IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 3109 EDA 2017

COMMONWEALTH OF PENNSYLVANIA,
APPELLEE,
V.

TRISTAN STAHLEY,
APPELLANT.

BRIEF FOR APPELLEE

APPEAL FROM THE ORDER DENYING PCRA PETITION BY THE HONORABLE JUDGE WILLIAM R. CARPENTER ON AUGUST 28, 2017, IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, CRIMINAL DIVISION, AT NO. CP-46-CR-5026-2013.

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

COUNTERSTATEMENT OF QUESTIONS PRESENTED 1

COUNTERSTATEMENT OF THE CASE 2

SUMMARY OF THE ARGUMENT 15

ARGUMENT 16

I. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PRESENT A DIMINISHED CAPACITY DEFENSE 16

II. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PRESENT HIS MOTHER AND THE AMBULANCE DRIVER AT THE SUPPRESSION HEARING 21

III. DEFENDANT IS NOT ENTITLED TO A NEW SENTENCING HEARING 23

CONCLUSION 30

TABLE OF AUTHORITIES

Cases

Alleyne v. United States, 133 S.Ct. 2151 (2013) 25

Arizona v. Fulminante, 499 U.S. 279 (1991) 28

Beard v. Banks, 542 U.S. 406 (2004) 26

Commonwealth v. Batts, 163 A.3d 410 (Pa. 2017) ..... *passim*

Commonwealth v. Bishop, 936 A.2d 1136 (Pa. Super. 2007) 21

Commonwealth v. Britcher, 563 A.2d 502 (Pa. Super. 1989) 22

Commonwealth v. Chambers, 807 A.2d 872 (Pa. 2002) 17

Commonwealth v. Colavita, 993 A.2d 874 (Pa. 2010) 17

Commonwealth v. Dennis, 950 A.2d 945 (Pa. 2008) 17, 21

Commonwealth v. Foust, 180 A.3d 416 (Pa. Super. 2018) 28

Commonwealth v. Fulton, 830 A.2d 567 (Pa. 2003) 17

Commonwealth v. Gillespie, 516 A.2d 1180 (Pa. 1986) 24

Commonwealth v. Henkel, 90 A.3d 16 (Pa. Super. 2014) 16

Commonwealth v. Lehr, 583 A.2d 1234 (Pa. Super. 1990) 16

Commonwealth v. Philistin, 53 A.3d 1 (Pa. 2012) 17, 18

Commonwealth v. Pierce, 645 A.2d 189 (Pa. 1994) 18

Commonwealth v. Reyes, 870 A.2d 888 (Pa. 2005) 16

Commonwealth v. Riggle, 119 A.3d 1058 (Pa. Super. 2015) 25

Commonwealth v. Saranchak, 866 A.2d 292 (Pa. 2005) 19, 20

Commonwealth v. Sepulveda, 55 A.3d 1108 (Pa. 2012) 20

Commonwealth v. Small, 980 A.2d 549 (Pa. 2009) 22

Commonwealth v. Spotz, 47 A.3d 63 (Pa. 2012) 20

Commonwealth v. Stevens, 739 A.2d 507 (Pa. 1999) 21

Commonwealth v. Story, 383 A.2d 155 (Pa. 1978) 28

Commonwealth v. Travaglia, 661 A.2d 352 (Pa. 1995) 19

Commonwealth v. Washington, 927 A.2d 586 (Pa. 2007) 17

Commonwealth v. Wilson, 824 A.2d 331 (Pa. Super. 2003) 16

Harrington v. Richter, 131 S. Ct. 770 (2011) 17

Miller v. Alabama, 132 S. Ct. 2455 (2012) ..... *passim*

Montgomery v. Louisiana, 136 S. Ct. 718 (2016) ..... *passim*

Saffle v. *Parks*, 494 U.S. 484 (1990) 25

Schriro v. Summerlin, 542 U.S. 348 (2004) 24, 25

Teague v. Lane, 489 U.S. 288 (1989) 24, 26

Whorton v. Bockting, 549 U.S. 406 (2007) 26

Statutes

18 Pa.C.S.A. § 1102 3

42 Pa.C.S.A. § 9543 17

COUNTER STATEMENT OF QUESTIONS PRESENTED

I. Whether trial counsel was ineffective for failing to present a diminished capacity defense, where trial counsel had fully-prepared a diminished capacity defense but defendant decided at the last-minute to concede his guilt?

(Answered in the negative by the PCRA court).

II. Whether trial counsel was ineffective for failing to present two witnesses at the suppression hearing in support of a claim that his confession was involuntary due to intoxication, where the evidence against any such claim was overwhelming?

(Answered in the negative by the PCRA court).

III. Whether the rule announced in *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017), is retroactively applicable to cases on collateral review, where it is a procedural, non-watershed rule?

(Answered in the negative by the PCRA court).

