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**CRAIG W. STEDMAN**  
DISTRICT ATTORNEY

January 5, 2015

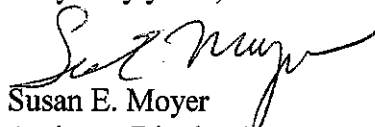
Scott S. Harris, Clerk  
Supreme Court of the United States  
Office of the Clerk  
1 First Street, NE  
Washington, DC 20543

**RE: Jakeen Lydell Towles v. Commonwealth of Pennsylvania**  
**Case Number: 14-7656, "CAPITAL CASE"**

Dear Mr. Harris:

Enclosed for filing with your Office are an original and ten (10) copies of the "Respondent's Brief in Opposition," in the above referenced matter. Also enclosed is a proof of service evidencing service upon the petitioner.

Very truly yours,

  
Susan E. Moyer  
Assistant District Attorney

Enclosures

cc: James J. Karl, Esq.  
(Counsel for Petitioner)

**CASE NUMBER 14-7656**

**THIS IS A CAPITAL CASE**

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**JAKEEM LYDELL TOWLES,**

**Petitioner,**

**vs.**

**COMMONWEALTH OF PENNSYLVANIA,**

**Respondent.**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF PENNSYLVANIA**

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**RESPONDENT'S BRIEF IN OPPOSITION**

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Office of the District Attorney  
of Lancaster County  
Lancaster County Courthouse  
50 North Duke Street  
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Susan E. Moyer\*  
Assistant District Attorney  
(Counsel for Respondent)  
Todd P. Kriner  
Assistant District Attorney

Dated: January 5, 2015

\*Member of the Bar of this Court

**TABLE OF CONTENTS**

|   | <u>PAGE</u> |
|---|-------------|
| TABLE OF AUTHORITIES .....                                | i           |
| COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW ..... | 1           |
| COUNTER-STATEMENT OF THE CASE .....                       | 2           |
| REASONS FOR DENYING THE WRIT .....                        | 4           |
| CONCLUSION .....  | 8           |
| SENTENCING VERDICT AND FINDINGS .....                     | Exhibit A   |
| PROOF OF SERVICE .....                                    | 9           |

**TABLE OF AUTHORITIES**

**STATUTES**

**PAGE**

|  |   |
|--|---|
| 42 Pa. C.S.A. §9711 .....                | 3 |
| 42 Pa. C.S.A. §9711(c)(1);(f)(1,2) ..... | 4 |

**COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW**

**"CAPITAL CASE"**

I. Whether Petitioner was afforded Due Process in the manner in which the jury returned it's verdict in this capital case?

## COUNTER-STATEMENT OF THE CASE

**The procedural history of the case is as follows:** On May 11, 2012, the Petitioner, Jakeem Towles, following a jury trial before the Honorable Howard F. Knisely, was convicted of Murder of the First Degree, and Criminal Attempt to Criminal Homicide. (Notes of Trial Testimony (hereinafter "N.T.T"), at p. 574). On May 14, 2012, the penalty phase of the trial commenced. On May 15, 2012, the Jury rendered a sentence of death. (Notes of Penalty Phase (hereinafter "N.P.P."), at p. 187).

A direct appeal to the Supreme Court of Pennsylvania followed. On September 22, 2014 the Supreme Court of Pennsylvania issued an Opinion affirming the Judgement of Sentence of the Court of Common Pleas of Lancaster County. This Petition for a Writ of *Certorari* followed.

**The Trial Court accurately summarized the factual history of the case as follows:**

On the night of May 7, 2010, Defendant shot and killed Cornell Anton Stewart, Jr., following an altercation at the Mighty Dog Family Fun Center (the "Fun Center") in Columbia, Lancaster County, Pennsylvania. Earlier that evening, Defendant and his friend, Antwain Robinson, took a bus from Lancaster to Columbia. Defendant's cousin, Tyrone Hunter, lived in an apartment close to the Fun Center where a rap performance was being held that night. Defendant and Mr. Robinson walked between the Fun Center, another venue, and Mr. Hunter's apartment multiple times that evening. They smoked marijuana and drank alcohol. At some point, unbeknownst to Mr. Hunter, Defendant took possession of Mr. Hunter's handgun and hid it in an alleyway outside of Mr. Hunter's apartment.

Cornell Stewart and John Wright were scheduled to perform at the Fun Center that night. The opening act started at 10:00 p.m. Cornell and John started their performance after the opening act, but were interrupted when Defendant grabbed Mr. Wright's microphone. An altercation between the two ensued shortly thereafter wherein Mr. Wright hit Defendant at least once. Paul Williams, working security, and other individuals separated Defendant and Mr. Wright. Paul Williams escorted Defendant and Mr. Robinson out the front of the Fun

Center. Mr. Williams then escorted John Wright out the back of the Fun Center. Cornell Stewart went out back of the Fun Center with Mr. Wright.

