

IN THE COURT OF COMMON PLEAS
LEHIGH COUNTY, PENNSYLVANIA

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CLERK OF COURTS
LEHIGH COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

v.

JAMIE LYNN SILVONEK,

Petitioner.

CP-39-CR-0002141-2015

PETITION FOR HABEAS CORPUS AND POST-CONVICTION RELIEF

AND NOW comes JAMIE LYNN SILVONEK (“Petitioner”), through counsel, hereby filing this Petition for Relief under the Post-Conviction Relief Act (“PCRA”), 42 Pa.C.S. § 9541 et seq.

INTRODUCTION

1. Jamie Silvonek petitions this Court for relief under Pennsylvania’s PCRA. *Id.* Convicted for her role in the murder of her mother, Cheryl Silvonek, when she was barely fourteen years old, Jamie argues that throughout the prior proceedings — from pre-trial, to the decertification hearing, to the ultimate entry of her guilty plea and sentencing to 35 years to life — her prior counsel, John Waldron (“Prior Counsel”¹), repeatedly failed to meet even the minimal standards for effective representation under the Constitution’s due process guarantees. Critically, Prior Counsel failed to conform his representation to the specific needs and circumstances of his fourteen-year-old female client — a young girl with no history of criminal conduct but a very

¹ Prior Counsel also includes any conduct by Mr. Waldron’s associate, Michael Stitt, who assisted Mr. Waldron at various points during Jamie’s case.

substantial history of trauma, an undiagnosed learning disability and other emotional and psychological issues, who at the time was involved in an abusive relationship with the 20-year-old murderer of her mother, and who was facing a charge of first-degree murder and a potential sentence of life without parole.

2. Jamie's case amply demonstrates the need to explore fully a juvenile defendant's past or present trauma, emotional immaturity, potential disabilities, and other personal characteristics – and to understand their impact on the defendant's behavior and decision-making – when representing a young client charged with a serious crime. As explained in detail in this Petition, Jamie experienced substantial emotional trauma during early puberty, including anxiety and insecurity from her facial disfigurement and her early physical development, and emotional strain within her family. That trauma both stunted her emotional development and made her acutely vulnerable to her abusive and controlling romantic relationship with her co-defendant Mr. Caleb Barnes. The combination of Jamie's particular psychological history and the months of physical and emotional abuse she suffered from Mr. Barnes directly influenced and contributed to her actions in this case. Prior Counsel's failure to contextualize and explain Jamie's conduct against this backdrop produced a record bereft of the critical elements needed to demonstrate her amenability to treatment in the juvenile justice system, and left her now serving a sentence that is ten years longer than the sentence minimum established by the General Assembly.

3. This is undeniably an exceptional case. Homicides of any sort are thankfully a rare occurrence in Upper Macungie Township,² and matricides are exceptionally uncommon

² In fact, the first homicide in the township, since Mrs. Silvonek's murder, occurred in February 2019, almost four years later. Kayla Dwyer et. al, *Homicide Victim Had "Large Amount of Blood Coming from his Head," Dispatchers Reported*, THE MORNING CALL (Feb. 25, 2019), available at <https://www.mcall.com/news/breaking/mc-pol-homicide-investigation-cds-20190225-story.html>.

throughout the country.³ The seemingly inexplicable nature of this particular homicide adds to the profound emotional challenges presented by this case. In the wake of Mrs. Silvonek's murder, everyone involved in the case – from the investigating officers, to Jamie's own legal team, to Jamie herself – were struggling to understand how something like this could have happened.

4. But the unusual and exceptional nature of this case does not alter or diminish Prior Counsel's constitutional responsibility to provide effective representation to Jamie. Over the last 30 years, the only defendants fourteen years of age or younger who have been prosecuted in adult criminal court and convicted of either first- *or* second-degree homicide in Pennsylvania have been principals – children who actually committed the murder.⁴ The closest analog to Jamie's conviction is the 1999 case of Miriam White, an eleven-year-old girl with serious mental illness who brutally murdered a stranger on the street. *See Commonwealth v. White*, 910 A.2d 648 (Pa. 2006). Miriam was prosecuted in criminal court but allowed to plead guilty to *third*-degree homicide, for which she received a sentence of 18 to 40 years in prison. *See* Mensah M. Dean, THE PHILADELPHIA INQUIRER, *At 11, She Became City's Youngest "Adult"* (Nov. 23, 2011).

5. Significantly, during that same 25-year period, scientific research has substantially advanced our understanding of juvenile offenders. Developmental research confirms that young offenders like Jamie are more impulsive, more susceptible to negative peer influences, lack maturity of judgement and are more capable of change and rehabilitation than their adult counterparts. Elizabeth S. Scott & Laurence Steinberg, *Adolescent Development and the*

³ According to national crime data collected by the Federal Bureau of Investigation, in 2017 matricides and patricides together amounted to just 118 homicides, out of 17,284 total homicides reported. Federal Bureau of Investigation, Crime Data Explorer (Sept. 24, 2018), <https://crime-data-explorer.fr.cloud.gov/explorer/national/united-states/crime/2007/2017>.

⁴ Ricardo Cruz, Docket No. CP-36-CR-0001173-1992; Levar Jones, Docket No. CP-36-CR-0003302-1994; Maurice Williams, Docket No. 51-CR-0203961-1996; Daniel Castro, Docket No. CP-51-CR-0310323-1997; Michael Pendelton, Docket No. CP-02-CR-0008053-1997; Qu'eed Batts, Docket No. CP-48-CR-0001215-2006. *See infra*. fn. 36 for further discussion of cases.

Regulation of Youth Crime, 18 FUTURE CHILD 2, 29 (2008) (describing “a large body of recent research that was not available twenty years ago” that “offers insights about adolescence and about young offenders); see also Terrie E. Moffit, *Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 Psychol. Rev. 4, 674 (1993). These characteristics, and the well-established body of research confirming them, are now firmly embedded in legal jurisprudence, having been repeatedly cited and relied upon by the Supreme Court in its quartet of landmark decisions striking extreme sentencing of children, as well as its ruling modifying the rules for custodial interrogation of youth by law enforcement. See *Roper v. Simmons*, 543 U.S. 551 (2005) (striking the juvenile death penalty); *Graham v. Florida*, 560 U.S. 48 (2010) (striking juvenile life without parole for juveniles convicted of non-homicide crimes); *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (adopting the “reasonable child” standard in police interrogation of youth); *Miller v. Alabama*, 567 U.S. 460 (2012) (striking mandatory life without parole sentences for youth convicted of homicide); and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016) (holding *Miller* established a new substantive rule of constitutional law barring life without parole sentences for youth whose crimes reflect transient immaturity).

6. The general public’s understanding of trauma and its effects on adolescent behavior has also been enriched by research during this time period. Untreated trauma hinders teens’ emotional development, affects their decision-making and judgment, and makes them vulnerable to abusive or coercive relationships which in turn can affect their conduct or behavior. See, e.g., TRAUMA & JUVENILE DELINQUENCY: THEORY, RESEARCH, AND INTERVENTIONS (Ricky Greenwald, ed., 2002); David A. Wolfe; Jennine S. Rawana & Deborah Chiodo, *Abuse & Trauma, in BEHAVIORAL & EMOTIONAL DISORDERS IN ADOLESCENTS: NATURE, ASSESSMENT, AND TREATMENT* (2008); Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household*

Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study, 14 AM. J. PREVENTATIVE MED. 245 (1998). Aided by the work of the National Child Traumatic Stress Network,⁵ the American Bar Association’s work on polyvictimization and trauma-informed advocacy,⁶ and the Office of Juvenile Justice and Delinquency Prevention’s (OJJDP) ongoing trauma initiatives,⁷ among others, legal representation of children has adapted to this research on trauma, beginning long before 2015. *See also* Nat’l Juvenile Defender Ctr., NATIONAL JUVENILE DEFENSE STANDARDS (2012) [hereinafter NATIONAL JUVENILE DEFENSE STANDARDS], available at <https://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf> (“Evidence abounds as to the unique and special status of childhood and the impact that immaturity, disabilities, or trauma may have in the case at hand.”).

7. Yet, although all of this information was readily available to Jamie’s Prior Counsel at the time of her decertification proceeding, none of it was effectively presented to the court. In fact, the word “trauma” is barely mentioned in any of the expert reports or court filings, and *no* evidence was presented to show either the scope or effect of Mr. Barnes’s physical and emotional abuse of Jamie. Because Jamie’s counsel failed to present the court with a complete and accurate picture of the relevant facts and circumstances, the court accepted the Commonwealth expert’s conclusion that Jamie was a “psychological[] bully[]” and “sociopathic in her beliefs,” *see* (Dr.

⁵ The National Child Traumatic Stress Network, <https://www.nctsn.org/> (last visited on April 12, 2019) (including dozens of resources on childhood trauma specifically for justice system professionals).

⁶ AMERICAN BAR ASSOCIATION, POLICY ON TRAUMA-INFORMED ADVOCACY FOR CHILDREN & YOUTH (Feb. 10, 2014), https://aemdev.americanbar.org/content/dam/aba/administrative/child_law/ABA%20Policy%20on%20Trauma-Informed%20Advocacy.pdf (last visited on April 12, 2019).

⁷ *See* Office of Juvenile Justice & Delinquency Prevention (OJJDP), *Trauma’s Impact on Children Exposed to Violence*, <https://www.ojjdp.gov/programs/traumas-impact-on-children-exposed-to-violence.html> (last visited on April 12, 2019) (providing an overview of the federal government’s numerous current and past initiatives around childhood trauma and children’s exposure to violence).

O'Brien's Report, Commw.'s Decert. Ex. 23, at 25) (an opinion that – as a matter of generally accepted medical standards – should never be given for a juvenile); determined that her lack of amenability to treatment was “beyond questionable” because she had no “mental infirmity or disorder” to treat,⁸ *see* (November 11, 2015, Decert. Op. at 33 n.18) [hereinafter Decert. Op.] (notwithstanding the court's simultaneous determination that Jamie's behavior was “sociopathic”); and ultimately imposed a sentence for first-degree murder ten years beyond the statutory requirement.

