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IN THE
SUPERIOR COURT OF PENNSYLVANIA

3109 EDA 2017

COMMONWEALTH OF PENNSYLVANIA

APPELLEE,

V.

TRISTAN STAHLEY,

APPELLANT.

BRIEF OF APPELLANT

On Appeal from the Final Order of August 28, 2017 Dismissing PCRA Petition in the Court of Common Pleas, Montgomery County,
Docket CP-46-CR-0005026-2013.

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STATEMENT OF JURISDICTION

This is an appeal from the August 28, 2017 final order of the Montgomery County Court of Common Pleas dismissing Appellant Tristan Stahley's Petition for Post-Conviction Relief. (CP-46-CR-0005026-2013). This Court has exclusive appellate jurisdiction under 42 Pa.C.S.A. § 742.

ORDER IN QUESTION

Appellant Tristan Stahley appeals from the August 28, 2017 Order of the Honorable William R. Carpenter, denying his Petition for Post-Conviction Relief.[1]

SCOPE AND STANDARD OF REVIEW

Claims of Ineffective Assistance of Counsel

This Appeal first raises Appellant Tristan Stahley's claims of ineffective assistance of counsel. The United States Supreme Court has articulated a two-pronged test for such claims: (1) whether counsel provided deficient, unreasonable representation in critical areas of the pretrial, trial, and direct appeal proceedings, and (2) whether confidence in the outcome is consequently undermined. *Strickland v. Washington*, 466 U.S. 668 (1984), *superseded on other grounds by statute*, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, *as recognized in United States v. Williams*, No. 2:12-CR-162-TFM, 2015 WL 4255574, at *2 (W.D. Pa. July 14, 2015); *Williams v. Taylor*, 529 U.S. 362

[1] A copy of the August 28, 2017, Order is attached hereto as Appendix "A." Judge Carpenter's Opinion is attached as Appendix "B," and Mr. Stahley's Statement of Matters Complained of on Appeal is attached as Appendix "C."

(2000).

Pennsylvania applies a three-part test for ineffective assistance. In *Commonwealth v. Moore*, 805 A.2d 1212 (Pa. 2002), the Pennsylvania Supreme Court explained:

> In order to establish a claim of ineffective assistance of counsel under the PCRA, an appellant must show that: (1) the claim is of arguable merit; (2) counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

Id. at 1215. Although it employs different language, Pennsylvania's test is the equivalent of the *Strickland* test. *Commonwealth v. Kimball*, 724 A.2d 326, 332 (Pa. 1999) (Pennsylvania's standard is "identical" to *Strickland*).

In reviewing a PCRA court's denial of post-conviction relief, this Court must determine whether the lower court's ruling is supported by the record and is free of legal error. *Commonwealth v. Marshall*, 947 A.2d 714, 719 (Pa. 2008). The PCRA court's credibility determinations, when supported by the record, bind this Court. *Commonwealth v. Johnson*, 966 A.2d 523, 532, 539 (Pa. 2009). This Court applies a *de novo* standard of review to the PCRA court's legal conclusions. *Commonwealth v. Rios*, 920 A.2d 790, 810 (Pa. 2007) (citing *Commonwealth v. Gorby*, 909 A.2d 775 (2006) (Cappy, C.J., joined by Newman, J. concurring)) (overruled on other grounds by *Commonwealth v. Tharp*, 101 A.3d 736 (Pa. 2014))).

No number of failed claims of counsel's ineffective assistance may collectively warrant relief if each individual claim lacks arguable merit. *Johnson*, 966 A.2d at 532. However, when the failure of individual claims is grounded in lack of prejudice, the cumulative prejudice from those individual claims may properly be assessed. *Id*.; *Commonwealth v. Perry*, 644 A.2d 705, 709 (Pa. 1994) (new trial may be awarded due to cumulative prejudice accrued through multiple instances of ineffective representation); *Commonwealth v. Sattazahn*, 952 A.2d 640, 671 (Pa. 2008).

Finally, the acts or omissions of counsel are prejudicial *per se* where they are certain to undermine the confidence that the defendant received a fair trial or that the outcome of the proceedings is so unreliable that no separate determination of actual prejudice under *Strickland*, is needed. One such instance is where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing. *United States v. Cronic*, 466 U.S. 648, 659 (1984); *Commonwealth v. Lantzy*, 736 A.2d 564, 571 (Pa. 1999).

Challenges to the Legality of Sentence

Tristan Stahley also challenges the legality of his sentence of life without parole, where the sentencing court imposed that sentence after a proceeding which did not comport with the federal and state constitutional requirements articulated in *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter "*Batts II*"]. Issues

relating to the legality of a sentence are questions of law. This Court's standard of review over such questions is *de novo* and its scope of review is plenary. *Commonwealth v. Furness*, 153 A.3d 397, 405 (Pa. Super. Ct. 2016); *see also Batts II*, 163 A.3d at 434-35 (holding that a juvenile's challenge to state's authority to impose a life without parole sentence is a question of the sentence's legality).

STATEMENT OF THE QUESTIONS INVOLVED

1. Did the PCRA court erroneously deny Mr. Stahley's ineffectiveness claim, where trial counsel failed to introduce readily available evidence, from both lay and expert witnesses, which would have established Mr. Stahley's intoxication at the time of the crime and which would have supported a defense of voluntary-intoxication/diminished-capacity?

   Suggested Answer: Yes.

2. Did the PCRA court erroneously deny Mr. Stahley's ineffectiveness claim, where trial counsel failed to introduce readily available evidence which would have established Mr. Stahley's intoxication at the time of his post-arrest statement and which would have provided the basis for a successful motion to suppress that statement?

   Suggested Answer: Yes.

3. Did the PCRA court erroneously dismiss Mr. Stahley's challenge to the legality of his sentence under *Batts II*?

   Suggested Answer: Yes

STATEMENT OF THE CASE

On May 25, 2013, the Commonwealth charged Appellant Tristan Stahley with the murder of his girlfriend, Julianne Siller. Leading up to the offense, the two teenagers were walking in the park and began to argue over their relationship. Mr. Stahley was only sixteen years old at the time.

Immediately after the offense, Mr. Stahley confessed to his mother and threatened to kill himself. His parents had to restrain and disarm him to keep him from hurting himself. After the police arrived, Mr. Stahley took them to the location of the crime. After being treated for minor injuries at a local hospital, Mr. Stahley gave a statement admitting what had happened. During Mr. Stahley's suppression hearing, trial counsel failed to present the testimony of his mother, Mrs. Heather Stahley, and the transporting paramedic, which would have established Mr. Stahley's intoxication at the time of his custodial interrogation and which would have provided the basis for the suppression of Mr. Stahley's post-arrest statement. On March 26, 2014, the Honorable William R. Carpenter denied Mr. Stahley's motion to suppress his post-arrest statement.

Prior to trial, defense counsel prepared to present a diminished capacity defense. Counsel hired experts to evaluate Mr. Stahley and collected evidence indicating that he was heavily intoxicated during the crime. However, on the day of trial (September 29, 2014), Mr. Stahley agreed to a stipulated bench trial. At this

trial, he stipulated to the Commonwealth's evidence. The only question at Mr. Stahley's guilt-phase proceeding was whether he committed first or third-degree murder. Trial counsel presented no evidence on Mr. Stahley's behalf.

