. Burgess gave Burton Granthon's phone number and told him to resolve the situation amongst themselves. Burton and Mr. Williams left Burgess's house on foot in the direction of Mulberry Street. Ten minutes after they departed Burgess's house, Burgess heard a volley of gunfire. Shortly before the shooting, an eyewitness saw Granthon and said it appeared as if he was looking for someone – presumably Burton.

Another witness, Georgio Rochon, testified he heard the shooting. Specifically, Rochon said he heard two gunshots, followed by four louder gunshots fired from a larger caliber firearm.

The gunfire left Granthon dead. However, very near Granthon's body was a .40 caliber firearm and a .40 caliber shell casing. CSI personnel also recovered a .40 caliber bullet from the scene. Granthon died from a single gunshot wound – from a .45 caliber bullet. CSI personnel recovered five .45 caliber cartridge casings about twenty feet from Granthon's body. A .45 caliber firearm is a higher power firearm than the .40 caliber firearm and would have produced louder gunfire.

The Commonwealth claimed Burton or Mr. Williams shot and killed – and that both had conspired with the other to kill Granthon. The Commonwealth tried Burton

and Mr. Williams separately, but presented virtually the same evidence and witnesses at both trials.

The Commonwealth tried Burton in January 2011 and secured first-degree murder, conspiracy, REAP, and other convictions against him. On appeal, though, Burton had his murder conviction overturned on January 20, 2012 because his trial counsel effectively represented him by presenting Georgio Rochon and requesting self-defense, defense of others, and voluntary manslaughter instructions at his trial.[1] The Pennsylvania Superior Court said Burton was entitled to self-defense, defense of others, and voluntary manslaughter instructions. In Burton's case, the trial court had refused to issue a defense of others instruction and a voluntary manslaughter instruction based on imperfect self-defense. Once the state courts overturned his murder conviction, the Commonwealth chose not to retry Burton on the murder charge, and the trial court eventually resentenced him from life imprisonment to 22 to 45 years in prison. *Commonwealth v. Burton*, 2017 Pa. Super. Unpub. LEXIS 2845 (July 17, 2017).

Four days after the Pennsylvania Superior Court overturned Burton's conviction, Mr. Williams went to trial on January 24, 2012. The Commonwealth presented virtually the *same evidence* as it did at Burton's trial, save for some circumstantial evidence suggesting Mr. Williams was with Burton immediately before the shooting. The

[1] Rpp. 29-54. Counsel created a quasi-reproduced record for the Court's convenience. Exhibit 1 has pp. 1 thru 28. Exhibit 2 has pp. 29 thru 64. Exhibit 3 has pp. 65 to 82. Reference to the pages numbers will be Rp. or Rpp.

Commonwealth also presented Mr. Williams's two custodial statement. Mr. Williams not only admitted to being with Burton shortly before and shortly after the shooting, he gave two different narratives regarding his alibi, calling into question any future alibi defenses.

Mr. Williams's trial counsel did not file a notice of alibi, did not present an alibi witness at trial, did not present Georgio Rochon to argue that Granthon presumably fired first, and did not have Mr. Williams testify in his own defense that he was somewhere else when the shooting occurred. And trial counsel knew about Georigo Rochon because he gave a statement hours after the shooting on May 5, 2009 – and the Commonwealth disclosed this statement to trial counsel.[2] His statement mimicked his trial testimony at Burton's testimony, *i.e.*, he heard two gunshots from a smaller caliber firearm and then saw a gunman fleeing who fired four gunshots from a larger caliber firearm. More importantly, based on the physical evidence, Rochon's sequencing of events strongly suggests Granthon fired one or two shots *before* Burton or Mr. Williams returned fire.

During the charge conference, moreover, trial counsel undercut any sort of alibi narrative he may have suggested during the trial when he asked for a voluntary manslaughter charge based on "sudden provocation" and "imperfect self-defense." 18 Pa. C.S. § 2503. The voluntary manslaughter request, in other words, suggested trial

[2] Rpp. 55-64.

counsel believed there was sufficient evidence of either "sudden provocation," "imperfect" self-defense, or both. Put differently, trial counsel presumably recognized that whoever shot and killed Granthon may have done so in self-defense, be it justifiable or imperfect self-defense. The trial court denied the manslaughter request.

Had trial counsel reviewed the Superior Court's *Burton* opinion and the trial testimony in Burton's case, he would have realized that base on Georgio Rochon's testimony, and the fact the .40 caliber firearm was recovered next to Granthon's body, Granthon most likely fired the first shots. Likewise, the Superior Court's Burton opinion gave trial counsel strong reason to believe the trial evidence in Mr. Williams's case, even absent Georgio Rochon's testimony, warranted a self-defense instruction and a defense of others instruction. Remarkably, though, trial counsel did not subpoena and present Georgio Rochon, nor did he request self-defense or defense of others instructions, even though he asked for a voluntary manslaughter instruction based on *imperfect self-defense*.

Based on the above-mentioned facts, and the fact Commonwealth had no idea who fired the fatal shot that kill Granthon, reasonably competent trial counsel would have presented the following witnesses and requested the following instructions:

Called Georgio Rochon to Testimony

Burton's trial attorney called Rochon as a defense witness and understandably so. As indicated in his May 5, 2009 statement, Rochon lived on Mulberry Street, not far from where the shooting had occurred. Rochon heard the gunfire and, most

importantly, said he first heard two gunshots followed by four louder and more powerful gunshots. Rochon's trial testimony mimicked his statement.[3] The importance of what Rochon heard and saw cannot be understated based on the physical evidence. Granthon likely came to the scene with the .40 caliber firearm found next to his body and he likely discharged the firearm because CSI personnel collected at least one .40 caliber shell case and bullet from the scene. Granthon, though, was shot with a .45 caliber bullet. A f.45 caliber firearm is a louder and more powerful firearm than a .40 caliber firearm. Thus, based on Rochon's testimony of what he heard, it could be strongly argued that Granthon fired first when he saw Burton and Mr. Williams and that Burton or Mr. Williams fired back in self-defense.

Mr. Williams's trial counsel, therefore, should have called Rochon for these very reasons, especially considering the fact trial counsel recognized the self-defense angle when he requested voluntary manslaughter instructions based on sudden provocation and imperfect self-defense. Had trial counsel called Rochon, it would have only reinforced his requests for self-defense, defense of others, and voluntary manslaughter requests.

Requested Justifiable Self-Defense and Defense of Others Instructions

Burton is the shooter (self-defense): There was that Burton and Mr. Williams went to meet Granthon to return his money; there was evidence in the record strongly

[3] Rp. 31.

suggesting Granthon was angry at Burton, that Granthon went looking for Burton, that Granthon came to the scene armed with a .40 caliber firearm, and that upon seeing Burton and Mr. Williams, Granthon fired his .40 caliber weapon at either Burton or Mr. Williams. Indeed, the Superior Court agreed with this scenario in its *Burton* opinion: "Considered in a light most favorable to Burton, the record admits of the possibility that Granthon fired a .40 caliber weapon at Burton and/or his companion before the perpetrator returned fire with a .45 caliber weapon."[4]

Thus, if Burton justifiably fired at Granthon in self-defense, once Granthon threatened him and/or Mr. Williams with his .40 caliber firearm, this would absolve Burton *and* Mr. Williams of all criminal liability. Simply put, if the person who shot Granthon did so justifiably, neither Burton *nor* Mr. Williams could be convicted of murder, conspiracy, or any other criminal charges.

Burton as the shooter (defense of others): Using the same facts as above, Burton could have justifiably fired at Granthon *to defend Mr. Williams* in accordance with 18 Pa. C.S. § 506. If so, neither Burton *nor* Mr. Williams could be convicted of murder, conspiracy, or any other criminal charges.

Mr. Williams as the shooter (self-defense): Using the same facts as above, if Granthon pulled his .40 caliber firearm upon seeing Burton and Mr. Williams and fired his .40 caliber firearm in Burton's and Mr. Williams's direction, Mr. Williams, like

[4] Rp. 44.

Burton, could have justifiably shoot at Granthon in self-defense. If so, Mr. Williams and Burton would be absolved of all criminal charges.

Mr. Williams as the shooter (defense of others): Using the same facts as above, Mr. Williams could have justifiably fired at Granthon to defend Burton in accordance with 18 Pa. C.S. § 506.

Requested a Imperfect Self-Defense Instruction

Burton is the shooter: If the jury believed Burton and Mr. Williams went to meet Granthon for the sole purpose of returning his money, and that Burton opened fire on Granthon because he subjectively, but "unreasonably," believed Granthon was going to shoot him with his .40 caliber firearm, Burton would be guilty of manslaughter based on imperfect self-defense. 18 Pa. C.S. § 2503(b). Mr. Williams, though, would be acquitted of the murder, manslaughter, and conspiracy charges.

In terms of the conspiracy charge, if Burton had no intent of committing a crime against Granthon, but rather shot him because he subjectively believed Granthon was going to shoot him, yet this subjective belief was objectively unreasonable, then there was no agreement between Burton and Mr. Williams to harm Granthon or to commit a crime. Rather, the harm to Granthon was created by *Burton's split-second subjective belief* that he was in grave danger. *Commonwealth v. Weimer*, 977 A.2d 1103, 1105-1106 (Pa. 2009) ("To sustain a criminal conspiracy conviction, the Commonwealth must establish a defendant entered into an agreement to commit or aid in an unlawful act with another

person or persons, with a shared criminal intent, and an overt act was done in the conspiracy's furtherance."); 18 Pa. C.S. § 903.

The same reasoning applies to the manslaughter charge. Mr. Williams cannot be guilty of manslaughter via conspiratorial liability because, as mentioned, under this fact pattern, Burton and Mr. Williams *never entered into an agreement* to harm Granthon. Likewise, Mr. Williams cannot be guilty of manslaughter via accomplice liability. The general rule is that a person is an accomplice of another in the commission of "an offense" if, acting with the intent to promote or facilitate the commission of "the offense," he solicits the other person to commit it or aids, agrees, or attempts to aid the other person in planning or committing it. 18 Pa. C.S. § 306(c).

Here, based on the imperfect self-defense fact pattern, neither Burton nor Mr. Williams had the "intent to promote or facilitate" the commission of a crime. Rather, as mentioned, Granthon's death is a byproduct of Burton's *split second subjective*, *yet unreasonable, belief* that Granthon was going to shoot and kill him. *Commonwealth v. Knox*, 105 A.3d 1194, 1196-1197 (Pa. 2014).