8. This shocking result was the product of numerous errors by Prior Counsel, including his failure to pursue obvious avenues of investigation in preparation for the decertification hearing that would have revealed critical information about Jamie's background and highly relevant evidence about the effects of her trauma, emotional immaturity, learning disability, and intimate partner abuse on her decision-making and behavior; his failure to provide his experts with crucial evidence, leading to their impeachment by the Commonwealth; his failure to introduce any favorable witnesses or other mitigating evidence even after the Commonwealth called a character witness; his failure to present an accurate picture of the dispositional options available to Jamie through the juvenile and adult systems; and his failure to effectively challenge the Commonwealth's witnesses. Prior Counsel's errors continued during the guilty plea and sentencing process, where he permitted the court to improperly set the terms for the guilty plea negotiations, failed to engage in advocacy regarding her minimum sentence, and inaccurately and inadequately counseled Jamie as to the risks and benefits of her plea, rendering it constitutionally

⁸ In fact, this conclusion is contrary to the Supreme Court's decision in *Commonwealth v. Kocher*, which rejected the idea that absence of a mental disorder precludes transfer back to the juvenile court. *See* 602 A.2d 1308, 1313 (Pa. 1992). Further, the court's finding that Jamie does not “suffer from any mental infirmity” and “lacks any recognized diagnosis” contradicts the very expert she credits. *See* (Decert. Op. at 33 n.18.) Although he declines to officially diagnose Jamie with a personality disorder due to her age, Dr. O'Brien bases his conclusion that she has sociopathic characteristics on his findings that she “manifests symptoms of an evolving Cluster B Personality Disorder.” *See* (Dr. O'Brien's Report, Commw.'s Decert. Ex. 23, at 25.)

invalid. Finally, Prior Counsel failed to effectively raise crucial evidentiary challenges to the admissibility of Jamie's statement to police and of her text messages with Mr. Barnes, which proved critical to the outcome of her case. Overall, Prior Counsel failed to conduct a meaningful investigation, relied on client interview tactics that actively hindered his representation, ignored lines of inquiry that should have been obvious, and improperly delegated his attorney responsibilities to his primary expert.

9. Prior Counsel's multiple errors have a unifying theme: He repeatedly failed in his obligations toward his barely 14-year-old client. As a result, the court was left with a blemished evidentiary record which offered an inaccurate, myopic view of Jamie as lying, manipulative, and savvy-beyond-her-years, and which lacked available evidence demonstrating her amenability to treatment in the juvenile system. With this flawed record, the court reached flawed conclusions, denying Jamie's petition to transfer her case to juvenile court and imposing a sentence ten years longer than the statutory requirement for first-degree homicide committed by a 14-year-old in adult criminal court, a sentence all the more unprecedented when imposed on a child with no prior criminal or delinquent record who was not the principal.

10. In short, because of Prior Counsel's constitutionally inadequate representation of Jamie, she has spent the last several years in an adult prison not suited for children, and indeed spent much of that time in virtual isolation. She remains in that adult prison today with no current hope for release for another three decades or more. For the reasons further described herein, Jamie respectfully requests that this Court vacate her conviction and sentence and remand her case for a new decertification hearing or new trial.

PROCEDURAL HISTORY

11. On March 15, 2015, a delinquency petition was filed against Jamie in juvenile court

alleging hindering apprehension, tampering with evidence, and abuse of corpse in connection with her mother's death. (Omnibus Pretrial Mot. ¶ 1.)

12. On April 2, 2015, homicide charges were filed, leading to the automatic transfer of Jamie's charges to adult court. (Omnibus Pretrial Mot. ¶ 2.)

13. A decertification hearing was conducted over the course of two days, October 28 and November 2, 2015, due to a scheduling conflict for a defense expert. (Decert. Hr'g Tr. 10/29/15, 126:2-6; Decert. Hr'g Tr. 11/2/15, 1-2.)

14. Jamie's motion for decertification was denied on November 19, 2015. (Decert. Op. at 37.)

15. Jamie entered a plea to all charges on February 11, 2016; the plea included a sentence of 35 years to life for first-degree murder but did not include sentences on the other charges. (Guilty Plea & Sentencing Tr. 2/11/16, 40:11-23.) The court imposed the following sentences concurrently:

- a. 35 years to life for first-degree murder.
- b. 20 to 40 years for conspiracy.
- c. 1 to 2 years for abuse of corpse.
- d. 1 to 2 years for tampering with/fabricating physical evidence.

(Guilty Plea & Sentencing Tr. 2/11/16, 40:11-23.)

16. No post-sentence motions or motions for reconsideration were filed.

17. Prior Counsel filed a Notice of Appeal on March 11, 2016. (Notice of Appeal)

18. On March 15, 2016, the court ordered a Statement of Matters Complained of on Appeal which Prior Counsel filed on April 1, 2016. (1925(b) Statement)

19. The court filed its 1925(a) Order on April 8, 2016, relying on its Omnibus Pretrial

Motion Opinion of November 16, 2015, and its Decertification Opinion filed November 19, 2015. The court did not provide additional reasons for its decision. (April 8, 2016 1925(a) Order.)

20. Prior Counsel filed a brief with the Superior Court on September 12, 2016, raising the following issues:

- a. Whether the court abused its discretion when it denied Juvenile's motion to transfer to juvenile court.
 - i. Whether the court abused its discretion in denying decertification because it violated juvenile's constitutional right against self-incrimination by requiring that she accept responsibility in order to demonstrate her amenability to treatment.
 - ii. Whether the court abused its discretion in denying decertification when it improperly considered the facts as required under 42 Pa.C.S.A. § 6355(a)(4)(iii).
 - iii. Whether the court abused its discretion in denying decertification because its opinion demonstrated unreasonable judgment based on partiality, prejudice, or ill will.

(Br. of Appellant at 6.)

21. The Superior Court affirmed the denial of decertification on August 9, 2017. *Commonwealth v. Silvonek*, No. 818 EDA 2016, 2017 WL 3411919 (Pa. Super. Ct. 2017).

22. Prior Counsel then filed a Petition for Allowance of Appeal on September 7, 2017. Prior Counsel presented only one question to the court: whether the juvenile Petitioner's constitutional right against self-incrimination was violated when the court in a decertification proceeding considered her failure to admit guilt in denying Petitioner's motion to transfer her case

to juvenile court for adjudication? (Pet. for Allowance of Appeal at 3.)

23. Allowance of appeal was denied on February 7, 2018. *Commonwealth v. Silvonek*, 181 A.3d 1073 (Pa. 2018).

24. This Petition is the first to be filed on Jamie’s behalf under the PCRA. *See* 42 Pa.C.S. § 9543(a)(1).

ELIGIBILITY FOR RELIEF

I. PCRA Statutory Standard

25. Petitioner Jamie Silvonek has been convicted of a crime under the laws of this Commonwealth and is currently serving a sentence of imprisonment for that crime, and so may bring a petition for relief under the PCRA. 42 Pa.C.S. § 9543(a)(1).

26. To qualify for relief under the PCRA, a petitioner must establish, by a preponderance of the evidence, that her conviction or sentence resulted from one or more of the errors enumerated in 42 Pa.C.S.A. § 9543(a)(2). Those errors include, among other things, “[a] violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place,” and “[i]neffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa.C.S.A. § 9543(a)(2). As explained herein, Jamie has shown by a preponderance of the evidence that she is entitled to relief under this standard.

27. This court has original jurisdiction over proceedings brought under the PCRA. 42 Pa.C.S. § 9545(a). This petition has been timely filed pursuant to 42 Pa.C.S. § 9545(b)(1).

28. None of the issues raised herein have been previously litigated or waived, as they are based upon underlying allegations of ineffective assistance of counsel. *See* 42 Pa.C.S. §§

9543(a)(3), 9544(a) (providing that an issue has been previously litigated if “the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue”). Moreover, even previously litigated legal theories are cognizable if they are based upon an underlying claim of ineffectiveness of counsel. *Commonwealth v. Collins*, 888 A.2d 564 (Pa. 2005) (holding that a claim alleging ineffective assistance of counsel raises an issue cognizable under the PCRA even if the claim underlying the ineffectiveness claim has been previously litigated). Likewise, an issue that could theoretically have been litigated is not waived if the failure to litigate is due to prior counsel’s ineffectiveness, rather than “any rational, strategic or tactical decision by counsel.” *See* 42 Pa.C.S. § 9543(a)(4).

29. Here, the Pennsylvania Superior Court has not ruled on the merits of any of the specific issues raised in this Petition. In its denial of Jamie’s direct appeal, the Superior Court ruled on the three specific issues raised by Prior Counsel: (1) whether the court violated Jamie’s Fifth Amendment protection against self-incrimination by requiring her to admit responsibility; (2) whether the court improperly considered the required decertification factors; and (3) whether the court based its determination on partiality, prejudice, or ill will. *See Silvonek*, 2017 WL 3411919. None of these specific issues is raised again in this Petition. To the extent that any of the issues raised herein could have been litigated, the failure to previously litigate them is due to the ineffective assistance of prior counsel, and hence they are not waived. *See Commonwealth v. Mitchell*, 105 A.3d 1257, 1266 (Pa. 2014) (“[C]laims of ineffective assistance of counsel should be deferred until collateral review” and are not waived when not brought earlier) (citing *Commonwealth v. Grant*, 813 A.2d 726 (Pa. 2002)).⁹

⁹ In *Commonwealth v. Grant*, the Supreme Court issued a new rule that ineffective assistance of counsel claims need not be raised as soon as new counsel is assigned, but should instead be deferred to collateral review. 813 A.2d at 738. Here, Jamie was represented by the same counsel at decertification and on direct appeal, so there is no issue of “layered” ineffectiveness in any event. *See Commonwealth v. McGill*, 832 A.2d 1014, 1022 (Pa. 2003).