As alleged in Mr. Stahley's PCRA, trial counsel failed to introduce readily available evidence, from both lay and expert witnesses, which would have established Mr. Stahley's intoxication at the time of the crime and which would have supported a defense of voluntary intoxication/diminished capacity. The evidence that trial counsel failed to present was substantial:

- Mr. Stahley's post-arrest statement, wherein he acknowledged drinking a "handle" of vodka and being "drunk" at the time of the crime.[2] (Post-Arrest Statement 5/26/13, p. 4-5).[3]

- The recovery of an empty vodka container during the post-arrest search of Mr. Stahley's bedroom. (N.T. PCRA 7/25/17, p. 11:2-6).[4]

- The testimony of paramedic Todd Evans, who transported Mr. Stahley to the hospital after his arrest. According to Paramedic Evans, Mr. Stahley was crying and sobbing uncontrollably and possibly under the influence. (N.T. PCRA, p. 48-51). During this interaction, Mr. Stahley also told Evans he had been drinking. (N.T. PCRA, p. 48-49).

- The hospital records from Mr. Stahley's admission to the emergency room where he was diagnosed with "alcohol intoxication." These records verified his admission that he drank a half gallon of vodka. (Dr. O'Brien's Report, p. 5-6).

[2] "Handle" is a colloquial term for a half gallon of any liquor.
[3] A copy of Post-Arrest Statement is attached hereto as Appendix "D."
[4] "N.T. PCRA" refers to the notes of testimony from Mr. Stahley's PCRA hearing.

- The testimony of Appellant's mother, Heather Stahley, who observed her son "swaying" after he returned from the park where the crime occurred. (N.T. PCRA, p. 53:11-17). At the time, Mr. Stahley also told his mother that he had been drinking and that he had taken "Molly."[5] (N.T. PCRA, p. 53:22-25). He also possessed a water bottle that smelled of alcohol. (N.T. PCRA, p. 79:25-80:5). Mrs. Stahley also informed the arresting officers that her son had been drinking. (N.T. PCRA, p. 74:11-13, 81:11-18).

- The testimony of Mr. Stahley's father, Brian Stahley, who wrestled a knife away from his son to prevent him from acting on his threats to kill himself. According to Brian Stahley, his son smelled of alcohol during this struggle. (N.T. PCRA, p. 87:3-15).

- The testimony of Dr. John O'Brien, a psychologist who concluded that, due to a number of factors including his intoxication at the time of the incident, Mr. Stahley "was not able to premeditate, deliberate and formulate the intent to kill Julianne Siller." (N.T. PCRA, p. 17:2-4). Among the factors considered by Dr. O'Brien was the post-mortem examination of the decedent's wounds, which were characteristic of situation where an assailant acts in an unreflecting state of rage. (N.T. PCRA, p. 16-17).[6]

Besides counsel's failure to submit ample evidence regarding Mr. Stahley's intoxication, counsel did not explain the defense of voluntary intoxication/diminished capacity. At his PCRA hearing, Mr. Stahley testified that trial counsel failed to explain that intoxication could negate a finding of the specific intent required for a first-degree murder conviction. (N.T. PCRA, p. 102:3-11). Both of Mr. Stahley's parents also testified that trial counsel failed to explain this potential

[5] "Molly" is a colloquial term for the drug ecstasy. (N.T. PCRA, p. 99:9-12).
[6] The post-mortem examination disclosed that Ms. Siller sustained 75 separate stab wounds. (Dr. O'Brien's Report, p. 12-13).

defense. Both parents emphasized counsel's repeated statement, to them, that intoxication is not a defense. (N.T. PCRA, p. 54:10-55:6, 87:16-88:7). Trial counsel so informed them despite the availability of evidence which would have established Mr. Stahley's intoxication at the time of the crime.

At the conclusion of the stipulated bench trial, the court convicted Mr. Stahley of first degree murder.

On December 17, 2014, the lower court sentenced Mr. Stahley to life without parole, under 18 Pa.C.S. § 1102.1(a). It is undisputed that the sentencing court did not have the benefits of *Montgomery* or *Batts II* when sentencing Mr. Stahley.[7] The sentencing court only considered the factors listed in Section 1102.1(d). The sentencing court did not (1) apply a presumption against life without parole; (2) place the burden on the Commonwealth to rebut that presumption; (3) require the presumption to be rebutted beyond a reasonable doubt; or (4) find that Mr. Stahley

[7] In its Answer, the Commonwealth did not contest that the trial court failed to presume a life sentence was improper and failed to require proof of incorrigibility beyond a reasonable doubt. Instead, the Commonwealth contended that the *Batts II* requirements were not retroactive. Commonwealth's Answer & Motion to Dismiss Defendant's Amended PCRA Seeking Relief Pursuant to *Commonwealth v. Batts* at 2. In addition, the Commonwealth argued that "the totality of the circumstances" demonstrated Mr. Stahley's incorrigibility. The only "circumstances," though, were the "horrific murder" and his purported lack of remorse. *Id.* at 4-5. Even in denying Mr. Stahley's PCRA petition, the court did not contest that it failed to presume against life and failed to require proof beyond a reasonable doubt. The court simply ruled that *Batts II* "does not apply retroactively in the PCRA context." Order, 8/28/17.

is one of the rare and uncommon children that can never be rehabilitated. *See Batts II*, 163 A.3d at 415-16.

The sentencing court never "addressed the question *Miller* and *Montgomery* require a sentencer to ask: whether [Mr. Stahley] was among the very rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Tatum v. Arizona*, 137 S. Ct. 11, 12 (2016) (mem.) (Sotomayor, J, concurring) (quotation marks omitted). The Commonwealth relied solely upon evidence regarding the offense and victim impact testimony in seeking life without parole and provided no evidence regarding Mr. Stahley's amenability to rehabilitation. Amended PCRA Seeking Relief Pursuant to *Commonwealth v. Batts* at 5-6.

On December 21, 2015, Mr. Stahley filed a timely *pro se* petition for post-conviction relief pursuant to *Montgomery v. Louisiana*. On July 20, 2017, the Montgomery County Public Defender's Office filed a timely second amended PCRA petition, seeking resentencing under the requirements set forth *Batts II*. *See* 163 A.3d 410.

On August 28, 2017, the lower court denied all requested PCRA relief.

SUMMARY OF THE ARGUMENT

The PCRA court erred in denying Mr. Stahley's ineffectiveness claim as there was no strategic reason to withhold from the judge ample evidence establishing Mr. Stahley's intoxication during the crime. Physical evidence and lay and expert

testimony would have supported a defense of voluntary intoxication/diminished capacity, and there was a reasonable probability of a different outcome had the evidence been presented.

The PCRA court committed a similar error in denying Mr. Stahley's second ineffectiveness claim regarding the suppression of his post-arrest statement. There again was ample evidence that Mr. Stahley could not provide a voluntary confession due to his intoxication and the surrounding conditions of his statement. Counsel, however, failed to introduce any evidence at the suppression hearing. Had counsel presented the evidence, there is a reasonable probability the statement would have been suppressed which would have created a reasonable likelihood of Mr. Stahley receiving a third-degree conviction.