After being escorted out, Defendant retrieved the gun he hid earlier, went to the alleyway behind the fun center, and fired three shots at John Wright and Cornell Stewart. One of the bullets hit Mr. Stewart in the head. Defendant and Mr. Robinson fled the scene in opposite directions. Police officers and emergency personnel arrived on the scene shortly thereafter. Officer Austin Miller arrived within minutes of being dispatched. He found Mr. Stewart on the ground, in the doorway at the back of the Fun Center. Mr. Stewart was bleeding and unable to communicate. Emergency personnel arrived and transported Cornell to Lancaster General Hospital.

Defendant and Mr. Robinson met up at the Oak Hollow apartments where they asked Arpasia Bridgman for a ride back to Lancaster. Arpasia was leaving for the evening with two friends. During the drive, Defendant made incriminating statement and warned the girls and Mr. Robinson not to talk.

Mr. Stewart was kept on life support, but ultimately died from the gunshot wound to his head.

Trial Court Opinion, 10/23/2012, at pp 1-2.

## REASONS FOR DENYING THE WRIT

### **I. The Petitioner was afforded Due Process in the manner in which the jury returned its verdict in this capital case.**

The Petitioner asserts that the Jury's death verdict was invalid because of the manner in which the jury returned its verdict. The Petitioner does not dispute the constitutionality of Pennsylvania's death penalty scheme. Rather, he simply asserts that it was not employed properly in his case by arguing that the jury, although polled on the issue, did not explicitly check a box on the verdict slip indicating that the aggravating circumstance outweighed any mitigating circumstance.

The sentencing procedure for murder in the first degree in Pennsylvania is set forth in 42 Pa.C.S.A. §9711. The relevant portions are as follows:

(c) Instructions to jury.--

(1) Before the jury retires to consider the sentencing verdict, the court shall instruct the jury on the following matters:

(I) the aggravating circumstances specified in subsection (d) as to which there is some evidence.

(ii) the mitigating circumstances specified in subsection (e) as to which there is some evidence.

(iii) aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt; mitigating circumstances must be proved by the defendant by a preponderance of the evidence.

(iv) the verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance specified in subsection (d) and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.



(v) the court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment.

(f) Sentencing verdict by the jury.—

(1) After hearing all the evidence and receiving the instructions from the court, the jury shall deliberate and render a sentencing verdict. In rendering the verdict, if the sentence is death, the jury shall set forth in such form as designated by the court the findings upon which the sentence is based.

(2) Based upon these findings, the jury shall set forth in writing whether the sentence is death or life imprisonment.

42 Pa.C.S. §9711(c)(1); (f)(1,2).

Here, the Court adequately and accurately instructed the Jury on its duties as those duties related to imposing a sentence of death. (N.P.P., at pp. 164-73). In particular, the Court instructed the jury as follows:

First, however, you must understand that your verdict must be a sentence of death if and only if you unanimously find, that is all of you find, at least one aggravating circumstance and no mitigating circumstances, or if you unanimously find one aggravating circumstance that outweighs all of the mitigating circumstances.

If you do not all agree on one of those findings, then the only verdict that you may return is a sentence of life in prison.

Id. at p. 165.

The verdict slip in this case comprised a 3 page form. This form is attached to this response as Exhibit A. The jury checked “Death” in Section A of the form and then proceeded to complete Section B. In Section B, the jury specifically listed the aggravating and mitigating circumstances that were considered and unanimously found. Section B of the verdict form is merely an explanation of the basis of the death sentence. As the Verdict Slip Instructions read, “If the sentence is death, indicate the basis for that verdict by completing Section B, which the

jury did. As to whether the aggravating circumstance outweighed any mitigating circumstance, it is clear from the record that the Jury did make a specific finding that the aggravating circumstance outweighed the mitigating circumstances. When the Jury returned its verdict the following exchange took place:

The Court: Mr. Foreman, have you found an aggravating circumstance that has been proven beyond a reasonable doubt by the Commonwealth?

The Foreperson: Yes, we have.

The Court: And what is that aggravating circumstance?

The Foreperson: In the commission of the offense, the defendant knowingly created a grave risk of death to another person, in addition to the victim of the offense.

The Court: Have you found any mitigating circumstances which have been proven by the defense by a preponderance of the evidence to any one of you?

The Foreperson: Yes, we have.

The Court: And what are the mitigating circumstances that you have found?

The Foreperson: Unstable and impoverished nature of [the Defendant's] background; the emotionally-charged atmosphere of the Mighty Dog contributed to [the Defendant's] poor decision making; the fact that [the Defendant] suffered a beating just prior to the offense affected his judgment; at the time of the offense, [the Defendant] was under the influence of drugs and alcohol, which had some influence on his judgment surrounding the circumstances leading to the homicide; [the Defendant] grew up in a chaotic and unstable, violent, single-parent environment; his mother was a substance abuser and brought men into the home who were violent, drug-dependent and alcoholic.

Id. at pp. 185-86. The Court went on further to ask the Foreperson if the “jury, weighed the aggravating and mitigating circumstances and reached a verdict of sentence that is unanimous in its decision”? Id. at p. 187. The Foreperson stated that they had and the verdict of the Jury was to sentence the Petitioner to death. Id.