COUNTERSTATEMENT OF THE CASE

This is an appeal from the trial court's denial of defendant Tristan Stahley's petition under the Post Conviction Relief Act ("PCRA") after an evidentiary hearing. The lower court aptly recounted the factual and procedural history as follows:

> A brief history of this case follows. After a motion to suppress was denied, a Stipulated Non-Jury Trial was held on September 29, 2014. The trial established that on May 25, 2013, Stahley murdered Julianne Siller, who was 17-years-old. (Stipulated Bench Trial 9/29/14, p. 13). Stahley was 16 years of age at the time of the murder. *Id.* On the night of the incident, a dispatch came into the State Police of a stabbing in Palmer Park. *Id.* at 13. The two responding troopers went to Stahley's house, where they saw Stahley and his father on the ground fighting. Id. After separating the two, Stahley makes a statement that he stabbed his girlfriend because she broke up with him and that he thought she would hookup with other people. *Id.*
>
> The troopers took Stahley to Palmer Park and he directed them to the trail where the Ms. Siller was laying. *Id.* There was blood on the trail and a trail of blood into the woods of the park. *Id.* Stahley's DNA was found at the scene. There was DNA on the knife used to kill Ms. Siller. *Id.* at 13-14. The handle of the knife contained Stahley's DNA and on the blade was that of Ms. Siller. *Id.* at 14. In addition, one of the troopers found blood in the bathroom at Palmer Park, which was genetically matched to Stahley. *Id.*
>
> At the scene of the crime the troopers found Ms. Siller's jean jacket with a stab wound in it, a shirt that had blood on it,

stab wounds on Ms. Siller and the murder weapon, 10 feet from Ms. Siller's body. *Id.*

Trooper Berry Betolet took custody of Stahley at the scene when Ms. Siller's body was found. *Id.* Trooper Bertolet went through the Miranda warnings form with Stahley while in the presence of his mother. *Id.* Stahley and his mother both signed the form, indicating they understood all of his rights. *Id.*

Stahley gave the troopers a statement. During this statement Stahley told the trooper that he was sober and that he understood what was going on. *Id.* In the statement, Stahley gave a rendition of the facts, wherein he said that he and Ms. Siller were in a relationship, but they were on again off again, and that she would always come back. *Id.* at 15. Additionally, he told the troopers that they got into a fight that night about her going out and that he stabbed her in the neck with the knife. *Id.* The trooper asked Stahley, "When did you make the decision in your mind?" and he replied, "About two seconds before I did it." *Id.*

An autopsy was performed on Ms. Siller and the cause of death was determined to be multiple stab and cutting wounds, and the manner of death was homicide. *Id.* Ms. Siller suffered over 75 stab wounds to her body, including 27 to her head and neck and 45 to her torso and shoulders. *Id.*

At the conclusion of the trial, this Court found Stahley guilty beyond a reasonable doubt of murder in the first degree. *Id.* at 19.

On December 17, 2014, a sentencing hearing was held. After considering the *Miller v. Alabama*, 132 S. Ct. 2455 (2012) factors as codified in 18 Pa.C.S.A. § 1102.1 and stating its reasons on the record, including the finding of irreparable

corruption, this Court imposed a sentence of life imprisonment without parole. No appeal was filed.

On December 22, 2015, Stahley filed a *pro se* PCRA petition. Counsel was appointed, and after multiple extensions of time, PCRA counsel filed an Amended PCRA Petition on February 13, 2017.

A PCRA Hearing was conducted on July 25, 2017. Stahley's trial counsel, Timothy Barton, a seasoned defense attorney of 29 years, provided credible testimony as follows. (PCRA Hearing 7/25/17 p. 25). Attorney Barton's involvement in this case began when he had been privately retained by the Stahleys. *Id.* at 4. In his initial meetings with the Stahley family, he discussed the scope and nature of his representation and he also interviewed Mr. and Mrs. Stahley regarding anything they might know about the incident. *Id.* at 5.

Both Mr. and Mrs. Stahley had been present the night that Stahley was arrested. *Id.* Mrs. Stahley accompanied Stahley to the police station and was present during the custodial interrogation when Stahley, a then minor, gave a statement to police. *Id.* at 5-6.

Attorney Barton estimated that he met with Stahley over a dozen times, "if not more." *Id.* at 6. He met with him on a weekly basis for a period of time at Montgomery County Correctional Facility. *Id.* In addition, Attorney Barton testified that he met with Stahley's parents "[o]ften" and were in frequent contact, although he was unable to estimate on how many occasions. *Id.* at 6-7.

Since Stahley admitted to the murder in his statement to police, Attorney Barton's initial strategy was to focus on whether at the time of the crime Stahley could have formed a

specific intent to kill and what degree of guilty it might be. *Id.* at 7. Prior to trial, Attorney Barton in part prepared a decertification motion, for which he retained two psychiatrists, Dr. John O'Brien and Dr. Steven Samuel. *Id.* at 8. He further testified that he also retained Dr. Samuel for the purpose of interviewing Stahley to ascertain what defenses there might be at trial. *Id.* at 25-27. In part, Attorney Barton wanted to use Dr. Samuel's report to show the DA that there should be some sort of plea negotiations. *Id.* at 27. In addition, he had several conversations with the assigned Assistant District Attorney, Jeremy Lupo, who had been assigned the case and with the then District Attorney, Risa Ferman, about possible resolutions. *Id.* at 8. ADA Lupo informally suggested that if Stahley were to plead guilty, the Commonwealth would recommend a sentence of 40-80 years imprisonment. *Id.* at 28. Attorney Barton testified that Stahley was not interested in that deal in large part because he believed that in 40 years his mom and/or dad would be deceased. *Id.* That was very important to Stahley, the hope that he would be able to reunify with his parents. *Id.*

Attorney Barton testified that in his conversations with Stahley, they spoke about whether he actually formed the intent to kill. *Id.* at 9. Attorney Barton also testified that Stahley had described his state of mind the evening of the murder, telling him that he intended to kill the victim. *Id.* at 32. Stahley told Attorney Barton this at various meetings at the Montgomery County Correctional Facility. Specifically, Stahley told Attorney Barton that it was not his intent to kill Miss Siller when they were at the home or left the home or went to the park, but at some point while at the park he decided to kill her. *Id.*