30. Should this Court find this or any amended Petition defective in some respect, the Rules of Criminal Procedure require that this Court notify Jamie of the nature of any such defects and afford her an opportunity to comply and conform her Petition. *See* PA. R. CRIM. P. 905(B) (“When a petition for post-conviction collateral relief is defective as originally filed, the judge shall order amendment of the petition, indicate the nature of the defects, and specify the time within which an amended petition shall be Filed”); *see also* PA. R. CRIM. P. 905(A) (“Amendment shall be freely allowed to achieve substantial justice”).

II. Jamie Is Entitled to the Requested Discovery

31. Discovery is permitted during PCRA proceedings with leave of court after a showing of exceptional circumstances in a non-capital case. PA. R. CRIM. P. 902(E)(1). Exceptional circumstances have been found for innocence claims where a case is “somewhat unusual,” there is a reasonable probability that another person is culpable, and there is a reasonable belief that the requested evidence may support one of petitioner’s PCRA theories. *Commonwealth v. Frey*, 41 A.3d 605, 611-13 (Pa. Super. Ct. 2012) (reviewing exceptional circumstances for an innocence claim).

32. Jamie’s case is both “exceptional” and “unusual” for multiple reasons: (1) Jamie is the only child under the age of 15 convicted of first-degree murder in Pennsylvania in more than 25 years; (2) Jamie’s incredibly young age made her less equipped to participate in and understand her own defense; (3) Jamie’s counsel routinely excluded her from the decision-making process and failed to provide her with sufficient information for her to be able to assist as an adult defendant might be expected to do; (4) Jamie’s counsel has been unable to obtain the entire record below due to the Commonwealth’s objections over sealed documents and the clerk’s office’s inability to reproduce evidence that is on compact discs; and (5) ample evidence demonstrates there is a reasonable probability both that Jamie can succeed on multiple claims of ineffective counsel and

that the information she seeks in discovery will support her request for PCRA relief.

33. In particular, Jamie's counsel never gave her a copy of the Commonwealth's complete homicide file and initial discovery. The Commonwealth has since refused to produce them to Jamie's PCRA counsel. The underlying justification for her Prior Counsel's decisions, the reasonableness of those decisions, and the probability of different outcomes are all dependent on the information that was readily available to counsel at the time of each proceeding. Therefore, denying discovery of the Commonwealth's entire homicide file, which it has refused to produce voluntarily, expressly negates Jamie's right to effective assistance of PCRA counsel. Jamie has thus been materially prejudiced in her ability to demonstrate fully the ineffectiveness of her counsel and any other grounds for PCRA relief. That prejudice can be cured only by compelling the Commonwealth to produce the information in its possession relating to Jamie and giving Jamie an opportunity to address that information in an amended Petition and/or in an evidentiary hearing. *See Commonwealth v. Smith*, 121 A.3d 1049, 1053 ("Pennsylvania law makes clear . . . this Commonwealth, by way of procedural rule, provides for the appointment of counsel during [a first PCRA petition.] Pursuant to our procedural rule, . . . [Petitioner] has the right to effective assistance of counsel.") (citing *Commonwealth v. Haag*, 809 A.2d 271, 282-83 (Pa. 2002), *cert. denied*, 539 U.S. 918 (2003) (internal citations and quotation marks omitted)).

34. The Commonwealth has also refused to consent to granting Jamie and her PCRA counsel access to sealed records from the court proceedings in Jamie's case. Jamie has accordingly been forced to file a separate motion seeking access to those records and has been unable to address information from those records in this Petition. Again, the inability to address in this Petition sealed filings from *her own case* is highly prejudicial to Jamie.

35. Jamie's request to the Commonwealth for a complete copy of her case file, and its

consent to allow her and her counsel access to the full court records from the proceedings against her, is not a “fishing expedition” as specific, known documents and evidence are being requested and are readily available from the Commonwealth. The Commonwealth gave Jamie’s prior counsel access to most, if not all, of that information in the original proceedings.

36. Jamie also has a constitutional right to any discovery the Commonwealth was mandated to provide pretrial but did not. Pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the Commonwealth has an ongoing obligation to produce all exculpatory evidence and evidence favorable to Petitioner. *See Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) (“the duty to disclose is ongoing”); *Commonwealth v. Williams*, 732 A.2d 1167, 1175-76 (Pa. 1999) (holding that the Commonwealth’s duty to disclose continues through all stages of the judicial process); U.S. CONST. AM. XIV. It appears that the Commonwealth withheld at least some information from Jamie and her counsel, including, *e.g.*, information regarding work performed by at least one Commonwealth-retained expert and potentially exculpatory witness statements.

37. Discovery should include the following documents:

- a. Any and all reports, resumes, and other material related to Dr. Valliere’s involvement in the case on behalf of the Commonwealth;
- b. Copy of all information (texts, emails, photos, data, etc.) pulled from Jamie’s phone;
- c. Copy of all information/data dump (texts, emails, photos, data, etc.) pulled from Mrs. Silvonek’s phone;
- d. Copy of any documents allegedly from Jamie’s personal diary;

- e. Copy of all information/data dump from Mr. and Mrs. Silvonek's phones and Caleb Barnes';
- f. Copy of Walmart video (a piece of evidence counsel has requested from the court since it was entered as evidence, but the clerk cannot copy compact discs);
- g. Police notes, transcripts and/or recordings of the following interviews:
 - i. Witness One and mother
 - ii. Diane Haberstroh
 - iii. Brian Holtzhauser
 - iv. Lynda Strohl
 - v. Todd Gombos
 - vi. Christie Schlander
 - vii. Amy Miller
 - viii. Mrs. Silvonek's coworkers
 - ix. Isaac Moreno
 - x. Tristan Rodriguez
 - xi. Nickaury DeJesus Montanez
 - xii. Rebecca Diigiovani
 - xiii. Jovanda Mosely Lebo
 - xiv. Emily Cramer
 - xv. Spec. Carl Williams
 - xvi. Joshua Mix
 - xvii. Spec. William Schmitt
- h. All recorded calls from Jamie's time at county jail

- i. Interrogation transcript of David Silvonek
- j. Interrogation video of Caleb Barnes

III. Jamie Is Entitled to an Evidentiary Hearing

38. When PCRA pleadings “raise[] material issues of fact” an evidentiary hearing is required. PA. R. CRIM. P. 908(A)(2); *Williams*, 732 A.2d at 1189-90 (“Clearly, a material factual controversy exists . . . ; therefore, we hold that the PCRA court erred in dismissing [the] ground for relief without conducting a factual hearing.”) (citing former PA. R. CRIM. P. 1509(b)). A hearing cannot be denied unless the court “is certain of the *total lack of merit*” of the petition. *Commonwealth v. Bennett*, 462 A.2d 772, 773 (Pa. Super. Ct. 1983) (emphasis in original); *accord Commonwealth v. Korb*, 617 A.2d 715, 716 (Pa. Super. Ct. 1992) (remanding for evidentiary hearing where “[i]t appears that appellant has presented a claim of ineffective assistance of counsel which contains at least arguable merit”) (overruled on other grounds by *Commonwealth v. Goldberg*, 773 A.2d 126, 128, 130 (Pa. 2001)). Even in “borderline cases Petitioners are to be given every conceivable legitimate benefit in the disposition of their claims for an evidentiary hearing.” *Commonwealth v. Pulling*, 470 A.2d 170, 173 (Pa. Super. Ct. 1983) (citations and quotations omitted).

39. Jamie has presented a compelling claim for ineffective assistance of counsel that raises numerous material issues of fact, as set forth herein. She accordingly requests an evidentiary hearing on her Petition.

GROUND FOR THE REQUESTED RELIEF

I. Standard of Review for Claims of Ineffective Assistance of Counsel

40. The Constitution guarantees that every juvenile or adult criminal defendant, regardless of economic status, has the right to counsel when their liberty is at stake. *See Gideon v. Wainwright*, 372 U.S. 335, 340-41, 344 (1963); *In re Gault*, 387 U.S. 1, 36 (1967). “Of all the

rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.” *United States v. Cronin*, 466 U.S. 648, 654 (1984) (citation and internal quotation marks omitted). As the Pennsylvania Supreme Court has affirmed, “[t]he Sixth Amendment right to counsel exists in order to protect the fundamental right to a fair trial.” *Commonwealth v. Pierce*, 527 A.2d 973, 981 (Pa. 1987).

41. The right to counsel is particularly important for juvenile defendants. As the U.S. Supreme Court explained in *In re Gault*, juvenile defendants “require[] the guiding hand of counsel at every step in the proceedings against [them]” because of their immaturity, lack of experience, and susceptibility to coercion. 387 U.S. 1 at 36 (internal citations omitted) (holding that children are constitutionally entitled to counsel during the adjudicatory stage of delinquency proceedings). Indeed, the Supreme Court has long recognized the vital role an attorney plays in protecting the rights of juvenile defendants. *See, e.g., Haley v. Ohio*, 332 U.S. 596, 599-600 (1948) (recognizing that youth need counsel during interrogations to ensure they do not become victims of coercion); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (explaining the need for both an attorney and the youth’s parents during an interrogation to provide him with “adult advice” and put him on “less unequal footing with his interrogators”); *Kent v. United States*, 383 U.S. 541, 556 (1966) (discussing the importance of counsel in juvenile transfer proceedings).