Mr. Williams is the shooter: The same reasoning applies if Mr. Williams fired the fatal shot based on imperfect self-defense. At most, Mr. Williams would be convicted of manslaughter and perhaps REAP, but not first-degree murder, third-degree murder, and conspiracy.

Requested an Imperfect Defense of Others Instruction

The same arguments made in the Imperfect Self-Defense section apply here. If Burton fatally shot Granthon based on his subjective, yet unreasonable, belief that Granthon was going to shoot Mr. Williams, Burton would be guilty of manslaughter and REAP. Mr. Williams, though, would be cleared of all wrong doing because conspiratorial and accomplice liability are not present because based on these facts because they never entered into an agreement to commit a crime, nor did he have the intent to promote or facilitate a crime, and he did not aid and abet Burton when he fired at Granthon.

That trial counsel did not request these instructions and make these arguments in support of these instructions was objectively unreasonable because under state law Mr. Williams was entitled to both instructions – as well as a manslaughter instruction based on imperfect self-defense. Trial counsel's deficient performance, moreover, prejudiced Mr. Williams. Had trial counsel requested these instructions and made the above arguments, it is reasonably probable the trial court would have granted his requests and charged all three to the jury. Had this occurred, it is reasonably probable at least one juror's assessment of the trial evidence would have been altered to the point where the juror would have harbored a reasonable doubt about whether Mr. Williams and Burton killed Granthon with specific intent and premeditation.

Moreover, if the trial court had rejected trial counsel's timely requests, trial counsel's timely request and subsequent objection to the denial would have preserved

these issues for appellate review. Had they been preserved, it is reasonably probable the state courts would have granted a new trial – like they did for Burton.

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Unfortunately, Mr. Williams's experience with ineffective attorneys did not end at his trial. Rather, it continued during his initial-review PCRA proceedings. Under state law, the first time a defendant can raise a trial counsel ineffectiveness claim is during his initial-review PCRA proceedings. Mr. Williams filed a timely PCRA petition and was appointed counsel. Appointed PCRA counsel, however, did not raise these substantial trial counsel ineffectiveness claims regarding trial counsel's failure to present Georgio Rochon and to request a self-defense instruction and a defense of others instruction – and to use Rochon's testimony and these instructions to argue for a voluntary manslaughter instruction. Thus, due to PCRA counsel's ineffectiveness, Mr. Williams never presented these substantial ineffectiveness claims to the state courts. As a result, they are defaulted.

Under *Martinez v. Ryan*, 566 U.S 1 (2012), initial-review PCRA counsel's failure to raise these substantial trial counsel ineffectiveness claims allows this Court to review these defaulted claims *de novo* and not under AEDPA's very high and deferential standard. Under *de novo* review, Mr. Williams is entitled to a new trial. It is reasonably probable that, had trial counsel requested, and the trial court instructed on self-defense, defense of others, and voluntary manslaughter, the ability to consider these options would altered at least one juror's assessment of the Commonwealth's evidence to the

point where the "juror would have harbored a reasonable doubt about whether" Mr. Williams and Burton acted with specific intent and premeditation when Granthon was killed. *Buck v. Davis*, 137 S. Ct. 759, 776 (2017).

A. Ronald Burton's trial and appeal

The Commonwealth tried Burton first in January 2011 (CP-22-CR-0005456-2009). At trial, the Commonwealth presented evidence that Burton had sold Granthon crack earlier that night, and that Granthon believed Burton had "shorted" him, meaning Granthon believed he did not receive the amount of crack he had paid for.[5] Preston Burgess had orchestrated the deal between Burton and Granthon. Once Granthon believed he had been shorted, he angrily told Burgess to call Burton and to tell Burton that he (Granthon) wanted his money back because he (Burton) had shorted him (Granthon).

Burgess called Burton and Burton agreed to refund the money. Burton then returned to Burgess's house assuming Granthon was still there. Granthon, though, had left Burgess's residence dressed in all black, including black gloves, in search of Burton. Burgess said a man named "Slim" had accompanied Burton into his (Burgess's) house. Burgess identified "Slim" as Tyrone Williams – someone he had purchased drugs from previously. While Burton and Mr. Williams were inside Burgess's home, Granthon called Burgess. When Burgess told Granthon that Burton was at his house, Granthon

[5] The facts pleaded here are garnered from the Superior Court's Burton opinion. Rpp. 29-54.

told Burgess to tell Burton to show him (Burgess) the money. Burgess then gave Burton Granthon's phone number and told them to work out the dispute. Burgess said Burton and Mr. Williams left his house on foot once Burton had Granthon's phone number.

Shortly after Burton and Mr. Williams had left Burgess's house, Jeffery Lynch saw Burton with another individual walking quickly down an alley on Mulberry Street, not far from where the shooting ultimately occurred. Lynch recognized Burton – and knew him as "Philly" – because he had previously purchased cocaine from Burton. Lynch said Burton and his companion ducked down, one behind a car and the other behind a telephone pole, and one of them said, "there he goes." Another eyewitness, Greta McAllister, saw Burton and his companion and said were both armed. Lynch saw a third man, dressed in all black with gloves on (Granthon), walk by, and Burton and his companion eventually emerged from their hiding places and ran after the third man. The Commonwealth argued that Burton's companion was Mr. Williams and the third man was Granthon.

Approximately twenty seconds later, Lynch and McAllister both heard gun fire. Lynch, an ex-Marine, heard two distinct calibers of firearms being fired. Shortly after the shooting stopped, Lynch saw Burton and his companion run to, enter, and flee in a dark colored SUV. Lynch believed he had heard more than five shots and that at least three or four were from a heavier caliber weapon than the others.

Burton called Georgio Rochon who said he heard the shooting from his home and said he heard two shots that were "just like pop-pop followed by four louder shots that "were more of a bang-bang."

CSI personnel recovered a .40 caliber handgun, a spent .40 caliber casing, and a .40 caliber bullet near Granthon's body. CSI personnel also recovered five spent .45 caliber casings approximately 20 feet from Granthon's body. The forensic pathologist determined that Granthon had been killed with a .45 caliber round.

Burton did not testify.

Based on these facts, particularly the sequencing of the gunfire as provided by Rochon's testimony, and the physical evidence collected from the scene, Burton requested and received a self-defense instruction. The argument being: Granthon presumably had the .40 caliber firearm that was recovered next to his body, that Rochon heard smaller caliber gunfire before hearing larger caliber gunfire, and that based on these facts, Granthon very likely opened fired on Burton and Mr. Williams first.

The trial court, though, denied Burton's requests for a defense of others instruction under 18 Pa. C.S. § 506 and a manslaughter instruction under 18 Pa. C.S. § 2503. Burton argued the trial evidence supported a defense of others instruction because if he could defend himself against an armed Granthon, he had every right to defend his companion in accordance with 18 Pa. C.S. § 506. In terms of the manslaughter instruction, Burton believed that if the evidence warranted a self-defense

instruction, it warranted an imperfect self-defense instruction and a manslaughter instruction under 18 Pa. C.S. § 2503(b).

The jury convicted Burton of first-degree murder, conspiracy, and other related offenses.

Burton appealed (385 MDA 2011) and on January 20, 2012, *four days before Mr. Williams's trial commenced*, the Pennsylvania Superior Court granted Burton a new trial based on the trial court's refusal to charge defense of others and imperfect self-defense manslaughter. When addressing the defense of others instruction, the Superior Court said:

> [T]he instant record reflects that Burton and a companion were on their way to meet Granthon, ostensibly for Burton to refund Grathon's money in exchange for the drugs Burton had provided to Granthon several house before the shooting. One witness believed two shots by a smaller weapon were followed by several shots from a larger weapon. Police found a .40 caliber firearm near Granthon's body, and the evidence established that Granthon was killed by a .45 caliber bullet. There record also reflects that Granthon was angry at Burton for having shorted him in the drug transaction. Considered in a light most favorable to Burton, the record admits the possibility that Granthon fired a .40 caliber weapon at Burton and/or his companion before the perpetrator returned fire with a .45 caliber weapon.
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> Though there is no evidence of a dispute between Burton's companion (presumably Slim) and Granthon, as there was between Burton and Granthon, it is quite possible that Granthon, upon observing two armed men approaching him, opened fire on one or both of them. No witnesses observed the gunfire exchange. Viewing the record in a light most favorable to Burton, we can discern no valid basis for charging the jury on self-defense but not defense of others,

> as the trial court did. We conclude that the lack of a defense of others instruction was error… [.][6]

Regarding the imperfect self-defense voluntary manslaughter instruction, the Superior Court said that when "viewed in a light most favorable to Burton," the record "could support a voluntary manslaughter conviction."[7] The Superior Court explained:

> The .40 caliber gun found near Granthon's body had jammed. Burton, therefore could have subjectively believed his life was in danger even though the objective facts established that Granthon's weapon was jammed and posed no immediate danger to Burton. Further, one witness testified that a short period of time passed between the opening shots from the smaller weapon and the subsequent shots from the larger weapon. The jury might have concluded that Burton's belief in the need to use deadly force in self-defense became unreasonable during that period of time….[.][8]

The Superior Court, furthermore, concluded that the error was not harmless:

> The facts of record and the trial court's erroneous jury charge leave open the possibility that the jury rejected Burton's justification defense because it found that Burton unreasonably believed that he was justified in killing Granthon. If the jury so found, Burton should have been convicted of voluntary manslaughter rather than first-degree murder. This is a significant error of law, and given the many possible interpretations of the facts of record, we cannot conclude beyond a reasonable doubt that the error did not contribute to the verdict. This error requires remand for a new trial.[9]

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[6] Rpp. 43-44.
[7] Rp. 47.
[8] Rpp. 47-48.
[9] Rp. 49.

After the Pennsylvania Supreme Court denied the Commonwealth's discretionary review request, *Commonwealth v. Burton*, 48 A.3d 1246 (Pa. 2012), the Commonwealth chose not to retry Burton on the murder charges. The trial court ultimately sentenced him to 22 to 45 years in prison on his remaining convictions. *Commonwealth v. Burton*, 175 A.3d 417 (Pa. Super. 2017).

