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**COMMONWEALTH OF
PENNSYLVANIA V.
MARK NEWTON SPOTZ**Post Conviction Collateral Relief Act –
Capital Case

No. 1673 - 1995

1. This Post-conviction Collateral Relief Act (“PCRA”) petition arises from Petitioner’s April 22, 1996 conviction for first-degree murder, kidnapping, robbery, and other offenses. The jury returned a sentence of death, finding the four aggravating circumstances outweighed the two mitigating circumstances. The Court found that Petitioner’s claims of straight trial court error were waived and not subject to review on the merits under the PCRA. The Court then addressed each of Spotz’s issues one by one in a lengthy analysis.

In the Court of Common Pleas of York County Pennsylvania; **COMMONWEALTH OF PENNSYLVANIA V. MARK NEWTON SPOTZ**. Post Conviction Collateral Relief Act – Capital Case.

OPINION

This Post-conviction Collateral Relief Act (“PCRA”) petition arises from Petitioner’s April 22, 1996 conviction for first-degree murder, kidnapping, robbery, and other offenses. The jury returned a sentence of death in this case, after finding four aggravating circumstances and two mitigating circumstances, and that the aggravating circumstances outweighed the mitigating circumstances. On August 22, 2000, the Supreme Court of Pennsylvania, on direct appeal in which Bruce Blocher and Suzanne Smith represented Petitioner, affirmed the judgment of sentence.¹ On March 19, 2001, the United States Supreme Court denied Petitioner’s petition for writ of certiorari.²

In the Supreme Court of Pennsylvania’s Opinion affirming Petitioner’s sentence, the Court stated:

The evidence adduced at trial showed that: at 6:20 a.m. on February 2, 1995, in York County, appellant approached Penny Gunnet’s vehicle on the pretense of asking Ms. Gunnet for directions. Appellant aimed a nine-millimeter semiautomatic pistol at Gunnet and forced her into the passenger seat. He then drove the car to Indian Rock Dam Road, an isolated area, while his girlfriend, Christina Noland, followed him

in a car that they had stolen from June Ohlinger in Schuylkill County. While the two cars were stopped on Indian Rock Dam Road, Noland heard three gun shots. Soon afterwards, appellant sped off in Ms. Gunnet’s car. Noland attempted to follow appellant in the Ohlinger vehicle, but she was unable to keep up. Gunnet was eventually found under the wheels of her car, which had been abandoned by appellant. Thomas Stover and Patricia Eisenhart, two motorists, both positively identified appellant as the man they saw walking near the area where Ms. Gunnet’s body was found.

Juan Maldonado testified that, on the day of the murder, appellant tried to sell him items of jewelry that had belonged to Ms. Gunnet. At that time, appellant informed Maldonado that he had a nine-millimeter semiautomatic pistol that was “dropping them like flies.” Michelle Rhinehart, appellant’s ex-wife, testified that less than 24 hours after the murder of Ms. Gunnet appellant gave her several rings that were later identified as belonging to Ms. Gunnet. Appellant also offered her several credit cards at the same time. Charles Carothers, another of appellant’s acquaintances, testified that he heard appellant offer Rhinehart credit cards that appellant said would have to be used the next day. Carothers further testified that appellant confessed that he had shot his brother and had killed “these other ladies.” Appellant told Carothers that he had thrown one woman off a bridge and “the other lady he ran over with her car and she got stuck under it.” Carothers also testified that appellant was in possession of the silver nine-millimeter semiautomatic pistol that was later identified as the weapon that fired at least two of the three nine-millimeter bullets recovered from Ms. Gunnet’s car.

The police eventually tracked appellant to a motel room in Carlisle, Pennsylvania. When appellant opened the door to the room, he discarded a silver nine-millimeter semiautomatic pistol and surrendered to the police. A subsequent search of the room yielded appellant’s bloodstained jeans, a knife, nine-millimeter “full metal jacket” ammunition, five credit cards issued in Ms. Gunnet’s name and one credit card issued in Ms. Gunnet’s husband’s name. Ms. Rhinehart’s fingerprint was found on one of the credit cards. Corporal James Rottmund of the Pennsylvania State Police, a ballistics expert, testified that two full metal jackets that were recovered from Ms. Gunnet’s car

were conclusively fired from the gun seized from appellant.

Dr. Isidore Mihalikis, a forensic pathologist, testified that Ms. Gunnet died from two gunshot wounds. One bullet passed through Ms. Gunnet's neck, severing her jugular vein, piercing a carotid artery, and severing her spine before exiting the body. Another bullet entered her chest and pierced her heart and lungs before exiting the body. Dr. Mihalikis further testified that there were three bullet holes in Ms. Gunnet's vehicle. When appellant was arrested, he was found to have sustained a self-inflicted bullet wound to his thigh. The wound matched the trajectory of bullet holes in appellant's jeans, in the driver's seat and in the floor of Ms. Gunnet's car.

Appellant's accomplice, Christina Noland, testified for the Commonwealth. She related that, at the time appellant abducted Ms. Gunnet, they were escaping because appellant had shot his brother on January 31, 1995. She further testified that, prior to abducting Ms. Gunnet, she and appellant had committed a similar flight-induced crime in Schuylkill County. Specifically, they forced June Ohlinger into the passenger seat of Ohlinger's car at gunpoint, drove her to a remote, wooded area and shot her in the back of the head.³ Commonwealth witness Dr. Richard Bindie, a board certified anatomical and clinical pathologist and forensic pathologist, testified that Mrs. Ohlinger had sustained a gunshot wound to the back of the head consistent with the use of a full metal jacket bullet. Ms. Noland testified that she and appellant took Mrs. Ohlinger's car and money and drove to Rehoboth Beach, Delaware. In Delaware, they attempted to alter their appearances before returning to York County in search of another vehicle and money for gas. Unfortunately, they happened upon Penny Gunnet. Based on the foregoing facts, overwhelming evidence was presented to support the first degree murder conviction.

Petitioner's direct appeal rights were extinguished on March 19, 2001, when the United States Supreme Court denied Petitioner's petition for writ of *certiorari*, which Robert Dunham of the Defender Association of Philadelphia had filed. See **Spotz v. Pennsylvania**, 532 U.S. 932 (2001).

Following the termination of Petitioner's direct appeal, on April 20, 2001, Petitioner filed a *pro se* PCRA petition, a request for appointment of counsel, and a motion for a

stay of execution. The Defender Association of Philadelphia entered its appearance and on August 20, 2001, filed Petitioner's first Petition for Habeas Corpus Relief under Article I, Section 14 of the Pennsylvania Constitution and for Statutory Post-Conviction Relief under the PCRA, challenging his York County conviction. Petitioner's execution was stayed by an Order of June 21, 2001.

The Defender Association filed an Amended PCRA petition on August 21, 2001, with supplements filed May 21, 2002, and May 31, 2007. This case was assigned to this Judge on May 31, 2007. Petitioner raises, in total, thirty-four issues, ranging from the Commonwealth's failure to disclose exculpatory evidence, failure of trial counsel to investigate Petitioner's history in the guilt phase, failing of trial counsel to rebut the Commonwealth's forensic expert, improper instruction to the jury, and the deprivation of Petitioner's state and federal rights to a fair trial.

Petitioner's counsel also filed a Motion for Summary Judgment on June 15, 2007, which the Commonwealth answered. We held oral argument on this Motion on July 23, 2007, at which time we reserved judgment pending the PCRA hearing scheduled to occur in September 2007.

We began Petitioner's PCRA hearing on September 17, 2007 through September 19, 2007, at which time Petitioner's competency to continue participating in the PCRA hearing came into question. The PCRA hearing was halted pending the completion of competency evaluations. After competency evaluations by experts for the Commonwealth and the Defender Association, it was determined that Petitioner was competent to assist his counsel at the continuation of this hearing; the PCRA hearing resumed on June 9, 2008 through June 13, 2008, with Petitioner appearing via videoconference.

The Commonwealth argues that many of Petitioner's claims are waived for purposes of the PCRA for failure to litigate them on direct appeal; but to the extent that the derivative ineffective assistance of counsel claims have been made in connection with some of these issues, the Commonwealth discusses them in its post-hearing brief. The Commonwealth avers that the following claims are waived and are not cognizable under the PCRA: I, II, III, IV, VI, VIII, IX, X, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX, XXXI, XXXII, XXXIII.

On the other hand, Petitioner states that "because counsel first failed to raise these claims in this court either at trial or during post-sentence motions, Petitioner should be entitled to raise the claims in the same pos-

ture in which counsel would have presented them to this court and have this court review them on their merits.” We are not persuaded by this argument.

We believe that Petitioner’s claims of straight trial court error are waived, and therefore, not subject to review on the merits under the PCRA. Since these claims could have been raised in Petitioner’s direct appeal, they are explicitly waived under the PCRA. 42 Pa.C.S.A. § 9544(b)(an issue is waived under the PCRA if a Petitioner “could have raised it but failed to do so before trial, at trial, during unitary review, on appeal, or in a prior state post-conviction proceeding”). Additionally, the Supreme Court cannot grant relief on an issue that has been previously litigated or waived. 42 Pa.C.S.A. § 9543(a)(3). Accordingly, we will not address the merits of Petitioner’s following claims: IV, VI, VIII, IX, X, XIV, XVI, XX, XXI, XXII, XXVI, XXVII, XXVIII, XXXI, XXXII and XXXIII.

We shall address each of the remaining issues Petitioner raises.⁴

DISCUSSION

We begin our discussion by noting that Petitioner has filed a “Petition for Habeas Corpus Relief Under Article 1, Section 14 of the Pennsylvania Constitution and for Statutory Post-Conviction Collateral Relief Under the Post-Conviction Relief Act,” with several supplemental filings. A petition seeking post-conviction relief will be treated as a petition under the PCRA regardless of the title of the document filed. 45 Pa.C.S.A. §§ 9541 – 9546.

The Supreme Court’s standard of review for a PCRA court’s denial of PCRA relief is “whether the ruling of the PCRA court is supported by the record and free of legal error.” **Commonwealth v. Cam Fry**, 980 A.2d 61, 72 (Pa. 2009) (citations omitted). A PCRA petition must prove by a preponderance of the evidence that the petitioner’s conviction resulted from one or more of the factors of 42 Pa.C.S.A. § 9543(a)(2). The Supreme Court cannot grant relief on an issue that has been previously litigated or waived. 42 Pa.C.S.A. § 9543(a)(3). An issue has been previously litigated when the highest appellate court in which the petitioner could have had review as a matter of right has made a ruling on the issue. 42 Pa.C.S.A. §9544(a)(2). A petitioner cannot obtain post-conviction relief of claims previously litigated by alleging ineffective assistance of prior counsel and presenting new theories of relief to support previously litigated claims. **Commonwealth v. Fisher**, 813 A.2d 761, 772 (Pa. 2002). An issue is waived, “if the petitioner failed to raise it and if it could have been raised before the trial, at the trial, on appeal, in a habeas cor-

pus proceeding or other proceeding actually conducted or in a prior proceeding actually initiated under this subchapter.” 42 Pa.C.S.A. § 9544(b).