Even if this Court does not vacate the underlying conviction, Mr. Stahley's life without parole sentence remains illegal and the PCRA court erred in determining *Batts II* cannot be applied on collateral review. In *Batts II*, the Pennsylvania Supreme Court held that juveniles convicted of first-degree murder must be presumed eligible for parole and can only be sentenced to life without parole if the Commonwealth can rebut that presumption by proving the juvenile is irreparably corrupt beyond a reasonable doubt. Under either test announced in *Teague v.* Lane, 489 U.S. 288 (1989) (plurality opinion), and its progeny, *Batts II* requires application on collateral review. Under *Teague*'s first test, *Batts II* created a substantive change in the law by

creating a class of individuals that the Commonwealth cannot lawfully sentence to life without parole. Alternatively, *Batts II* satisfies *Teague*'s second test by creating a watershed rule of criminal procedure. Therefore, Mr. Stahley's sentence which was imposed without the benefits of either *Montgomery* or *Batts II* must be vacated as illegal and remanded for sentencing consistent with current case law.

STATEMENT OF REASONS TO ALLOW AN APPEAL TO CHALLENGE THE DISCRETIONARY ASPECTS OF A SENTENCE

Under Pennsylvania Rules of Appellate Procedure:

> An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in a separate section of the brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence.

Pa.R.A.P. 2119(f); *see also Commonwealth v. Tuladziecki*, 522 A.2d 17, 19 (Pa. 1987). However, when issues raised on appeal involve the legality of the sentence, and not its discretionary aspects, a Pa.R.A.P. 2119(f) ("*Tuladziecki*") statement is not required. *Commonwealth v. Shaw*, 744 A.2d 739, 742 (Pa. 2000), *superseded by statute on other grounds*, 75 Pa.C.S.A. § 3806(a)(3). Appellant, Tristan Stahley, challenges the constitutionality of, and legal authority to impose, his life without parole sentence and need not include a *Tuladziecki* statement.

ARGUMENT

I. THE PCRA COURT ERRONEOUSLY DENIED MR. STAHLEY'S INEFFECTIVENESS CLAIM, WHERE TRIAL COUNSEL FAILED TO INTRODUCE READILY AVAILABLE EVIDENCE—FROM BOTH LAY AND ERPERT WITNESSES—WHICH WOULD HAVE ESTABLISHED MR. STAHLEY'S INTOXICATION DURING THE CRIME AND SUPPORTED A DEFENSE OF VOLUNTARY INTOXICATION/DIMINISHED CAPACITY

A defense of diminished capacity, grounded in voluntary intoxication, is a limited defense available to defendants who admit criminal liability but contest the degree of their culpability. Such a defense negates the element of specific intent, and can mitigate a homicide from first-degree murder to third-degree murder. *Commonwealth v. Hutchinson*, 25 A.3d 277, 312-313 (Pa. 2011). To establish a diminished capacity defense based upon voluntary intoxication, a defendant must prove that his cognitive abilities of deliberation and premeditation were so compromised that he could not formulate the specific intent to kill. The defendant must show he was overwhelmed to the point of losing his faculties and sensibilities. *Id.*; *Commonwealth v. Spotz*, 47 A.3d 63, 90-91 (Pa. 2012). While Mr. Stahley admitted criminal liability here, there was ample evidence to support a diminished capacity defense due to his level of intoxication. In not presenting evidence that had a reasonable probability of changing the outcome of the underlying conviction counsel was ineffective.

A. Petitioner's Ineffectiveness Claim Has Arguable Merit

A diminished capacity defense was available and supported by physical evidence, Mr. Stahley's own admission, and multiple witnesses. Police recovered an empty vodka bottle during the post arrest search of his bedroom. (N.T. PCRA 7/25/17, 11:2-6). When admitted to the emergency room, he was diagnosed with "alcohol intoxication." (Dr. O'Brien's Report pp. 5-6).

Mr. Stahley also maintained his intoxication before and after his arrest. Immediately after the offense, he told his mother he had been drinking and that he had taken ecstasy. When being transported to the hospital, he told the paramedics he had been drinking, and his statement of consuming a half gallon of vodka was documented in the hospital records. (N.T. PCRA p. 41, 59); (Dr. O'Brien's Report pp. 5-6). In his post-arrest statement, he admitted that he drank a half gallon of vodka and that he was "drunk" at the time of the crime. (Post-Arrest Statement 5/26/13, pp. 4-5.)

His admissions were corroborated by observations of several witnesses. Mr. Stahley's mother observed him "swaying" after he returned from the park where the crime occurred. (N.T. PCRA, p. 53:11-17). Based upon her observations, Mrs. Stahley informed the arresting officers that her son had been drinking. (N.T. PCRA, p. 74:11-13, 81:11-18). When wrestling a knife away from Mr. Stahley to prevent him from hurting himself, Mr. Stahley's father noticed his son smelled of alcohol.

(N.T. PCRA, p. 87:3-15). The paramedic who transported Mr. Stahley to the hospital after his arrest observed that Mr. Stahley's behavior suggested intoxication. (N.T. PCRA, p. 48-51).

The evidence of Mr. Stahley's intoxication, along with other factors, led psychologist Dr. John O'Brien to conclude that Mr. Stahley "was not able to premeditate, deliberate and formulate the intent to kill Julianne Siller." (N.T. PCRA, p. 17:2-4). Among the factors considered by Dr. O'Brien was the post-mortem examination of the decedent's wounds, which were characteristic of an assailant acting in an unreflecting state of rage. (N.T. PCRA, p. 16-17).

Counsel also never explained to Mr. Stahley how this evidence could form a defense as he never explained a voluntary-intoxication/diminished capacity defense. At his PCRA hearing, Mr. Stahley testified that trial counsel failed to explain that intoxication could negate a finding of the specific intent to kill required for a first-degree murder conviction. (N.T. PCRA, p. 102:3-11). Both of his parents also testified that trial counsel did not explain the defense. Both parents emphasized counsel's repeated statement to them that intoxication was not a defense. (N.T. PCRA, p. 54:10-55:6, 87:16-88:7). Trial counsel maintained that intoxication was not a defense to Mr. Stahley and his parents despite the evidence establishing Mr. Stahley's intoxication at the time of the crime and its ability to negate specific intent.

B. Counsel Had No Reasonable Strategic Basis for His Inaction

After stipulating to the Commonwealth's evidence—including Mr. Stahley's responsibility for Ms. Siller's death—counsel had no strategic basis for withholding the abundant evidence of Mr. Stahley's intoxication. As the only real question was his degree of guilt as it related to his intent**,** there was no strategic reason to forego the presentation of readily available physical evidence and lay and expert testimony to support a diminished capacity defense and conviction for a lesser degree of homicide.

C. Reasonable Probability of a Different Outcome

The evidence above must create a reasonable probability of a different outcome, thereby establishing prejudice, to sustain Mr. Stahley's ineffectiveness claim. On collateral review, the prejudice analysis under *Strickland* is guided by three principles. First, in determining the reasonable probability of a different outcome, a PCRA court must independently *weigh* the evidence rather than engage in a sufficiency of evidence review. *Williams v. Taylor*, 529 U.S. 362, 397-398 (2000) (prejudice determination unreasonable where state court "failed to evaluate the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding—in *reweighing* it against the evidence in aggravation" (citing *Clemons v. Mississippi*, 494 U.S. 738, 751-52 (1990)

(emphasis added))); *Breakiron v. Horn*, 642 F.3d 126, 140 (3d Cir. 2011) (state court erroneously applied a sufficiency of the evidence standard, without weighing the evidence as a whole to determine whether there was a reasonable probability that the outcome would have been different); *Saranchak v. Secretary Pa. D.O.C.*, 802 F.3d 579, 599 (3d Cir. 2015) (PCRA court erroneously applied a sufficiency of the evidence test to demonstrate that the outcome would not have been different). Only by weighing the evidence can the PCRA court determine if there is a reasonable probability that the correction of trial counsel's errors would cause an "objective factfinder" to reach a different outcome. *Id.*

Second, as the Third Circuit explained in *Saranchak*, "the prejudice inquiry focuses on 'the effect the same evidence would have had on an unspecified, objective factfinder' rather than a particular decision maker in the case." *Id*. at 588. Thus, at the PCRA stage, the question is not whether the trial court itself finds the new evidence to be persuasive enough that it would have affected that court's own verdict. Rather, the question is whether there is a reasonable probability that the new evidence would affect the decision of a new jury. *Commonwealth v. Johnson*, 966 A.2d 523, 541 (Pa. 2009) ("Logically, however, credibility assessments in the *Strickland* context are not absolutes, but must be made with an eye to the governing standard of a 'reasonable probability' that the outcome of the trial would have been different."); *Schlup v. Delo*, 513 U.S. 298, 330-332 (1995) (reviewing court "must

assess the probative force of the newly presented evidence in connection with the evidence of guilt adduced at trial").