Attorney Barton stated that he had reviewed discovery, which included a property receipt for a search that was executed at the Stahley's home. *Id.* at 9-10. In the property receipt was a "'nearly empty bottle of raspberry vodka'" *Id.* at 11. Attorney Barton also reviewed various witness statements, and in particular the statement of Todd Evans, a paramedic who treated Stahley the evening of the murder, wherein Stahley told Mr. Evans that he was under the influence of alcohol. *Id.* at 12. Stahley had also told police in his statement that he had been under the influence of alcohol. *Id.*

According to Attorney Barton, he had also received an expert report from Dr. O'Brien which opined "'It is my opinion that Mr. Stahley's records and the psychological testing performed by Dr. Samuel reflect him to have been a troubled adolescent with a combination of both psychiatric symptoms and characterologic difficulties which rendered him susceptible to the disinhibiting effects of alcohol on the night of the offense.'" *Id.* at 13, 15. The report concluded "'It is my opinion that as a result of his psychiatric, psychological and characterologic impairments, and his degree of intoxication at the time of the offense, Mr. Stahley was not able to premeditate, deliberate and formulate the intent to kill Julianne Siller, notwithstanding his response to police questioning about the timing of his,'" quote, "'decision,'" unquote "'to kill Julianne Siller at the time of the offense.'" *Id.* at 17.

Attorney Barton had this report prior to the trial; however, he did not call Dr. O'Brien to testify at the time of trial or at the suppression hearing. *Id.* at 17-18. On cross-examination, Attorney Barton explained that Dr. O'Brien had been privately retained by the Stahley family for an opinion regarding Stahley's ability to form the specific intent to kill, in

anticipation of him testifying at a jury trial. *Id.* at 29. At some point, Attorney Barton had concerns about Dr. O'Brien's opinion. *Id.* at 30. He elaborated that in speaking with Dr. O'Brien after the Commonwealth had an expert examine Stahley and prepare a report and some of the statements Stahley made after Dr. O'Brien's report was prepared that Dr. O'Brien's opinion was weakened, if not invalidated. *Id.* at 30. More specifically, Attorney Barton had the expert report prepared by Dr. Barbara Ziv, the expert retained by the Commonwealth to examine Stahley. *Id.* at 31. He reviewed the report himself and with Stahley at the prison. *Id.*

At the PCRA Hearing, Attorney Barton detailed the events on September 29, 2014, the day of the scheduled trial that occurred causing Stahley's decision to proceed with a Stipulated Bench Trial instead of a jury trial. That morning Attorney Barton was prepared to proceed to a jury trial, and would have presented Dr. O'Brien, Mrs. Stahley and possibly Stahley along with an intoxication defense. *Id.* at 19, 21-22. Mrs. Stahley requested that she speak to her son. *Id.* at 19. Both Mr. and Mrs. Stahley were permitted to meet with Stahley in the robing room, where there was a conversation mainly between Mrs. Stahley and Stahley about whether he should proceed with a jury trial or plead guilty. *Id.*

Mrs. Stahley and Attorney Barton had had many conversations about the merits of the Commonwealth's case, the defense and the options. *Id.* Specifically, Attorney Barton explained the defense of intoxication. *Id.* He explained that to present a defense of diminished capacity by intoxication had to be so overwhelming as to render him unable to process what was going on. *Id.* at 20. Attorney Barton actually copied the law on first and third degree murder and diminished capacity and

reviewed them with both Stahley and his mother. *Id.* Attorney Barton also discussed Dr. O'Brien's report with them. *Id.* at 21. Additionally, Attorney Barton testified that they discussed jury trial, waiver of a jury trial and what each entailed. *Id.* They discussed degree of guilty hearings. *Id.* Attorney Barton elaborated that whether to proceed to a stipulated non-jury trial was an evolving conversation. He stated that that consideration had been an ongoing conversation for weeks or months. As Attorney Barton explained it, "it was all part of the fabric of our conversations during probably the later parts of my representation..." *Id.* at 33.

The Commonwealth asked trial counsel why did Stahley proceed to a stipulated non-jury trial if Stahley elected to plead guilty. *Id.* Attorney Barton recollected that this Court did not want to accept a guilty plea because that would allow Stahley to at least attempt to file a motion to withdraw the guilty plea within ten days and; therefore, a stipulated non-jury trial was elected to go forward. *Id.* at 33-34. Attorney Barton fully advised Stahley that it would be a stipulated non-jury trial instead of a guilty plea. He also advised Stahley that it would be the functional equivalent of a guilty plea, but that he had to be absolutely certain he wanted to proceed in that manner because unlike a guilty plea, Stahley would not have the option to file a motion to withdraw guilty plea. *Id.* at 34.

It was Attorney Barton's opinion that the advantage to Stahley in waiving a jury trial and essentially pleading guilty would be that the sentencing court would take this into consideration when fashioning a sentence to impose, that Stahley showed some remorse, took some accountability and spared the Siller's a prolonged jury trial with graphic testimony

and exhibits. *Id.* at 35. He believed these factors would be considered at the time of sentencing. *Id.*

Regarding intoxication as an issue in this case, Attorney Barton did file a suppression motion, in part included therein was the argument that the statements that Stahley gave to police were not knowing and voluntary due to his level of intoxication. *Id.* at 35-36. There were several statements that Stahley made to troopers who responded to the original scene, those made when Stahley voluntarily accompanied the troopers to the park and those he made during his custodial interrogation. *Id.* at 36. During the custodial interrogation, Stahley had told the trooper that he was not intoxicated and that he could understand what was going on. *Id.* The trooper asked some questions to elicit some response about his condition, including his level of intoxication. *Id.* at 37. Mrs. Stahley was present during this questioning and signed off on each answer. *Id.*