42. The constitutional right to counsel includes the right to *effective* assistance of counsel, and ineffective assistance of counsel can entitle a defendant to postconviction relief. *See Wiggins v. Smith*, 539 U.S. 510 (2003). In determining whether an attorney’s performance, like Prior Counsel’s, was ineffective, courts look to “[p]revailing norms of practice” as reflected in applicable professional standards. *Id.* at 523; *see also Strickland v. Washington*, 466 U.S. 668, 688-89 (1984) (“Prevailing norms of practice as reflected in American Bar Association standards

and the like . . . are guides to determining what is reasonable.”); *Commonwealth v. Bailey*, 390 A.2d 166, 170 (Pa. 1978) (looking to the American Bar Association Standards for the Defense Function to assess whether trial counsel’s performance was ineffective). Both national standards and Pennsylvania guidelines further define specifically what is required for effective representation of juveniles facing adult prosecution. *See generally* NATIONAL JUVENILE DEFENSE STANDARDS; Juvenile Defender Ass’n Pa., PERFORMANCE GUIDELINES FOR QUALITY AND EFFECTIVE JUVENILE DELINQUENCY REPRESENTATION [hereinafter PA. JUVENILE DEFENSE PERFORMANCE GUIDELINES], <https://njdc.info/wp-content/uploads/2016/03/PA-Peformance-Guidelines-for-Quality-Effective-Juv-Del-Representation-2010.pdf>; *see also In re K.J.R.*, 386 Mont. 381, 390 & n.5 (Mo. 2017) (citing the NATIONAL JUVENILE DEFENSE STANDARDS in assessing an ineffective assistance of counsel claim).

43. These standards make clear that, to represent a juvenile defendant effectively at any stage of a proceeding, a defense attorney must – at a minimum – “be knowledgeable about adolescent development and the special status of youth in the legal system,” be familiar with “the specialized skill of communicating with young clients in a developmentally appropriate and effective manner,” and “conduct a prompt, thorough, and independent investigation into the facts and circumstances of the case,” among many other things. NATIONAL JUVENILE DEFENSE STANDARDS, Standards 1.1, 1.3 & 4.1; *see also* PA. JUVENILE DEFENSE PERFORMANCE GUIDELINES, Guideline 1 § 1 (Attorney-Client Relationship) & Guideline 2 § 1(D) (Specialized Training).

44. To obtain relief based upon a claim of ineffective assistance of counsel, a petitioner must satisfy the “performance and prejudice test” in *Strickland*, 466 U.S. at 698. *Commonwealth v. Vandivner*, 130 A.3d 676, 680 (Pa. 2015). Specifically, the petitioner must establish that: (1) the

underlying claim has arguable merit; (2) no reasonable basis existed for counsel’s action or failure to act; and (3) petitioner suffered prejudice as a result of counsel’s error, with prejudice measured by whether there is a reasonable probability that the result of the proceeding would have been different. *Commonwealth v. Pierce*, 786 A.2d 203, 213 (Pa. 2001) (abrogated on other grounds). “When assessing whether counsel had a reasonable basis for his act or omission, the question is not whether there were other courses of action that counsel could have taken, but whether counsel’s decision had any basis reasonably designed to effectuate his client’s interest.” *Commonwealth v. Williams*, 141 A.3d 440, 463 (Pa. 2016). With regard to the prejudice prong, a “reasonable probability” is “a probability sufficient to undermine confidence in the outcome.” *Commonwealth v. Chambers*, 807 A.2d 872, 883 (Pa. 2002).

45. Although non-meritorious claims of error cannot collectively warrant relief, the cumulative effect of multiple errors can be considered in the prejudice analysis. *See Commonwealth v. Bardo*, 105 A.3d 678, 717 (Pa. 2014). The Pennsylvania Supreme Court has long recognized that, “if multiple instances of deficient performance are found, the assessment of prejudice properly may be premised upon cumulation.” *Commonwealth v. Johnson*, 966 A.2d 523, 532 (Pa. 2009) (citing *Commonwealth v. Perry*, 644 A.2d 705, 709 (Pa. 1994) (finding prejudice from trial counsel’s multiple instances of ineffectiveness “in combination”)).

II. Factual Background for Claims of Ineffective Assistance of Counsel

46. Early in the morning on March 15, 2015, after finding Mrs. Silvonek’s abandoned car and a shallow grave, police officers were dispatched to the Silvonek residence at which time it was confirmed that Mrs. Silvonek was missing. (Preliminary Hr’g Tr. 5/14/2015, 24:12-16.) Soon after, police were able to identify Mrs. Silvonek as the individual who was killed. (Preliminary Hr’g Tr. 5/14/2015, 28:1-8.)

47. A homicide detective was included in the investigation and it was labeled a suspicious death. (Preliminary Hr'g Tr. 5/14/2015, 34:12-35:7.)

48. Only a few hours after the offense, officers arrived at the Silvonek residence to find Mr. Silvonek who had just awakened and did not realize his wife was missing. (Preliminary Hr'g Tr. 5/14/2015, 41:10-23.) The officers then discovered Jamie and an adult man, later identified as her co-defendant, Caleb Barnes, in Jamie's bed. (Preliminary Hr'g Tr. 5/14/2015, 45:21-25, 46:21-23, 47:7-8, 49:1-25.)

49. All three individuals were taken down to the police station and placed in separate rooms for purposes of interrogation. (Preliminary Hr'g Tr. 5/14/2015, 51:17-24, 54:21-55:17.)

50. Mr. Silvonek was questioned first. (Preliminary Hr'g Tr. 5/14/2015, 55:2-3.)

51. Jamie was then questioned. Mrs. Silvonek's mother, Margaret Lynn, was asked to accompany Jamie during her interrogation. (Preliminary Hr'g Tr. 5/14/2015, 55:25-56-15.)

52. When Mrs. Lynn was asked to sit in on the interrogation, she did not know that a crime had occurred and was oblivious to the possibility that her daughter was dead. (App. A, Margaret Lynn Cert. ¶¶ 9-15 [hereinafter M.L. Cert.]) She only knew Mrs. Silvonek was missing, and Mrs. Lynn assumed there was some sort of mix-up happening. (App. A, M.L. Cert. ¶ 10.)

53. The officers left Mrs. Lynn and Jamie alone for a brief period of time to give them the opportunity to discuss Jamie's rights. (Preliminary Hr'g Tr. 5/14/2015, 56:22-57:6.) When police returned, Jamie waived her *Miranda* rights. (Preliminary Hr'g Tr. 5/14/2015, 56:22-57:6.)

54. During the course of the interrogation, Mrs. Lynn learned that her daughter was dead and became emotionally distraught and needed to be carried out of the room. (Jamie's Interrogation Tr. 3/15/2015, 32-34.) Officers then proceeded to interview Jamie without an adult present. (Jamie's Interrogation Tr. 3/15/2015, 34-35.) Mrs. Lynn was brought in later for the

officers to obtain consent to take evidence from Jamie (fingernail clippings, etc.) and for her to provide them permission to search Jamie's phone. (Jamie's Interrogation Tr. 3/15/2015, 102-12.)

55. Investigators interviewed Mr. Barnes after first talking to Jamie, and then returned to continue questioning her (Preliminary Hr'g Tr. 5/14/2015, 72:21-23.)

56. The police investigation soon uncovered the basic facts of the offense, which were largely uncontested:

- a. Jamie, who was 13 at time, and Mr. Barnes, who was 20 and a half, met at a concert in October 2014 and began a relationship that largely consisted of text messages and phone calls. Jamie turned 14 in February, and Mr. Barnes was almost 21 at the time of the offense.
- b. Mrs. Silvonek had learned the week before the offense that Mr. Barnes was 20 years old and thus insisted on the relationship ending.
- c. At some point that weekend, Jamie and Mr. Barnes discussed the possibility of murdering her parents and while no concrete plan was discussed, Mr. Barnes claimed that he "already had the knives picked out."
- d. On the day of the offense, Mrs. Silvonek agreed that Jamie and Mr. Barnes could go to a concert but said that it would be the last time she would permit them to see each other.
- e. Mrs. Silvonek showed Mr. Barnes Jamie's passport to show that she was indeed only fourteen years old.
- f. There was then a text message exchange between Jamie and Mr. Barnes prior to departing for the concert in which Jamie was upstairs and

encouraged Mr. Barnes to kill her mother while pleading with him not to leave her.

- g. Mrs. Silvonek then drove them to the concert. She waited in the car while they attended the concert, then drove them to Chris' Diner after the concert, where she again waited in the car, before driving everyone back to the Silvonek residence.
- h. Once they arrived back at the house, at about 1:00am, the three of them were in the car in the driveway when Mr. Barnes attempted to strangle Mrs. Silvonek and ultimately stabbed her to death while Jamie remained in the car.
- i. Mr. Barnes and Jamie then proceeded to try and bury the body and dispose of the vehicle after the offense. During this process, the two of them went to Walmart to obtain various cleaning supplies. They then returned to the Silvonek residence and went to bed.

See generally, (Decert. Op. 4-25.); (Guilty Plea & Sentencing Tr. 9:4-21:10.)

57. Jamie was initially charged in juvenile court. (Omnibus Pretrial Mot. ¶ 1-2.) She was represented by Prior Counsel who had been retained by her father.

58. Jamie's case was transferred to adult criminal court due to a homicide charge being filed against her. (Criminal Complaint at 3.) In adult court Jamie was charged with criminal homicide (18 § 2501), conspiracy to commit criminal homicide (18 § 903), abuse of corpse (18 § 5510), and tampering with/fabricating physical evidence (18 § 4910). (Criminal Complaint at 3-4.) A charge of first-degree murder exposed Jamie to a possible sentence of life without parole if the Commonwealth chose to seek that sentence. 42 Pa.C.S. § 1102.1(a)(2).

59. At the preliminary hearing conducted on May 14, 2015, the Commonwealth called five witnesses: three law enforcement officers to explain the investigation; a juvenile, referenced as Witness One, to testify to a conversation she allegedly overheard; and a neighbor who heard a car honking at the time of the offense. (Preliminary Hr'g Tr. 5/14/2015, 3:1-14; 5:24-6:2.)

60. It became clear at the preliminary hearing that the Commonwealth was primarily resting its case against Jamie on her statement to police and text messages with Mr. Barnes, Witness One's accounting of conversations she allegedly had with Jamie and overheard between Jamie and Mr. Barnes, and the videos of Jamie and Mr. Barnes before and after the event at Chris's Diner and Walmart. *See generally* (Preliminary Hr'g Tr. 5/14/2015.)