Third, before a collateral review court can determine there is no *Strickland* prejudice, that court must conclude there is no "reasonable probability that at least one juror," if given the new information withheld because of counsel's errors, would have reached anything less than a "subjective state of certitude of the facts in issue." *Wiggins v. Smith*, 539 U.S. 510, 537 (2003); *In re Winship*, 397 U.S. 358, 364 (1970). The Supreme Court recently reaffirmed this principle in *Buck v. Davis*, 137 S. Ct. 759 (2017). There, Chief Justice Roberts defined the prejudice inquiry as whether there is a "reasonable probability that . . . at least one juror would have harbored a reasonable doubt." *Id*. at 776.

When these principles are applied here, the reasonable probability of a different outcome is clear. A substantial body of evidence established Mr. Stahley's extreme intoxication at the time of the crime. Based upon that evidence, a reputable expert was prepared to testify regarding the impact of Mr. Stahley's intoxication on his ability to form the specific intent required for a first-degree conviction. The expert's opinion would have been further buttressed by forensic evidence regarding the decedent's wounds. As Dr. O'Brien's report explained, the multiple wounds inflicted upon the decedent are characteristic of an assailant acting in an unreflecting state of rage. (N.T. PCRA, p. 16-17). *See also Richardson v. State*, 83 S.W.3d 332,

339 (Tex. Crim. App. 2002) (relying on expert testimony that "crimes of passion are generally overkills with dozens and dozens of stab wounds").

Obviously, it is impossible for another person—no matter how wise a judge or juror—to know what was in a person's mind during a highly charged, emotional moment. Although using a deadly weapon on a vital organ permits a first-degree inference, such an inference is not obligatory. Pennsylvania also recognizes that the same facts can support a finding of third degree malice. *See, e.g.*, *Commonwealth v. Truong*, 36 A.3d 592, 598 (Pa. Super. Ct. 2012) (Malice for third degree murder "may be inferred from the use of a deadly weapon on a vital part of the victim's body."); *Commonwealth v. Cruz-Centeno*, 668 A.2d 536, 539-40 (Pa. Super. Ct. 1995) (same); *Commonwealth v. Lee*, 626 A.2d 1238, 1241 (Pa. Super. Ct. 1993) (same); *Commonwealth v. Ventura*, 975 A.2d 1128, 1142 (Pa. Super. Ct. 2009) (same).

In addition, third degree convictions regularly occur in situations such as that presented here—where a killing takes place during a heated argument, which spontaneously turns violent. *See, e.g.*, *Truong*, 36 A.3d at 597 (defendant/son stabbed victim/father after domestic argument); *Commonwealth v. Johnson*, 631 A.2d 639, 639 (Pa. Super. Ct. 1993) (defendant shot his girlfriend during course of argument); *Commonwealth v. McFadden*, 559 A.2d 58 (Pa. Super. Ct. 1989) (defendant killed girlfriend whom he believed was unfaithful); *Ventura*, 975 A.2d at

1132 (victim killed after fight over defendant's girlfriend); *Commonwealth v. Bullock*, 948 A.2d 818, 821 (Pa. Super. Ct. 2008) (killing occurred after victim insulted defendant's girlfriend); *Commonwealth v. Mercado*, 649 A.2d 946, 950 (Pa. Super. Ct. 1994) (killing occurred during heated argument over money). Each case involves a situation where the defendant, in an intense moment of anger, attacked the decedent using a potentially deadly weapon. Yet, although each defendant acted with malice, they were not found to have consciously formed a specific intent to kill.

Under these circumstances, there is a reasonable probability that "an unspecified, objective factfinder" would have arrived at a different outcome, had trial counsel presented the abundant evidence of diminished capacity.

II. THE PCRA COURT ERRONEOUSLY DENIED MR. STAHLEY'S INEFFECTIVENESS CLAIM, WHERE TRIAL COUNSEL FAILED TO INTRODUCE READILY AVAILABLE EVIDENCE WHICH WOULD HAVE ESTABLISHED HIS INTOXICATION AT THE TIME OF HIS POST-ARREST STATEMENT AND WHICH WOULD HAVE PROVIDED THE BASIS FOR A SUCCESSFUL MOTION TO SUPPRESS THAT STATEMENT

Mr. Stahley's attorney was ineffective in failing to present evidence of Mr. Stahley's intoxication during his post-arrest statement, rendering Mr. Stahley incapable of giving a voluntary confession. For a confession to be admissible, the Commonwealth must prove by a preponderance of the evidence that the statement was voluntary. *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426, 429 (Pa. 1968). A statement is voluntary when it is the product of an essentially free and

unrestrained choice. *Commonwealth v. Alston*, 317 A.2d 241, 243-244 (Pa. 1974). A trial court must examine the totality of the circumstances in determining voluntariness, including such factors as coercion, the length and location of the interrogation, the maturity and education level of the defendant, his physical condition, and his mental health. *See id.*; *see also Moran v. Burbine*, 475 U.S. 412, 421 (2016). A statement is not voluntary if the suspect's capacity for self-determination is critically impaired. *Commonwealth v. Riggins*, 304 A.2d 473, 476 (Pa. 1973). Accordingly, a confession may be rendered involuntary because of the suspect's intoxication. *Beecher v. Alabama*, 408 U.S. 234 (1972) (confession involuntary where the wounded defendant confessed after being given large doses of morphine); *see also United States v. Swint*, 15 F.3d 286, 289 (3d Cir. 1994); *Commonwealth v. McGeachy*, 407 A.2d 1300, 1302 (Pa. 1979); *Commonwealth v. Schroth*, 435 A.2d 148, 151 (Pa. 1981). Additional relevant factors include the accused's age and level of education and experience. *Commonwealth v. Perez*, 845 A.2d 779, 785 (Pa. 2004); *Commonwealth v. Yandamuri*, 159 A.3d 503, 525 (Pa. 2017). Evidence of Mr. Stahley's age, intoxication, and the surrounding circumstances demonstrate counsel could have successfully challenged the admissibility of Mr. Stahley's confession if counsel provided effective representation.

A. Petitioner's Ineffectiveness Claim Has Arguable Merit

Here, a 16-year-old who had recently consumed a half gallon of vodka and exhibited suicidal behavior prior to his interrogation gave an uncounseled, self-incriminatory statement. At the suppression hearing, counsel unaccountably failed to introduce readily available evidence establishing Mr. Stahley's intoxication and fragile mental condition during his post-arrest confession. Instead, counsel simply cross-examined the interrogating officers, who predictably claimed that Mr. Stahley was not intoxicated. (Trial Court Opinion 11/15/17, p.22). As trial counsel failed to introduce readily available evidence contradicting crucial police testimony, Mr. Stahley's ineffectiveness claim has arguable merit.