There were audio/video recordings that cut against an intoxication defense. *Id.* Specifically, there was a video directing the troopers back to the park and you could hear Stahley in the audio being conversational with the troopers, directing them through the park, talking to them about certain things that happened. From Attorney Barton's perspective he believed this evidence, which to him showed that Stahley did not seem intoxicated, would be well below the standard required to suppress a statement due to involuntary intoxication. *Id.* at 38. He also believed that this evidence also undercut an intoxication defense at trial. *Id.*

Next to testify on behalf of Stahley was Todd Evans, who was employed by Skippack Emergency Medical Services as a paramedic and responded to the scene at Palmer Park. *Id.* at 47-

48. Mr. Evans provided emergency help to Stahley for some lacerations to his legs and an abrasion on his forehead. *Id.* at 48. While transporting Stahley to the hospital, Mr. Evans observed that Stahley had different mood swings. *Id.* One minute he would be calm and able to talk, but then he would break down crying and sobbing uncontrollably and verbalizing inappropriately. *Id.* Under questioning by PCRA counsel he said that Stahley's behavior "possibly" indicated intoxication. *Id.* at 49. However, Mr. Evans was able to communicate with Stahley. *Id.* at 50. He was able to ask Stahley questions, and Stahley was able to provide some answers. *Id.* at 51. Mr. Evans testified Stahley seemed emotionally upset. Additionally, Mr. Evans stated that Stahley was able to walk on his own. *Id.* at 51.

Next to testify was Heather Stahley, Stahley's mother. According to Mrs. Stahley, she relayed to Attorney Barton that he son told her that he had been drinking and taken Molly the night of the incident. *Id.* at 54. It was Mrs. Stahley's testimony that Attorney Barton had advised her that voluntary intoxication is not a defense to murder. *Id.*

Mrs. Stahley testified that the morning of the scheduled trial, Attorney Barton spoke to her about the possibility of pleading open or a stipulated non-jury trial, explaining that he suggested it because Attorney Barton believed it was the best chance to obtain a more favorable sentence. *Id.* at 59. Mrs. Stahley relayed this information to her son in the robing room. *Id.* In regard to the degrees of murder, Attorney Barton had explained the difference between first degree and third degree murder. *Id.* at 61. He had also talked to Mrs. Stahley about calling Dr. O'Brien as a witness at trial. *Id.* Additionally, Mrs. Stahley could only recall that Attorney Barton had met with her

son four or five times over the course of his representation. *Id.* at 62.

Upon cross-examination, Mrs. Stahley recollected that in the statement she gave to troopers the night of the murder she did not tell the troopers that Stahley was intoxicated. Mrs. Stahley was with her son on the day and night of the murder. According to her statement to the troopers, at around 2:00 p.m., Stahley went into her room, wanting to go to Target where he bought a video game. *Id.* at 64-65. Stahley knew that his mom was upset about a fight she had with a friend, so he bought her favorite drink from Starbucks to cheer her up. *Id.* at 65. After Target Mrs. Stahley and her son went to Rita's and for water ice. *Id.* at 65-66. The two of them went home afterwards and watched TV. *Id.* Stahley was still trying to cheer up his mom. *Id.* at 66. Mrs. Stahley admitted at the PCRA hearing that Stahley did not appear intoxicated during the time spent together. *Id.* at 66.

At some point that evening, Stahley went upstairs to his room. Later around 7:00 p.m. he asked his mom to take him to Wawa. *Id.* at 67. Mrs. Stahley told the troopers in her statement that Stahley did not appear intoxicated between the time they got home from Rita's and went to Wawa. *Id.* at 68. After Wawa, Stahley spent some time in the living room, and later went up to his room again. *Id.* Around 8:20, Stahley went down and asked him mom to use her phone to call Julianne two times. *Id.* He then went up to his room with the phone. *Id.* Still, Stahley did not appear intoxicated. *Id.* at 69.

About 10 to 15 minutes later after Stahley gave his mom back her phone, Ms. Siller came over her house. *Id.* Ms. Siller said hi and went upstairs. *Id.* Mrs. Stahley heard bickering coming from upstairs and she went to check on them. *Id.* She

asked them if they were okay, and they said they were fine. *Id.* at 69-70. Around 8:56 p.m., Mrs. Stahley spoke to her husband on the phone. *Id.* at 70. Ms. Siller and Stahley came downstairs around 9:01 p.m. *Id.* Mrs. Stahley saw them briefly, and she did not see any signs of intoxication in her son. *Id.*

Ms. Siller and Stahley went for a walk and sometime later Stahley returned to his home and asked him mom to go for a walk with him. *Id.* Mrs. Stahley immediately knew that her son was crying. *Id.* at 71. She also noticed some blood or dirt on his legs, which Stahley explained away telling her he had fallen. *Id.* Mrs. Stahley tried to persuade her son to sit down and talk right there, but Stahley insisted they go for a walk. *Id.* at 71. On their walk Stahley told her that he and Ms. Siller broke up and that he stabbed her. *Id.* at 72. Stahley didn't know yet whether he had killed her. *Id.* Stahley started crying and pulled out a knife out of his pocket and threatened to kill himself. *Id.* at 73. Mrs. Stahley convinced her son to come back to the house with her. *Id.* When she got there she went inside and spoke to her husband. *Id.* Mr. Stahley came to ask Stahley what was going on. *Id.* He confessed to his father that he stabbed Ms. Siller and that she was on the trail. *Id.* At the PCRA hearing, Mrs. Stahley stated that although Stahley was upset and bawling she was still able to communicate with him. *Id.* at 73-74.