B. Tyrone Williams's trial

Mr. Williams's trial started on January 24, 2012 – *four days after* the Superior Court had issued its *Burton* opinion. The Commonwealth presented virtually the same evidence and testimony at Mr. Williams's trial as it did at Burton's trial, save for some additional circumstantial evidence suggesting that Mr. Williams was with Burton when the shooting had occurred, *e.g.*, evidence that policed had stopped Mr. Williams on August 10, 2009 while driving a 2000 gold Cadillac Deville that was linked to Burton.

The Commonwealth also presented Mr. Williams's two custodial statements.[10] In his first statement, which detectives recorded, Mr. Williams said he went to Burgess's house with Burton the night of the shooting, but when he and Burton left Burgess's house, he dropped Burton off and then picked him up later, before going to the Hollywood casino for a few hours. In a second statement, which detectives claimed occurred only minutes after Mr. Williams had given his recorded statement, Mr. Williams said that after he and Burton had left Burgess's residence, they went to

[10] Rpp. 65-82.

Hummel Street and met a man named Roni. Mr. Williams said he left Mr. Williams and Roni at Hummel Street and went to his Vernon Street residence where he smoked marijuana, got a shower, and got ready to go to the Hollywood casino. Once ready, Mr. Williams said Burton picked him up and they went to the Hollywood casino together.[11]

Trial counsel did not file a notice of alibi, did not present an alibi witness at trial, did not have Mr. Williams testify in his own defense, did not present Georgio Rochon, and he requested a voluntary manslaughter instruction – which necessarily implied either Burton or Mr. Williams had shot and killed Granthon based on sudden provocation or imperfect self-defense. 18 Pa. C.S. § 2503. The voluntary manslaughter request, moreover, undercut any sort of indirect alibi argument trial counsel may have made at trial. The trial court denied the voluntary manslaughter request.

The jury, therefore, was left with only three options regarding the murder charge: (1) guilty of first-degree murder, (2) guilty of third-degree murder, or (3) not guilty of first- or third-degree murder. Thus, even if the jury had believed self-defense, defense of others, or imperfect self-defense played a role in Granthon's death, it had not way of articulating this belief due to trial counsel's ineffectiveness.

The jury convicted Mr. Williams of first-degree murder, conspiracy, and REAP.

[11] TT, pp. 273-280.

Direct appeal counsel could not raise trial counsel's ineffectiveness on direct appeal. *Commonwealth v. Grant*, 813 A.2d 726 (Pa. 2002). Thus, the first time Mr. Williams could raise these substantial trial counsel ineffectiveness claims was during his initial-review PCRA proceedings. Although Mr. Williams filed a timely PCRA petition and the PCRA court appointed counsel, appointed counsel failed to raise and litigate these substantial trial counsel ineffectiveness claims. Instead, PCRA counsel raised a far weaker alibi claim – an alibi claim that presented a *third alibi narrative* provided by Mr. Williams. Initial-review PCRA counsel's failure to raise these substantial trial counsel ineffectiveness claims was objectively unreasonable under *Strickland*, allowing this Court review these defaulted claims *de novo* under *Martinez v. Ryan*, 566 U.S. 1 (2012).

PROCEDURAL HISTORY

On May 5, 2009, as mentioned, Granthon was shot and killed in Harrisburg, Pennsylvania. On September 17, 2009, police arrested Burton. On January 19, 2010, the Dauphin County District Attorney's Office ("DAO") filed an *Information* against Burton, charging him with murder, conspiracy, and other offenses in case number CP-22-CR-0005456-2009. On May 7, 2009, nearly a year after Granthon's death, police arrested Mr. Williams. On December 10, 2010, the DAO filed an *Information* against Mr. Williams, charging him with murder, conspiracy, and other offenses in case number CP-22-CR-0004623-2010.

In January 2011, the DAO prosecuted Burton, resulting in a jury finding him guilty of all counts on January 27, 2011. Burton appealed (385 EDA 2011) to the Pennsylvania Superior Court, which granted him a new trial on January 20, 2012, after finding that his trial court failed to give a defense of others (18 Pa. C.S. § 506) and voluntary manslaughter (18 Pa. C.S. § 2503) instructions.

On January 24, 2012, the DAO prosecuted Mr. Williams. On January 27, 2012, the jury convicted him of first-degree murder, conspiracy, and REAP. On April 23, 2012, the trial court sentenced him to LWOP for the murder conviction, 20 to 40 years for the conspiracy conviction, and 1 to 2 years for the REAP conviction. Michael Rentschler represented Mr. Williams at trial.

Mr. Williams appealed to the Pennsylvania Superior Court (1682 MDA 2012), which affirmed his convictions and sentences on August 12, 2014.[12] Mr. Williams did not petition the Pennsylvania Supreme Court for discretionary review, meaning his conviction became final on September 11, 2014.

On March 10, 2015, Mr. Williams properly filed a timely state post-conviction petition ("PCRA petition). After appointing William Shreve as PCRA counsel, Shreve filed an amended PCRA petition and motion for an evidentiary hearing on November 24, 2015. On January 6, 2016, the PCRA court held a hearing and dismissed the petition on January 12, 2016.[13] Mr. Williams appealed to the Pennsylvania Superior Court (249

[12] Rpp. 1-17.
[13] Rpp. 18-20.

MDA 2016), which affirmed the dismissal on November 23, 2016.[14] When Shreve failed to timely petition the Pennsylvania Supreme Court, Mr. Williams had his discretionary review rights reinstated *nunc pro tunc* on July 24, 2017.[15] On August 17, 2017, Mr. Williams filed his petition with the Pennsylvania Supreme Court (561 MAL 2017), which was denied on January 17, 2018.

On May 14, 2018, Mr. Williams filed a timely *pro se* federal habeas petition.[16] Mr. Williams raised three federal claims, including the following:

> Ground Two: PCRA counsel was ineffective for failing to identify them raise trial counsel's ineffectiveness for failing to request a jury instruction on defense of others.[17]
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> Ground Three: PCRA counsel was ineffective for failing to identify then raise trial counsel's ineffectiveness for failing to request a jury instruction on unreasonable belief voluntary manslaughter.[18]

In both claims, Mr. Williams referenced the Superior Court's opinion in Burton's case:

[14] Rpp. 21-27.
[15] Rp. 28.
[16] E.C.F. #1
[17] E.C.F. #1, p. 7.
[18] E.C.F. #1, p. 9.

GROUND TWO: PCRA counsel was ineffective for failing to identify then raise trial counsel's ineffectiveness for failing to request ~~a jury instruction on defense of others.~~

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The defendant was convicted of First degree murder and the evidence showed that the victim fired at the defendant or his co-defendant. And seven days before the defendant's conviction the Pennsylvania Superior Court determined that it was an error for the co-defendant not to receive a jury instruction on defense of others. Both defendant and co-defendant were confronted with the same exact evidence at trial. Thus, an error of one is an error for the other.

GROUND THREE: PCRA counsel was ineffective for failing to identify then raise trial counsel's ineffectiveness for failing to request ~~a jury instruction on unreasonable belief voluntary manslaughter.~~

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The defendant was convicted of First degree murder and the evidence showed that the victim fired at the defendant or his co-defendant. And seven days before the defendant's conviction, the Pennsylvania Superior Court vacated the co-defendant's First degree murder conviction because a voluntary manslaughter jury instruction was not given. Both defendant and co-defendant were confronted with the same exact evidence.

(b) If you did not exhaust your state remedies on Ground Three, explain why:

Pennsylvania has no remedy to raise PCRA counsel's ineffectiveness and defendant's are barred by Pennsylvania rule from engaging in hybrid representation.

In July 2018, counsel entered his appearance and now respectfully amends Mr. Williams's *pro se* federal habeas petition. As developed below, counsel merges these two claims and raises the following multi-prong, global trial counsel ineffectiveness claim, where each prong is part of the "common core of operative facts," *Mayle v. Felix*, 545 U.S. 644 (2005), underlying Mr. Williams's *pro se* federal claims:

> **Trial counsel was ineffective for not presenting witnesses, arguments, and instructions in support of a coherent and cogent strategy where self-defense, defense of others, and imperfect self-defense represented Mr. Williams's primary defense at trial.**

STATEMENT OF FACTS

The trial court summarized the facts from Mr. Williams's trial in its direct appeal opinion:

> Brandon Granthon [("Victim")] was shot in the chest and killed on May 5, 2009 at approximately 1:10 a.m. Officer Garrett Miller ("Officer Miller") of the Harrisburg Bureau of Police ("HBP") was dispatched to the corner of Mulberry and Crescent Streets in Harrisburg City to investigate a report of shots fired. The area is known for high crime and drug traffic. Officer Miller found [Victim] lying on the sidewalk in front of the McFarland Building apartments, on his back, with a gunshot wound to the chest. [Officer] Miller stated that [Victim] was dressed in all black including black gloves, and a .40 caliber handgun was on the ground to the left of him. Officer Miller described the scene as initially chaotic as several individuals were in the immediate area. [Victim] was loaded into an ambulance for purposes of transport to the hospital for treatment along with Officer Jeffery Cook ("Officer Cook") of the HBP.
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> While in the ambulance, the EMS personnel had to cut off [Victim's] pants to administer medical treatment which caused a bag to fall out of the pants to the floor. Officer Cook suspected that the bag contained crack cocaine, so he gave it to Officer Miller who subsequently provided it to the forensic officer. After arriving at the hospital emergency room, the ER physician pronounced [Victim] dead at 1:35 a.m.
>
> The substance in the baggy found on [Victim's] body was tested at the [Pennsylvania State Police ("PSP")] Crime Lab by forensic scientist Nicole Blascovich ("Ms. Blascovich"). Ms. Blascovich determined that the substance contained in the baggy found on [Victim's] body was 8.2 grams of crack cocaine. She also tested a substance suspected to be cocaine

which had been obtained by Officer Mark McNaughton ("Officer McNaughton") of the HBP when he conducted a search of [Victim's] apartment pursuant to a warrant. Ms. Blascovich determined that the substance in the second baggie was crack cocaine weighing 65/100ths of a gram.