B. Counsel Had No Reasonable Strategic Basis for His Inaction

Counsel's theory at the suppression hearing was that Mr. Stahley's intoxication rendered his statement involuntary. (Trial Court Opinion 11/15/17, p. 9, 22). Under these circumstances, there is no strategic explanation of counsel's failure to introduce evidence that (1) the police recovered an empty vodka bottle in Mr. Stahley's bedroom, (2) a paramedic observed symptoms consistent with intoxication, (3) his mother observed him swaying, and (4) his father smelled alcohol when intervening to prevent him from committing suicide. (N.T. PCRA, p. 11, 48-51, 53, 74, 81, 87). To justify trial counsel's ineffectiveness, the trial court notes that counsel cross-examined the officers on Mr. Stahley's intoxication, each of whom

denied that Mr. Stahley showed signs of impairment. (Trial Court Opinion 11/15/17, p. 22). The court's observation simply underlines the absence of any strategic explanation for counsel's inaction. If counsel sought to demonstrate that Mr. Stahley was intoxicated, and if his interrogators were unwilling to concede that point on cross, then there can be no strategic basis for counsel's failure to call witnesses who could establish Mr. Stahley's intoxication with contrary, admissible evidence.

C. Reasonable Probability of a Different Outcome

As the United States Supreme Court has recognized, a "confession is like no other evidence." *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). A defendant's voluntary confession has a "profound impact on the jury" and "is probably the most probative and damaging evidence that can be admitted against him," *Id*. at 296; *Hopt v. Utah*, 110 U.S. 574, 584-85 (1884) (confessions are "among the most effectual proofs in the law"). Where a confession is tainted by deficient counsel performance, courts should "think hard, and then think hard again," before finding there was no prejudice. *Lazar v. Coleman*, No. CV 14-6907, 2017 WL 783666, at *4 (E.D. Pa. Mar. 1, 2017) (quoting *Camreta v. Greene*, 563 U.S. 692, 707 (2011), *appeal filed* sub nom. *Lazar v. Fayette*, No. 17-1491, 2017 WL 738666 (3d Cir. Mar. 7, 2017).

Here, Mr. Stahley's confession was a decisive factor in the trial court's verdict. His statement (typed by his interrogators but signed by Mr. Stahley) contains an answer wherein Mr. Stahley purportedly averred that he made "the decision" to kill

Ms. Siller "about two seconds before I did it." (Post-Arrest Statement, p. 3). The homicide detective's leading question—"When did you make the decision in your mind?"—cynically assumed that Mr. Stahley consciously decided to kill the decedent. Posing this leading question to an uncounseled, emotionally distraught 16-year-old who had recently consumed a half gallon of vodka elicited an answer later employed to support a first degree conviction. As the homicide detective who framed this leading question was aware, two seconds is enough time under Pennsylvania case law for someone to form the intent to kill. *See, e.g.*, *Commonwealth v. Rivera*, 983 A.2d 1211, 1220 (Pa. 2009) ("the period of reflection required for premeditation . . . can be formulated in a fraction of a second"). The trial court then employed this portion of the statement in reaching its first-degree verdict. (Trial Court Opinion 11/15/17, p. 3).

Had counsel successfully litigated a motion to suppress Mr. Stahley's statement based upon intoxication, Mr. Stahley's purported statement that he "decided" to kill the decedent could not have been used to justify a first-degree verdict. Here, no one contended this was a premeditated ambush. Rather, a spontaneous confrontation erupted during an already volatile argument between two teenagers who had been in an intimate relationship. To decide whether Mr. Stahley had the specific intent to kill, the trial court had to make one of the most difficult determinations imaginable: what was in another person's mind during a highly

charged emotional moment? Did Mr. Stahley consciously decide to kill the decedent? Or, while reacting in anger, did he consciously disregard an unjustified and high risk that his actions might cause death? *See Commonwealth v. Young*, 431 A.2d 230, 232 (Pa. 1981) (describing the requisite malice for third degree murder in Pennsylvania). Where the facts which could support either a first or a third-degree verdict were in virtual equipoise, the trial court made this critical determination, at least in part, based on the defendant's statement. (Trial Court Opinion 11/15/17, p. 3).

Under these circumstances, had trial counsel presented evidence of Mr. Stahley's intoxication at the time of the interrogation, there is a reasonable probability of a different outcome.

III. A SENTENCE OF LIFE WITHOUT PAROLE IMPOSED WITHOUT THE PROTECTIONS OF *BATTS II* IS UNCONSTITUTIONAL AND CAN BE CHALLENGED ON COLLATERAL REVIEW

After *Miller*, but before *Montgomery* and *Batts II*, Pennsylvania's juveniles facing a life without parole sentence continued to be unconstitutionally sentenced to life without parole despite being part of the protected class, i.e., juveniles presumed to be eligible for parole and whom the Commonwealth cannot prove beyond a reasonable doubt are incapable of rehabilitation. *See generally Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) [hereinafter "*Batts II*"]. Mr. Stahley was one of these individuals unconstitutionally sentenced as his sentence became final before

Montgomery and *Batts II*. He was not presumed to be eligible for parole and the Commonwealth did not have to prove permanent incorrigibility beyond a reasonable doubt. He, thus, was never placed in the class of individuals eligible to receive life without parole. After Mr. Stahley's sentence was final, the Pennsylvania Supreme Court, in *Batts II*, corrected the prevailing jurisprudence in the state and adopted due process protections to ensure unconstitutional sentences were not imposed. The Court established that life without parole imposed in the absence of key due process protections was an illegal sentence beyond the state's authority to impose, creating a substantive rule that must be applied on collateral review.

New constitutional rules must be either substantive rather than procedural or a watershed rule of criminal procedure to be applied retroactively on collateral review. *See Teague v. Lane*, 489 U.S. 288, 307 (1989) (plurality opinion) (adopted by the Pennsylvania Supreme Court in *Commonwealth v. Lesko*, 15 A.3d 345 (Pa. 2011); *see also Schriro v. Summerlin*, 542 U.S. 348, 351-52 (2004). The *Teague* Court originally characterized the first exception as "plac[ing] certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." 489 U.S. at 307. Jurisprudence then developed to include new rules which "carry a significant risk that a defendant . . . faces a punishment that the law cannot impose upon him" in the definition of a substantive change. *Schriro*, 542 U.S. at 351-52. Conversely, procedural rules "merely raise the possibility that

someone convicted with use of the invalidated procedure might have been acquitted otherwise." *Id*. at 352. As for the second exception, a watershed rule must "implicat[e] the fundamental fairness and accuracy of the criminal proceeding." *Id.*

Batts II is a substantive rule as it forbids a life without parole sentence for a defined class of individuals. *See Batts II*, 163 A.3d at 416. Under this new rule, life without parole can only be imposed on individuals who are presumed to be less culpable and eligible for parole, but whom the Commonwealth has proven beyond a reasonable doubt are incapable of rehabilitation. *Id.* For all other juveniles convicted of homicide, though, "a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose." *Id.* at 435. Alternatively, *Batts II* is a watershed rule of criminal procedure as its requirements are "necessary to prevent an impermissibly large risk" of inaccuracy in a juvenile homicide sentencing, and "alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Whorton v. Bockting*, 549 U.S. 406, 418 (2007) (internal quotations omitted).[8]

[8] The Supreme Court has recognized that sentencing is a critical component of the trial process, and thus directly affects the accuracy of criminal trials. *See, e.g.*, *Witherspoon v. Illinois*, 391 U.S. 510, 523 n.22 (1968) (retroactively applying a decision on a jury selection process that related to sentencing because it "necessarily undermined 'the very integrity of the . . . process' that decided the [defendant's] fate").