Mrs. Stahley also testified that she had told police in her statement that Stahley had been drinking and that she knew that because her husband smelled alcohol on Stahley. *Id.* at 74-75. The police officer asked her whether Stahley had been drinking alcohol at the home prior to event. *Id.* at 75-76. She responded by saying, "'Not that I'm aware of. I didn't see the water bottle before they started wrestling. No. I mean, he was fine all day. He seemed fine when they left.'" *Id.* at 76. At the

PCRA hearing, upon examination, Mrs. Stahley admitted that she never told the police the night of the murder that Stahley had been drinking and took Molly despite the officer's question specifically inquiring as to whether Stahley had been drinking that night. *Id.* at 76-77.

Next, the Commonwealth cross-examined Mrs. Stahley on the formal statement that her son gave to police when police asked her son whether he was under the influence of anything that might impair his ability to understand. *Id.* at 77. Stahley denied this, saying he understood what was going on. *Id.* The trooper followed up asking Stahley whether he would consider himself to be sober, buzzed or drunk to which Stahley answered, "Sober." Mrs. Stahley initiated those answers and agreed with Stahley. *Id.*

The third witness presented by PCRA counsel was Brian Stahley, Stahley's father. On direct examination, Mr. Stahley testified that the night of the incident his son was inebriated. *Id.* at 86-87. He also testified that Attorney Barton told him that intoxication is not a defense to murder in Pennsylvania. *Id.* at 87-88. On cross-examination, Mr. Stahley admitted that he was not with Stahley all day and would not have known when he started drinking. *Id.* at 94.

Finally at the PCRA Hearing, Stahley testified. He testified that on the night of the incident he had been drinking and took the drug Molly. *Id.* at 98. Stahley stated that he had been drinking since 4:00 or 5:00 in the evening and took Molly, a form of Ecstasy about 7:00 p.m. *Id.* at 99. In relevant part, Stahley stated that when he spoke to Attorney Barton he had informed him that he had been drinking and doing drugs the evening of the murder. *Id.* at 102. Stahley related that Attorney Barton told him that intoxication is not a defense to murder. *Id.*

Stahley also said that he only met with Attorney Barton five or six times. *Id.* Further, Stahley told this Court that he wanted to go to trial, and that he had told this to his attorney. *Id.* at 103. Stahley denied that Attorney Barton reviewed with him how jury selection would work, what the Commonwealth had to prove to find him guilty, that there are different degrees of homicide in Pennsylvania and what third degree murder or voluntary manslaughter means. *Id.* at 103-104. Stahley further testified that Attorney Barton told him that the only way to possibly not get a life sentence was to proceed with a stipulated non-jury trial. *Id.* at 105. Moreover, Stahley denied that Attorney Barton ever reviewed appellate options, despite having completing and signing a post-sentence rights form. *Id.* at 106.

After the defense concluded its case, the Commonwealth called Attorney Barton to testify as a rebuttal witness. *Id.* at 112. On rebuttal, Attorney Barton categorically denied advising Stahley, his mother or father that voluntary intoxication was not a defense to murder. *Id.* at 113. Additionally, he denied telling Stahley, his mother or his father that Stahley's only chance for non-life sentence was a guilty plea or a stipulated non-jury trial. *Id.* at 113-114.

On August 23, 2017, PCRA counsel and the Commonwealth provided Argument on the PCRA petition including the recent case of *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017) ("Batts II"). Relief was denied on August 28, 2017.

Opinion, Dated Nov. 15, 2017 (Carpenter, J.).

SUMMARY OF THE ARGUMENT

Defendant argues that trial counsel was ineffective for failing to present a diminished capacity defense. Trial counsel, however, was fully-prepared to present such a defense. It was defendant who decided, on the morning the trial was scheduled to begin, not to contest his guilt. In any event, the evidence was overwhelming, and so a diminished capacity defense stood no reasonable probability of success.

Defendant next contends that trial counsel was ineffective for failing to call his mother and an ambulance driver as witnesses at the suppression hearing to testify that he was intoxicated at the time he gave statements to the police. Defendant and his mother, as well as three state troopers, all stated that defendant was not intoxicated when he gave his police statement. Trial counsel cannot be ineffective for declining to raise a meritless issue.

Defendant lastly insists that he is entitled to a new sentencing hearing under *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017). That case, however, was decided after his judgment of sentence became final, and so its new rule is not retroactively applicable to his case.

ARGUMENT

I. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PRESENT A DIMINISHED CAPACITY DEFENSE.

Defendant first argues that trial counsel was ineffective for failing to present a diminished capacity defense to the murder. The lower court properly denied this claim.

The standard of review for all of defendant claims is for this Court to determine "whether the findings of the PCRA court are supported by the record and are free from legal error." *Commonwealth v. Reyes*, 870 A.2d 888, 893 n.2 (Pa. 2005). In conducting review of a PCRA matter, we consider the record "in the light most favorable to the prevailing party at the PCRA level." *Commonwealth v. Henkel*, 90 A.3d 16, 20 (Pa. Super. 2014) (*en banc*). The findings of the PCRA court are accorded great deference and should not be disturbed unless they have no support in the record. *Commonwealth v. Wilson*, 824 A.2d 331, 333 (Pa. Super. 2003). "Matters of credibility are vested in the sound discretion of the trier of fact, in this case, the PCRA court." *Commonwealth v. Lehr*, 583 A.2d 1234, 1236 (Pa. Super. 1990).