With respect to Petitioner’s ineffectiveness of counsel claims,⁵ Pennsylvania courts have long held that counsel is presumed effective, and the petitioner bears the burden of proving ineffective assistance. **Commonwealth v. Ligon**, 971 A.2d 1125, 1137 (Pa. 2009)(quoting **Commonwealth v. Cooper**, 941 A.2d 655, 664 (Pa. 2007)). In order to overcome the presumption of effectiveness, a petitioner must satisfy a three-prong test, in which 1) the underlying substantive claim has arguable merit; 2) counsel whose effectiveness has been challenged did not have a reasonable basis for the actions or the failure to act; and 3) the petitioner suffered prejudice as a result of counsel’s deficit performance. **Commonwealth v. Pierce**, 527 A.2d 973, 975 (Pa. 1987)(adopting the U.S. Supreme Court’s holding in **Strickland v. Washington**, 466 U.S. 668, 687 (1984)). Prejudice occurs when there is a reasonable probability that but for the unprofessional errors of counsel the proceeding would have ended differently. **Strickland**, 466 U.S. at 694. A chosen strategy will not be found to have been unreasonable unless it is proven that the path not chosen, “ ‘offered a potential for success substantially greater than the course actually pursued.’ ” **Commonwealth v. Williams**, 899 A.2d 1060, 1064 (Pa. 2006)(citations omitted). A claim of ineffectiveness will fail if a petitioner does not meet all three prongs of this test. **Commonwealth v. Collins**, 957 A.2d 237, 244-245 (Pa. 2008).

GUILT PHASE CLAIMS INEFFECTIVE ASSISTANCE OF COUNSEL: CLAIMS I, II, III, IV, V, VII, XI, XII

I. SPOTZ IS NOT ENTITLED TO A NEW TRIAL BECAUSE HIS WAIVER OF COUNSEL AT THE GUILT-STAGE OF TRIAL WAS VOLUNTARY, KNOWING AND INTELLIGENT

Petitioner represented himself during the guilt phase of trial with Attorneys Bruce Blocher and Suzanne Smith, formerly Petitioner’s appointed counsel, serving as standby counsel. Petitioner represented himself pursuant to his own request to do so, after two extensive plea colloquies from the trial court.⁶ Attorneys Smith and Blocher represented Petitioner at the penalty phase of trial, and continued representing Petitioner in his direct appeal to the Supreme Court. Petitioner similarly represented himself after a lengthy colloquy in the guilt phase of his trial in Cumberland County in May 1996.⁷

Petitioner now avers that his waiver of

counsel was not competent, voluntary and intelligent because his decision to represent himself was the product of the mental disorders from which he was suffering at the time of trial, rather than a genuinely free and informed choice.

The Supreme Court of Pennsylvania has stated that the competency standard for waiving the right to counsel at trial is precisely the same as the competency to stand trial, and is not a higher standard. **Commonwealth v. Starr**, 664 A.2d 1326 (Pa. 1995). A waiver of the right to counsel may be considered knowing and intelligent based simply on a finding that the defendant understands the significance and consequences of the decision to waive counsel. *Id.* at 1336. A defendant's interests in his fundamental right to counsel are sufficiently protected when the judge is present and attentive during the plea colloquy and conscientiously evaluates the responses to the questions posed to the defendant, before granting the defendant's request to proceed *pro se*. **Commonwealth v. McDonough**, 812 A.2d 504 (Pa. 2002).

Suzanne Smith and Bruce Blocher testified at the post-conviction proceedings; Attorney Smith stated that she was present when Petitioner calmly announced his plans to represent himself in court and Petitioner did not appear to have any difficulties understanding what was happening to him and why he was in court. (N.T. PCRA Vol. II, pp. 296-300). Further, Attorney Smith testified that she and Attorney Blocher has no indication that a competency evaluation at the time of the trial or any time prior was necessary; she had been involved in other cases in which a competency evaluation was conducted, however Petitioner appeared to understand what was going on and the nature of the murder of the victim in this case, Penny Gunnet. *Id.*

Considering all the evidence, we believe that Petitioner's waiver of counsel was voluntary, knowing and intelligent. Because counsel cannot be found ineffective for failing to raise a meritless claim in the direct appeal, we find Petitioner's first issue on appeal lacks merit.

II. SPOTZ IS NOT ENTITLED TO A NEW TRIAL BECAUSE HIS RIGHTS TO SELF-REPRESENTATION WERE NOT VIOLATED BY AN IMPROPER RESTRICTION OF STANDBY COUNSELS' ABILITY TO ASSIST IN HIS DEFENSE

In its Opinion on direct appeal, the Supreme Court of Pennsylvania addressed the issue of whether the trial court erred in refusing Petitioner's request for new counsel and new standby counsel, alleging in his direct appeal that there was a conflict between himself and appointed counsel. 756

A.2d 1139, 1149 (Pa. 2000). The Supreme Court found no error, stating as follows:

The trial court acted properly here. When faced with a potential conflict between appellant and his counsel, the court investigated the matter and was assured by appellant's counsel that they would be able to advocate zealously on appellant's behalf. Furthermore, as the trial court recognized, the "conflict" here resulted from appellant's own conduct, and the security measures that his purported conduct required. Even if new counsel were appointed, the security concern – *i.e.*, that steps had to be taken to ensure that appellant did not injure counsel in the hopes of securing a mistrial – would remain. In response to appellant's threats and attempts to manipulate, the court took appropriate measures to ensure the safety of counsel and appellant's right to effective, conflict-free representation. There was no abuse of discretion by the trial court in refusing to appoint new counsel or new standby counsel for appellant.

756 A.2d at 1150. As the Commonwealth points out in its post-hearing brief, Petitioner cites to no supporting legal authority that the purported "severe limitations" on standby counsel rendered Smith and Blocher's assistance to Petitioner "meaningless." We concur with the Commonwealth's statements that Attorneys Smith and Blocher were instructed according to Pa.R.Crim.P. 121(d), and they behaved according to it, offering assistance in answering Petitioner's questions to them when Petitioner asked, providing him with documents as they arrived, and discussing trial strategy. *See* N.T. PCRA, Vol. II, pp. 292-294. We do not believe that the underlying substantive claim has merit, so we find that Petitioner's second appeal issue fails for lack of merit.

III. SPOTZ IS NOT ENTITLED TO A NEW TRIAL BECAUSE THE COMMONWEALTH DID NOT IMPERMISSIBLY FAIL TO DISCLOSE TO HIM AN AGREEMENT WITH CHRISTINA NOLAND IN EXCHANGE FOR HER TESTIMONY AGAINST HIM

As in Petitioner's post-conviction claims in Schuylkill County and Cumberland County, Petitioner avers that there was an agreement between the Commonwealth and Ms. Noland in exchange for her testimony against him at trial. According to the Supreme Court of Pennsylvania, in order for Petitioner to be eligible for post-conviction relief on this claim, he must prove by a preponderance of the evidence that an agreement did exist and introduction of it would have changed the outcome of the trial.⁸

The evidence upon which Petitioner bases his claim includes allegations that Ms. Noland received gifts from the District Attorney's Office, such as the promise of a lobster dinner. Ms. Noland did not testify at Petitioner's York County PCRA hearings; however, she did testify at Petitioner's Cumberland County PCRA proceedings, stating that she had never made an agreement with the Commonwealth at trial and that she had no expectations regarding such testimony. The Cumberland County PCRA Court, in its Opinion denying Petitioner's PCRA request, found no agreement existed between the Commonwealth and Ms. Noland regarding her testimony there that was impermissibly withheld from Petitioner at his trial, much less an agreement that would have changed the outcome of his Cumberland County trial.⁹

In the appeal Petitioner filed from the denial of his PCRA request in Schuylkill County, the Supreme Court of Pennsylvania similarly found no evidence that Ms. Noland and the Commonwealth entered an agreement in which Ms. Noland would testify against Petitioner in return for lesser sentence.¹⁰ We mention this Supreme Court decision in particular because it deals with Petitioner's allegations on this issue relative to both Schuylkill and York Counties; we concur with the Supreme Court's finding that no evidence has been presented to establish the existence of an agreement between Ms. Noland and the Commonwealth for her testimony. The underlying claim here lacks merit, so this issue fails and should be dismissed.

V. SPOTZ IS NOT ENTITLED TO RELIEF FROM HIS CONVICTION AND SENTENCE BECAUSE COUNSEL WERE NOT INEFFECTIVE IN THEIR INVESTIGATION, DEVELOPMENT OR PRESENTATION OF PETITIONER'S GUILT PHASE DEFENSES

Petitioner argues that his impairments at the time of trial were substantial and would have provided voluntary intoxication and/or diminished capacity defenses during the guilt phase of Petitioner's trial. These defenses, however, are only available if a defendant admits liability for the charged offenses but contests the degree of guilt. *See Commonwealth v. Laird*, 726 A.2d 346, 353 (Pa. 1999); *Commonwealth v. Weaver*, 457 A.2d 505 (Pa. 1983); and *Commonwealth v. Jones*, 651 A.2d 1101, 1109 (Pa. 1994). Petitioner defended himself at trial by claiming that he was innocent of the murder of Penny Gunnet.

The Supreme Court of Pennsylvania rejected this claim in Petitioner's Schuylkill County appeal of the denial of his PCRA petition in that county, reasoning that absent an

admission from Petitioner that he had shot and killed Mrs. Ohlinger, trial counsel could not have presented a diminished capacity defense; likewise trial counsel could not have presented a voluntary intoxication defense because Petitioner would have been required to concede liability. *Spotz*, 896 A.2d at 1217-1219.

Here, counsel testified at the PCRA hearing that they did not pursue either of these defenses because, "we couldn't present evidence to support it." (N.T. Vol. 1, p. 286). Nor did counsel recall Petitioner informing them that he had been using drugs throughout the time of Mrs. Gunnet's death. (N.T. PCRA hearing 9/17/07, pp. 214-215, 219). We do not believe that these defenses were available to Petitioner since he made no concessions of liability at trial nor was there evidence to support such defenses. Accordingly, counsel cannot be held ineffective for failing to pursue a meritless claim, so we conclude that this appeal issue lacks merit.

VII. TRIAL COUNSEL WERE NOT INEFFECTIVE IN THEIR PRE-TRIAL INVESTIGATION OF THE PHYSICAL EVIDENCE OR THE COMMONWEALTH'S THEORY OF THE CASE, OR IN NOT OBTAINING A FORENSIC EXPERT TO EVALUATE THE CASE

Petitioner has not developed this claim, neither at the time of the PCRA hearings nor does he address it in his post-hearing brief. Thus, we conclude this undeveloped claim lacks merit.

XI. TRIAL COUNSEL WERE NOT INEFFECTIVE IN THEIR INVESTIGATION, DEVELOPMENT, AND PRESENTATION OF MITIGATING EVIDENCE IN PREPARATION FOR THE PENALTY PHASE

In the penalty phase, the jury found four aggravating circumstances: 1) Petitioner committed a killing in the perpetration of a felony; 2) Petitioner had a significant history of felony convictions involving the use or threat of violence to the person; 3) Petitioner had been convicted of another offense either before or at the time of the offense at issue; and 4) Petitioner had been convicted of another murder either before or at the time of the offense at issue. The jury found two mitigating circumstances: 1) Petitioner was under the influence of extreme mental or emotional disturbance; and 2) other evidence of mitigation concerning the character of the defendant and the circumstances of his offense, including a bad childhood. At the penalty phase of Petitioner's trial, the jury determined that the four aggravated circumstances outweighed the two mitigating circumstances, and the jury returned a death sentence.

Petitioner argues that he is entitled to a new penalty phase trial because his counsel failed to adequately investigate, develop and present mitigating evidence in preparation for the penalty phase. According to Petitioner, this includes evidence of physical and sexual abuse, child neglect, substance abuse, Petitioner's intervention to protect others from sexual abuse, a family history of mental illness, the failures of child protective services to intervene at key points in Petitioner's life when he was allegedly amenable to treatment and how these failures worsened his mental and emotional disorders, and the psychological significance of this evidence. (*See* Petitioner's post-hearing brief, pp. 179-180).