Dr. Wayne Ross, a forensic pathologist for the Dauphin County Coroner's Office performed an autopsy on the body of [Victim]. Upon examination of the body, he discovered [a] hole in [Victim's] chest consistent with a gunshot wound. Upon further examination, Dr. Ross determined that a gunshot went into [Victim's] chest entering the 5th rib on the left side, broke the rib, and went through the liver, heart and lungs. Dr. Ross stated that he found a bullet in blood that was in the lung. Dr. Ross concluded that, as there was no soot or residue on the outside of [Victim's] hoodie, the wound was a "distant gunshot wound" and the "path relative to his body was going front to back, left to right, and upward." Dr. Ross concluded within a reasonable degree of medical certainty that the cause of [Victim's] death was a gunshot wound to the chest and the manner of death was homicide. Upon evaluation of the position in which [Victim] was found and the path of the bullet within the body, it was Dr. Ross' opinion that when [Victim] was shot he was pulling his body backwards in some manner, lying on the ground or the shooter was pulling backward and running.

On May 4, 2009, [Victim] called Preston Burgess ("Mr. Burgess"), who is also known as "Pepsi," and asked him [to] set up a deal to purchase an ounce of crack cocaine. Mr. Burgess had known [Victim] for several months as he had been [Mr.] Burgess' drug dealer. [Mr.] Burgess contacted another drug dealer he knew, an individual nicknamed "Duke," to set up the sale for [Victim]. Duke later arrived [at] [Mr.] Burgess' house, parked outside in his truck and [Victim] went out to consummate the drug deal. When [Victim] reentered [Mr.] Burgess' house, he stated that he thought that the drugs were "light," meaning less than the ounce he had agreed upon. To remedy the situation, [Mr.] Burgess called Duke who agreed to come back to [Mr.]

Burgess' house, later in the evening, to return [Victim's] money in exchange for the drugs.

At the meeting time, [Victim] returned to [Mr.] Burgess' house. Mr. Burgess described him as being dressed in all black including his pants, shirt and gloves, and acting uncomfortable or skittish. Duke did not show up when expected, so [Victim] left. Later, when Duke arrived at [Mr.] Burgess' house, they arranged for [Victim] and Duke to meet at Kiwi's Bar on 13th and Derry Streets to make the exchange and [Mr.] Burgess gave [Victim's] cellphone number to Duke so the two of them could handle the situation themselves. When Duke was at Mr. Burgess' house the second time that day, Appellant, [whom] [Mr.] Burgess, and later police, knew to be called "Slim," unexpectedly arrived first, a minute or two before Duke. The police first learned that Appellant was at [Mr.] Burgess' house on the night of the murder during Mr. Burgess' testimony at the preliminary hearing for charges filed against [Appellant's co-defendant,] Ronald Burton, who is also known as "Duke." Mr. Burgess had known Appellant from previously buying drugs from him and, when [Appellant] would sell to [Mr.] Burgess, he would come to [Mr.] Burgess' house in a black SUV. Of note is that Appellant had been stopped by police for a traffic violation, in a black Ford Expedition SUV, in May 2010.

Duke and [Appellant] left [Mr.] Burgess' house, on foot, and walked toward the corner of Sylvan Terrace. Mr. Burgess testified that after they left, his girlfriend returned home and they immediately went to a store called the "All Nighter" for cigarettes. While at the All Nighter, within approximately ten (10) minutes of Appellant and Duke leaving, they heard several gunshots fired, one after another. From a police photo array, Mr. Burgess identified Ronald Burton as the person he knew as Duke.

On the night of the murder, two individuals, Greta McAllister ("Ms. McAllister") and Jeffery Lynch ("Mr. Lynch"), were in an alley smoking crack cocaine between Hummel Avenue and Mulberry Street. Both of them

testified that they saw two individuals dressed in black with hoods on[,] get out of a dark colored SUV and walk quickly through the alley towards Mulberry Street. Mr. Lynch did not see them carrying guns, but Ms. McAllister did. Mr. Lynch stated he recognized one of the men as an individual nicknamed "Philly" from whom he had previously bought cocaine. Mr. Lynch testified that he heard the man he knew as "Philly" say "hurry up" as the men crouched by a parked car and a light pole at the end of the alley. [Mr.] Lynch then heard one of the men say "there he go" at the same time he saw another man walking on the opposite side of Mulberry Street. Mr. Lynch said that once the man on the opposite side of Mulberry [Street] was out of his sight, the two men in the alley where he was located ran toward the man across the street. Both Ms. McAllister and Mr. Lynch were headed in the other direction, still in the alley, toward Hummel [Avenue], when shots rang out. Mr. Lynch stated that at least 10 shots, of two different caliber bullets, were fired. Ms. McAllister and Mr. Lynch testified that, after the shots were fired, the men ran back down the alley, toward Hummel Avenue and got back into the dark colored SUV. Later, while being interviewed by Detective Christopher Krokos ("Det. Krokos") of the HBP, Mr. Lynch was able to identify "Philly" from police photos as Ronald Burton.

At the murder scene, HBP forensic investigator Karen Lyda ("Officer Lyda") recovered four (4) spent .45 caliber shell casings on the south side of Mulberry Street, grouped together near the location where [Victim's] body was found. An additional grouping of five (5) spent .45 caliber shell casings was found at the same intersection, across Crescent Street. Officer Lyda also recovered a live .40 caliber bullet and a .40 caliber shell casing. Other evidence obtained at the scene included a mutilated bullet jacket, a cellphone and a left sneaker. Officer Lyda later learned from other investigating officers that a casing was jammed in the recovered .40 caliber hand gun and there were 3 unfired cartridges in the magazine.

During the trial, Corporal Mark Garrett ("Cpl. Garrett") of the [PSP], Bureau of Forensic Sciences processed the

firearms evidence submitted by the HBP and presented expert testimony on firearm and tool mark examination. The HBP provided Cpl. Garret with a Beretta semiautomatic .40 caliber pistol, a magazine with three (3) undischarged Remington .40 caliber cartridges, one (1) discharged mutilated bullet jacket, one (1) discharged Remington .40 caliber Smith and Wesson cartridge and five (5) discharged Winchester .45 automatic cartridge cases. After examination and forensic testing of these items, Cpl. Garrett concluded that the five (5) discharged .45 cartridges were all discharged from the same gun, but were definitely not discharged from the .40 caliber Beretta handgun found by [Victim] at the crime scene.

On August 10, 2009, a 2000 gold Cadillac Deville was stopped by police while Appellant was operating the vehicle. In furtherance of the investigation, on August 13, 2009, Detective Rodney Shoeman ("Det. Shoeman") of the HBP was asked to obtain and execute a search warrant for the vehicle operated by Appellant. Det. Shoeman had been informed that Ronald Burton had been seen in that particular vehicle. Lead investigator Detective Ryan Neal ("Det. Neal") had determined that Ronald Burton was also known in the drug community as "Duke" and "Philly" based on photo identification by [Mr.] Lynch and [Mr.] Burgess. During the search, plastic bags of clothing and toiletry items were found in the trunk of the car along with a green plastic storage tote. In the green storage tote, Detective Shoeman found documents belonging to Ronald Burton. The documents which were recovered were a 2008 W-2 income reporting form, a letter and a PPL electric utility bill all in the name of Ronald Burton.

Det. Neal reviewed [Victim's] cellphone that had been recovered at the scene of the murder and, in the address book, found a number that he confirmed had belonged to Ronald Burton/Duke. By way of search warrant, Det. Neal was able to obtain and review the records for Duke's phone number for May 4 and May 5, 2009. From the records, Det. Neal reviewed the particular cellphone numbers and call history that belonged to Duke/[Mr.] Burton and [Mr.]

Burgess Pepsi. Upon review of the records for the interactions between [Mr.] Burton, [Mr.] Burgess and [Victim] on the night of the murder, Det. Neal determined that multiple calls were made from [Mr.] Burgess' phone to Duke/[Mr.] Burton's phone that evening, but they eventually ceased as [Mr.] Burgess gave Duke/[Mr.] Burton [Victim's] phone number. During the remainder of the night, all of the calls placed were between [Victim] and Duke. The last phone call on Duke/[Mr.] Burton's cellphone was at 1:09 a.m. on May 5th, when call activity ceased until approximately 7:00 a.m.

Det. Neal also interviewed Appellant in connection with the shooting of [Victim]. Between the first interview, which was recorded by audio and second interview, which was not recorded, he changed his story. Appellant initially said that he left [Mr.] Burgess' house with [Mr.] Burton, dropped him off and picked him up then spent several hours at the Hollywood casino. His second version of events had him dropping off [Mr.] Burton with another man named Roni, going back to his own house to shower and smoke marijuana before picking up [Mr.] Burton and going to the casino.

Detective Donald Heffner of the HBP assisted Det. Neal by reviewing [Mr.] Burton/Duke's cellular phone historical data records for May 4 and May 5, 2009. More particularly, he reviewed the cell tower data to determine which cell towers were utilized by Duke's cellphone within a 13.8 mile radius, during the timeframe surrounding the murder. Det. Heffner analyzed the data and mapped the cell tower utilization locations and determined that all of the calls made from his phone, around 1:00 a.m. on May 5, 2009, hit cell towers within .5 miles to 2 miles of the crime scene. Additionally, Trooper Greg Kohl ("Trooper Kohl") of the PSP reviewed the records of Appellant's "action card," a type of rewards card one may get for use at the Hollywood Casino. The purpose of the card is to track an individual's gaming history for reporting and promotional purposes. The record which Trooper Kohl analyzed was dated May 12, 2010. Trooper Kohl testified that upon review of Appellant's records, unless he did not use his card during a particular visit, the

> last three uses of Appellant's actions card took place on May 23, 2009, April 18, 2009[,] and April 16, 2009.

Commonwealth v. Williams, No. 1682 MDA 2012, 2014 Pa. Super. Unpub. LEXIS 1631, at *1 (Aug. 12, 2014) (quoting trial court opinion).

FEDERAL CLAIMS

I. Trial counsel was ineffective for not presenting witnesses, arguments, and instructions in support of a coherent and cogent strategy where self-defense, defense of others, and imperfect self-defense represented Mr. Williams's primary defense at trial.