Under the ineffectiveness standard, defense counsel is presumed effective, and defendant has the burden of proving otherwise.

Commonwealth v. Washington, 927 A.2d 586, 594 (Pa. 2007); *see also Commonwealth v. Colavita*, 993 A.2d 874, 897 (Pa. 2010) (explaining that "[t]he Commonwealth, of course, has no burden of proof where a defendant raises a claim of counsel ineffectiveness"); *see also* 42 Pa.C.S.A. § 9543(a) (requiring defendant to plead and prove his claim by a preponderance of the evidence).

Proving ineffectiveness is never an easy task. *Commonwealth v. Philistin*, 53 A.3d 1, 26 (Pa. 2012). To rebut the presumption of effectiveness, a defendant must prove that (1) the underlying legal claim has arguable merit; (2) counsel's action or omission was unreasonable; and (3) the act or omission prejudiced the defendant. *Commonwealth v. Dennis*, 950 A.2d 945, 954 (Pa. 2008). To show prejudice, a defendant must prove that, but for counsel's alleged ineffectiveness, there is a reasonable probability the result would have been different. *Commonwealth v. Chambers*, 807 A.2d 872, 881 (Pa. 2002). "The likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 131 S. Ct. 770, 792 (2011). The reviewing court must reject the ineffectiveness claim if a defendant fails to prove any prong of the test. *Commonwealth v. Fulton*, 830 A.2d 567, 572 (Pa. 2003).

Trial counsel had a reasonable basis for his actions. On the morning scheduled for trial, he was prepared to present a diminished capacity defense, which included expert testimony. Defendant and his mother, however, decided at the last minute that he should instead plead guilty. During a conference with the lower court, the parties agreed to proceed by stipulated bench trial, so that defendant could not later withdraw a guilty plea. Defendant's attempt to blame counsel for his own decision to avoid a contested trial, accordingly, must fail. *See Commonwealth v. Pierce*, 645 A.2d 189, 195 (Pa. 1994) ("Trial counsel cannot be deemed ineffective for failing to override the decision of her client.").

Defendant nevertheless alleges that trial counsel failed to explain to him that voluntary intoxication could be a limited defense to murder. Trial counsel, however, specifically testified that he had numerous conversations with defendant and his parents about a diminished capacity defense. The lower court found his testimony credible, and its credibility determination cannot be challenged on appeal. *See Commonwealth v. Philistin*, 53 A.3d 1, 25 n.7 (Pa. 2012) ("It is well-settled that PCRA courts make credibility determinations.").

In any event, there was no prejudice, since there was overwhelming evidence of specific intent to kill. Diminished capacity is an "extremely limited defense" which permits a conviction for third-degree murder, rather than first-degree, if the defendant "proves that he was *incapable* of forming a specific intent to kill." *Commonwealth v. Travaglia*, 661 A.2d 352, 359 n.10 (Pa. 1995) (emphasis in original). "To prove a claim of diminished capacity, expert psychiatric testimony is admissible to address mental disorders affecting the cognitive functions of deliberation and premeditation necessary to formulate specific intent." *Commonwealth v. Saranchak*, 866 A.2d 292, 299 (Pa. 2005).

In this case, there was compelling evidence that defendant had the specific intent to kill. He brought the victim to a secluded trail in a park, argued with her, and decided to kill her. He stabbed her first in the neck and then stabbed her over 75 more times. While he continued to stab her, he dragged her by her arms and hair into a wooded area. Hours later, he gave a detailed statement to police about the killing, in which he admitted that he intended to kill the victim and that he attempted to conceal her body. He also attempted to clean himself up after the murder.

This evidence would have convincingly refuted any assertion of diminished capacity. Defendant engaged in a series of actions with clarity of purpose when he murdered the victim, and he continued to do so afterward by attempting to cover his tracks. In the face of such deliberate conduct, the notion that he was incapable of formulating and carrying out a plan or design strains credulity. A diminished capacity defense, accordingly, would have lacked arguable merit and certainly would not have resulted in a reasonable probability of a different outcome at trial. *See Commonwealth v. Spotz*, 47 A.3d 63, 95 (Pa. 2012) ("All of this evidence of Appellant's directed, intentional, goal-oriented activity at or near the time of the murder argues strongly against his current assertion that diminished capacity would have been a viable guilt-phase defense had counsel only done further investigation."); *Commonwealth v. Sepulveda*, 55 A.3d 1108, 1123 (Pa. 2012) (explaining that diminished capacity defense far-fetched where, *inter alia*, defendant chased second victim down and brought him back to the crime scene to kill him, and then hid and humiliated the corpses); *Saranchak*, 866 A.2d at 301 (no prejudice for failing to present diminished capacity defense where defendant's crime involved complex series of actions and he gave detailed statements after crime);

Commonwealth v. Stevens, 739 A.2d 507, 516 (Pa. 1999) (no prejudice for failing to present diminished capacity where defendant left bar, returned with gun, and shot wife multiple times).[1]

II. TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO PRESENT HIS MOTHER AND THE AMBULANCE DRIVER AT THE SUPPRESSION HEARING.

Defendant next contends that trial counsel was ineffective for failing to call his mother and an ambulance driver as witnesses at the suppression hearing to testify that he was intoxicated at the time he gave statements to the police. No relief is due.

The evidence that defendant was not intoxicated at the time he gave his statement was overwhelming. If the evidence of a defendant's guilt is overwhelming, then counsel's alleged ineffectiveness generally fails the prejudice prong. *Commonwealth v. Bishop*, 936 A.2d 1136, 1140 (Pa. Super. 2007). Here, three Pennsylvania State Troopers testified that defendant did not appear intoxicated at any time (N.T. 3/26/14, 35, 55-56, 58, 79-80).