61. Jamie was held on all charges at the conclusion of the preliminary hearing. (Preliminary Hr'g Tr. 5/14/2015, 212:15-16.)

62. On June 5, 2015, before conducting substantial investigation, Prior Counsel filed a motion to remand Jamie's case to juvenile court. The substance of the motion was less than two pages long. (Mot. to Remand Case to Juvenile Division.) Counsel never submitted additional briefing in support of decertification.

63. Prior Counsel's investigation prior to decertification consisted of the following:

- a. Prior Counsel hired an investigator to interview witnesses. (App. B, John Waldron Cert. ¶ 2 [hereinafter J.W. Cert.]) The investigator interviewed a list of individuals provided by Jamie's father. (App. C, Lee Anne Allison Cert. ¶¶ 3-4 [hereinafter L.A.A. Cert.]) The investigator did not conduct follow-up interviews or identify additional individuals to interview. Prior Counsel did not speak to any of the witnesses interviewed by the

investigator or provide the investigator with additional witnesses. (App. B, J.W. Cert. ¶ 2.); (App. C, L.A.A. Cert. ¶¶ 3-4.)

- b. Prior Counsel did not have anyone on the team interview Jamie’s closest family members. (App. B, J.W. Cert. ¶ 2.); (App. A, M.L. Cert. ¶ 2.); (App. D, Tonya Lynn Cert. ¶ 2 [hereinafter T.L. Cert.]); (App. E, David Silvonek Cert. ¶ 2 [hereinafter D.S. Cert.])
- c. No one from the defense team talked to any witnesses about the possibility of testifying. (App. B, J.W. Cert. ¶ 2.); (App. A, M.L. Cert. ¶ 2.); (App. D, T.L. Cert. ¶ 2.); (App. E, D.S. Cert. ¶ 2.); (App. F, Bailey Allison Cert. ¶ 2 [hereinafter B.A. Cert.]); (App. C, L.A.A. Cert. ¶¶ 3-4.); (App. G, Milah Allison Cert. ¶ 2 [hereinafter M.A. Cert.]); (App. H, Veronica “Ronnie” Andrietta Cert. ¶¶ 2-3 [hereinafter V.A. Cert.]); (App. I, Erich Joella Cert. ¶¶ 5-7 [hereinafter E.J. Cert.]); (App. J, Nicholas Jupina, LCSW Cert. ¶ 4 [hereinafter N.J. Cert.]); (App. K, Heather Lesko Cert. ¶¶ 2-3 [hereinafter H.L. Cert.]); (App. L, Ray Mueller Cert. ¶ 2 [hereinafter R.M. Cert.]); (App. M, Sara Senseman Cert. ¶ 2 [hereinafter S.S. Cert.]); (App. N, Jimmy Lee Werley Cert. ¶ 2 [hereinafter J.L.W. Cert.]); (App. O, Jamie Silvonek Cert. ¶¶ 44-45 [hereinafter J.S. Cert.]¹⁰)
- d. Prior Counsel requested Jamie’s school and medical records.
- e. Prior Counsel retained Dr. Frank Dattilio to evaluate Jamie for her decertification hearing. (App. B, J.W. Cert. ¶ 4); (App. P, Dr. Frank M. Dattilio, Ph.D., Cert. ¶ 2 [hereinafter Dr. F.M.D. Cert.]) Dr. Dattilio

¹⁰ Witness One’s name has been redacted from Jamie’s certification to protect her identity in accordance with prior court orders.

identified some witnesses to speak to on his own and reviewed the records provided to him. (App. B, J.W. Cert. ¶ 4.); (App. P, Dr. F.M.D. Cert. ¶ 4.); (Dr. Dattilio's Report, Def.'s Decert. Ex. 2, at 1-2) Prior Counsel did not provide Dr. Dattilio with a number of critical discovery documents. (App. P, Dr. F.M.D. Cert. ¶¶ 3-5.); (Decert. Op. at 27.) Dr. Dattilio evaluated Jamie and concluded that she was amenable to rehabilitation in the juvenile system. (Dr. Dattilio's Report, Def.'s Decert. Ex. 2, at 24-28.)

- f. Dr. Dattilio recommended Prior Counsel retain Dr. Steven Berkowitz. (App. B, J.W. Cert. ¶ 4.)
- g. Dr. Berkowitz was retained and only had a few weeks to conduct his evaluation and write a report for Jamie's decertification. (App. Q, Dr. Steven Berkowitz, M.D. Cert. ¶¶ 2-4 [hereinafter Dr. S.B. Cert.]) Prior Counsel did not provide Dr. Berkowitz with a number of critical discovery documents. (App. Q, Dr. S.B. Cert. ¶¶ 3, 6-10.); (Decert. Op. at 30.) Dr. Berkowitz focused his analysis on Jamie's non-verbal learning disability and concluded that she was amenable to rehabilitation. (App. Q, Dr. S.B. Cert. ¶¶ 5-7, 12-13.)
- h. Prior Counsel was contacted by an expert who specializes in sexual offenders/victims but did not consider retaining her or any other expert on intimate partner violence. (App. B, J.W. Cert. ¶ 4.)

64. Prior Counsel filed a seven-page Omnibus Pretrial Motion on August 17, 2015, requesting the following relief:

- a. Suppression of Jamie's statement to police (Omnibus Pretrial Mot. ¶¶ 6-13.)

- b. Severance from Mr. Barnes' trial (Omnibus Pretrial Mot. ¶¶ 14-19.)
- c. A Bill of Particulars from the Commonwealth (Omnibus Pretrial Mot. ¶¶ 20-23.)
- d. Various discovery of physical evidence (Omnibus Pretrial Mot. ¶¶ 24-26.)
- e. Inspection of Mr. Barnes' military personnel and medical file (Omnibus Pretrial Mot. ¶¶ 27-29.)
- f. Change of venue, or in the alternative, change of venire (Omnibus Pretrial Mot. ¶¶ 30-34.)
- g. Permission to file supplemental pre-trial motions after disclosure of additional discovery by the Commonwealth (Omnibus Pretrial Mot. ¶ 35.)

65. At no point did Prior Counsel move to have Jamie's text messages excluded from evidence.

66. A suppression hearing was conducted on October 28, 2015. (Suppression Hr'g Tr. 10/28/15, 1.)

67. Without a ruling on the defense's pretrial motions, including the suppression motion, the decertification hearing began on October 29, 2015. (Decert. Hr'g Tr. 10/29/15, 1.) Due to a scheduling conflict, Dr. Berkowitz testified on November 2, 2015, and counsel presented closing arguments on that day. (Decert. Hr'g Tr. 10/29/15, 126:2-6; Decert. Hr'g Tr. 11/2/15, 1-2.)

68. Prior Counsel's evidentiary presentation at Jamie's decertification hearing consisted of only three witnesses: two experts and a probation officer. (Decert. Hr'g Tr. 10/29/15, 2-3; Decert. Hr'g Tr. 11/2/15, 2.)

- a. Dr. Dattilio testified regarding Jamie's amenability to treatment, highlighting her immaturity, her lack of sophistication surrounding the crime, and the role of her co-defendant. *See generally* (Decert. Hr'g Tr. 10/29/15, 8-103.)
- b. Dr. Berkowitz testified as to Jamie's nonverbal learning disability and its interaction with her other developmental traits. He opined that Jamie was amenable to treatment within the juvenile system. *See generally* (Decert. Hr'g Tr. 11/2/15, 4-80.)
- c. A probation officer for Lehigh County testified that she did not know of any juvenile who was committed to a juvenile detention center for more than two and a half years and that the average commitment was typically much shorter than that. *See generally* (Decert. Hr'g Tr. 10/29/15, 104-125.)

69. The Commonwealth's presentation at Jamie's decertification hearing consisted of twice as many witnesses: a forensic pathologist, a psychiatrist, a Classification Program Manager from the State Correctional Institute at Muncy ("SCI Muncy"), a corrections officer from Lehigh County Prison, a science teacher from Jamie's school, and a co-worker of Jamie's mother. (Decert. Hr'g Tr. 10/29/15, 2-3.)

- a. The forensic pathologist testified to the autopsy conducted on Jamie's mother. *See generally* (Decert. Hr'g Tr. 10/29/15, 126-151.)
- b. Dr. O'Brien, a forensic psychiatrist, testified that Jamie was viewed as "manipulative" and "sociopathic" based on police interview notes. (Decert. Hr'g Tr. 10/29/15, 164-165.) He adopted this viewpoint and opined that Jamie was not amenable to treatment in the juvenile system as she was

highly intelligent, and it would thus be nearly impossible to judge her true progress in treatment programs. *See generally* (Decert. Hr’g Tr. 10/29/15, 152-227.)

- c. The Classification Program Manager from SCI Muncy, the women’s prison that houses juveniles, testified that he thought Muncy provided a more therapeutic environment compared to the juvenile facilities and explained the 40-week program designed for juveniles at SCI Muncy. *See generally* (Decert. Hr’g Tr. 10/29/15, 227-243.)
- d. Officer Cramer from the Lehigh County Prison explained that she thought Jamie was doing well at the county jail and introduced a letter that Jamie allegedly tried to send to Mr. Barnes through another prisoner. *See generally* (Decert. Hr’g Tr. 10/29/15, 244:264.)
- e. Diane Haberstroh, a teacher from Jamie’s school, had been overseeing Jamie’s work with other students on a project around manufacturing since October 2014. She testified that Jamie was a manipulative teenager who was well-equipped to take advantage of the adults around her. She specifically noted the manufacturing event in which Jamie told individuals she was interested in manufacturing and then Ms. Haberstroh “cornered her” during which time Jamie said she was interested in being a doctor. At no point was Ms. Haberstroh Jamie’s teacher. *See generally* (Decert. Hr’g Tr. 10/29/15, 264:282.)

f. Debra Bellis, a co-worker of Mrs. Silvonek, spoke to the impact on the hospital and community of losing her. *See generally* (Decert. Hr’g Tr. 10/29/15, 282:292.)