A. *Batts II* Creates a Substantive Rule by Placing a Life Without Parole Sentence Beyond the Commonwealth's Authority for a Class of Individuals

A new rule is substantive when it "set[s] forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." *Montgomery v. Louisiana*, 136 S. Ct. 718, 729 (2016). The guarantees prohibit a punishment "regardless of the procedures followed" as "the Constitution itself deprives the State of the power to impose a certain penalty." *Penry v. Lynaugh*, 492 U.S. 302, 329-30 (1989), *overturned in part by Atkins v. Virginia*, 536 U.S. 304 (2002); *see also Montgomery*, 136 S. Ct. at 729. If a sentence is prohibited by a substantive rule, it "is not just erroneous but contrary to law and, as a result, void." *Montgomery*, 136 S. Ct. at 731. The fact that the sentence became final prior to the new rule is irrelevant as "[t]here is no grandfather clause that permits States to enforce punishments the Constitution forbids." *Id.*

The Supreme Court in *Miller* and *Montgomery* held that mandatory life without parole sentences are unconstitutional as they "pos[e] too great a risk of disproportionate punishment." *Id.* at 733 (alteration in original). Specifically, in determining that the rule announced in *Miller* was substantive, the Court reasoned:

> Because *Miller* determined that sentencing a child to life without parole is excessive for all but "the rare juvenile offender whose crime reflects irreparable corruption," it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth.. . . Like other

> substantive rules, *Miller* is retroactive because it "necessarily carr[ies] a significant risk that a defendant"—here, the vast majority of juvenile offenders—"faces a punishment that the law cannot impose upon him."

Montgomery, 136 S. Ct. at 734 (alteration in original) (citations omitted). Similarly, in *Batts II*, the Pennsylvania Supreme Court protected a class of individuals from a discretionary life without parole sentence by placing the punishment beyond the Commonwealth's authority. The Court held life without parole unconstitutional for individuals presumed to be parole eligible and whom the Commonwealth could not prove were irreparably corrupt beyond a reasonable doubt.

The substantive nature of the holding is apparent in how the Court characterizes Batts' appeal as "challenging a sentencing court's legal authority to impose a particular sentence." *Batts II*, 163 A.3d at 435. The Court further highlighted:

> [I]n the absence of the sentencing court reaching a conclusion, supported by competent evidence, that the defendant will forever be incorrigible, without any hope for rehabilitation, *a life-without-parole sentence imposed on a juvenile is illegal, as it is beyond the court's power to impose*. As stated by the *Montgomery* Court, "when a State *enforces a proscription or penalty barred by the Constitution*, *the* resulting conviction or *sentence is, by definition, unlawful.*

Batts II, 163 A.3d at 435 (emphasis added) (citations omitted). This conclusion follows from the Pennsylvania Supreme Court's recognition that

> for a sentence of life without parole to be proportional as applied to a juvenile murderer, the sentencing court . . . must find that

> there is no possibility that the offender could be rehabilitated at any point later in his life, no matter how much time he spends in prison and regardless of the amount of therapeutic interventions he receives.

Id. at 435.

Such requirements place *Batts II* within the substantive jurisprudence as supported by the United States Supreme Court's analysis in *Schriro*, 542 U.S. at 358 in which it denied retroactive application to *Ring v. Arizona*, 536 U.S. 584 (2002). *Ring* held that the Sixth Amendment required that a jury find the statutory aggravating factors necessary to impose the death penalty. In *Schriro*, though, the Court found the jury requirement to be procedural:

> [The United States Supreme] Court's holding that, *because Arizona* has made a certain fact essential to the death penalty, that fact must be found by a jury, is not the same as [*the*] *Court's* making a certain fact essential to the death penalty. The former was a procedural holding; the latter would be substantive.

542 U.S. at 354. In implementing *Miller* and *Montgomery*, the Pennsylvania Supreme Court made certain factors "essential to" imposing life without parole. Absent a presumption recognizing "the ultimate fact . . . that an offender is capable of rehabilitation and that the crime was the result of transient immaturity[ ] is connected to the basic fact [ ]that the offender is under the age of eighteen," the Court does not permit life without parole. *Batts II*, 163 A.3d at 452 (citing *Commonwealth v. Childs*, 142 A.3d 823, 830 (Pa. 2016). Similarly, the sentencing court must find that the Commonwealth has met its burden to prove beyond a

reasonable doubt "that the juvenile offender is permanently incorrigible and that rehabilitation would be impossible." *Id.* at 459. Without these "essential" determinations, life without parole remains an unconstitutional sentence beyond the Court's legal authority to impose. Even a discretionary sentence under *Batts II* is illegal if the sentencing court does not make the essential findings placing the juvenile outside of the protected class.

That the Court's holding necessitates procedures does not negate the substantive nature of the new rule as the PCRA court improperly held. (*See* PCRA Opinion p. 18); *see also Montgomery*, 136 S. Ct. at 735. While "[t]here are instances in which a substantive change in the law must be attended by a procedure," "[t]hose procedural requirements do not, of course, transform substantive rules into procedural ones." *Id.* Procedural rules, such as that in *Schriro*, do not create a protected class of persons; rather, they "regulate only the *manner of determining* the defendant's culpability." 542 U.S. at 353. *Batts II*, though, created a specific class of persons for whom a life without parole sentence is unconstitutional: juveniles presumed to be capable of rehabilitation and against whom the Commonwealth cannot provide competent evidence to prove permanent incorrigibility beyond a reasonable doubt.

The PCRA court failed to appreciate this distinction when it found that "[a] LWOP sentence may still be imposed upon a juvenile, but the sentencing court must

apply the presumption against such a sentence and other procedural safeguards provided for in *Batts II*." (PCRA Opinion p. 18-19). *Batts II* is unequivocal that "a sentencing court has no discretion to sentence a juvenile offender to life without parole unless it finds that the defendant is one of the 'rare' and 'uncommon' children" that can never be rehabilitated. 163 A.3d at 435. The Pennsylvania Supreme Court's invocation of its constitutional right to "prescribe general rules governing practice, procedure and the conduct of all courts" does not undermine the substantive nature of the Court's proscription of a punishment for a class of individuals. *Batts II*, 163 A.3d at 449 (quoting Pa. Const. art. V, § 10(c). The procedures announced are required to ensure that the substantive rights of the juvenile are protected during the proceeding. *Batts II*, 163 A.3d at 459. Even the "use of flawless sentencing procedures," though, cannot "legitimate a punishment where the Constitution immunizes the defendant from the sentence imposed." *Montgomery*, 136 S. Ct. at 730. [9]

[9] The substantive nature of *Batts II* is supported by this Court's jurisprudence as well. Prior to *Montgomery* and *Batts II*, this Court dismissed two different appeals of life without parole as discretionary challenges. *Commonwealth v. Dekeyser*, No. 675 MDA 2016, 2017 WL 587324 (Pa. Super. Ct. Feb. 14, 2017); *Commonwealth v. Clark*, No. 2005 MDA 2014, 2015 WL 6828057 (Pa. Super. Ct. July 21, 2015). Since *Batts II*, though, this Court has remanded for resentencing pursuant to *Batts II*. *Commonwealth v. Shabazz-Davis*, 172 A.3d 1112 (Pa. 2017) (remanded "for reconsideration in light of this Court's decision in [*Batts II*].") This Court and the Pennsylvania Supreme Court did not fully appreciate the holding in *Miller* until *Montgomery*, and the Pennsylvania Supreme Court was not capable of properly implementing *Miller* until its decision in *Batts II*. Therefore, the sentences that were finalized in the interim did not have the benefits of such jurisprudence and failed to meet constitutional standards.