During the penalty phase of Petitioner's trial, the jury heard testimony from Petitioner's grandmother, Jean Redden, his mother, Jean Newpher, and his family's Clearfield County Children & Youth Services worker, Molly Muir, as well as several other mitigation witnesses. The jury also heard testimony from Dr. Stephen Ragusea, Ph.D., a forensic psychologist with a doctorate in clinical psychology, who testified about Petitioner's bad childhood, and who diagnosed Petitioner with Acute Stress Disorder at the time of his brother Dustin's death, and opined that this developed into Post-traumatic Stress Disorder. We believe the testimony elicited from these witnesses at Petitioner's penalty phase hearing shows that counsel prepared these witnesses appropriately to give their statements, and the testimony elicited lead the jury to apply not one, but two mitigating factors in Petitioner's favor.

We have reviewed the transcripts of Petitioner's penalty phase hearing, and we heard the testimony at Petitioner's PCRA hearings. We believe that the testimony of Mrs. Redden at the PCRA hearings, while it detailed some newly offered sexual abuse testimony, varied only in degree from the testimony she offered at the penalty phase of trial. We do not believe that Mrs. Redden's testimony at the PCRA hearing demonstrates that trial counsel did not properly investigate or prepare her as a mitigation witness; rather, we found her testimony at the PCRA hearing incredible and not convincing. We concur with the Supreme Court's decision in the Schuylkill County PCRA denial appeal, in which the Supreme Court found that, "Spotz has failed to show how the result of his penalty hearing would have been different had this additional testimony of Redden been presented. We fail to see how the absence of Redden's newly offered testimony at the PCRA hearing, 'so undermined the truth-telling process that no reliable adjudication of guilt or innocence could have taken place.'" **Commonwealth v. Spotz**, at 1227.

Petitioner's mother did not appear at his

PCRA hearings in York County. Her testimony at Petitioner's penalty phase hearing, like her mother Jean Redden's, thoroughly portrayed Petitioner's violent stepfathers, the family's continuous relocations, her sons' drug use, Petitioner's brother's erratic and violent behavior or "brutalizing," and the lack of stability in Petitioner's home life. We believe that Mrs. Newpher's testimony at Petitioner's penalty phase hearing demonstrates that counsel did adequately question her about Petitioner's childhood abuse, neglect, and dysfunction. We can only speculate about the nature and extent of the testimony she may have offered at the PCRA hearings.

With respect to Molly Muir's testimony at Petitioner's PCRA hearings compared to her testimony in the penalty phase of Petitioner's trial, her testimony at the PCRA hearings was duplicative. At Petitioner's trial, Ms. Muir reported about the severe family dysfunction that was evidenced in the Clearfield County Children & Youth Services records. Similar to Petitioner's arguments in his PCRA Petitions in Schuylkill and Cumberland Counties, Petitioner avers that because each and every document in Petitioner's family's Clearfield County Children & Youth Services records was not provided, Petitioner should receive a new trial. The Supreme Court, in its opinion in Petitioner's appeal from the denial of PCRA, rejected Petitioner's contention that the records Ms. Muir provided to defense counsel were incomplete or insufficient:

We fail to see how Spotz was prejudiced by the failure of trial counsel to obtain the full text of each and every available institutional record relating to Spotz and Dustin. Contrary to the position of Spotz, the condensed institutional records provided by Muir from Clearfield County Children & Youth more than adequately detailed the abuse, neglect, and violence prevalent in the Spotz household. (*Id.* at 278-79; Exhibit 18A). Moreover, as referenced above, numerous penalty phase witnesses meticulously recounted the substantial abuse, neglect, and violence to which Spotz had been subjected at home. Hence, the jury found, by a preponderance of the evidence, the "catchall" mitigating circumstance, namely that Spotz had been raised in a dysfunctional household.

Spotz has failed to demonstrate that there is a reasonable probability that, but for counsel's alleged failure to obtain the full text of all available institutional records, the outcome of the penalty phase would have been different. *Pierce, supra*. Additional, full-text institutional records reiterating the abuse, neglect, and violence in the Spotz home would have been cumula-

tive and redundant. A defendant is not prejudiced by the failure of counsel to present merely cumulative evidence. *Clemmons, supra*. Thus, this claim of ineffective assistance of trial counsel is meritless.

Spotz, 896 A.2d at 1230-1231. We concur with the Supreme Court's position on this appeal issue.

With respect to Dr. Ragusea's decision to change Petitioner's diagnosis, based on information he received after he made his initial diagnosis of Petitioner in the course of this litigation, we concur with the discussion by Judge Bayley in his Opinion denying Petitioner's PCRA requests in Cumberland County:

. . . Attorney Andrews testified that he was involved in a coordinated investigation effort with the defense in all of the counties except Clearfield County in which Spotz was convicted of killing his brother Dustin. Andrews had his own investigator, and he retained Dr. Ragusea, who testified for the defense in the Schuylkill County and York County capital cases. Andrews did two recorded life story interviews with Spotz. He recognized that Spotz had a dysfunctional family history and that Dustin had violent propensities. He believed that he had obtained the entire Clearfield County Children and Youth files for both Mark and Dustin from Molly Muir. He met personally with Jean Redden. She was anxious to help Spotz and wanted to assist him. He tape recorded an interview with her in which he thought she was forthcoming. His investigator also separately talked with Redden. Much of the problem for Andrews was that Spotz, in his many interviews with Andrews and Dr. Ragusea, did not inform them of the details of his dysfunctional family and/or of the extent of his claimed neglect and abuse, including sexual abuse, he suffered while growing up. Jean Redden in particular failed to reveal the full extent of the abuse she testified to at the post-conviction hearing. See **Commonwealth v. Bracey**, 795 A.2d 935 (Pa. 2001)(stating that counsel cannot be deemed ineffective for failing to present evidence of abuse that the defendant and his family failed to reveal during consultations with counsel)...

In the present case, the difference in the information about Spotz and his family that Dr. Ragusea had at trial, including the information that Jean Redden provided to post-conviction counsel but not to trial counsel,

resulted in his upgrading his trial diagnosis of post-traumatic stress disorder to chronic post-traumatic stress disorder and a mixed personality disorder to a schizotypal personality disorder. His trial diagnosis of attention deficit hyperactive disorder and poly-substance abuse did not change. As previously set forth, trial counsel was not ineffective for not having the complete Children and Youth records available for review or because Jean Redden did not tell him personally or his investigator all of what she told post-conviction counsel. Trial counsel presented to the jury significant evidence as to Spotz's background, mental health, childhood abuse, neglect and family dysfunction. This evidence was constitutionally sufficient to provide Spotz with a fair penalty phase hearing. We are satisfied that the differences between Dr. Ragusea's diagnosis of Spotz at trial and his revised diagnosis did not prejudice Spotz because the revised diagnosis would not have resulted in the jury concluding that any mitigating circumstances outweighed the aggravating circumstances of (1) a significant history of felony convictions involving the use of violence to the person, (2) his having been convicted of murders committed before he killed Amstutz, and (3) the perpetration of a felony when he shot her nine times including one lethal shot through the neck and another lethal shot to the head. The outcome of the penalty phase would not have changed. There was no ineffective assistance of counsel regarding the investigation, development and presentation of the penalty phase evidence that warrants the grant of a new penalty phase trial.

Commonwealth v. Spotz, 794 Criminal 1995, 6/28/08 Opinion pp. 42-46. The Supreme Court reached a similar result in its discussion Petitioner's allegation that trial counsel in Schuylkill County failed to present mitigating evidence, in its Opinion, which we incorporate herein by reference, especially pages 1225 through 1235. The Supreme Court held that Spotz has failed to establish that he was prejudiced by the failure of trial counsel to provide Dr. Ragusea with additional institutional records; we concur here.

Trial counsel presented significant evidence of Petitioner's family background, mental health, child abuse and neglect, and family dysfunction; this evidence, from which the jury found two mitigating factors, was constitutionally sufficient to provide Petitioner with a fair penalty phase hearing. We presided over Petitioner's PCRA hearings, and we believe that the evidence presented at the PCRA

hearings is cumulative of the evidence presented at trial. We do not believe that the outcome of the penalty phase would have been different with the addition of cumulative evidence. We find that counsel were effective regarding the investigation, development and presentation of penalty phase evidence. We conclude that this appeal issue lacks merit.

XII. BURGLARY IS PER SE A CRIME INVOLVING USE OR THREAT OF VIOLENCE FOR PURPOSES OF AGGRAVATING FACTOR OF SIGNIFICANT HISTORY OF FELONY CONVICTIONS INVOLVING USE OR THREAT OF VIOLENCE TO A PERSON, AND TRIAL COUNSEL WERE NOT INEFFECTIVE FOR NOT PROVIDING REBUTTAL EVIDENCE TO ESTABLISH THAT THE COMMONWEALTH IMPROPERLY USED PETITIONER'S BURGLARY CONVICTIONS

Petitioner raised this appeal issue in his post-conviction proceedings in Schuylkill and Cumberland Counties; the Supreme Court of Pennsylvania determined that such evidence was admissible pursuant to its decision in **Commonwealth v. Bracey**, 662 A.2d 1062 (Pa. 1995). See **Commonwealth v. Spotz**, 896 A.2d 1191, 1240-42 (Pa. 2006). Trial counsel cannot be found ineffective for failing to pursue a meritless claim, so we find this appeal issue lacks merit.

PENALTY PHASE

CLAIMS: XIII, XV, XVII, XVIII, XIX, XXIII, XXIV, XXV, XXXIII, AND XXXIV

XIII. PETITIONER WAS NOT DENIED DUE PROCESS OF LAW OR HIS RIGHT TO PRESENT MITIGATING EVIDENCE WHEN THE DEPARTMENT OF CORRECTIONS DID NOT PRODUCE TO THE DEFENSE MITIGATING EVIDENCE CONTAINED IN ITS MENTAL HEALTH ASSESSMENTS OF PETITIONER, SPECIFICALLY EVIDENCE THAT PETITIONER WOULD ADJUST WELL TO PRISON LIFE

Petitioner avers that the undisclosed records from the Department of Corrections provided compelling evidence in mitigation, which the jury had never heard. Petitioner raised this assignment of error in his Schuylkill County post-conviction proceeding, and the Supreme Court of Pennsylvania rejected it there, for the following reasons:

...Spotz has failed to demonstrate how his counsel were ineffective for failing to present his Department of Corrections records as mitigating evidence. First, Spotz has failed to show that trial counsel did not have a reasonable strategic basis for choosing not to present these institutional records. Likewise, Spotz has failed to

demonstrate how he was prejudiced by the failure of counsel to offer his Department of Corrections records. Notably, the report prepared by Dr. Ryan, which appears to have been an intake evaluation, merely indicates that Spotz is **likely** to adjust favorably to prison life...this report does not detail Spotz's actual, favorable adjustment to prison life, but rather speculates as to his potential, favorable adjustment. Because of the speculative nature of the report, we believe that trial "counsel can hardly be deemed constitutionally incompetent for failing to produce it." In any case, Spotz has failed to show how that there is a reasonable probability that, for trial counsel's failure to present his Department of Corrections records, the outcome of his sentencing hearing would have been different. Thus, this claim of ineffective assistance of counsel must fail.