A reasonably competent trial attorney would have reviewed the pre-trial discovery, the witness testimony in Burton's trial, and the appellate briefing and opinion from Burton's direct appeal. All three sources possessed critical facts that would and should have impacted the defense strategy at Mr. Williams's trial. The pre-trial discovery contained the physical evidence collection forms and Georgio Rochon's May 5, 2009 statement,[19] both of which laid a concrete pathway to persuasively argue that Granthon fired at Burton and/or Mr. Williams first. Likewise, the witness testimony, physical evidence, and Superior Court opinion in Burton's case could not have made the self-defense and/or imperfect self-defense narratives more obvious and relevant in Mr. Williams's trial because the Commonwealth, literally, presented the same witnesses, evidence, and testimony in Mr. Williams's trial. Remarkably, though, trial counsel either did not review the Burton material or reviewed it and simply did not understand the

[19] Rpp. 55-64.

significance of it. We know this because trial counsel did not present Georgio Rochon or request instructions for self-defense or defense other others.

Instead, trial counsel's approach at trial was, to put it kindly, schizophrenic. Trial counsel did not present any alibi witnesses, did not call Georgio Rochon, did not have Mr. Williams testify regarding an alibi, yet based on the trial court's comments it appears trial counsel tried to make some sort of half-hearted alibi argument.[20] At the same time, though, trial counsel made a half-hearted request for voluntary manslaughter instructions based on sudden provocation and imperfect self-defense.[21] Trial counsel's manslaughter request proves trial counsel had realize that there was some evidence in the record suggesting that whoever shot and killed Granthon may have done so in self-defense or imperfect self-defense.

This, however, begs the following question: if trial counsel recognized these facts, even absent Rochon's testimony, why didn't he request a self-defense instruction or a defense of others instruction? Moreover, why didn't he adjust his arguments to the jury, meaning instead of making a half-hearted alibi argument, which the Commonwealth thoroughly undermined with Mr. Williams's custodial statements and Preston Burgess's testimony, why didn't trial counsel hammer home the fact the evidence strongly suggested Granthon fired at Burton and Mr. Williams because

[20] The opening statements and closing arguments were not transcribed, but the trial court mentioned during its jury charge that Mr. Williams was arguing he was not present when the shooting occurred.
[21] TT, pp. 338-339.

Granthon had a motive to harm Burton based on the fact Burton had shorted him on the crack he had purchased.

In the end, trial counsel's failure to heed any strategic knowledge from Burton's case and his failure to present a coherent self-defense and/or imperfect self-defense strategy at trial was objectively unreasonable.

A. AEDPA's applicability

1. Timeliness

Mr. Williams's 2254 petition is timely. Mr. Williams appealed to the Pennsylvania Superior Court (1682 MDA 2012), which affirmed his convictions and sentences on August 12, 2014.[22] Under state law, Mr. Williams had thirty days to petition the Pennsylvania Supreme Court. Pa.R.App.P. 1113(a). Mr. Williams did not petition the Pennsylvania Supreme Court, making his conviction final on September 11, 2014. *Caspari v. Bohlen*, 510 U.S. 383, 390 (1994).

On March 10, 2015, Mr. Williams properly filed his *pro se* PCRA petition, stopping AEDPA's 1-year limitations clock. 28 U.S.C. § 2244(d)(2). There are 180 days between September 11, 2014 and March 10, 2015, meaning Mr. Williams still had 185 days remaining under AEDPA's 1-year limitations clock. After timely appealing the PCRA court's January 12, 2016 dismissal,[23] the Pennsylvania Superior Court affirmed

[22] Rpp. 1-17.
[23] Rpp. 18-20.

on November 23, 2016 (249 MDA 2016).[24] Once Mr. Williams had his discretionary appeal rights reinstated on July 24, 2017,[25] Mr. Williams petitioned the Pennsylvania Supreme Court on August 17, 2017, which was denied on January 17, 2018 (561 MAL 2017).

AEDPA's 1-year limitations clocked, therefore, restarted on January 17, 2018 because petitioning the U.S. Supreme Court does not toll AEDPA's 1-year clock – meaning petitioners are not afforded the 90 days they are afforded on direct appeal. *Lawrence v. Florida*, 549 U.S. 327 (2007). Mr. Williams, therefore, had 185 days from January 17, 2018 – or until July 21, 2018 – to file his federal habeas petition. Mr. Williams filed his *pro se* federal habeas petition on May 14, 2018,[26] making his petition timely.

2. Substantive review under AEDPA

Substantive review under AEDPA is generally very deferential to the state court's legal conclusions and factual findings. AEDPA's requirements reflect a "presumption that state courts know and follow the law," *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002); *accord Burt v. Titlow*, 571 U.S. 12, 18-19 (2013), and AEDPA "is designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). AEDPA, therefore, demands

[24] Rpp. 21-27.
[25] Rp. 28.
[26] E.C.F. #1.

that "state-court decisions be given the benefit of the doubt[.]" *Felkner v. Jackson*, 562 U.S. 594, 598 (2011). In short, AEDPA "create[d] an independent, high standard to be met before a federal court may issue a writ of habeas corpus to set aside state-court rulings." *Uttecht v. Brown*, 551 U.S. 1, 10 (2007).

This is all true, but there is a significant caveat. AEDPA deference only applies when the state courts have "adjudicated" the petitioner's federal claims "on the merits." 28 U.S.C. § 2254(d)(1) & (2). For instance, a federal court's § 2254(d)(1) review "is limited to the record that was before the state court that adjudicated the prisoner's claim on the merits." *Greene v. Fisher*, 565 U.S. 34, 38 (2011); *Cullen v. Pinholster*, 563 U.S. 170, 181-182 (2011). An "unreasonable application" of a clearly-established Supreme Court principle must be "objectively unreasonable," not merely wrong; even "clear error" will not suffice. *Lockyer v. Andrade*, 538 U.S. 63, 75-76 (2003); *White v. Woodall*, 572 U.S. 415, 419-420, (2014); *Cavazos v. Smith*, 565 U.S. 1, 2 (2011). Thus, if the state court's rejection of a federal claim was "reasonable," AEDPA relief is unwarranted. *Hardy v. Cross*, 565 U.S. 65, 72 (2011). A state court's rejection of a federal claim "on the merits" is reasonable "so long as fairminded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. at 101 (quotations and citation omitted). Stated differently, the petitioner "must show that the state court's ruling… was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103.

Here, Mr. White did not present his substantial trial counsel ineffectiveness claims to the state courts due to initial-review PCRA counsel's ineffectiveness. The state courts, therefore, did not "adjudicate" his substantial trial counsel ineffectiveness claims "on the merits." For this reason, *Martinez* is applicable.

B. There are no *Mayle v. Felix* concerns

Mr. Williams filed his initial federal habeas petition *pro se*. "A habeas corpus petition prepared by a prisoner without legal assistance may not be skillfully drawn and should thus be read generously. It is the policy of the courts to give a liberal construction to pro se habeas petitions." *Workman v. Superintendent Albion SCI*, 908 F.3d 896, 907 (3d Cir. 2018) (quotations and citation omitted).

In his *pro se* federal habeas petition, Mr. Williams did not specifically claim trial counsel was ineffective for failing to call Georgio Rochon and request a self-defense instruction. Mr. Williams claimed trial counsel was ineffective for not requesting a defense of others instruction and for not requesting a imperfect self-defense manslaughter instruction. However, in raising both claims, Mr. Williams referenced Burton's case and the Superior Court's opinion in Burton's case.

Thus, construed liberally, the gist of Grounds Two and Three in his *pro se* federal habeas petition is that his trial attorney should have done what Burton's trial attorney did, namely present a coherent and cogent self-defense theory and to request a self-defense instruction, a defense of others instruction, and a voluntary manslaughter charge based on imperfect self-defense. In other words, the incorporation of the

Gerogio Rochon claim and the self-defense instruction claim share a "common core of operative facts" with the claims Mr. Williams raised in his *pro se* federal habeas petition. Mayle v. Felix, 545 U.S. 644, 664 (2005) (amendments relate back when the "original and amended petitions state claims that are tied to a common core of operative facts").

C. *Martinez v. Ryan*

Federal habeas courts reviewing convictions from state courts will not consider claims a state court refused to hear based on an adequate and independent state procedural ground. *Beard v. Kindler*, 558 U.S. 53, 55 (2009). A state prisoner may be able to overcome this bar, however, if he can establish "cause" to excuse the procedural default and demonstrate he suffered actual prejudice from the alleged error. *Wainwright v. Sykes*, 433 U.S. 72, 84 (1977). An attorney error, generally, does not qualify as "cause" to excuse a procedural default unless the error amounted to constitutionally ineffective assistance of counsel. *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000). Because a prisoner does not have a constitutional right to counsel in state post-conviction proceedings, ineffective assistance in those proceedings does not qualify as cause to excuse a procedural default. *Coleman* v. *Thompson*, 501 U.S. 722, 754 (1991).

In *Martinez* v. *Ryan*, 566 U.S. 1 (2012), and *Trevino* v. *Thaler*, 569 U.S. 413 (2013), however, the Supreme Court announced a narrow exception to *Coleman*'s general rule. That exception treats ineffective assistance by a prisoner's state post-conviction counsel as cause to overcome the default of a single claim – trial counsel ineffectiveness claim – in a single context – where the State effectively requires a defendant to bring that

claim in state post-conviction proceedings rather than on direct appeal. Specifically, *Martinez* held that, in these situations, "a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if" the default results from initial-review post-conviction counsel's ineffectiveness. *Martinez v. Ryan*, 566 U.S. at 17. Thus, the *Martinez* exception "is available to a petitioner who can show that: 1) his procedurally defaulted ineffective assistance of trial counsel claim has 'some merit' and that 2) his state-post conviction counsel was 'ineffective under the standards of *Strickland v. Washington*.'" *Workman v. Superintendent Albion SCI*, 908 F.3d 896, 903 (3d Cir. 2018); *accord Cox v. Horn*, 757 F.3d 113, 124 (3d Cir. 2014).

To demonstrate that his claim has "some merit," a petitioner must "show that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Id.* at 903. This is different than *Strickland* prejudice, meaning "in considering whether [a petitioner's trial counsel ineffectiveness] claim is substantial, [the Court is] guided by the two-part *Strickland* analysis, but [it] remain[s] mindful that the 'substantiality' inquiry 'does not require full consideration of the factual or legal bases adduced in support of the claims." *Preston v. Superintendent Graterford* SCI, 902 F.3d 365, 377 (3d Cir. 2018) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003)).