As the Court in *Montgomery* clarified, "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects 'unfortunate yet transient immaturity.'" *Id.* at 734. Without *Batts II*'s protections and under Section 1102.1, though, the sentencing court in Mr. Stahley's case did not have to do more than consider his age and other factors. There was no requirement at the time of his sentencing to presume his amenability to rehabilitation nor did the Commonwealth have to prove beyond a reasonable doubt that Mr. Stahley could never be rehabilitated. Therefore, Mr. Stahley was never placed within the class of individuals who can be lawfully sentenced to life without parole. *Batts II*'s substantive rule thus requires vacatur of Mr. Stahley's sentence and remand to determine if he is one of the exceptionally uncommon juveniles who could be eligible for life without parole.

B. Alternatively, *Batts II* Created a "Watershed Rule of Criminal Procedure" Requiring Retroactive Application

Even if *Batts II* is deemed procedural, it satisfies *Teague*'s second exception as a "watershed rule[ ] of criminal procedure." *Teague*, 489 U.S. at 311. To be a "watershed" rule, the change must first "be necessary to prevent an impermissibly large risk" of inaccuracy in a criminal proceeding, and second, "alter our understanding of the bedrock procedural elements essential to the fairness of a proceeding." *Bockting*, 549 U.S. at 418 (internal quotations omitted). *Batts II* satisfies both requirements.

The Supreme Court has recognized that sentencing is a critical component of the trial process, and directly affects the accuracy of criminal trials. *See, e.g.*, *Witherspoon v. Illinois*, 391 U.S. 510, 523 n.22 (1968) (retroactively applying a decision on a jury selection process that related to sentencing because it "necessarily undermined 'the very integrity of the . . . process' that decided the [defendant's] fate"). Each procedure required by the Court in *Batts II* independently satisfies *Teague*'s analysis and collectively highlight the fundamental shift effectuated by the Court. The requirements under *Batts II* upend juvenile homicide sentencing hearings, recognizing the distinct nature of life without parole and protecting against such a sentence for a certain class of youth.

The presumption announced by *Batts II* ensures that "certain facts are held to call for uniform treatment with respect to their effect as to proof of other facts." *Childs*, 142 A.3d at 830. In sentencing juveniles to life without parole, requiring a sentencing court to presume the attendant characteristics of youth and how they counsel against a life without parole sentence is necessary to avoid an unacceptable risk that the facts of the case will overpower the inherent mitigation of youth. *See Roper v. Simmons*, 543 U.S. 551, 572-73 (2005) (highlighting the risks of heinous crimes overpowering mitigation and evidence of diminished culpability). The presumption also constitutes a "bedrock procedural element" as it ensures the court conducts its analysis from the proper starting point, favoring parole-eligibility, and

the presumption shifts the burden to the Commonwealth. "[A]ny suggestion of placing the burden on the juvenile offender is belied by the central premise of *Roper*, *Graham*, *Miller* and *Montgomery*—that as a matter of law, juveniles are categorically less culpable than adults." *Batts II*, 163 A.3d at 452.

Further, *Batts II* affirms the need for the Commonwealth to prove irreparable corruption beyond a reasonable doubt to "protect youthful offenders from erroneous decisions that foreclose their ability to ever be released from prison." 163 A.3d at 455. The Court selected the highest burden of proof due to its assessment that the "risk of an erroneous decision against the offender would result in the irrevocable loss of that liberty for the rest of his or her life," which outweighed the minimal risk of a parole-eligible sentence. *Id.* at 454. The holding alters the entire proceeding as Pennsylvania law was unclear on who carried the burden and lacked a designated burden of proof. Applying a beyond a reasonable doubt standard to sentencing, though, "bespeaks the weight and gravity of the private interest affected, society's interest in avoiding erroneous convictions, and a judgment that those interests together require that society impose almost the entire risk of error upon itself." *Batts II*, 163 A.3d at 454 (quotations and citations omitted). Requiring a sentencer to shift from weighing various factors to the Commonwealth having to prove irreparable corruption beyond a reasonable doubt creates a fundamentally different hearing. It attaches some of the highest standards available in criminal procedure to properly

address a juvenile's due process concerns. Effectively, a juvenile sentencing hearing for first-degree murder has been transformed into a proceeding with more concrete due process than a death penalty sentencing.

Batts' case demonstrates how a sentencing without the announced protections results in an unconstitutional sentence. Despite an exhaustive opinion that attempted to account for *Miller*, the trial court could not properly discern Batts' eligibility for a life without parole sentence. The lack of a presumption, failing to assign the burden of proof to the Commonwealth, and the absence of a beyond a reasonable doubt standard left the sentencing court in a position of merely weighing various factors against one another rather than answering *Miller*'s central question: whether the juvenile is capable of rehabilitation. The Supreme Court's commentary in *Batts* regarding expert testimony also demonstrates how the requirements fundamentally alter the sentencing process and outcomes. Even with the above protections, the Supreme Court recognized that "it is difficult to conceive of a case where the Commonwealth would not proffer expert testimony and where the sentencer would not find expert testimony to be necessary" before competently concluding a juvenile is incapable of rehabilitation. *Batts II*, 163 A.3d at 456.

Justice Harlan noted in *Mackey* that "time and growth in social capacity, as well as judicial perceptions of what we can rightly demand of the adjudicatory process, will properly alter our understanding of the bedrock procedural elements

that must be found to vitiate the fairness of a particular conviction." *Mackey v. U.S.*, 401 U.S. 667, 693 (1971) (Harlan, J., concurring). The Court in *Batts II* mandated several due process protections to ensure only the rare and uncommon juvenile is exposed to life without parole. The procedures are watershed rules that cement *Miller*'s fundamental shift of how we treat juveniles so it is cemented throughout the state, creating an unprecedented sentencing procedure before a child is exposed to life without parole.

C. Ensuring That No Child Is Unconstitutionally Sentenced to Die in Prison Outweighs the State's Interest in Finality of Only a Handful of Cases

By setting narrow limits on the retroactive application of a new constitutional rule, the Court in *Teague* gave full weight to considerations of finality. *Teague,* 489 U.S. at 309. However, finality and repose cannot block the application of new constitutional commands in all cases. "[I]t must be noted that the retroactive application of substantive rules does not implicate a State's weighty interests in ensuring the finality of convictions and sentences" as "no resources marshaled by a State could preserve a conviction or sentence that the Constitution deprives the State of power to impose." *Montgomery*, 136 S. Ct. at 732 (citing *Mackey*, 401 U.S. at 693).