Commonwealth v. Spotz, 896 A.2d at 1237 (Pa. 2008)(citations omitted). We reach the same result here. The testimony at the PCRA hearing revealed that trial counsel did request records from the Department of Corrections. (N.T., 9/17/07, p. 140). As counsel cannot be held ineffective for failing to pursue a meritless claim, this appeal issue fails for lack of merit.

XV. THE COMMONWEALTH DID NOT VIOLATE BRADY V. MARYLAND WHEN IT DID NOT DISCLOSE TO THE DEFENSE POLICE STATEMENTS AND OTHER EVIDENCE RELATING TO PETITIONER'S PRIOR BURGLARY CONVICTIONS AS EVIDENCE OF A SIGNIFICANT HISTORY OF VIOLENT FELONY CONVICTIONS

In this appeal issue, Petitioner claims that the Commonwealth violated *Brady v. Maryland* when it failed to disclose police statements, which contained Petitioner's history of abusing LSD and other substances, and established that the burglaries in Petitioner's history were allegedly non-violent. 373 U.S. 83 (1963).

As the Commonwealth discusses in its post-hearing brief in this case, in order to establish a *Brady* violation, a defendant must demonstrate: "1) suppression by the prosecution, 2) of evidence, whether exculpatory or impeaching, favorable to the [appellant], 3) to the prejudice of the [appellant]." **Commonwealth v. Paddy**, 800 A.2d 294, 305 (Pa. 2002). The Commonwealth does not violate the *Brady* rule when it fails to hand over evidence readily obtainable by, and known to, a defendant. **Commonwealth v. Pinsell**, 724 A.2d 293, 305 (Pa. 1999).

Here, Petitioner was aware of his burglary

convictions, so we do not believe he can establish that a *Brady* violation occurred, even if he could establish that the Commonwealth failed to provide evidence related to his burglary convictions. As such, we believe this appeal issue lacks merit.

XVII. BURGLARY IS A PER SE CRIME INVOLVING USE OR THREAT OF FORCE FOR PURPOSES OF AGGRAVATING FACTOR OF SIGNIFICANT HISTORY OF FELONY CONVICTIONS INVOLVING USE OR THREAT OF VIOLENCE TO A PERSON, AND PETITIONER'S DEATH SENTENCE SHOULD NOT BE VACATED BECAUSE OF THE USE OF BURGLARY CONVICTIONS TO ESTABLISH THIS AGGRAVATING CIRCUMSTANCE

Please see our response to Appeal Issue XII, *supra*.

XVIII. PETITIONER'S CLAIM THAT REVERSAL OF CLEARFIELD COUNTY CONVICTION FOR VOLUNTARY MANSLAUGHTER THAT WAS FOUND TO BE THE BASIS OF AN AGGRAVATING FACTOR WARRANTS NEW SENTENCE FOR CAPITAL MURDER IS RENDERED MERITLESS BY THE SUPREME COURT'S REINSTATEMENT OF THAT CONVICTION AND SENTENCE

Petitioner's Clearfield County conviction was temporarily overturned; however, the Supreme Court has since reinstated this conviction, rendering this claim of error meritless.¹¹ This voluntary manslaughter conviction is valid for purposes of finding the aggravating circumstance at 42 Pa.C.S. § 9711(d)(12).

XVIX. PETITIONER'S CLAIM THAT VACATION OF HIS SENTENCE MUST OCCUR BECAUSE HIS SCHUYLKILL COUNTY HOMICIDE CONVICTION WAS INVALID LACKS MERIT

With respect to Petitioner's Schuylkill County conviction, the Supreme Court affirmed the denial of post-conviction relief on May 2, 2006.¹² The convictions considered by the jury in York County have been validated by the Supreme Court and were properly considered by the jury. Thus, this assignment of error lacks merit.

XXIII. PETITIONER'S CLAIM THAT THE METHODOLOGY UTILIZED BY THE SUPREME COURT TO CONDUCT PROPORTIONALITY REVIEW IS MERITLESS

XXIV. PETITIONER'S CLAIM THAT THE SUPREME COURT FAILED TO MEANINGFULLY REVIEW THE ENTIRE RECORD IN THIS CASE FOR PASSION, PREJUDICE, OR OTHER ARBITRARY FACTORS IS MERITLESS

Petitioner presented identical Issues XXIII and XXIV to the Supreme Court of Pennsylvania in his appeal from the denial of PCRA relief in Schuylkill County, which the Supreme Court rejected there. See *Spotz*, A.2d at 1248-1250. We believe that these two claims fail for the same reasons as stated by the Pennsylvania Supreme Court in that case.

XXV. COUNSEL WAS NOT INEFFECTIVE FOR NOT PRESENTING A SECTION 110 CLAIM TO BAR THE CONSPIRACY PROSECUTION IN YORK COUNTY

We concur with the Commonwealth that this claim is simply a rehashing of an issue previously litigated by the Supreme Court in Petitioner's direct appeal, and the only ineffective assistance of counsel aspect of this claim is that trial counsel should have raised the Section 110 claim under all available legal theories. In his direct appeal, Petitioner argued that the trial court erred when it denied the defense motion to quash the criminal charges pursuant to 18 Pa.C.S.A. §110. In the direct appeal, the Supreme Court held that the trial court correctly denied Petitioner's motion to quash. *Spotz*, at 1157-1159.

The Supreme Court of Pennsylvania has recognized that a claim cannot succeed through comparing in hindsight trial strategy employed with alternatives not taken. See *Commonwealth v. Washington*, 927 A.2d 586, 599-600 (Pa. 2007). This requires a conclusion that the alternatives not chosen offered a potential for success substantially greater than the tactics utilized. *Commonwealth ex. rel. Washington v. Mahoney*, 235 A.2d 349, 353, n. 8 (Pa. 1967).

Here, Petitioner does not specify what, if any, legal theories, would have been meritorious for trial/appellate counsel to have employed in order to raise a Section 110 claim, nor do we have any indication of how the failure to pursue any one of these theories cause Petitioner to experience prejudice. We do not believe Petitioner has shown that the underlying claim here has merit, so we find that this claim of error is fruitless.

XXIX. SPOTZ IS NOT ENTITLED TO RELIEF FROM HIS CONVICITON AND SENTENCE BECAUSE OF THE CUMULATIVE EFFECT OF THE ERRORS DESCRIBED IN HIS PCRA PETITION

Petitioner contends that because of the cumulative effect of the errors he describes in his PCRA petition, that he should be entitled to relief of his conviction and sentence. Petitioner refers to *Commonwealth v. Sattazahn* as the Supreme Court's recognition of, "the viability of a claim of error based upon the cumulative prejudicial effect of

errors that were not sufficiently prejudicial to warrant relief individually. Commonwealth v. Sattazahn, 952 A.2d 640, 670-71 (Pa. 2008).” With respect to the issue of Cumulative Effects of Alleged Errors and Ineffectiveness in Sattazahn, the Supreme Court states as follows:

Finally, Appellee offers several permutations of arguments resting on the cumulative effect of errors and ineffectiveness. To the degree that Appellee’s claims failed on merit or arguable merit, there is no basis for an accumulation claim. To the extent that the individual dispositions have centered on the absence of sufficient prejudice to give rise to relief on an individual basis, we are satisfied that prejudice would be lacking on a collective basis relative to those claims as well.

952 A.2d 640, 670-671 (Pa. 2008). We do not believe that this quoted portion of the Supreme Court’s opinion in Sattazahn recognizes precisely what Petitioner says it recognizes. Additionally, the Supreme Court has issued a litany of opinions in which this argument lacks merit. See Commonwealth v. Fisher, 813 A.2d 761, 773 (Pa. 2002)(citing Commonwealth v. Rompilla, 721 A.2d 786, 795 (Pa. 1998)(where individual claims of error fail for lack of merit, there could be no cumulative prejudicial effect when there was no harm in the first place)).

XXXIII. TRIAL COUNSEL WERE NOT INEFFECTIVE IN FAILING TO PRESERVE, RAISE OR BRIEF CLAIMS THAT THE COMMONWEALTH AND TRIAL COURT EXPLOITED PETITIONER’S PRO SE STATUS TO ENSURE THAT HE DID NOT RECEIVE A FAIR TRIAL

Petitioner avers that, “the Commonwealth repeatedly took unfair advantage of the fact that Petitioner was unrepresented and forced to proceed *pro se* in this case, embarking on a campaign of verbal and physical intimidation of Petitioner and making a host of objections it knew to be contrary to the law to take advantage of Petitioner’s inexperience and the unreasonable restrictions placed on standby counsel.” (See Petitioner’s post-hearing brief, p. 345). Thus, we believe this that issue simply rehashes Petitioner’s Issue II concerning what Petitioner deems improper restrictions on stand-by counsel to assist in Petitioner’s defense, and we incorporate our response to that Issue here and reach the same result in this appeal issue. We conclude that Petitioner received a fair trial, and that this appeal issue lacks merit.

XXXIV. THERE WAS NO DEAL BETWEEN THE COMMONWEALTH AND CHARLES CAROTHERS

Petitioner avers that a deal existed between the District Attorney’s Office and Charles Carothers, but he has not produced any evidence of the existence of such an agreement, nor whether the outcome of the proceedings would have been different if such a deal had been disclosed to the jury. Similar to Petitioner’s averments in Issue III regarding Ms. Noland, Petitioner must prove by a preponderance of the evidence that an agreement existed between the Commonwealth and Mr. Carothers, and that the introduction of evidence related to this agreement would have altered the outcome of the trial. 42 Pa.C.S.A. § 9543(a). Petitioner has presented no evidence of an actual agreement here.

Mr. Carothers testified at the PCRA hearing in this case as follows:

Attorney Zuckerman: What other concerns did you express to the district attorney or to the detectives?

Mr. Carothers: Well, I wasn’t really concerned about the Phillip D. case. That was over and done and I did have a deal in place for that.

Q: The Phillip D. case?

A: Yes.

Q: What was the deal?

A: To tell exactly what happened. That I was there and saw what happened, and I wouldn’t be charged at all. I told what happened. What I saw.

Q: And were you not charged in the Phillip D., Devenshire case, is that correct?

A: No, I wasn’t.

Q: Did you tell that to the detectives or the prosecutor that you already had a deal in the Phillip D. Devenshire case or the Samuel Thompson case?

A: I don’t think it was discussed. It was never brought up.

Q: Do you recall the prosecutor in this case expressing to you that you did not have any fears about being prosecuted?

Attorney Beck: Objection.

The Court: Sustained.

Q: Do you recall what the prosecutor told you regarding your involvement in the Spatz case?

A: Do I recall what she said?

Q: Yes.

Attorney Buck: Your Honor, I object.

The Court: I’ll sustain the objection.

Q: Tell us what she told you regarding your cooperation.

A: That if I am truthful, I have nothing to worry about. As long as I tell the truth, there is not a problem.

Q: That’s essentially what you say in this signed statement, is that correct?

A: I don’t know if that’s what it says in the statement. What I took it as, as

long as I told the truth - - as long as I told the truth, I wouldn't have nothing could come of telling the truth.

Q: Well, I am saying as long as you cooperate and tell us what you know, we won't bring any charges, is that how you understood?

A: I am not sure if the word was cooperation, but just to be forthcoming and honest maybe.

Q: But other than that your statement here is correct, your signed statement, and I am referring to what the prosecutor told you?

A: I signed that statement, but I don't remember telling it to you that maybe I did.

Q: But in your own words today if you tell the truth nothing bad would happen to you, is that your recollection as you stand here today?