Regarding *Strickland*, the *Strickland* contains two prongs, both of which must be met to sustain a trial counsel ineffectiveness claim: the "performance" and "prejudice"

prongs. The "performance" prong refers to *Strickland's* requirement that "counsel's representation fell below an objective standard of reasonableness." The "prejudice" prong refers to *Strickland's* requirement that a petitioner show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 687-688, 694 (1984).

In applying this standard to initial-review post-conviction counsel, the Third Circuit recently said:

> For [a petitioner] to show that his state post-conviction counsel's deficient performance caused prejudice under *Strickland*, he must show that his state post-conviction counsel *could have obtained* a different result had he presented the now-defaulted ineffective-assistance-of-trial-counsel claim. In other words, he must prove the merits of his underlying ineffective-assistance-of-trial-counsel claim in order to excuse the procedural default of that claim and obtain consideration on the merits. At this stage, what is important is that the underlying ineffective-assistance-of-trial-counsel claim is *"substantial," not that a petitioner has, in fact, been "prejudiced"* by trial counsel's deficient performance under *Strickland*.

Workman v. Superintendent Albion SCI, 908 F.3d at 904 (emphasis added); *see also Brown v. Brown*, 847 F.3d 502, 513 (7th Cir. 2017); *Detrich v. Ryan*, 740 F.3d 1237, 1245-1246 (9th Cir. 2013). If the petitioner satisfies *Martinez*, and overcomes the procedural default, the Court's "review of a petitioner's claim is *de novo* because the state court did not consider the claim on the merits." *Id.* at 908; *Bey v. Superintendent Greene SCI*, 856 F.3d 230, 236 (3d Cir. 2017).

1. The *Martinez* default analysis

a. Mr. Williams could not raise his trial counsel ineffectiveness claims until his initial-review PCRA proceedings

The first time Mr. Williams could challenge trial counsel's advocacy was during his state post-conviction proceedings under the Post-Conviction Relief Act. 42 Pa. Cons. Stat. § 9541, et seq; *Commonwealth v. Grant*, 813 A.2d 726 (Pa. 2002); *Workman v. Superintendent Albion* SCI, 908 F.3d at 901 (recognizing *Grant's* holding). Also, initial-review PCRA counsel did not raise – and therefore – defaulted Mr. Williams's substantial trial counsel ineffectiveness claim, raised in this petition, regarding trial counsel's failure to request a self-defense instruction and a defense of others instruction. 42 Pa. Cons. Stat. § 9544(b) ("an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review, on appeal or in a prior state postconviction proceeding").

b. Mr. Williams's procedurally defaulted trial counsel ineffectiveness claim has "some merit"

A reasonably competent trial attorney would have reviewed the witness testimony, the appellate pleadings, and the Superior Court's opinion in Burton's case. Trial counsel did not do this, or he did it and simply did not understand their significance and relevance to Mr. Williams's case. Why not present Georgio Rochon and have him tell jurors he heard the smaller caliber firearm shoot first? Why not use Burton's case, particularly the Superior Court's opinion, as a template for Mr. Williams's

defense at trial? It is maddening to think the Superior Court spoon fed a coherent and cogent defense to trial counsel, yet trial counsel did absolutely nothing with it.

Even if trial counsel did not call Georgio Rochon, there was still substantial evidence in the record to make a forceful self-defense narrative. "Any objective standard of reasonableness requires counsel to understand facts and testimony and adapt to them, even at the expense of purportedly clever theories." *Workman v. Superintendent Albion* SCI, 908 F.3d as 909. Likewise, "trial counsel's stewardship" is generally "constitutionally deficient if he or she neglect[s] to suggest instructions that represent the law that would be favorable to his or her client supported by reasonably persuasive authority unless the failure is a strategic choice." *Bey v. Superintendent Greene SCI*, 856 F.3d at 238. Trial counsel failed in these two respects.

The witness testimony and physical evidence strongly suggested that Granthon went looking for Burton because Granthon was angry that Burton had shorted him on the crack he had purchased.[27] The evidence also strongly suggested Granthon was armed with a .40 caliber handgun and that Granthon fired at least one shot at Burton and Mr. Williams because CSI personnel recovered a .40 caliber handgun, a live .40 caliber bullet, and a .40 caliber shell casing near Granthon's body. The evidence also strongly suggested Granthon may have predetermined that if he saw Burton, he was going to shoot him or at least use his .40 caliber firearm to retrieve the money he had

[27] TT, pp. 140-142, 155.

given Burton for the crack.[28] The strongest evidence in support of this premeditation argument is the fact Granthon was dressed in all black and had on black gloves – in early May – when he left Burgess's house in search of Burton and his money.[29] Indeed, when responding officers found Granthon after the shooting, he still had on the black gloves.[30]

The witness testimony also strongly suggested that Mr. Williams was Burton's companion that Lynch and McCallister saw with Burton moments before they both heard gunfire. Preston Burgess described how Burton and "Slim" had come to his (Burgess's) house to refund Granthon's money.[31] Burgess identified "Slim" as Mr. Williams.[32] Burgess knew Mr. Williams from having previously purchased drugs from him. Burgess said Burton and Mr. Williams left his house on foot and walked in the direction of where the shooting ultimately occurred. More importantly, within ten minutes of Burton and Mr. Williams departing his house, Burgess said he heard gunshots.[33]

Burgess's ten-minute reference is significant because both Lynch and McAllister saw Burton with another man moments before the shooting. Lynch, for example, said he saw Burton and another man get out of a dark colored SUV and walk quickly through

[28] TT, pp. 73-81.
[29] TT, p. 157.
[30] TT, p. 33.
[31] TT, pp. 144-146.
[32] TT, pp. 144, 165.
[33] TT, pp. 146-148, 160.

the alley towards Mulberry Street – which is very near the location where Burton had agreed to meet Granthon to refund his money.[34] Specifically, Burgess testified that Burton was supposed to meet Granthon at Kiwi's convenience store located at the corner of 13th Street and Derry Avenue.[35] Lynch knew Burton because he (Lynch) had bought drugs from Burton for a few years.[36] Lynch knew Mr. Williams because he had purchased drugs from him on multiple occasions, but said he could not say whether Mr. Williams was the man with Burton because that man had on a hoody covering his face preventing him from making an identification.[37]

Lynch said he then saw someone dressed in all black (Granthon) walking on Mulberry Street. Immediately thereafter, Lynch saw Burton and the other man run from Hummel Street in the direction of the man dressed in all black (Granthon). Less than a minute later, Lynch heard gunfire from at least two different caliber firearms. He then saw Burton and the other man get into the dark colored SUV and drive off.[38]

This sequence of events – and the timing of them – is significant. Within ten minutes of Burgess seeing Mr. Williams leave his (Burgess's) house with Burton, two people – Lynch and McCallister – saw Burton with another man shortly before Burton and this other man run in the direction of the third man (Granthon). Although, Lynch

[34] TT, pp. 170-172.
[35] TT, pp. 141-142.
[36] TT, p. 174.
[37] TT, pp. 190-191, 196-197.
[38] TT, pp. 173-174.

and McCallister never identified Mr. Williams as the other man, this circumstantial evidence strongly suggested Mr. Williams was, in fact, the other man.

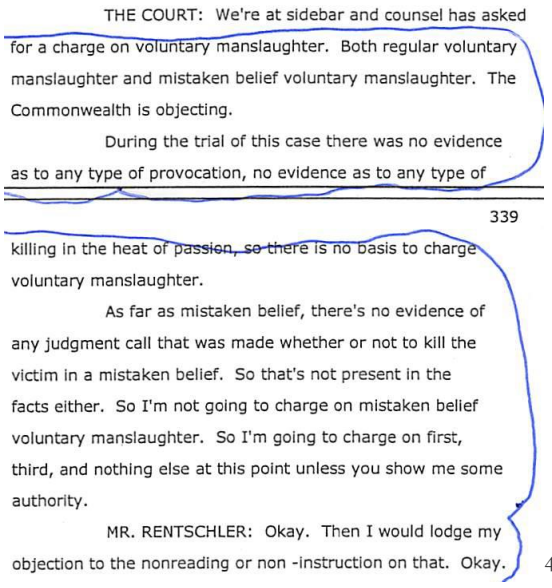
Another fact supporting the strong inference that Mr. Williams was Burton's companion is the fact trial counsel did not present a single alibi witness. Indeed, trial counsel did not present a single witness in Mr. Williams's defense. Likewise, the Commonwealth presented Mr. Williams's two custodial statements. In both statements, Mr. Williams placed himself with Burton when they went to and had left Burgess's house – only ten minutes before the shooting.[39] Moreover, according to Detective Neal, Mr. Williams gave two inconsistent narratives as to what he did after he and Burton departed from Burgess's house.[40]

In the end, while Mr. Williams's statements to Detective Neal placed him at home or the Hollywood casino at the time of the shooting, trial counsel presented no evidence – not even Mr. Williams's testimony – to substantiate either of the alibi narratives presented in his two custodial statements. Simply put, if trial counsel's strategic decision was to present an alibi defense, trial counsel did a woefully poor job of presenting any semblance of an alibi defense. Overall, trial counsel's defense was incoherent, and that's being generous. This was obvious when trial counsel made a half-hearted request for voluntary manslaughter instructions based on "sudden

[39] TT, pp. 272-274, 276-280.
[40] TT, pp. 276-280.

provocation" and "imperfect self-defense."[41] If trial counsel recognized the self-defense angle, as his imperfect self-defense requests proves, why didn't he request a self-defense instruction, a defense of others instruction, and present a clearer and more forceful self-defense theory at trial?

Moreover, when the trial court denied his voluntary manslaughter request, trial counsel did not make any of the arguments spoon fed to him in the *Burton* opinion regarding self-defense, defense of others, and imperfect self-defense:



THE COURT: We're at sidebar and counsel has asked for a charge on voluntary manslaughter. Both regular voluntary manslaughter and mistaken belief voluntary manslaughter. The Commonwealth is objecting.

During the trial of this case there was no evidence as to any type of provocation, no evidence as to any type of

339

killing in the heat of passion, so there is no basis to charge voluntary manslaughter.

As far as mistaken belief, there's no evidence of any judgment call that was made whether or not to kill the victim in a mistaken belief. So that's not present in the facts either. So I'm not going to charge on mistaken belief voluntary manslaughter. So I'm going to charge on first, third, and nothing else at this point unless you show me some authority.

MR. RENTSCHLER: Okay. Then I would lodge my objection to the nonreading or non -instruction on that. Okay.