70. Prior Counsel did not call any lay witnesses to rebut the characterization of Jamie presented by the Commonwealth. *See generally* (Decert. Hr’g Tr. 10/29/15.)

71. After the decertification hearing, on November 4, 2015, Prior Counsel filed a brief in support of suppression. (Def.’s Br. Support Mot. Suppress Statements.)

72. The court denied Prior Counsel’s pretrial motions, including the request to suppress Jamie’s confession, on November 16, 2015. (November 16, 2015 Order & Opinion.)

73. Three days later, the court issued its opinion denying decertification. (November 19, 2015, Decert. Op. at 1.) The court made the following findings as to the decertification factors:

- a. “[T]he impact on the victim was devastating” as it resulted in Mrs. Silvonek’s death. The court also characterized the offense as “heinous.” (Decert. Op. at 24.)
- b. The court found that the community at large was impacted by the offense, specifically that the crime “posed a grave risk to the community at large” since it occurred in a residential area. (Decert. Op. at 24.) The court also emphasized that the offense caused “others in the community to feel that their safe environment has been breached and violated.” (Decert. Op. at 25.)
- c. As to the nature and circumstances, the court found them to be “extremely serious” since Jamie “was a willing and active participant.” (Decert. Op. at 25.) The court went so far as to find that “[b]ut for [Jamie,] Co-Defendant

Caleb Barnes never would have killed the victim.” (Decert. Op. at 25 n.12.)

Thus, Jamie “was completely culpable in this crime.” (Decert. Op. at 25.)

- d. The court held that Jamie demonstrated criminal sophistication, the factor that weighed against Jamie the most, as her “intelligence and manipulation were essential to achieving the desired goal.” (Decert. Op. at 25.)
- e. Jamie was considered a threat to the public “as she takes no responsibility for her actions” and thus “the likelihood that rehabilitation will be successful is greatly diminished.” (Decert. Op. at 26.)
- f. The court dismissed Dr. Dattilio’s opinions since he was “constrained” by Jamie’s version of events, (Decert. Op. at 29-30), and did not have several pieces of key evidence in the case. (Decert. Op. at 27.) The trial court also found Dr. Dattilio’s characterization of Jamie to be “in direct contrast to the picture that she painted to others” based on a comparison with Diane Haberstroh’s testimony. (Decert. Op. at 28.)
- g. The court similarly dismissed Dr. Berkowitz’s opinions for failure to consider key pieces of evidence. (Decert. Op. at 30-31.) The court also discredited Dr. Berkowitz for adopting the underlying research of the Supreme Court’s jurisprudence outlawing the death penalty and mandatory life without parole for juveniles. (Decert. Op. at 30-31.)
- h. The court adopted Dr. O’Brien’s opinions, concluding that he had reviewed the most physical evidence of any of the experts. (Decert. Op. at 31-33.) Also, the court adopted the underlying characterizations of Jamie that Dr.

O'Brien pulled from investigative reports. (Decert. Op. at 32-33); *see also* (Dr. O'Brien's Report, Commw's Decert. Ex. 23.)

- i. The court thus agreed that Jamie was ““a highly intelligent and manipulative young woman’ who was not a ‘fearful or emotionally overpowered passive participant.’” (Decert. Op. at 32-33.) (quoting Dr. O'Brien's Report, Commw's Decert. Ex. 23.) The court also adopted Dr. O'Brien's characterization of Jamie as “an individual who could size up her audience and behave in a manner that was consistent with their interests and their receptiveness to her self-serving and ingratiating representation of herself.” (Decert. Op. at 32-33.) (quoting Dr. O'Brien's Report, Commw's Decert. Ex. 23.)
- j. Similarly, the court adopted Ms. Haberstroh's characterization of Jamie as a “chameleon,” manipulative, and well-versed in interacting with adults and used this as corroboration for Dr. O'Brien and as evidence undermining the defense experts. (Decert. Op. at 28-30.)
- k. In holding that a juvenile facility would be inadequate for Jamie, the court emphasized that Jamie would likely be released in less than two and a half years if she was prosecuted and sentenced in the juvenile system. (Decert. Op. at 35.) The court found this time to be inadequate particularly as the systems were designed for a shorter duration. (Decert. Op. at 35.) In contrast, the court adopted a lay witness' opinion that SCI Muncy would be more suited to Jamie's needs as it was “less chaotic” and they “had more options available to them to deal with rule breakers” according to one SCI

Muncy official who testified at the decertification hearing. (Decert. Op. at 35-36.)

- l. The court held that Jamie’s “age *alone* is the primary factor in favor of decertification” but it was “overwhelmingly outweighed by the factors against decertification.” (Decert. Op. at 36.) (emphasis in original)
- m. The court repeatedly characterized Jamie as arrogant, manipulative, criminally sophisticated, and somehow mature beyond her years. *See generally* (Decert. Op.)

74. After the denial of decertification, the only motion Prior Counsel filed was a petition for recusal of trial judge and reconsideration of change of venue/venire. The motion was filed on December 1, 2015, alleging bias, prejudice, and ill will. (Pet. for Recusal Trial Judge & Reconsideration Change Venue/Venire.) The motion was denied on December 18, 2015. (Status Conference/Motions Hr’g Tr. 12/1/15, 10:23.)

75. Counsel did not conduct any additional investigation after the denial of decertification *See generally* (App. B, J.W. Cert.)

76. Counsel for the parties had a meeting in chambers with the honorable Judge Dantos prior to beginning plea negotiations. During this meeting, Judge Dantos made it clear that a plea agreement, if one was reached, could not propose a sentence below 35 years to life. (App. B, J.W. Cert. ¶ 7.); (App. O, J.S. Cert. ¶¶ 46-47.)

77. Prior Counsel did not present any additional evidence or other material to the Commonwealth or the court to support a conviction for less than first-degree murder or a minimum sentence below 35 years. (App. B, J.W. Cert. ¶¶ 8-9.)

78. Jamie ultimately agreed to plead guilty to all charges for an agreement of 35 years to life on the first-degree murder charge; no agreement was made as to the other sentences. (Guilty Plea & Sentencing Tr. 2/11/16, 40:11-23.) The trial court sentenced Jamie to the following concurrent sentences: 35 years to life for first-degree murder, 20 to 40 years for conspiracy, 1 to 2 years for abuse of corpse, and 1 to 2 years for tampering with/fabricating physical evidence. (Guilty Plea & Sentencing Tr. 2/11/16, 40:11-23.)

III. Prior Counsel Failed to Represent Jamie Effectively in Her Decertification Proceeding.

79. The need for effective assistance of counsel is paramount in decertification proceedings. The determination of whether a child will be tried as an adult in criminal court or juvenile court is a “critically important” action. *Commonwealth v. Brown*, 26 A.3d 485, 494 (Pa. Super. Ct. 2011) (quoting *Kent*, 383 U.S. at 556). The consequences of which “can be monumental.” *Id.* As this case demonstrates, the decision to keep a youth in the adult criminal justice system can mean the difference between treatment and rehabilitation and severe, possibly life-long, punishment. *See Kent*, 383 U.S. at 556. Therefore, effective assistance of counsel during the decertification process “is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice.” *Id.* at 561.

80. Under Pennsylvania law, a child seeking decertification bears the burden of proof and must establish by a preponderance of the evidence that transfer to the juvenile court system best serves the public interest. 42 Pa.C.S. § 6322(a). The factors relevant to this determination are statutorily defined, and include:

- (A) the impact of the offense on the victim or victims;
- (B) the impact of the offense on the community;
- (C) the threat to the safety of the public or any individual posed by the child;

(D) the nature and circumstances of the offense allegedly committed by the child;

(E) the degree of the child's culpability;

(F) the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and

(G) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile by considering the following factors:

- (I) age;
- (II) mental capacity;
- (III) maturity;
- (IV) the degree of criminal sophistication exhibited by the child;
- (V) previous records, if any;
- (VI) the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by the juvenile court to rehabilitate the child;
- (VII) whether the child can be rehabilitated prior to the expiration of the juvenile court jurisdiction;
- (VIII) probation or institutional reports, if any;
- (IX) any other relevant factors.

42 Pa.C.S. § 6355(a)(4)(iii).

81. Pennsylvania law does not assign a specific weight to each of the decertification factors; the court is required to consider all of them. *Commonwealth v. Brown*, 26 A.3d 485, 492 (Pa. Super Ct. 2011) (citing *Commonwealth v. Sanders*, 814 A.2d 1248, 1251 (Pa. Super. Ct. 2003); *see also Commonwealth v. Archer*, 722 A.2d 203, 207 (Pa. Super. Ct. 1998) (noting that

decertification should not be denied due to the severity of the offense alone). Attorneys representing youth facing prosecution in adult criminal court thus bear the responsibility to investigate all circumstances relevant to decertification, which includes interviewing “all witnesses named by the client, all known state witnesses, and any other relevant witnesses,” and to “[p]resent all facts, mitigating evidence, and testimony that may convince the court to keep the client in juvenile court.” NATIONAL JUVENILE DEFENSE STANDARDS, Standards 4.3, 8.4; *see also id.* at Standard 8.3. Pursuant to Pennsylvania standards for representation in decertification proceedings, this duty includes the “obligation to actively investigate the social, psychological and educational history of the child.” PA. JUVENILE DEFENSE PERFORMANCE GUIDELINES, Guideline 9, Section 2. Counsel must also “be prepared to offer evidence and testimony, such as from teachers, counselors, psychologists, probation officers, religious associates, and/or employers, to establish amenability to the juvenile system.” *Id.* at Guideline 9, Section 3.