Even aside from substantive rules, though, this Court in *Teague* understood that determinations of retroactivity involve balancing the justice concerns of newly

announced constitutional rulings with finality concerns and resolving the "tension between justice and efficiency." *Wainwright v. Sykes*, 433 U.S. 72, 115-16 (1977). In some circumstances, like those reflected in the *Teague* exceptions, the "principles of finality and comity 'must yield to the imperative of correcting a fundamentally unjust incarceration.'" *Sawyer v. Whitley*, 505 U.S. 333, 351 (1992), *superseded on other grounds by statute*, Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, *as recognized in In Re Hill*, 777 F.3d 1214 (11th Cir. 2015) (quoting *Engle v. Isaac*, 456 U.S. 107, 135 (1982)). Further, when a sentence is the subject of a new rule sought to be applied retroactively, the concern for finality should be accorded less weight. *See Carrington v. United States*, 503 F.3d 888, 901 (9th Cir. 2007) (Pregerson, J., concurring in part and dissenting in part) ("The interest in repose is lessened all the more because we deal not with finality of a *conviction,* but rather the finality of a *sentence*. There is no suggestion that [the defendants] be set free or that the government be forced to retry these cases. The district court asks only for an opportunity to re-sentence in accordance with the Constitution."). Particularly here, though, the state's interest concerns less than a handful of cases. Relying on Department of Corrections records and public docket searches, counsel can locate only four other cases in which the retroactivity of *Batts*

II on collateral appeals would be applicable.[10] *Batts II* already applies to all individuals facing resentencing, and those directly appealing their life without parole sentences when *Batts II* was issued have all been remanded.[11] When a juvenile is sentenced to die in prison, a punishment otherwise proscribed under their proceedings, based on the date their sentence became final, "[t]here is little societal interest in permitting the criminal process to rest at a point where it ought properly never to repose." *Mackey v. United States,* 401 U.S. at 693 (Harlan, J., concurring).

D. Failing to Apply *Batts II* Retroactively Would Create Two Classes of Juveniles Exposed to Life Without Parole, Violating Due Process and Equal Protection

The denial of *Batts II* protections to those whose convictions are final creates two classes of Pennsylvania prisoners sentenced for first-degree murder as juveniles. Those whose life without parole sentences were not final as of June 26, 2017, or who were subject to a mandatory life sentence, must be resentenced and can only be

[10] *See Commonwealth v. Clark*, No. 2005 MDA 2014, 2015 WL 6828057 (Pa. Super. Ct. July 21, 2015) (non-precedential) (affirming Mr. Clark's life without parole sentence), *appeal denied*, 132 A.3d 456 (Pa. 2016); *Commonwealth v. Dekeyser*, No. 675 MDA 2016, 2017 WL 587324 (Pa. Super. Ct. Feb 14, 2017 (non-precedential) (affirming Mr. Dekeyser's life without parole sentence) (counsel cannot locate an appeal of the Superior Court's decision); *Commonwealth v. Street*, No. 952 WDA 2015, 2016 WL 5854506 (Pa. Super. Ct. August 24, 2016) (non-precedential), *appeal quashed*, 163 A.3d 399 (Pa. 2016); *Commonwealth v. Seagraves*, 103 A.3d 839 (Pa. Super. Ct. 2014), *appeal denied*, 116 A.3d 604 (Pa. 2015).

[11] *Shabazz-Davis*, 172 A.3d 1112; *Commonwealth v. Stern*, No. 1959 MDA 2016, 2017 WL 5944095 (Pa. Super. Ct. Nov. 22, 2017) (vacated life without parole sentence and remanded for resentencing); *Commonwealth v. Moye*, No. 1924 WDA 2016, 2017 WL 4329780 (Pa. Super. Ct. Sept. 29, 2017) (vacated life without parole sentence and remanded for resentencing).

subjected to life without parole if they are first presumed to be eligible for parole and the Commonwealth rebuts that presumption by proving irreparable corruption beyond a reasonable doubt. Those whose sentences were final as of June 25, 2017, though would have to serve a sentence of death by incarceration that the state otherwise had no authority to impose. As life without parole sentences have been ruled unconstitutional for a class of individuals,[12] the existence of two arbitrary classes of Pennsylvania prisoners, one who receives relief from an illegal sentence, and one who does not, is unconstitutional.

The Eighth Amendment's prohibition on disproportionate sentencing compares the gravity of the offense and the severity of the sentence. *Harmelin v. Michigan*, 501 U.S. 957, 1005 (1991). Here, the disproportionality between juveniles whom the State must prove are incapable of rehabilitation and those whose potential for rehabilitation must merely be considered is tied solely to the date of their sentence becoming final. Because two groups of offenders within the same jurisdiction are subject to different sentencing schemes for no reason related to the gravity of the offense, the sentences are necessarily arbitrary and therefore unconstitutional. *See Furman v. Georgia*, 408 U.S. 238, 256 (1972) (Douglas, J., concurring). To comport with the Eighth Amendment, Pennsylvania must apply the

[12] The class as enumerated under *Montgomery* and *Batts II*: those who were presumed parole-eligible and whom the Commonwealth has not proved irreparably corrupt beyond a reasonable doubt.

same standards and requirements before a juvenile is sentenced to life without parole.

Further, under the Fourteenth Amendment, no state can, in the administration of criminal justice, deprive a particular class of person of due process or equal protection. *See, e.g.*, *Bearden v. Georgia*, 461 U.S. 660, 667 (1983) (state may not subject a certain class of convicted defendants to a period beyond the statutory maximum solely by reason of their indigency); *Griffin v. Illinois*, 351 U.S. 12, 19-20 (1956) (due process and equal protection require that indigent defendants receive access to transcripts for their state-vested right to appeal). It would violate the Fourteenth Amendment to force a class of individuals to serve an otherwise illegal sentence merely because their sentences were final prior to *Montgomery* and *Batts II.*

While Section 1102.1 requires consideration of several factors, including those enumerated in *Miller*, it does not incorporate the requirements of *Montgomery* and *Batts II*. Specifically, Section 1102.1 does not require (1) a presumption of rehabilitation based on a child's lessened culpability, (2) the Commonwealth to carry the burden during sentencing; or (3) the sentencer to find that Commonwealth proved beyond a reasonable doubt that the juvenile can never be rehabilitated regardless of any support that may be provided to them. *See* 18 Pa.C.S. §1102.1. Mr. Stahley did not receive these protections or the recognition of his diminished

culpability merely because he was prosecuted under Pennsylvania's *Miller*-fix statute and his sentence was finalized prior to *Montgomery* and *Batts II*. Access to justice—and the possibility of ever stepping foot outside of prison—should not be dictated by the legislature's failure to capture Supreme Court precedent in a statute or the date of one's sentence. If Mr. Stahley's sentence was still on appeal when *Batts II* was issued, he would have received the same relief provided to Mr. Batts and others who had been resentenced to life without parole. However, failing to apply the standards retroactively would subject him to a disproportionate sentence and violate equal protection.

CONCLUSION

For the foregoing reasons Mr. Stahley respectfully requests that this Court find his counsel provided ineffective assistance of counsel warranting remand. Additionally, Mr. Stahley requests this Court vacate his illegal life without parole sentence and remand the instant matter for resentencing pursuant to *Batts II*.

Respectfully submitted,

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APPENDIX

August 28, 2017, Order of Court .....APPENDIX A

November 15, 2017, 1925(a) Opinion .....APPENDIX B

October 18, 2017, Statement of Matters .....APPENDIX C

May 26, 2013, Post-Arrest Statement .....APPENDIX D

CERTIFICATE OF COMPLIANCE

I hereby certify this 5th day of March, 2018, that the foregoing brief of Appellant complies with the word count limits as set forth in Pa.R.A.P. 2135.

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