42

Yes, trial counsel cross-examined the Commonwealth's witnesses, but he did little more than that because, as mentioned, he presented no witnesses or evidence to place Mr. Williams at another location at the time of the shooting. Likewise, he did not argument self-defense, defense of others, or imperfect self-defense. In the end, Mr.

[41] TT, pp. 338-339.
[42] TT, pp. 338-339.

Williams's defense was like a boat without a captain: it meandered on the water in whatever direction the wind blew, with no apparent direction or destination.

Even if trial counsel went into the trial with an alibi defense, it is incumbent upon trial attorney to "understand" the "facts and testimony" presented at trial "and adapt to them." As mentioned, "[a]ny objective standard of reasonableness requires counsel to understand facts and testimony and adapt to them, even at the expense of purportedly clever theories." *Workman v. Superintendent Albion SCI*, 908 F.3d as 909. Trial counsel's manslaughter request strongly suggests, if not proves, he "understood" that the "facts and testimony" made self-defense and imperfect self-defense via defenses. Despite this recognition, trial counsel did not request a self-defense instruction, or a defense of others instruction, and he did not articulate why both instructions were warranted – and why both instructions justified a voluntary manslaughter charge based on imperfect self-defense.

Simply put, based on these facts, there were far more legally sound and impactful defenses available to Mr. Williams – defenses based on credible fact witnesses (Georigo Rochon) and the physical evidence presented at trial. More importantly, the Pennsylvania Superior Court's *Burton* opinion literally *spoon fed* this witness and these defenses to trial counsel.

Thus, besides failing to present Georgio Rochon, trial counsel also failed to articulate how the self-defense and defense of others instructions could be applied to Burton and Mr. Williams – even though Granthon suffered only one fatal bullet wound,

and the Commonwealth could not prove who fired the fatal shot. There was more than enough evidence in the record to warrant both instructions based on the following scenarios. *Commonwealth v. Robinson*, 721 A.2d 344, 353 (Pa. 1998) (a defendant is entitled to a jury instruction when the evidence produced at trial, viewed in a light most favorable to the defendant, would support the instruction).

Justifiable Self-Defense

Burton is the shooter: If the jury believed Burton and Mr. Williams went to meet Granthon for the purpose of returning his money, and that Burton fired the fatal shot, there was substantial evidence in the record strongly suggesting Granthon came to the scene armed with a .40 caliber firearm and that he, in fact, fired at least one shot from the .40 caliber firearm. Thus, if Burton justifiably fired in self-defense because Granthon opened fire on him and/or Mr. Williams first, this would absolve Mr. Burton *and* Mr. Williams of all criminal liability.

Mr. Williams is the shooter: If the jury believed Mr. Williams fired the fatal shot, the same argument applies. If the jury believed Granthon pulled a .40 caliber firearm on Burton and Mr. Williams, and Mr. Williams reasonably feared for his life, prompting him to fire in self-defense, this would absolve him of all criminal liability.

Imperfect Self-Defense

Burton is the shooter: Furthermore, if the jury believed that Burton and Mr. Williams went to meet Granthon for the purpose of returning Granthon's money, and that Burton opened fire on Granthon because he subjectively, but unreasonably,

believed Granthon was going to shoot him with his .40 caliber firearm, Burton would be guilty of manslaughter based on imperfect self-defense. 18 Pa. C.S. § 2503(b). Mr. Williams, though, would be acquitted of murder, manslaughter, and conspiracy.

In terms of the conspiracy charge, if Burton had no intent of committing a crime against Granthon, but rather shot him because he subjectively believed Granthon was going to shoot him, yet this subjective belief was objectively unreasonable, then there was no agreement between Burton and Mr. Williams to harm Granthon or to commit a crime. Rather, the harm to Granthon was created by *Burton's split-second subjective belief* that he was in grave danger. *Commonwealth v. Weimer*, 977 A.2d at 1105-1106 ("To sustain a criminal conspiracy conviction, the Commonwealth must establish a defendant entered into an agreement to commit or aid in an unlawful act with another person or persons, with a shared criminal intent, and an overt act was done in the conspiracy's furtherance."); 18 Pa. C.S. § 903.

The same reasoning applies to manslaughter. Mr. Williams cannot be guilty of manslaughter via conspiratorial liability because, as mentioned, under this fact pattern, Burton and Mr. Williams never entered into an agreement to harm Granthon or to commit a crime. Likewise, Mr. Williams cannot be guilty of manslaughter via accomplice liability. The general rule is that a person is an accomplice of another in the commission of "an offense" if, acting with the intent to promote or facilitate the commission of "the offense," he solicits the other person to commit it or aids, agrees, or attempts to aid the other person in planning or committing it. 18 Pa. C.S. § 306(c).

Here, based on the imperfect self-defense fact pattern, neither Burton nor Mr. Williams had the "intent to promote or facilitate" the commission of any crime. Rather, as mentioned, Granthon's death, under this fact pattern, is a byproduct of Burton's *split second subjective, yet unreasonable, belief* that Granthon was going to shoot and kill him. *Commonwealth v. Knox*, 105 A.3d at 1196-1197.

Mr. Williams is the shooter: The same reasoning applies if Mr. Williams fired the fatal shot based on imperfect self-defense. At most, Mr. Williams would be convicted of manslaughter and perhaps REAP, but not first-degree murder, third-degree murder, and conspiracy.

Justifiable Defense of Others

If Burton can justifiably shoot Granthon to defend himself, he could justifiably shoot Granthon to defend Mr. Williams in accordance with 18 Pa. C.S. § 506. The Superior Court's *Burton* opinion made this very point: "[W]e discern no valid basis for charging the jury on self-defense but not defense of others[.]"[43] This would absolve Mr. Williams of all criminal liability. This same logic applies if Mr. Williams fired the fatal shot, as both would be absolved of all criminal liability.

Imperfect Defense of Others

The same arguments made in the Imperfect Self-Defense section apply here. If Burton fatally shot Grathon based on his subjective, yet unreasonable, belief that

[43] Rp. 44.

Granthon was going to shoot Mr. Williams, Burton would be guilty of voluntary manslaughter and, presumably, REAP. Mr. Williams, though, would be cleared of all wrong doing because conspiratorial and accomplice liability are not present because based on these facts, as they never entered into an agreement to commit a crime, nor did he have the intent to promote or facilitate a crime, and he did not aid and abet Burton when he fired at Granthon. The same logic applies if Mr. Williams fired the fatal shot because he subjectively, yet unreasonably, believed Granthon was going to shoot Burton. At most, Mr. Williams would be guilty of voluntary manslaughter and, presumably, REAP.

c. PCRA counsel's decision not to raise these substantial trial counsel ineffectiveness claims constitutes deficient performance under *Strickland*

In a case where the evidence and testimony called out for a self-defense or imperfect self-defense theory, and where Mr. Williams did not take the stand and testify he was else where at the time of the shooting, PCRA counsel raised and litigated a single trial counsel ineffectiveness claim: trial counsel was ineffective for failing to present Mr. Williams's niece, Quanisha Williams, as an alibi witness.[44] The alibi claim was "clearly and significantly weaker" than the self-defense and imperfect self-defense claims Mr. Williams filed in his *pro se* federal habeas petition. *Workman v. Superintendent Albion SCI*, 908 F.3d at 908 (finding PCRA counsel ineffective under *Strickland* when PCRA counsel

[44] Rpp. 18-20.

raised a trial counsel ineffectiveness claim that was "clearly and significantly weaker" than the ineffectiveness claim raised by the petitioner in his *pro se* PCRA petition).

On January 6, 2016, the PCRA court held a hearing where Quanisha Williams, testified. Quanisha said she had attempted to contact trial counsel several times before trial but was unsuccessful. When she allegedly contacted trial counsel, and she had to leave a message, she said she never specified in her messages why she wanted to speak with trial counsel. She said she spoke with trial counsel the first day of trial, after watching the entire first day of testimony. She said trial counsel told her she could not testify because she had sat through the entire first day. Lastly, she never gave a statement to the police after learning of Mr. Williams's arrest.[45]

Mr. Williams testified at the hearing and said he had given trial counsel Quanisha's name and contact information. However, when trial counsel testified, he said he had no recollection of Quanisha, nor did he have any documents, memos, or reports indicating she was an alibi witness. Even if Mr. Williams had mentioned Quanisha's name, trial counsel said he would have had significant concerns presenting her as an alibi witness because in his two custodial statements, Mr. Williams indicated he was with Burton shortly before and after the shooting and he identified two different alibi locations in his statements. Lastly, Mr. Williams never mentioned being with Quanisha during his two custodial statements.[46]

[45] Rpp. 18-19.
[46] Rp. 19.

The PCRA court rejected the alibi claim: "There is serious doubt as to whether [trial counsel] knew or should have known about Ms. Williams's identity. The testimony at the evidentiary hearing was flatly contradictory and we find it hard to believe that an attorney who was advised of an alibi witness in a murder trial would not investigate that witness further if he had known of her."[47]

On appeal, the Superior Court mimicked these findings:

> At the PCRA hearing, Ms. Williams testified that she was with Appellant at the time of the murder, that she was available and willing to testify at Appellant's trial, and that she had contacted Attorney Rentschler several times prior to trial but never spoke to him and never specified why she wanted to speak to him. N.T. PCRA Hearing, 1/6/16, at 4-9, 16-18. Ms. Williams' testified further that she finally spoke with Attorney Rentschler after the first day of the trial and he told her that she could not be a witness because she was not sequestered on the first day of trial. *Id.* at 11-14. Ms. Williams also testified that she never provided a statement to the police and that she never told anyone else that she was with Appellant at the time of the murder. *Id.* at 14-16
>
> Appellant testified that he told Attorney Rentschler about Ms. Williams several times and that Attorney Rentschler attempted to get into contact with Ms. Williams but they kept missing each other. *Id.* at 53-54.
>
> In contrast, Attorney Rentschler testified that he did not recall speaking to Ms. Williams prior to trial, but if he had spoken to her, he would have advised her to give a statement to the police. *Id.* at 19. Attorney Rentschler stated that he reviewed his own files, and they did not indicate that he spoke to Appellant about Ms. Williams and did not include any contact information for her. *Id.* at 25. He further stated that when he took over the case from another attorney prior

[47] Rp. 20.