A: Pretty much, yeah.

Q: By nothing bad meaning you weren't going to get charged anything involving the Spotz case?

A: No, if that's involved in the case then.

Q: Now, do you also remember somebody from the prosecution team in Cumberland County also coming to talk to you?

A: In Cumberland County?

Q: Do you recall also that they made certain assertions to you?

A: No.

Q: And I'll refer you to the second - - the first full paragraph of the last page before the Cumberland trial. That paragraph does that refresh your recollection?

A: And your question was?

Q: Does that refresh your recollection about what the Cumberland County detectives told you prior to your testimony in Cumberland County?

A: Mark was trying to blame it on me.

Q: I am referring to this. He told me as long as - -

Attorney Buck: I object to him reading the statement.

Attorney Zuckerman: As I stated before - -

The Court: All right. I'll sustain the objection.

Q: I am referring to the second sentence of the first full paragraph. Does that refresh your recollection? It starts, he told me - - do you see that sentence?

A: Yeah, I remember that.

Q: He told me as long as - - that last sentence, does that refresh your recollection?

A: Yeah.

Q: Okay. And is that your recollection what the Cumberland County detective told you?

Attorney Buck: Your Honor, I am going to object. I don't see how this is relevant to the York County trial. This happened after.

The Court: Overruled. Go ahead. You can answer.

Q: What is your present recollection of what Cumberland County detectives told you about whether or not you would be charged?

A: It was pretty much the same thing. As long as I told the truth, I didn't have to worry about nothing.

Q: You wouldn't have to worry about the charges. Do you recall where you were on February 1, 2007?

A: In jail.

Q: Was that Camp Hill?

A: Yeah.

Q: Do you remember who came to see you about this?

A: I think it was you.

Q: And do you remember - - you remember talking to me?

A: Yeah.

Q: Do you remember me writing down what you said?

A: I remember you writing it down, sure.

Q: Okay. And do you remember me showing it to you?

A: Showing me what you wrote?

Q: Yes.

A: I remember that. I don't remember actually reading. I remember you asking me to sign it. I was under the impression that what you wanted me here for was to simply, you know, tell that he was getting high. I didn't realize you were going to try and distort it or twist it and turn it, once again, back on me. So, I didn't think it was necessary to read what you wrote.

Q: Did you have an opportunity to read this before you signed it?

A: In my negligence I don't believe I read it.

Q: How about that part, I hereby certify the facts set forth before are true and correct to the best of my personal knowledge, information and belief. Did you sign this notwithstanding?

A: I certainly did. I signed it.

Q: You don't disavow I hereby certify the facts set forth above are true and correct under the penalty of perjury?

Attorney Buck: Objection.

The Court: I'll sustain the objection.

Q: Do you see where I am pointing at?

The Court: I sustained the objection.

Q: I am asking another question, Judge. I am referring to the bottom of the page. Each of these pages do you see typewritten aforementioned?

A: Yes.

Q: And just so we know is that type-written aforementioned you signed your name and dated it, correct?

A: Yes.

Q: And that was true then and it's true today?

Attorney Buck: Objection, argumentative.

The Court: Sustained.

Attorney Zuckerman: It's a question, Judge.

The Court: I sustained.

Q: Is it true today?

Attorney Buck: Objection.

The Court: Sustained.

Q: Was it true then?

Attorney Buck: Objection.

The Court: Sustained.

Q: If I may have one moment, Judge. It's been communicated to me Mr. Spotz had a question. If we could very briefly take that question and answer his concerns?

The Court: Go ahead.

Attorney Zuckerman: Thank you.

Q: Sir, were you ever charged with possession of a stolen car in relation to the Spotz case?

A: In what county?

Q: York County?

A: No.

Q: Cumberland County?

A: No.

Q: Were you ever charged in York or Cumberland County in relation to facilitating drug use by Mark Spotz?

A: No.

Q: Were you ever prosecuted in Cumberland or York County for possession of a firearm in relation to the prosecution of Mark Spotz?

A: No.

Q: Were you ever prosecuted in York or Cumberland County for spending proceeds in a robbery related to Mark Spotz case?

A: No.

Attorney Zuckerman: I have nothing else.

Attorney Buck: Mr. Carothers, when you first came in contact with Mark Spotz on February 2, 1995, that was in the evening, correct?

Mr. Carothers: Yes.

Q: Do you remember what time?

A: I believe around 8:00 or 9:00 I think.

Q: You stated that Mr. Zuckerman, in fact, wrote out this statement that he had signed February 1, of 2007?

A: Yes.

Q: Did he ever ask you to write a statement in your own handwriting?

A: No.

Q: Did he say why he was writing it out himself?

A: No.

Attorney Buck: I have no further

questions.

Attorney Zuckerman: On of the documents in front of you purports to be your signed statement typed out by police. The one you signed at the bottom.

Attorney Buck: I am going to object beyond the scope of cross.

Attorney Zuckerman: No, it's not.

The Court: Overruled. Go ahead.

Q: Okay. I believe it's 62 has your signature at the bottom?

A: 63, are you talking about?

Q: The one with your signature. You didn't type this document, did you?

A: No.

Q: But nevertheless, it bears your signature at the bottom, right?

A: Yes.

Q: And that one - - does that one have any kind of attestation that I hereby certify that the facts are true and correct to the best of my personal knowledge subject to perjury?

A: No, it doesn't.

Attorney Zuckerman: Thank you. I don't have - -

Q: But you didn't type that statement that he typed that for you, right?

A: Yes.

Q: Did they give you an opportunity to write out your own statement then - - my question is they type it and you looked it over and signed it, right?

Attorney Buck: It's been asked and answered, Your Honor.

The Court: Sustained.

Attorney Zuckerman: I have nothing further.

Attorney Buck: I have nothing further.

(N.T. PCRA hearing, pp. 484-495). This testimony does not amount to any evidence of an agreement between the Commonwealth and Mr. Carothers. Petitioner speculates that Mr. Carothers fabricated his testimony to falsely inculpate Petitioner because Mr. Carothers's liberty was at stake. Mr. Carothers, on the other hand, consistently denies the existence of a deal for his testimony, and Petitioner has not presented evidence to prove beyond a preponderance that a deal existed. Petitioner claims that in an act of quintessential bad faith, Commonwealth attorney Christy Fawcett destroyed her notes from her meeting with Mr. Carothers, and those notes may have contained, "the best evidence of the deal." (*See* Petitioner's post-hearing brief, p. 355). Whereas when Ms. Fawcett testified at the PCRA hearing, she was not certain that she even took notes at her meeting with Mr. Carothers, and she had no recollection of what the notes may have contained. (N.T. PCRA hearing, pp. 430-431). Petitioner's entire argument is pure speculation, and we

conclude that this issue lacks merit.

CONCLUSION

This Court has thoroughly reviewed all of the relevant pleadings and transcripts in this matter. We rely on and incorporate those pleadings and transcripts, including the within Opinion as its 1925(a) Opinion in the above-captioned matter.

BY THE COURT,

JOHN S. KENNEDY, Judge

Date: March 25, 2010

FOOTNOTES

¹ **Commonwealth v. Spotz**, 756 A.2d 1139 (Pa. 2000).

² **Spotz v. Pennsylvania**, 121 S.Ct. 1381 (2001).

³ Appellant was tried separately and sentenced to death for his crimes arising from the killing of June Ohlinger in Schuylkill County. This Court affirmed the death sentence. See *Commonwealth v. Spotz*, 552 Pa. 499, 716 A.2d 580 (Pa. 1998). Appellant was also convicted of first degree murder in Cumberland County and sentenced to death for the murder of Betty Amstutz, a murder which occurred while appellant was attempting to evade capture for the murder of Ms. Gunnet. That judgment is the subject of a separate appeal pending in this Court. *Commonwealth v. Spotz*, No. 202 Capital Appeal Docket. We note that, pursuant to the ruling of the trial court here, evidence of the subsequent killing of Betty Amstutz in Cumberland County was not introduced at this trial.

⁴ Claim XXX asserts that Petitioner is entitled to an evidentiary hearing on his claims (it was filed within the Amended PCRA petition on August 21, 2001).

⁵ Appellant's ineffective assistance of counsel claims include as follows: I. Mark Spotz is entitled to a new trial because his waiver of counsel at the guilt stage of trial was not voluntary, knowing and intelligent; II. Mark Spotz is entitled to a new trial because the trial court violated his rights to self-representation by improperly restricting stand-by counsel's ability to assist in his defense; III. Petitioner was denied due process of law and the right to confront his accuser when the Commonwealth failed to disclose exculpatory evidence and failed to correct false and misleading evidence that would have impeached the testimony of the Commonwealth's key witness, Petitioner's co-defendant; IV. Mark Spotz is entitled to a new trial because the trial court violated due process, *Commonwealth v.*

Santiago, and Petitioner's right to present a defense when it failed to disclose Children and Youth Services documents that contained mitigating evidence and evidence that was material to evaluating and presenting mental health defenses to first degree murder; V. Petitioner is entitled to relief from his conviction and sentence because counsel was ineffective for failing to investigate, develop and present guilt phase defenses concerning Petitioner's intoxication and mental health deficits at the time of the offense...VII. Trial counsel was ineffective for failing to conduct an appropriate pre-trial investigation into the physical evidence and the resulting flaws in the Commonwealth's theory of the case, and in failing to obtain a forensic expert to evaluate and rebut the Commonwealth's forensic expert...XI. Trial counsel was ineffective for failing to investigate, develop and present available mitigating evidence in preparation for Petitioner's penalty phase; XII. Trial counsel was ineffective for failing to present rebuttal evidence establishing that the Commonwealth improperly relied upon non-violent burglary convictions to establish the significant history of violent felony convictions aggravating circumstance.

⁶ These plea colloquies comported with the dictates of **Commonwealth v. Starr**, 664 A.2d 1326 (Pa. 1995).

⁷ **Commonwealth v. Spotz**, 759 A.2d 1280 (2000).

⁸ 42 Pa.C.S. §9543(a); **Commonwealth v. Spotz**, 896 A.2d 1191, 1214 (Pa. 2006).

⁹ **Commonwealth v. Spotz**, 794 Criminal 1995 (June 26, 2008 Order and supporting Opinion, Bayley, J.)

¹⁰ **Spotz v. Commonwealth**, 896 A.2d 1191, 1214-1217 (Pa. 2006).

¹¹ See **Commonwealth v. Spotz**, 870 A.2d 822 (Pa. 2005), *cert. denied*, 546 U.S. 984 (2005).

¹² See **Commonwealth v. Spotz**, 896 A.2d 1191 (Pa. 2006).