82. Prior Counsel failed to meet even his minimal obligations in representing a juvenile defendant facing adult criminal prosecution for a homicide. At the time of Jamie’s decertification proceeding, there was a tremendous amount of known or readily discoverable evidence demonstrating her amenability to treatment in the juvenile system, much of which was never presented to the court in any form. Indeed, Prior Counsel failed to introduce the evidence necessary to answer the key question before the decertification court: *why* did Jamie become involved in her relationship with Mr. Barnes and act in the way she did leading up to, during, and after the death of her mother? In other words, what can explain her decision-making and behavior? Answering that question was fundamental to every aspect of this case – from the specific charges filed, to the ultimate conviction and sentence, and it was of utmost relevance to the decertification proceeding. In particular, understanding the reasons behind Jamie’s decision-making and behavior was

necessary in order to assess her relative degree of culpability, the likelihood that she would pose a threat to the public, and her amenability to treatment through the juvenile system. *See* (App. R, Dr. Marty Beyer Cert. at 22 [hereinafter Dr. M.B. Cert.]); *see also* 42 Pa.C.S. § 6355(a)(4)(iii) (listing decertification factors). As explained below and in the attached report by Marty Beyer, Ph.D., a clinical psychologist who evaluated Jamie and reviewed the record in this case, answering these questions required understanding the combined effect of Jamie’s untreated emotional trauma, her developmental immaturity, her nonverbal learning disability, and the intimate partner abuse she experienced at the hands of Mr. Barnes on her decision-making and behavior. Prior Counsel knew many of the relevant factual details at the time of decertification and would have learned of many others through minimally competent investigation, yet he failed to effectively present this highly relevant information to the court. As a result, with no credible, contrary explanation for Jamie’s behavior and decision-making, the court readily accepted the Commonwealth’s grossly inaccurate characterization of her as a “manipulative young woman” who is likely “sociopathic in her beliefs.” (Dr. O’Brien’s Report, Commw.’s Decert. Ex. 23, at 25) Had Prior Counsel effectively presented the existing and readily available information about the effects of Jamie’s trauma, immaturity, disability, and intimate partner abuse on her decision-making and behavior, there is a reasonable probability the outcome here would have been different.

A. Substantial Available Evidence Demonstrates that Jamie Was Highly Amenable to Treatment in the Juvenile System.

83. Had Prior Counsel fulfilled his minimal obligations toward his client – adequately investigating the relevant decertification factors, ensuring that key evidence and caselaw were presented to the court, and effectively rebutting the Commonwealth’s evidence – an entirely different story would have come to light rather than the narrative the Commonwealth presented of Jamie as the lying, manipulative mastermind behind her mother’s murder. Indeed, readily available

evidence could have shown that: (1) Jamie was well-liked by those who knew her and was not viewed as manipulative or deceptive; (2) Jamie had substantial challenges during puberty associated with her anxiety about her physical appearance and chronic feelings of rejection by her family; (3) Jamie experienced those challenges as a form of emotional trauma, which affected her cognitive and emotional development and predisposed her to fall victim to an abusive relationship; (4) Jamie’s relationship with Mr. Barnes was, in fact, highly abusive, both physically and emotionally; (5) the combined effect of Jamie’s untreated emotional trauma, abusive relationship with Mr. Barnes, developmental immaturity, and nonverbal learning disability directly contributed to her involvement in the crime; and (6) members of Jamie’s community – including victims of the offense – remained supportive of her after the offense and would have provided support in her treatment and rehabilitation through the juvenile system. This evidence amply demonstrates that Jamie was highly amenable to treatment in the juvenile system, and that decertification of her case would have best served the public interest.

i. **Jamie Was Well-Liked and Not Viewed as Manipulative or Deceptive by Those Who Knew Her.**

84. The people who knew Jamie best at the time of the decertification hearing – her family, lifelong friends, close neighbors, and long-time teachers – all would have described Jamie as a loving, sweet, and pleasant girl who had no trace of violent or antisocial tendencies. Peers recall Jamie as “a good friend,” (App. G, M.A. Cert. ¶ 4.), and someone you “could always ask . . . for help,” (App. F, B.A. Cert. ¶ 4.). The adults who knew Jamie well thought of her as “a dream to have around,” (App. C, L.A.A. Cert. ¶ 6.), “a sweet kid who was very smart,” (App. H, V.A. Cert. ¶ 4), and the kind of kid who “would stay up all night trying to keep a baby bird alive,” (App. M, S.S. Cert. ¶ 13). *See also* (App. K, H.L. Cert. ¶¶ 4, 17.) (describing how Jamie was a good, smart kid whom she viewed “like another child” of her own). Jamie’s music teacher, Erich Joella,

who had taught her since kindergarten, described Jamie as “the kind of kid you liked to have around. She was gifted, thoughtful, and earnest.” (App. I, E.J. Cert. ¶ 8.) “She was never a student that caused [him] problems or that [he] had to discipline,” and he trusted her so fully he would ask her to retrieve items from his desk. (App. I, E.J. Cert. ¶¶ 10-11.) These positive views of Jamie by her teachers are echoed in Jamie’s glowing school records, *see generally* (Parkland School District Records, Commw.’s Decert. Ex. 6), and by her grandmother and aunt, both of whom recall that “Cheryl would come home smiling after PTA meetings,” (App. A, M.L. Cert. ¶ 24), and that “[t]he notes coming home from school were wonderful and said she was a joy,” (App. D, T.L. Cert. ¶ 4.).

85. None of the people who knew Jamie well viewed her as deceptive or manipulative. According to Jamie’s aunt, Tonya, “it’s laughable to characterize Jamie as manipulative or the mastermind. She might’ve known how to get her way with her mom and [grandmother], but we all knew how to do that when we were kids.” (App. D, T.L. Cert. ¶ 15.) Close family friend Heather Lesko further explains how, when she was questioned by the police, “the officers were really pressing for” her statement to “fit into their negative view of Jamie, but they didn’t understand who Jamie was or the dynamics of these kids. The interviewers focused a lot on the idea that Jamie did whatever she wanted, had no limits, and could manipulate her mom. But the thing is, [us parents] didn’t have to set a lot of limits, because they were just good kids. Since they were so smart, [we] could talk to them about situations, [they]’d negotiate, hear them but, but it was rare that [us parents] had to just tell them no to something.” (App. K, H.L. Cert. ¶ 17.)

ii. Jamie Began to Experience Substantial Emotional Challenges When She Entered Puberty.

86. Those who knew Jamie well also agree that she began to experience challenges when she entered puberty, at around age 11. In particular, many people close to Jamie describe the

embarrassment and anxiety she began to display associated with her notable facial disfigurement, caused by a congenital lipoma on her cheek. *See, e.g.*, (App. K, H.L. Cert. ¶ 10.) (Jamie “was very insecure, especially as she entered puberty. She was always insecure about the scar on her face, which she’d had since birth.”); (App. A, M.L. Cert. ¶ 5.) (Jamie “became really self-conscious about her face being off on one side” and “would say . . . ‘I always thought I was normal, I never realized I was different.’”) At her parents’ urging, Jamie had undergone several procedures to try to correct the disfigurement, with limited success. During one surgery, Jamie was not fully numb from the local anesthetic and “experienced frightening pain.” (App. R, Dr. M.B. Cert. at 4.) Although the disfigurement had not bothered Jamie much as a small child, family and friends noticed that, beginning in adolescence, Jamie started wearing her hair in a way that hid her face (App. A, M.L. Cert. ¶ 6.); (App. D, T.L. Cert. ¶ 10.) Close family friend, Heather Lesko, recalls talking to Jamie about the disfigurement, and Jamie would say “things such as, ‘it’s okay, I don’t have to be pretty I’m smart,’” but Heather “could tell she was hurting.” (App. K, H.L. Cert. ¶ 11.)

87. At around the same time, Jamie experienced rapid, early physical development, which also became a source of insecurity. (App. E, D.S. Cert. ¶ 8.) She was the first girl in her class to begin menstruating, developed breasts more than a year before any other girl in her class, and she gained weight during early puberty. (App. R, Dr. M.B. Cert. at 4-5.) Heather Lesko describes that Jamie’s “physical changes affected her a lot,” “girls in school would make comments,” and she suddenly “started to get attention.” (App. K, H.L. Cert. ¶ 12.) Jamie’s father and grandmother agree that she developed quickly and became increasingly anxious about her appearance. (App. A, M.L. Cert. ¶¶ 5-6.); (App. E, D.S. Cert. ¶ 8.) This rapid physical development also exacerbated her insecurity about her facial disfigurement. As close family friend, Sara Sensemen, noted in describing Jamie during this period: “It is already hard to grow up female, but

as a female growing up with facial deformities, Jamie was even more insecure” than most. (App. M, S.S. Cert. ¶ 8.)

88. Jamie herself confirms that, beginning when she entered puberty, she “felt like [she] had a glaring deformity” and like “an imposter around [her] peers.” (App. O, J.S. Cert. ¶ 5.) Her parents’ well-intentioned efforts to improve the scarring “made [her] even more insecure because [she] felt like they were not accepting [her] for who [she] was.” (App. O, J.S. Cert. ¶ 5.) As Dr. Marty Beyer, a clinical psychologist with expertise on adolescent development who evaluated Jamie, describes, Jamie “realized that her facial disfigurement made her parents ashamed,” and their insistence that she undergo surgery “conveyed that she was not acceptable” to them. (App. R, Dr. M.B. Cert. at 4.) The treatments themselves also exacerbated her insecurity; she explains: “I felt like a guinea pig, with everyone looking at my face and talking about how to change it.” (App. O, J.S. Cert. ¶ 5.) She was also embarrassed about her physical changes both around her classmates and at home, where she sensed that her family was uncomfortable talking about puberty. (App. R, Dr. M.B. Cert. at 4-5.)