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[1] Defendant also failed to present an expert at the PCRA hearing. That, too, forecloses relief. *See Commonwealth v. Dennis*, 950 A.2d 945, 964 (Pa. 2008) (holding that a defendant alleging counsel was ineffective for failing to call witnesses at trial must "secure [the] witnesses' testimony" for PCRA hearing, or else ineffectiveness claim lacks foundation and necessarily fails).

Defendant himself admitted that he was sober (*id.* at 75). His own mother indicated that she agreed with defendant's assessment that he was sober by initialing that answer in his written statement (*id.* at 76-77). The Commonwealth's evidence at the suppression hearing, including defendant's own statements, convincingly demonstrated that defendant "had sufficient cognitive awareness to understand the *Miranda* warnings and to choose to waive his rights." *Commonwealth v. Britcher*, 563 A.2d 502, 507 (Pa. Super. 1989).

Trial counsel also testified at the PCRA hearing that there was a video recording from the police car of him conversing with the troopers, directing them to the victim's body, and talking about what had happened (N.T. 7/25/17, 37-38). Importantly, trial counsel believed that video demonstrated that defendant was not as intoxicated as required to suppress his confession (*id.* at 38). The claim fails for this reason, too. *See Commonwealth v. Small*, 980 A.2d 549, 570 (Pa. 2009) ("Counsel cannot be ineffective for failing to raise a meritless claim.").

Finally, even if the formal police statement were suppressed, there still would have been overwhelming evidence of guilt, including defendant's blurted out confession and the DNA evidence tying him to the

victim's body and crime scene. As such, defendant cannot prove any prong of the ineffectiveness standard.

III. DEFENDANT IS NOT ENTITLED TO A NEW SENTENCING HEARING.

Defendant lastly insists that he is entitled to a new sentencing hearing under *Commonwealth v. Batts*, 163 A.3d 410 (Pa. 2017). In that case, the Pennsylvania Supreme Court held that "to effectuate the mandate of *Miller*[2] and *Montgomery*,"[3] there is a presumption against a life-without-parole sentence for juveniles and that the Commonwealth must prove beyond a reasonable doubt that the juvenile is incapable of rehabilitation. *Id.* at 416.

Defendant, however, is not entitled to a new sentencing hearing. *Batts* was decided after his judgment of sentence became final, and so its new rule is not retroactively applicable to his case.

A decision announcing a new rule of law handed down after the completion of direct review generally cannot be the basis for relief on

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[2] *Miller v. Alabama*, 132 S. Ct. 2455 (2012) barred mandatory life without parole sentences for those under eighteen at the time of the murders.

[3] *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), made *Miller* retroactively applicable to cases on collateral review.

collateral review. *Commonwealth v. Gillespie*, 516 A.2d 1180, 1183 (Pa. 1986). There are two exceptions, however. *See generally Teague v. Lane*, 489 U.S. 288 (1989).

First, a new rule applies retroactively to cases on collateral review if it is substantive. A new rule is substantive if it "place[s] particular conduct of persons … beyond the State's power to punish." *Schriro v. Summerlin*, 542 U.S. 348, 351-352 (2004). Yet the more common new rule is one of procedure. Such rules do not create a punishment the law cannot impose, but merely require a certain process for imposing punishment. "A rule is substantive rather than procedural if it alters the range of conduct or the class of persons that the law punishes. In contrast, rules that regulate only the *manner of determining* the defendant's culpability are procedural." *Id.* at 353.

The new rule announced in *Batts* is procedural. That case held as follows:

> Pursuant to our grant of allowance of appeal, we further conclude that to effectuate the mandate of *Miller* and *Montgomery, procedural safeguards* are required to ensure that life-without-parole sentences are meted out only to "the rarest of juvenile offenders" whose crimes reflect "permanent incorrigibility," "irreparable corruption" and "irretrievable depravity," as required by *Miller* and *Montgomery*. Thus, as

> fully developed in this Opinion, we recognize a presumption against the imposition of a sentence of life without parole for a juvenile offender. To rebut the presumption, the Commonwealth bears the burden of proving, beyond a reasonable doubt, that the juvenile offender is incapable of rehabilitation.

Batts, 163 A.3d at 416 (emphasis added).

The key phrase is "procedural safeguards." *Id.* Those procedural safeguards regulate only the "*manner of determining*" a punishment. *Schriro*, 542 U.S. at 353. They are therefore procedural, not substantive, rules. The first exception, accordingly, does not apply. *Cf. Commonwealth v. Riggle*, 119 A.3d 1058, 1067 (Pa. Super. 2015) (holding that new rule announced in *Alleyne v. United States*, 133 S.Ct. 2151 (2013), that jury must find a mandatory-triggering fact beyond a reasonable doubt was procedural rule).

Defendant also cannot meet the second exception. That exception is reserved for "watershed rules" of criminal procedure "implicating the fundamental fairness and accuracy of the criminal proceeding." *Saffle* v. *Parks*, 494 U.S. 484, 495 (1990). As *Schriro* explained, "[t]hat a new procedural rule is fundamental in some abstract sense is not enough; the rule must be one without which the likelihood of an accurate conviction is

seriously diminished." *Id.* at 352 (citation and emphasis omitted). Here, the new rule in *Batts*, specifically identified by that court as merely imposing "procedural safeguards," is restricted to the manner in which the penalty is determined and has no bearing on the accuracy of the conviction. This "watershed" class of rules is also "extremely narrow," so much so that (apart from the guarantee of counsel in criminal proceedings) they are effectively nonexistent. *Id.* at 352 (citations and internal quotation marks omitted). *See, e.g., Whorton v. Bockting*, 549 U.S. 406, 417-418 (2007) ("in the years since *Teague*, we have rejected every claim that a new rule satisfied the requirements for watershed status") (collecting cases); *Beard v. Banks*, 542 U.S. 406, 417 (2004) ("it should come as no surprise that we have yet to find a new rule that falls under the second *Teague* exception").