ESTATE NOTICES

ADMINISTRATOR'S AND EXECUTORS NOTICES

FIRST PUBLICATION

DAVID A. BOWMAN late of Paradise Twp., York Co., PA, deceased. Nancy A. Zumbum, c/o 119 West Hanover Street, Spring Grove, PA 17362, Executrix. Craig A. Diehl, Esquire, Attorney. 4-22-3t

J. JAMES BURG a/k/a JOEL JAMES BURG late of Springettsbury Twp., York Co., PA, deceased. J. Gregory Burg, c/o 25 North Duke Street, York, PA 17401, Executor. SMITH, ANDERSON, BAKER & LONG. Charles J. Long, Esquire, Attorney. 4-22-3t

CHARLES BLAINE COOPER late of Glen Rock Borough, York Co., PA, deceased. Kevin C. Cooper, 1953 Cooper Road, New Freedom, PA 17349, Administrator. STOCK AND LEADER. J. Ross McGinnis, Esquire, Attorney. 4-22-3t

HARRY L. CUSTER a/k/a HARRY LEWIS CUSTER late of Penn Twp., York Co., PA, deceased. Harry Douglas Custer, 70 Knisley Drive, Hanover, PA 17331, Administrator. Stonesifer and Kelley, P.C., Attorney. 4-22-3t

JOHN CLEAVEN EVERETT late of East Manchester Twp., York Co., PA, deceased. Christine E. Scott, c/o P.O. Box 312, Stewartstown, PA 17363, Executrix. Laura S. Manifold, Esquire, Attorney. 4-22-3t

DAVID M. FISSEL late of Dillsburg, York Co., PA, deceased. Rory R. Stine, 2300 Cobble Hill Terrace, Silver Spring, MD 20902, Executor. Knupp Law Offices, LLC. Robert L. Knupp, Esquire, Attorney. 4-22-3t

ARLENE E. HEFNER late of Hanover Borough, York Co., PA, deceased. Arlene Reuss, c/o 250 York Street, Hanover, PA 17331, Executrix. Gates & Gates, P.C. Samuel A. Gates, Esquire, Attorney. 4-22-3t

ESTHER A. HERR late of York Co., PA, deceased. Paul Richard Herr, c/o One West Marketway, York, PA 17401, Executor. Jeffrey T. Bitzer, Esquire, Attorney. 4-22-3t

ALINE B. KLUSSMAN late of Springettsbury Twp., York Co., PA, deceased. Patricia C. Bankenstein, c/o 48 South Duke Street, York, PA

17401, Executrix. Bruce C. Bankenstein, Esquire, Attorney. 4-22-3t

JEANETTE E. KOONTZ late of York Co., PA, deceased. George John Koontz, 2016 Yingling Drive, Spring Grove, PA 17362, Administrator. MOONEY & ASSOCIATES. George W. Swartz, II, Esquire, Attorney. 4-22-3t

ALICE I. KREITZ late of Shrewsbury Borough, York Co., PA, deceased. Terrence L. Kreitz, c/o 119 West Hanover Street, Spring Grove, PA 17362, Executor. Craig A. Diehl, Esquire, Attorney. 4-22-3t

BEATRICE S. LAUBER late of Windsor Twp., York Co., PA deceased. Sandra J. Kelley, c/o 2025 E. Market Street, York, PA 17402, Executrix. Richard H. Mylin, III, Esquire, Attorney. 4-22-3t

RUTH A. RISHEL a/k/a RUTH ANNA RISHEL late of Warrington Twp., York Co., PA, deceased. Bonnie R. Shultz, 655 Yeager Road, Wellsville, PA 17365, Executrix. Wix, Wenger & Weidner. David R. Getz, Esquire, Attorney. 4-22-3t

KATHRYN B. ROSENZWEIG late of York Co., PA, deceased. Reda M. Kaufman and Janet L. Neiman, c/o 1434 W. Market Street, York, PA 17404, Co-Executrices. John W. Stitt, Esquire, Attorney. 4-22-3t

MONICA SCHMEYER a/k/a MONICA L. SCHMEYER late of Manheim Twp., York Co., PA, deceased. Elsa A. Schmeyer, 203 K West Clearview Road, Hanover, PA 17331, Executrix. MILLER & SHULTIS, P.C. Timothy J. Shultis, Esquire, Attorney. 4-22-3t

PHYLLIS R. SHANK a/k/a PHYLLIS RUTH SHANK late of North York Boro, York Co., PA, deceased. Richard R. Shank, Jr., 124 Laurel Street, North York, PA 17404, Executor. 4-22-3t

ANN G. SHIRES late of York Co., PA, deceased. Elizabeth A. Lusk, c/o 2000 Linglestown Road, Suite 202, Harrisburg, PA 17110, Personal Representative. Hazen Elder Law, Attorney. 4-22-3t

EDWARD J. WILLIAMS a/k/a EDWARD J. WILLIAMS, SR. late of Conewago Twp., York Co., PA, deceased. Edward J. Williams a/k/a Edward J. Williams, Jr., c/o 32 N. Duke St., P.O. Box 544, York, PA 17405, Executor. Morris & Vedder. Rand A. Feder, Esquire, Attorney. 4-22-3t

SECOND PUBLICATION

LOIS A. ALBRIGHT late of Carroll Twp., York Co., PA, deceased. Evelyn M. Silvis, 366 Franklin Church Road, Dillsburg, PA 17019, Executrix. The Wiley Group, P.C. Jan M. Wiley, Esquire, Attorney. 4-15-3t

MARGARET JUNE BARRON late of Windsor Twp., York Co., PA, deceased. Stephen G. Barron, Diana Barron Lane and David J. Barron, c/o 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356, Executors. Eveler & Eveler LLC, Attorney.

4-15-3t

MILLIE M. BULL a/k/a MILLIE MAXWELL BULL a/k/a MILLIE LOUISE BULL late of Codorus Twp., York Co., PA, deceased. Susan R. Bull, 4287 Fissels Church Road, Glen Rock, PA 17327, Administratrix. Kristina A. Bange, Esquire, Attorney.

4-15-3t

KENNETH E. FURMAN late of Mount Wolf Borough, York Co., PA, deceased. Teddy P. Furman, 77 S. 6th Street, P.O. Box 77, Mt. Wolf, PA 17347, Executor. Gregory H. Gettle, Esquire, Attorney.

4-15-3t

CATHERINE P. GARRETT late of Fairview Twp., York Co., PA, deceased. Thomas A. Garrett, c/o 3901 Market Street, Camp Hill, PA 17011-4227. COYNE & COYNE, P.C. Lisa Marie Coyne, Esquire, Attorney.

4-15-3t

J CLIFFORD GEHR a/k/a JACOB C. GEHR and JACOB GEHR late of Spring Garden Twp., York Co., PA, deceased. Sharon L. Shepard, c/o 1946 Carlisle Road, York, PA 17408, Administratrix, c.t.a. John M. Hamme, Esquire, Attorney.

4-15-3t

ROBERT LEE GOSSWEILER a/k/a ROBERT L. GOSSWEILER a/k/a ROBERT L. GOSSWEILER, SR. late of Hopewell Twp., York Co., PA, deceased. Carol V.S. Gossweiler, c/o P.O. Box 312, Stewartstown, PA 17363, Executrix. Laura S. Manifold, Esquire, Attorney.

4-15-3t

LLOYD G. GRAHAM late of Red Lion Borough, York Co., PA, deceased. Lucretia Z. Clark, 2342 S. Queen Street, York, PA 17402 and Betty M. Saylor, 474 Salem Church Road, Windsor, PA 17366, Co-Executors. LAUCKS & LAUCKS, LLP. David M. Laucks, Esquire, Attorney.

4-15-3t

RUTH MARIE HALL late of Penn Twp., York Co., PA, deceased. Leland R. Hall, c/o 120 Pine Grove Commons, York, PA 17403, Executor. Elder Law Firm of Robert Clofine. Robert Clofine, Esquire, Attorney.

4-15-3t

JAMES L. HAUPT late of Fairview Twp., York Co., PA, deceased. Elda M. Burnell, 240 Lincoln Drive, New Cumberland, PA 17070, Executrix. Snowiss, Steinberg & Faulkner, LLP. Michael K. Hanna, Sr., Esquire, Attorney.

4-15-3t

ATHALENE M. MICKLEY late of York City, York Co., PA, deceased. Lona D. Seipple, c/o 50 East Market Street, Hellam, PA 17406, Executrix. Donald B. Swope, Esquire, Attorney.

4-15-3t

MILDRED J. HAYWARD late of Windsor, York Co., PA, deceased. Steven R. Tompkins, 202 Pine

Ct., Red Lion, PA 17356, Executor. 4-15-3t

MARY A. KAUFMAN late of Hanover Borough, York Co., PA, deceased. Barbara A. Boyer, 229 George St., Hanover, PA 17331, Executrix. Guthrie, Nonemaker, Yingst & Hart. Matthew L. Guthrie, Esquire, Attorney.

4-15-3t

DALE E. KELLER a/k/a DALE EUGENE KELLER late of Lower Windsor Twp., York Co., PA, deceased. Tracey D. Keller and Mark A. Keller, c/o 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356, Executors. Eveler & Eveler LLC, Attorney.

4-15-3t

STEVEN M. KING late of Franklin Twp., York Co., PA, deceased. John R. King, 1417 Frost Road, Mechanicsburg, PA 17055 or Shirley L. Hawkins, 726 W. Siddonsburg Road, Dillsburg, PA 17019, Executors. The Wiley Group, P.C. Jan M. Wiley, Esquire, Attorney.

4-15-3t

LETITIA E. KNILEY late of Manchester Twp., York Co., PA, deceased. Kenneth L. Kniley, 553 Locust Street, Columbia, PA 17512, Executor. Mountz & Kreisler Law Offices, David T. Mountz, Esquire, Attorney.

4-15-3t

KATHY MCKINNEY late of Dillsburg, Franklin Twp., York Co., PA, deceased. Trina McKinney, 175 East 93rd Street, 4B, New York, NY, 10128 and Christel McKinney, 489 E. Elmwood Avenue, Mechanicsburg, PA 17055, Executors.

4-15-3t

ESTELLE M. MILLER late of Hanover Borough, York Co., PA, deceased. Richard J. Miller and James A. Miller, c/o 215 Baltimore Street, Hanover, PA 17331, Co-Executors. Shultz Law Firm, LLC. Thomas M. Shultz, Esquire, Attorney.

4-15-3t

LINDA M. MYERS late of Hanover Borough, York Co., PA, deceased. Lisa A. Myers, 24 Highland Avenue, Hanover, PA 17331 and Jayne S. Myers Wildasin, 1672 Art Drive, Hanover, PA 17331, Executrices. Donald W. Dorr, Esquire, Attorney.

4-15-3t

BENJAMIN F. PRICE, JR. late of Codorus Twp., York Co., PA, deceased. Allen S. Redding, c/o 250 York Street, Hanover, PA 17331, Administrator. Gates & Gates, P.C. Samuel A. Gates, Esquire, Attorney.

4-15-3t

ANDREW M. RILL late of Warrington Twp., York Co., PA, deceased. Sandra G. Kline, c/o Ten East High Street, Carlisle, PA 17013, Administratrix. MARTSON, LAW OFFICES. Ivo V. Otto III, Esquire, Attorney.

4-15-3t

ISAAC L. RUPPERT a/k/a ISAAC LEROY RUPPERT a/k/a ISSAC LEROY RUPPERT a/k/a ISAAC RUPPERT late of Lower Windsor Twp., York Co., PA, deceased. Reuben L. Ruppert and Daniel J. Ruppert, c/o 40 South Duke Street, York, PA 17401-1402, Co-Executors. Garber & Garber.