> to trial, "I went through everything, and no other prior information was anywhere to be found about [Ms. Williams]." *Id.* at 25-26. Attorney Rentschler had copies of all of the police reports and there was no mention of Ms. Williams in any of them. *Id.* at 50. Attorney Rentschler recalled meeting and speaking with Ms. Williams after the first day of trial and telling her that she could not testify because she had not been sequestered and she was not previously disclosed as an alibi witness. *Id.* at 32-33. Finally, Attorney Rentschler indicated that even if he had known about Ms. Williams as a potential alibi witness prior to trial, which he had not, he would not have called her to testify because it would have been inconsistent with the two different statements that Appellant had given to police, and, thus, would have presented a third version of events. *Id.* at 48-50.
>
> In denying relief, the PCRA court concluded that Appellant had not met his burden of proving that Attorney Rentschler should have known about Ms. Williams, stating that "[t]here is some serious doubt as to whether Attorney Rentschler knew of [or] should have known about Ms. William[s'] identity. The testimony at the evidentiary hearing was flatly contradictory[.]" PCRA Court Order, dated 1/12/16, at 3 (unpaginated). Because Appellant failed to convince the PCRA court that Attorney Rentschler even knew about Ms. Williams' existence prior to trial, Appellant has failed to prove an element essential to his ineffectiveness claim. The record supports the PCRA court's determination and we find no error.[48]

As both courts emphasized, a post-conviction alibi claim was bound to lose from the get-go for obvious reasons. Again, though, a simple reading of the record in Mr. Williams's case and the Superior Court's *Burton* opinion would have given any reasonably competent post-conviction attorney a substantial global ineffectiveness

[48] Rpp. 24-26.

claim to raise that had four substantial sub-claims: (1) failure to subpoena and present Georgio Rochon; (2) failure to request a self-defense instruction; (3) failure to request a defense of others instruction; and (4) failing to do the first three things resulted in trial counsel failing to make a coherent and cogent argument for a voluntary manslaughter charge based on imperfect self-defense.

The witnesses and evidence in Burton's and Mr. Williams's trials were virtually identical, outside of the evidence in Mr. Williams's trial regarding his custodial statements, his August 10, 2009 arrest in an SUV linked to Burton, and his casino card. Likewise, neither Burton nor Mr. Williams testified. Thus, if the Superior Court said Burton was entitled to self-defense, defense of others, and voluntary manslaughter instructions, this holding should have prompted trial counsel and PCRA counsel to litigate these issues either at trial or during Mr. Williams's initial-review PCRA proceedings. Remarkably, though, both attorneys spectacularly failed to even mention the Superior Court's *Burton* opinion and why the reasoning in that opinion applied to the facts, witnesses, and evidence in Mr. Williams's case. PCRA counsel either did not read the *Burton* opinion or read the opinion and simply did not make the connection between the two cases. Regardless if it is the former or later, PCRA counsel's decision not to rely on the facts, reasoning, and law articulated in the Burton opinion constitutes deficient performance under *Strickland*.

2. *Martinez's de novo* review of Mr. Williams's defaulted trial counsel ineffectiveness claim

Under *de novo* review, Mr. Williams's global trial counsel ineffectiveness claim is meritorious. As argued, trial counsel's strategy at trial was – God know what? Trial counsel cross-examined the Commonwealth's witnesses, but he did not present alibi witnesses, did not present Georgio Rochon, did not have Mr. Williams testify that he was somewhere else at the time of the shooting, and he made a half-hearted attempt to get manslaughter instructions based on sudden provocation and imperfect self-defense. Trial counsel's lack of focus and utter failure to present a coherent and cogent self-defense narrative at trial constitute deficient performance under *Strickland*.

First, trial counsel had the physical evidence reports and Gerogio Rochon's pre-trial statement. The physical evidence reports and Rochon's statement should have served as the foundation for a powerful defense argument that Granthon fired first and Burton or Mr. Williams returned fired, but only in self-defense or because they were trying to defend one another.

Second, trial counsel had an entire year to obtain and review the trial testimony from Burton's trial. The Commonwealth tried Burton in January 2011 – and Mr. Williams in January 2012. Rochon's testimony at Burton's trial was powerful evidence in support of the self-defense theory. Indeed, the Superior Court summarized it like this: "Georgio Rochon…. was called as a witness for the defense. On the night of May 5, 2009, Rochon stated that he was living at 1230 Mulberry Street, and was home playing

video games at one o'clock in the morning. Rochon heard two gunshots, followed by four louder ones[.]"[49] The evidence strongly suggests Granthon had the .40 caliber firearm found next to him, which is the smaller of the two firearms that discarded evidence at the scene. Granthon was struck and killed by a .45 caliber firearm.

Third, even if Rochon did not testify, the record evidence in Mr. Williams's supported a self-defense instruction, a defense of others instruction, and a voluntary manslaughter charge based on imperfect self-defense. The strongest evidence supporting the self-defense and imperfect self-defense narratives was: (1) the fact Granthon was angered about being shorted by Burton; (2) the fact Granthon was dressed in all black and wearing black gloves; and (3) the fact responding officers recovered a .40 caliber firearm, a .40 caliber bullet, and .40 caliber casing next to Granthon's body.

Fourth, the Superior Court handed down its *Burton* opinion on January 20, 2012 – *four days before* Mr. Williams's trial started on January 24, 2012. The Superior Court, for instance, said this about the defense of others instruction in Burton's case – a case where the evidence and testimony were virtually identical:

> [T]he instant record reflects that Burton and a companion were on their way to meet Granthon, ostensibly for Burton to refund Grathon's money in exchange for the drugs Burton had provided to Granthon several house before the shooting. One witness believed two shots by a smaller weapon were followed by several shots from a larger weapon. Police found a .40 caliber firearm near Granthon's

[49] Rp. 31.

> body, and the evidence established that Granthon was killed by a .45 caliber bullet. There record also reflects that Granthon was angry at Burton for having shorted him in the drug transaction. *Considered in a light most favorable to Burton, the record admits the possibility that Granthon fired a .40 caliber weapon at Burton and/or his companion before the perpetrator returned fire with a .45 caliber weapon.*
>
> Though there is no evidence of a dispute between Burton's companion (presumably Slim) and Granthon, as there was between Burton and Granthon, it is quite possible that Granthon, upon observing two armed men approaching him, opened fire on one or both of them. No witnesses observed the gunfire exchange. *Viewing the record in a light most favorable to Burton, we can discern no valid basis for charging the jury on self-defense but not defense of others, as the trial court did.* We conclude that the lack of a defense of others instruction was error… [.][50]

Based on these facts, and the fact that Mr. Williams gave conflicting alibi narratives during his custodial statement, trial counsel had every reason in the world to present a coherent and cogent self-defense theory at trial. Such an approach would have required presenting Georgio Rochon, asking for self-defense, defense of others, and voluntary manslaughter instructions, and articulating the abovementioned fact-patterns explaining why each instruction was warranted.

While trial counsel may have suggested Mr. Williams was else where at the time of the shooting, trial counsel presented no evidence or witnesses to corroborate this fact. More importantly, trial counsel's request for a manslaughter instruction based on "sudden provocation" and "imperfect" self-defense not only undercut any sort of alibi

[50] Rpp. 43-44.

argument, it demonstrated that trial counsel was obviously aware of the fact that whoever shot and killed Granthon may have killed him in self-defense. Despite trial counsel's awareness, trial counsel never requested a self-defense instruction or a defense of others instruction.

His failure to do all the above, therefore, constitutes deficient performance under *Strickland*.

Trial counsel's failure to present a coherent and cogent self-defense theory at trial prejudiced Mr. Williams. Put differently, had trial counsel presented Georgio Rochon, requested self-defense and defense of others instructions, and clearly articulated why Mr. Williams was entitled to both instructions, it is reasonably probable the trial court would have given these instructions, which in turn would have required the trial court to charge voluntary manslaughter based on imperfect self-defense. Had Rochon testified and had the trial court instructed on self-defense, defense of others, and voluntary manslaughter, it is reasonably probable "at least one juror would have harbored a reasonable doubt about whether" Mr. William (1) premedicated Granthon's death and (2) conspired with Burton to murder Granthon. *Buck v. Davis*, 137 S. Ct. 759, 776 (2017).

The Superior Court, for instance, said that when "viewed in a light most favorable to Burton," the record "could support a voluntary manslaughter conviction."[51] The Superior Court explained:

> The .40 caliber gun found near Granthon's body had jammed. Burton, therefore could have subjectively believed his life was in danger even though the objective facts established that Granthon's weapon was jammed and posed no immediate danger to Burton. Further, one witness testified that a short period of time passed between the opening shots from the smaller weapon and the subsequent shots from the larger weapon. The jury might have concluded that Burton's belief in the need to use deadly force in self-defense became unreasonable during that period of time….[.][52]

The Superior Court, furthermore, concluded that the instructional error in *Burton* was not harmless:

> The facts of record and the trial court's erroneous jury charge leave open the possibility that the jury rejected Burton's justification defense because it found that Burton unreasonably believed that he was justified in killing Granthon. If the jury so found, Burton should have been convicted of voluntary manslaughter rather than first-degree murder. This is a significant error of law, and given the many possible interpretations of the facts of record, we cannot conclude beyond a reasonable doubt that the error did not contribute to the verdict. This error requires remand for a new trial.[53]

[51] Rp. 47.
[52] Rpp. 47-48.
[53] Rp. 49.

Although *Strickland* and *Chapman* concern different prejudice standards, the facts plead herein prove *Strickland* prejudice. The Court, consequently, can have no confidence in the jury's verdicts in the absence of Rochon's testimony and the absence of instructions for self-defense, defense of others, and voluntary manslaughter.

Mr. Williams, therefore, is entitled to relief.

CONCLUSION

WHEREFORE, Mr. Williams respectfully requests the Court to grant him a writ of habeas corpus because his trial counsel's ineffectiveness rendered his trial fundamentally unfair under the Sixth and Fourteenth Amendments of the U.S. Constitution.

Respectfully submitted this the 21th day of January, 2019.

/s/Craig M. Cooley
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CERTIFICATE OF SERVICE

On January 21, 2019, counsel e-filed this pleading via the MD of PA's e-filing system. Once e-filed, the Commonwealth received an email notification of the filing and a PDF copy of the pleading.