The Commonwealth also argued in the lower court that *Montgomery* specifically foreshadowed that individual states would make new procedural rules to implement the *Miller/Montgomery* substantive rules:

> If I may, I'd just like to address the *Batts* issue first, then circle back to the effectiveness claims.
>
> It seems to me that there is some agreement that can be found between opposing counsel and I; and that is, if this is a procedural rule, a new procedural rule, it does not apply to

defendant. As I hear opposing counsel argue, she's saying it's not a procedural rule, so we don't need to worry about a retroactively bar. Our argument is pretty simple: It is a new procedural rule.

I direct the Court to the general rule that new Rules of Criminal Procedure are generally not applicable to cases on collateral review. There are really two exceptions for that. If it's a substantive rule, it does apply to cases on collateral review. If it's a procedural rule, it does not apply, unless it is considered a watershed-type of rule. An example of that would be the right to counsel recognized in *Gideon*. Those are very rare and are almost never recognized by the U.S. Supreme Court. I don't think opposing counsel is arguing that this is a watershed procedural rule, so really it just comes down to is it a procedural rule?

If you take a look at *Miller* and *Montgomery*, you can search high and low in both of those opinions for something saying there is a presumption against the life without parole sentence. It's not going to be there. You can search high and low in *Miller* and *Montgomery* for something saying that the Commonwealth has to prove beyond a reasonable doubt that the defendant is irreparably corrupted. It's not in there.

Miss Allman cited some language in, I believe it was *Montgomery*, that says when the courts said, When we announce a substantive rule, sometimes there will be procedural riders on that rule. And they said the procedural riders to the substantive rule announced in *Miller* was that there had to be a hearing in front of a Court at which the Court considered the defendant's age and related circumstances. Then it drew a line. It said that is all that is procedurally required

under *Miller*. And that's very clear from *Montgomery*. That was it.

> In *Montgomery* they said any other procedural rule-making we are going to leave to the states. That's because we have a system, a federalism system, that allows the states to regulate their own criminal justice systems. So that language that Miss Allman relies on is completely out of context. The Court in *Montgomery* directed the state courts: Here is this general substantive rule. You are free to adopt procedural rules that you see fit. And that's what the Court did in *Batts*.[4]

(N.T. 8/23/17, 15-17).

In any event, even if the new procedural rule of *Batts* applied to defendant, his bid for resentencing would still come up short. The United States Supreme Court has "adopted the general rule that a constitutional error does not automatically require reversal of a conviction," as "the Court has applied harmless-error analysis to a wide range of errors and has recognized that most constitutional errors can be harmless." *Arizona v. Fulminante*, 499 U.S. 279, 306 (1991); *see also Commonwealth v. Story*, 383 A.2d 155, 162 (Pa. 1978) (accepting that a constitutional error may be harmless).

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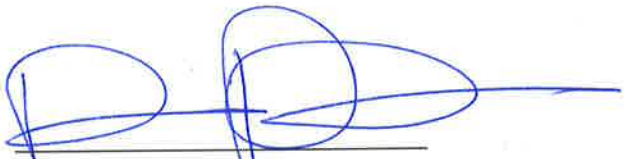
[4] *See Montgomery*, 136 S.Ct. at 734-736; *see also Commonwealth v. Foust*, 180 A.3d 416, 429 (Pa. Super. 2018) ("After deciding the merits of Batts' appeal, our Supreme Court 'exercise[d its] constitutional power of judicial administration to devise a procedure for the implementation of the *Miller* and *Montgomery* decisions in Pennsylvania.'") (quoting *Batts*, 163 A.3d at 451).

Although *Miller* did not foreclose a sentencer's ability to impose life without parole on a juvenile, the Court explained that a lifetime in prison is a disproportionate sentence for all but the rarest of children, those whose crimes reflect "'irreparable corruption.'" *Montgomery*, 136 S. Ct. at 726. The lower court was well-aware of this principle at sentencing, which defense counsel argued in closing (N.T. 12/17/14, 117-118). The lower found that the totality of the circumstances presented by this disturbing case reflected "irreparable corruption" (*id.* at 124). There was overwhelming evidence to support this conclusion. This was a horrific murder of a young woman, and defendant showed a truly ghoulish lack of remorse (N.T. 12/17/14, 124) (explaining that defendant's prison calls showed "a horribly callous attitude" towards murder, "a total lack of remorse," and were "shocking"). As such, any purported error under *Batts* is harmless beyond a reasonable doubt.

CONCLUSION

For the foregoing reasons, and those in the PCRA court's opinion, the Commonwealth respectfully requests that this Court affirm the trial court's denial of defendant's PCRA petition.

RESPECTFULLY SUBMITTED:



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IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA, Appellee,	:	3109 EDA 2017
v.	:	
TRISTAN STAHLEY, Appellant.	:	

Certification of Compliance with Pa. R.A.P. 2135

I, Robert M. Falin, Montgomery County Assistant District Attorney, do hereby certify that the within brief complies with Pa. R.A.P. 2135. The within brief contains 7,066 words.

Respectfully submitted,

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