John M. Garber, Esquire, Attorney. 4-15-3t

JUNE L. SHEFFER late of West York Borough, York Co., PA, deceased. Bradley L. Bennett, Jr., c/o 17 East Market Street, York, PA 17401, Executor. Blakey, Yost, Bupp & Rausch, LLP. David A. Mills, Esquire, Attorney. 4-15-3t

ANN G. SHIRES late of York Co., PA, deceased. Elizabeth A. Lusk, c/o 2000 Linglestown Road, Suite 202, Harrisburg, PA 17110, Personal Representative. Hazen Elder Law, Attorney. 4-15-3t

SARAH M. SMITH late of York Co., PA, deceased. Dennis Walter Smith, c/o One West Marketway, York, PA 17401, Executor. Jeffrey T. Bitzer, Esquire, Attorney. 4-15-3t

BEATRICE F. STORM a/k/a BEATRICE VIOLA STORM late of Hanover Borough, York Co., PA, deceased. Rodney L. Storm, 700 Linden Avenue, Hanover, PA 17331, Administrator. Stonesifer and Kelley, P.C., Attorney. 4-15-3t

OLIVIA C. VAN HEININGEN a/k/a OLIVIA C. VAN HEININGER late of Spring Garden Twp., York Co., PA, deceased. John H. Frederick, Jr. and Dirk van Heiningen, Jr., c/o 40 South Duke Street, York, PA 17401-1402, Co-Executors. Garber & Garber. John M. Garber, Esquire, Attorney. 4-15-3t

DELMA L. WINAND late of York City, York Co., PA, deceased. William Winand, c/o 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356, Executor. Eveler & Eveler LLC, Attorney. 4-15-3t

THIRD PUBLICATION

BEATRICE I. UPLINGER f/k/a BEATRICE I. DECKER late of Dillsburg Borough, York Co., PA, deceased. Joshua J. Sampson, 11C North Chestnut Street, Dillsburg, PA 17019, Executor. Jane M. Alexander, Esquire, Attorney. 4-8-3t

JUSTIN DAVID GILBERT late of West Manheim Twp., York Co., PA, deceased. Linda C. Gilbert and David L. Gilbert, 285 Vegas Drive, Hanover, PA 17331, Co-Administrators. STOCK AND LEADER. Thomas M. Shorb, Esquire, Attorney. 4-8-3t

ETHEL GOODFELLOW a/k/a ETHEL LOUISE GOODFELLOW late of Hanover Borough, York Co., PA, deceased. Robert W. Yingling, 6789 York Road, Abbottstown, PA 17301, Executor. BUCHEN, WISE & DORR. Donald W. Dorr, Esquire, Attorney. 4-8-3t

RANDY M. HENGST late of Springfield Twp., York Co., PA, deceased. Sandra J. Hengst, 2905 Seitzville Road, Seven Valleys, PA 17360, Administratrix. Dorothy Livaditis, Esquire, Attorney. 4-8-3t

GEORGE W. HOSHALL late of the New Freedom Borough, York Co., PA, deceased. Marie A. Hoshall, 100 Freedom Avenue, New Freedom, PA 17349, Executrix. Gates, Halbruner, Hatch & Guise, P.C. Clifton R. Guise, Esquire, Attorney. 4-8-3t

ARLENE O. KELLER late of Shrewsbury Twp., York Co., PA, deceased. Barry A. Keller, c/o 110 South Northern Way, York, PA 17402, Executor. Paul G. Lutz, Esquire, Attorney. 4-8-3t

FRED H. LLOYD, JR. late of Windsor Twp., York Co., PA, deceased. Margaret E. Lloyd, c/o 137 East Philadelphia Street, York, PA 17401-1424, Administratrix. MILLER, POOLE, & LORD, LLP. John D. Miller, Jr., Esquire, Attorney. 4-8-3t

FRANK SALVATORE RESTIVO a/k/a FRANK S. RESTIVO late of Hopewell Twp., York Co., PA, deceased. Mark A. Restivo, 3013 Misty Wood Lane, Ellicott City, MD 21042, Administrator. Gilbert G. Malone, Esquire, Attorney. 4-8-3t

ANN G. SHIRES late of York Co., PA, deceased. Elizabeth A. Lusk, c/o 2000 Linglestown Road, Suite 202, Harrisburg, PA 17110, Personal Representative. Hazen Elder Law. 4-8-3t

CIVIL NOTICES

Philadelphia, PA 19109
(215) 790-1010

4-22-1t

Solicitor

ACTION IN MORTGAGE FORECLOSURE

CHASE HOME FINANCE LLC, Plaintiff
v.
JOYCE A JONES
a/k/a JOYCE ANN JONES, Defendant

Number 2010-SU-000419-06

TO: JOYCE A JONES A/K/A JOYCE ANN JONES

**TYPE OF ACTION:
CIVIL ACTION/COMPLAINT IN
MORTGAGE FORECLOSURE**

PREMISES SUBJECT TO FORECLOSURE:
1159 LEDGE DRIVE, YORK, PENNSYLVANIA 17408

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service
137 East Market Street
York, PA 17401
(717) 854-8755

McCABE, WEISBERG & CONWAY, P.C.

TERRENCE J. McCABE, Esquire - ID #16496
MARC S. WEISBERG, Esquire - ID #17616
EDWARD D. CONWAY, Esquire - ID #34687
MARGARET GAIRO, Esquire - ID #34419
123 South Broad Street, Suite 2080

GMAC MORTGAGE, LLC
Vs.
LISA MARIE CHENIER

NO. 2009-SU-006040-06

NOTICE

TO LISA MARIE CHENIER:

You are hereby notified that on NOVEMBER 24, 2009, Plaintiff, GMAC MORTGAGE, LLC, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of YORK County Pennsylvania, docketed to No. 2009-SU-006040-06. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 6380 LAUREN LANE, SPRING GROVE, PA 17362 whereupon your property would be sold by the Sheriff of YORK County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

YORK COUNTY
LAWYER REFERRAL SERVICE
YORK LEGAL REFERRAL
137 EAST MARKET STREET
YORK, PA 17401
717-854-8755 x201

PHELAN HALLINAN & SCHMIEG, LLP.
Suite 1400
One Penn Center @ Suburban Station
Philadelphia, PA 19103-1814
215-563-7000
Main Fax: 215-563-7009

4-22-1t Solicitor

The corporation has been incorporated under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania Act of December 22, 1988.

BRIAN MARSHALL

4-22-1t Solicitor

**ADMINISTRATIVE
SUSPENSION NOTICE**

Notice is hereby given that LAURIE ANN RICHARDSON of York County has been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated March 3, 2010, pursuant to Rule 219, Pa.R.D.E., which requires that all attorneys admitted to practice in any court of this Commonwealth must pay and annual assessment of \$200.00. The Order became effective April 2, 2010.

SUZANNE E. PRICE

Attorney Registrar
The Disciplinary Board of the
Supreme Court of Pennsylvania

4-22-1t

**CERTIFICATE OF ORGANIZATION
OF DOMESTIC LIMITED
LIABILITY COMPANY**

NOTICE is hereby given of the filing of the Certificate for Domestic Limited Liability Company with the Department of State, Commonwealth of Pennsylvania, on April 8, 2010, for the purpose of obtaining a Certificate of Organization for a proposed limited liability company, to be organized under the provisions of the Business Corporation Law of 1988. The name of the limited liability company is FISHER SP PROPERTY, LLC. The location of the initial registered office of the limited liability company is 232 S. George Street, York, Pennsylvania 17401.

LAUCKS & LAUCKS, LLP

DAVID M. LAUCKS

4-22-1t Solicitor

ARTICLES OF INCORPORATION

NOTICE is hereby given that Articles of Incorporation and Amendments thereto were filed with the Commonwealth of Pennsylvania. The name of the corporation is HANOVER STREET ELEMENTARY PTO INC. The corporation has been incorporated under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania Act of December 22, 1988, as amended.

AMY E.W. EHRHART, Esquire

4-22-1t Solicitor

CHANGE OF NAME

IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA

IN RE: GABRIEL BENJAMIN RAMOS minor child by REBECCA E. JONES, natural mother and adult individual

NO. 2009-SU-003830-13

NOTICE is hereby given that on July 31, 2009, the Petition of GABRIEL BENJAMIN RAMOS by Rebecca E. Jones, natural mother of GABRIEL BENJAMIN RAMOS to GABRIEL BENJAMIN JONES.

The Court has fixed the date of Wednesday, May 12, 2010 at 11:00 A.M. in Courtroom No. 6, Sixth Floor, York County Judicial Center, 45 North George Street, York, Pennsylvania, as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the

NOTICE is hereby given that Articles of Incorporation were filed with the Commonwealth of Pennsylvania. The name of the corporation is TROJAN TOUCHDOWN CAMP, INC.

Petitioner should not be granted.

4-22-1t

Solicitors

THE HONORABLE
PENNY L. BLACKWELL, Judge

JOHN J. MOONEY, III, Esquire

4-22-1t

Solicitors

IN RE: DANIEL ELMO RAMOS minor child by
REBECCA E. JONES, natural mother and adult
individual

NO. 2009-SU-003829-13

NOTICE is hereby given that on July 31, 2009,
the Petition of DANIEL ELMO RAMOS by
Rebecca E. Jones, natural mother of DANIEL
ELMO RAMOS to DANIEL GREGORY
JLMO.

The Court has fixed the date of Wednesday,
May 12, 2010 at 11:00 A.M. in Courtroom No. 6,
Sixth Floor, York County Judicial Center, 45
North George Street, York, Pennsylvania, as the
time and place for the hearing on said Petition,
when and where all interested parties may appear
and show cause, if any, why the request of the
Petitioner should not be granted.

THE HONORABLE
PENNY L. BLACKWELL, Judge

JOHN J. MOONEY, III, Esquire

4-22-1t

Solicitors

IN RE: BENJAMIN HARRIS RAMOS minor
child by REBECCA E. JONES, natural mother
and adult individual

NO. 2009-SU-003831-13

NOTICE is hereby given that on July 31, 2009,
the Petition of BENJAMIN HARRIS
RAMOS by Rebecca E. Jones, natural mother of
BENJAMIN HARRIS RAMOS to BENJAMIN
HARRIS JONES.

The Court has fixed the date of Wednesday,
May 12, 2010 at 11:00 A.M. in Courtroom No. 6,
Sixth Floor, York County Judicial Center, 45
North George Street, York, Pennsylvania, as the
time and place for the hearing on said Petition,
when and where all interested parties may appear
and show cause, if any, why the request of the
Petitioner should not be granted.

THE HONORABLE
PENNY L. BLACKWELL, Judge

JOHN J. MOONEY, III, Esquire

CIVIL TRIAL LIST

IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA

CIVIL TRIAL LIST COMMENCING
MAY 3, 2010

CALL OF THE CIVIL TRIAL LIST WILL BE
IN COURTROOM NO. 9

1. Michelle Brown and Michael Brown,
Individually and as co-Administrators of the
Estate of Mitchel Brown, Deceased, and as
Parents and Natural Guardians of Zachary M.
Brown and Jacob L. Brown, Minors vs James E.
Kirby, M.D., Springdale Pediatrics; Diana L.
Lynn, R.N., and VNA Home Health – Wellspan;
2008-SU-03460-01; Thomas Hall for Plaintiffs;
Christopher A. Stump for Defendants.

SCHEDULED TO BE TRIED THE WEEK OF
MAY 10, 2010, BEFORE THE HONORABLE
JOHN W. THOMPSON, JR.

2. John W. Amig and Angelique Amig vs
Jerome Fuhrman; 2008-SU-5884-Y01; Judith K.
Morris for Plaintiffs; George H. Eager for
Defendant.

SCHEDULED TO BE TRIED THE WEEK OF
MAY 3, 2010

3. Michael R. Souders and Alana L. Souders vs.
Jessie L. Meadows; 2007-SU-1537-Y01; Daniel
E. P. Bausher for Plaintiffs; Richard H. Wix for
Defendant.