The Court went on further to individually poll each juror and specifically ask each juror if they weighed the aggravating and mitigating circumstances. Id. at p. 188. Each Juror answered that they had weighed the aggravating and mitigating circumstances and agreed with the sentence of death. Id. at pp. 188-92. Accordingly, the jury made an explicit finding that the aggravating circumstance outweighed any mitigating circumstance after the jury properly weighed all the aggravating and mitigating factors. This process served to protect the Petitioner's due process rights. Accordingly, the Petitioner's issue warrants no further review.

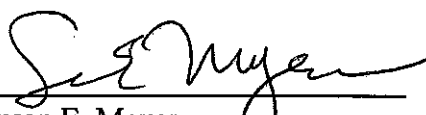
**CONCLUSION**

WHEREFORE, for all of the foregoing reasons, Respondent the Commonwealth of Pennsylvania respectfully requests that this Honorable Court deny the petition for writ of certiorari.

Respectfully submitted,

OFFICE OF THE DISTRICT ATTORNEY

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Pa. Id. No. 63533  
(Counsel for Respondent)  
Todd P. Kriner  
Assistant District Attorney  
Pa. Id. No. 93015

\*Member of the Bar of this Court.

# **EXHIBIT A**

II. SENTENCING VERDICT AND FINDINGS

If you have reached a unanimous verdict,  
complete this part of the form.

In Section A, indicate whether the sentencing verdict is death or life imprisonment. If the sentence is death, indicate the basis for that verdict by completing Section B. If the sentence is life imprisonment, indicate the basis for that verdict by completing Section C.

A. We, the jury, unanimously sentence the defendant to (check one):

Death

Life Imprisonment

B. \_\_\_\_\_ 1. An aggravating circumstance which outweighs any mitigating circumstance(s).

The aggravating circumstance unanimously found is:

1) IN THE COMMISSION OF THE OFFENSE THE DEFENDANT KNOWINGLY CREATED A GRAVE RISK OF DEATH TO ANOTHER PERSON IN ADDITION TO THE VICTIM OF THE OFFENSE.

The mitigating circumstance(s) found by one or more of us (is)(are):

10) THE UNSTABLE AND IMPOVERISHED NATURE OF JAKEEM'S BACKGROUND

13) THE EMOTIONALLY CHARGED ATMOSPHERE OF THE MIGHTY DOG CONTRIBUTED TO JAKEEM'S POOR DECISION MAKING

12) THE FACT THAT JAKEEM SUFFERED A BEATING JUST PRIOR TO OFFENSE AFFECTED HIS JUDGEMENT

10) AT THE TIME OF THE OFFENSE JAKEEM WAS UNDER THE INFLUENCE OF DRUGS AND ALCOHOL WHICH HAD SOME INFLUENCE ON HIS JUDGEMENT SURROUNDING THE CIRCUMSTANCE LEADING TO THE HOMICIDE.

PONTINUED ON BACK

6) JAKEEM GREW UP IN A CHAOTIC, UNSTABLE, VIOLENT SINGLE PARENT ENVIRONMENT. HIS MOTHER WAS A SUBSTANCE ABUSER AND BROUGHT MEN INTO THE HOME WHO WERE VIOLENT, DRUG DEPENDANT, AND ALCOHOLIC.

Peter Halderman

C. The findings on which the sentence of life imprisonment is based are

(check one):

- \_\_\_\_\_ 1. No aggravating circumstance exists.
- \_\_\_\_\_ 2. The mitigating circumstance(s) (is) (are) not outweighed by the  
aggravating circumstance.

The mitigating circumstance(s) found by one or more of us (is) (are):

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The aggravating circumstance unanimously found is:

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May 15<sup>th</sup> 2012  
Date

Juan P. Melina  
Jury Foreperson



IN THE SUPREME COURT OF THE UNITED STATES

**JAKEEM LYDELL TOWLES**

**Petitioner**

vs.

**COMMONWEALTH OF PENNSYLVANIA**

**Respondent**

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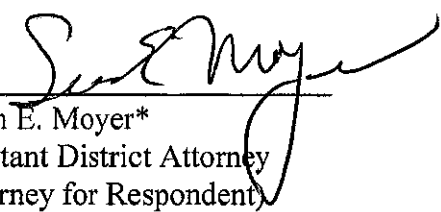
**CASE NUMBER: 14-7656**  
**"CAPITAL CASE"**

**PROOF OF SERVICE**

I, Susan E. Moyer, hereby affirm that on this day I served one (1) copy of the foregoing "Respondent's Brief in Opposition," upon the person and at the address set forth below by placing the same in the United States mail, first class, postage prepaid, and addressed as follows, which service satisfies the requirements of United States Supreme Court Rule 29:

James J. Karl  
Chief Public Defender  
Lancaster County Public Defender  
150 North Queen Street, Suite 210  
Lancaster, PA 17603  
(717) 299-8131

Date: January 5, 2015

By:   
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Assistant District Attorney  
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