SCHEDULED TO BE TRIED THE WEEK
BEGINNING MAY 10, 2010

4. Lynwood Corporation, Inc. vs Georgia M.
Bathon vs Grandview Estates, LLC; 2008-SU-
4881-Y01; Kurt A. Blake for Plaintiff; Arthur J.
Becker for Defendant; Marc Roberts for
Additional Defendant.

NON-JURY TRIAL SPECIALLY SCHEDULED
FOR WEDNESDAY, MAY 26, 2010, AND
THURSDAY, MAY 27, 2010

5. Laura M. Murphy vs Nathaniel C. Hammer-
stein; 2008-SU-05638-Y01; Leah Graff for
Plaintiff; Paul W. Grego for Defendant.

SCHEDULED FOR TRIAL THE WEEK COM-
MENCING MAY 3, 2010, BEFORE JUDGE
THOMPSON

6. Fred W. Read and Kimberly A. Read vs
Robert Ilyes, Jr.; 2009-SU-0072-Y01; Timothy
L. Salvatore for Plaintiffs and Todd B. Narvol for
Defendants.

SCHEDULED FOR TRIAL THE WEEK COM-

MENCING MAY 10, 2010

7. Keller Agency, Inc. vs Vernon L. Dietz II a/k/a Lee Dietz, David E. Bluett, Brooke Insurance, and Financial Services; 2007-SU-1659-Y07; Charles B. Calkins for Plaintiff; Bradley J. Leber, Christopher Ferro for Defendants.

SCHEDULED TO BE TRIED THE WEEK COMMENCING MAY 3, 2010, BEFORE JUDGE THOMPSON

8. David Cruz, Pro Se, and Laura Samuel Cruz, Pro Se vs Schaad Detective Agency; 2007-SU-01897-Y01; Inmate No. 97A7253, Sullivan Correctional Institution, P.O. Box 116, Fallsburg, NY 12773-0116 for Plaintiff; 930 West 30th St., Apartment 12C3, Brooklyn, NY 11224, (347) 587-1922 for Additional Plaintiff; L.C. Heim for Defendant.

SPECIFICALLY SCHEDULED FOR A NON-JURY TRIAL BEFORE THE HONORABLE RICHARD K. RENN ON MAY 19, 2010, 9:30 a.m.

ALL PARTIES ARE EXCUSED FROM ATTENDING THE CALL OF THE LIST

9. Mary Krug vs Zachary McCrary and Jennifer Dunnigan; 2007-SU-2778-01; Jill Mezyk for Plaintiff; Michael Wagman and Seth Black for Defendants.

SPECIALLY SCHEDULED TO BE TRIED ON MAY 4, 2010

10. Shawna Quarles-Johnson and Harry W. Johnson vs. Lynn Kandel and Admiral-Merchants Motor Freight, Inc. vs Harry W. Johnson; 2007-SU-2755-Y01; Michael E. Kosik for Plaintiffs; Curtis Stambaugh for Defendants; Joseph F. Murphy for Additional Defendant.

SCHEDULED FOR TRIAL THE WEEK COMMENCING MAY 10, 2010, BEFORE JUDGE THOMPSON

11. Performance Group vs Lifestyle Foods, Inc.; 2008-SU-002247-01; Chris Froba for Plaintiff; Anthony T. Bowser for Defendant.

NON-JURY TRIAL SPECIFICALLY SCHEDULED FOR MAY 24, 2010, AT 9:30 A.M.

J. ROBERT CHUK

4-22-1t District Court Administrator

**COMPLAINT - CIVIL ACTION
NOTICE TO DEFEND**

VANDERBILT MORTGAGE AND FINANCE, INC., PLAINTIFF v. KENNETH STERLING A/K/A KENNETH L. STERLING, JR. and

CHERYL STERLING A/K/A CHERYL A. STERLING, LOT 81 612 RANGE END RD., DILLSBURG, PA 17019, DEFENDANTS

NO: 2010-SU-000060-04

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim of relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service
137 East Market Street
York, PA 17401
(717) 854-8755

AVISO

LE HAN DEMANDADO A USTED EN LA CORTE. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus edades u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE

INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

Lawyer Referral Service
137 East Market Street
York, PA 17401
(717) 854-8755

RICHARD M. SQUIRE & ASSOC., LLC

RICHARD M. SQUIRE, Esquire
M. TROY FREEDMAN, Esquire
One Jenkintown Station, Suite 104
115 West Ave.
Jenkintown, PA 19046
Tel: 215-886-8790
Fax: 215-886-8791

4-22-1t Attorneys for Plaintiff

DISSOLUTION NOTICE

NOTICE is hereby given that CHALLENGE JOURNAL, INC., a Pennsylvania Corporation, whose registered address is 990 Clubhouse Road, York, PA 17403, has filed Articles of Dissolution with the Department of State, Commonwealth of Pennsylvania, and in winding up business.

STOCK AND LEADER

W. BRUCE WALLACE, Esquire

4-22-1t Solicitor

FICTITIOUS NAME

Notice is hereby given a certificate was or will be filed under the Fictitious Name Act approved May 24, 1945 in the Office of the Secretary of the

Commonwealth of Pennsylvania, setting forth that Schizoid Man Enterprises, LLC, 4165 Mount Pisgah Road, York, PA 17406 are the only persons owning or interested in a business, the character of which is Growth and Sale of Quality Flower and Vegetable Plants and that the name, style and designation under which said business is and will be conducted is GREEN VALLEY GREENHOUSES and the location where said business is and will be located is 4165 Mount Pisgah Road, York, PA 17406.

4-22-1t Solicitor

NOTICE is hereby given that an Application for Registration of Fictitious Name has been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, pursuant to the Fictitious Names Act, for M&M CHEM-DRY having a principal place of business at 416 Friendship Lane, Hellam, PA 17406. The entity interested in said name is MINNICH'S CARPET CLEANING, LLC, 416 Friendship Lane, Hellam, PA 17406.

BLAKEY, YOST, BUPP & RAUSCH, LLP

BRADLEY J. LEBER, Esquire

4-22-1t Solicitor

Notice is hereby given a certificate was or will be filed under the Fictitious Name Act approved May 24, 1945 in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Schizoid Man Enterprises, LLC, 4165 Mount Pisgah Road, York, PA 17406 are the only persons owning or interested in a business, the character of which is Growth and Sale of Flower and Vegetable Plants and that the name, style and designation under which said business is and will be conducted is RIDDLE'S GREEN VALLEY GREENHOUSES and the location where said business is and will be located is 4165 Mount Pisgah Road, York, PA 17406.

4-22-1t Solicitor

NOTICE is hereby given that on April 8, 2010 an application for registration was filed under the Fictitious Name Act of 1982-295 (54 PA.C.S. Sec. 311) in the Office of the Secretary of the Commonwealth of Pennsylvania, setting forth that Subs, Inc., is the corporation owning or interested in a business, the character of which is the purchase and sale of crabs, the name, style and designation under which said business is and will be conducted is RUDY'S CRABS and the location where said business is and will be conducted is 204G St. Charles Way, York, PA 17402.

L.C. HEIM, Esquire

4-22-1t

Solicitor

after the deed has been photographed and returned. (Approximately 6 months)

4. Please note the properties were exposed for Sale on September 24, 2009. The respective properties were advertised for Upset Sale in accordance with the requirements of the Real Estate Sale Law in effect at the time of the sale.

5. It is strongly recommended that prospective purchasers have examination made of the title to any property in which they may be interested. Every reasonable effort has been made to keep the proceedings free from error. However, in every case, THE PROPERTY IS OFFERED FOR SALE BY THE TAX CLAIM BUREAU WITHOUT ANY GUARANTEE OR WARRANTY WHATSOEVER EITHER AS TO EXISTENCE, CORRECTNESS OR OWNERSHIP, SIZE BOUNDARIES, LOCATION STRUCTURES OR LACK OF STRUCTURES UPON THE LAND, LIENS, TITLES OR ANY OTHER MATTER OR THING WHATSOEVER.

6. Notice is further given to any person who may have claims against any properties identified and to all other parties in interest that a schedule of proposed distribution of the proceed of sale will be posted in the office of the Tax Claim Bureau following such sale and distribution will be made in accordance with the schedule, unless exceptions are filed thereto within ten (10) days thereafter. All claims must be filed with the Tax Claim Bureau. ALL SALES WILL BE MADE UNDER THESE CONDITIONS AND WILL BE FINAL. NO ADJUSTMENT WILL BE MADE AFTER THE PROPERTY IS STRUCK DOWN. MAKE SURE OF WHAT YOU ARE BUYING BEFORE BIDDING.

7. Purchase by owner – The owners shall have no right to purchase their own property at the Judicial Sale conducted under the provision of the Act (618 added July 3, 1986, P.L. 351, No. 81).

8. Mobile home purchasers – will only receive a proof of purchase from the Tax Claim Bureau after the sale. The Department of Transportation will issue titles for the properties purchased at the tax sale only upon receipt of a proper order of court.

9. The properties subject to the Judicial Tax Sale can be identified by reference to the prior advertisement for the Tax Claim Bureau Upset Sale as set forth in the York Newspaper on August 24, 2009. The properties offered for sale may also be identified by purchasing a list of the properties exposed to the sale from the York County Tax Claim Bureau.

**YORK COUNTY
TAX CLAIM BUREAU**

NOTICE OF JUDICIAL TAX SALE

To owners of properties identified in this notice and to all persons having tax liens, tax judgments, municipal claims, mortgages, liens, charges or estates of whatsoever kind, except ground rents separately taxed, against such properties.

The following conditions shall govern the sale of properties by the York County Tax Claim Bureau for Judicial Sale as scheduled on May 20, 2010 at 9:00 AM. The sale will be held in Court Room #1 in the York County Administrative Center at 28 East Market Street, York, Pennsylvania. **All prospective bidders should register with the York County Tax Claim Bureau at 28 East Market St., York PA at least one day prior to the sale. This registration requires a photo I.D. such as a valid driver's license or other method of identification acceptable to the Tax Claim Bureau.**

1. SAID PROPERTIES, will be sold FREE and CLEAR of all tax and municipal claims, mortgages, liens, charges, and estates of whatsoever kind, except ground rents, separately taxed, Motor Vehicle or Uniform Commercial Code encumbrances on mobile homes to the highest bidder. A condition of this sale shall be that no sale shall be made except to the County unless there is a minimum bid equal to the costs incurred of such sale as designated in The Pennsylvania Real Estate Tax Sale Law 542 of 1947, as amended, Section 612(a).

2. Acknowledgment, Recording Fee and Preparation of the Deed. These items will be computed after the property has been knocked down to the successful bidder. The sale price, the transfer tax, and the recording fee, acknowledgment and preparation of the deed must all be paid at the time of the sale. In the case of all properties, actual cash in the form of currency of the United States or a certified check on a local bank or other satisfactory payment must be paid in full.

3. Deeds for the premises will be prepared by the Tax Claim Bureau and recorded. The Tax Claim Bureau will mail the deeds to the address given by the buyer at the sale

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, THE PUBLIC CAN REQUEST ACCOMMODATIONS FOR PERSONS WITH DISABILITIES TO ATTEND THE SALES BY CALLING THE COUNTY AT (717) 771-4773. INDIVIDUALS WITH HEARING IMPAIRMENT SHALL CONTACT THE DEAF CENTER AT (717) 845-7022, OR (717) 848-6765. (TTY)

YORK COUNTY TAX CLAIM BUREAU
William T. Hast, Solicitor
Vanessa Shive, Supervisor
Bradley K. Smith, Auctioneer Lic. No. 860

4-22-1t

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