89. Jamie’s anxiety caused her to begin “retreating into the online world rather than socializing with peers because [she] felt safer there.” (App. O, J.S. Cert. ¶ 9.) Jamie’s undiagnosed nonverbal learning disability, which limited her ability to understand social cues and recognize others’ emotions, contributed to this retreat, as the disability often makes “navigating the highly emotional interpersonal relationships of early adolescence difficult,” and can draw teens to “[o]nline relationships where they do not have to deal with nonverbal cues.” (App. R, Dr. M.B. Cert. at 7.) Jamie would flirt with girls online and made close friends, including what she identifies as her first romantic relationship, which was with a transgender man when she was about twelve. They met in an online forum and would email and video chat. (App. O, J.S. Cert. ¶ 14.) In addition

to her online relationship, Jamie had been “physically intimate” with some close female friends and had “engaged in some experimentation with other girls” earlier in childhood. (App. O, J.S. Cert. ¶ 14.) She identified as bisexual, (App. R, Dr. M.B. Cert. at 6.), and she struggled to understand her sexuality and the nature of some of her relationships. (App. O, J.S. Cert. ¶¶ 14- 16.)

90. When Jamie’s mother learned of Jamie’s online friendships and flirtations, she “was really upset,” accusing Jamie “of being a lesbian.” (App. O, J.S. Cert. ¶ 9.) Jamie felt “betrayed and misunderstood” by this reaction. (App. R, Dr. M.B. Cert. at 5-6.) She felt further rejection when she broke with her religious upbringing and identified as an atheist, which was upsetting to both her and her parents. (App. R, Dr. M.B. Cert. at 5-6.)

91. These feelings of rejection by her family became chronic, and Jamie’s mental health declined. She sometimes felt so depressed and anxious that she would refuse to leave the house. (App. O, J.S. Cert. ¶ 10.) Her anxiety was worsened by her own embarrassment over it. She felt that her anxiety and depression produced negative reactions from her family, who wanted her to just be a “happy, normal kid,” and so she “learned to put on a mask and overcompensate, to avoid everyone’s negative responses to [her] ‘issues.’” (App. O, J.S. Cert. ¶ 7.) Reflecting on those experiences to Dr. Beyer, Jamie explains: “I was real insecure. I believed no one would like me in person. I didn’t like how I looked. I felt worthless. I had high anxiety. I was struggling with whether I liked girls. I had crushes on girls and women teachers. I was an atheist and bisexual, a nonconformist. . . . I felt constant pressure: I had to be a certain kind of daughter, but I was an oddity and a disappointment.” (App. R, Dr. M.B. Cert. at 5-6.)

92. Additional tensions also grew within Jamie’s family, shattering her previous perception of having the “perfect family.” Jamie had spent a lot of time with her father when she was in fourth grade, as he had been laid off from work, and she struggled to adjust when he found

a new job and became unavailable again, which coincided with when she entered puberty. (App. O, J.S. Cert. ¶¶ 2-3.) At that same time, she began to feel harshly critiqued by her father, as he would “make degrading comments” to Jamie and her mother about their weight and appearance. (App. O, J.S. Cert. ¶ 4.); *see also* (App. J, N.J. Cert. ¶¶ 11.) Her father was also prone to angry outbursts in which he sometimes got physical, “grabbing her arm until it hurt.” (App. J, N.J. Cert. ¶ 11.) Her mother would overcompensate for these angry outbursts by coddling Jamie, and Jamie realized that her mother struggled from self-esteem issues herself. (App. J, N.J. Cert. ¶ 11.) Jamie began to play the role of “confidante” to each parent against the other, elevating her “beyond a normal parent-child relationship in the family hierarchy.” (App. J, N.J. Cert. ¶¶ 11, 12.)

93. Jamie’s relationship with her father was further fractured when, a month or so before the offense, she discovered text messages on his phone that led her to believe he was having affairs with other women. (App. O, J.S. Cert. ¶ 26.) She was so angry with her father about the messages that she had mostly “stopped talking to him during the weeks leading up to the offense.” (App. O, J.S. Cert. ¶ 26.)

iii. Jamie Experienced these Challenges as a Form of Emotional Trauma, Which Affected Her Development and Placed Her at Risk of an Abusive Relationship.

94. These experiences – Jamie’s deepening insecurity about her appearance, fractured image of her family, and “chronic belief that she was a disappointment to her parents and . . . would never be acceptable to her family and friends” – were emotionally traumatic for Jamie. (App. R, Dr. M.B. Cert. at 17.) As Dr. Beyer explains, several of Jamie’s particular forms of emotional trauma, including her facial disfigurement and early physical development, have been documented to have “[l]ong-lasting effects on mental health.” (App. R, Dr. M.B. Cert. at 17-18.) Teens engaging in normal exploration of their sexual orientation who lack family support are also

“particularly vulnerable to depression and low self-esteem” (App. R, Dr. M.B. Cert. at 18.) Indeed, the emotional impact of this trauma “was comparable to the impact that physical abuse can have on other children,” causing Jamie to become severely depressed, have temper tantrums (which are an externalizing response to trauma common to active and outgoing children), remain less emotionally mature than her classmates, and become “vulnerable to the attention of anyone who was not bothered by her appearance.” (App. R, Dr. M.B. Cert. at 17-19.)

95. Beginning in fifth of sixth grade, Jamie’s depression became so severe that she began having suicidal thoughts and self-harming. She “would cut [herself] on [her] thighs, stomach, and upper arms so that [her] clothing would hide the scars.” (App. O, J.S. Cert. ¶ 6.) Jamie’s social media posts reveal in raw form the depth of Jamie’s emotional struggles. For example, in one post, Jamie shared a drawing of a smiling happy girl, with a thought bubble revealing that inside the girl had deeply troubled thoughts, including “I wanna die”; “Someone please kill me”; “I cut”; and the word “Suicide” alongside the image of a noose. The caption reads: “This describes me perfectly.” *See* (App. S, Instagram Posts.) In another, Jamie posted a graphic picture of a woman stabbing a knife into her heart, with the caption “currently.” *See* (App. T, Twitter Posts.)

96. At one point in sixth grade, the police were called to Jamie’s house over a social media post that seemed like a suicide threat or attempt, which caused Jamie to feel deeply ashamed. (App. O, J.S. Cert. ¶ 8.) After that incident, she began keeping her thoughts and self-harm more private, but her self-harming behavior continued until her relationship with Mr. Barnes began. (App. O, J.S. Cert. ¶ 8.)

97. In 2012, Jamie began seeing a therapist at her mother’s urging, who diagnosed Jamie as having Major Depressive Disorder and Generalized Anxiety Disorder, and in eighth grade

she began taking Lexapro, an SSRI antidepressant and anti-anxiety medication. (App. R, Dr. M.B. Cert. at 18.) The medication reduced some of Jamie’s symptoms, but overall the treatment and therapy had little effect, as it was not intensive enough and merely provided an “outlet for venting,” rather than addressing the underlying trauma causing Jamie’s depression. (App. R, Dr. M.B. Cert. at 18-19) (further noting that “[e]ffective trauma treatment was an urgent necessity when she was 13 and 14.”)

98. Because of her untreated emotional trauma, “Jamie remained less emotionally mature” even than her middle school classmates. (App. R, Dr. M.B. Cert. at 19.) As Dr. Beyer explains:

Trauma like Jamie experienced slows down development in children and can interfere with all aspects of the child’s functioning, especially when it is chronic. While other children are growing emotionally, the child coping with trauma is distracted from normal developmental tasks and is preoccupied with anxiety, sadness and feeling powerless.

(App. R, Dr. M.B. Cert. at 17.)

99. Many of Jamie’s friends and family members confirm that, despite being highly intelligent, Jamie was emotionally immature for her age. As Jamie’s close friend Bailey recalls, “[e]ven though Jamie was really smart, she was also co-dependent. . . . In that real-life sense, she wasn’t very mature when it came to dealing with things on her own.” (App. F, B.A. Cert. ¶ 6.) According to Lee Anne Allison, a close family friend, “[e]ven though she sounded older because of her vocabulary, Jamie was still a baby at the time of the offense.” (App. C, L.A.A. Cert. ¶ 7.) Many others who knew Jamie echo the same perceptions. *See, e.g.*, (App. G, M.A. Cert. ¶ 5.) (Although Jamie “was smart and tried to come off as very mature and like an adult[,] [s]he wasn’t particularly mature emotionally.”); (App. H, V.A. Cert. ¶ 5.) (“On an emotional level, Jamie still acted far younger than her age.”); (App. I, E.J. Cert. ¶ 13.) (“[W]hile Jamie was gifted

academically, her intelligence made her believe that she was more mature than she actually was.)

100. Jamie’s untreated trauma, and its effects on her emotional maturity, placed her at high risk of an abusive relationship. Because of her anxiety, depression, and chronic feelings of rejection, Jamie came to believe that no one would ever love her. (App. R, Dr. M.B. Cert. at 22.) Jamie describes how she often thought: “who would want to be with someone who looks like me,” (App. O, J.S. Cert. ¶ 6.), and she confided in her grandmother that “she was worried that she would never find anyone to love her,” (App. A, M.L. Cert. ¶ 5.). Her complicated relationship with Witness 1, a female peer, exacerbated these feelings. (App. O, J.S. Cert. ¶ 15.) Jamie had very strong feelings for this friend and was physically attracted to her, but “worried she would never love [her] because she was a girl and liked boys.” (App. O, J.S. Cert. ¶ 15.) She developed strong “feelings of rejections, loss, and anxiety” associated with the relationship, which made her even more desperate for a validating relationship. (App. O, J.S. Cert. ¶ 16.)

101. Jamie was further vulnerable to an abusive relationship because, at age 14, she was “ignorant about teen intimate partner violence,” and was unable to recognize abusive or coercive behaviors in a relationship. (App. R, Dr. M.B. Cert. at 15.) Although well before 2015 “the Center for Disease Control was educating schools, parents and teenagers about teen dating violence and its devastating consequences,” Jamie had not received any information on the topic prior to the offense. (App. R, Dr. M.B. Cert. at 14-15.)

iv. Jamie’s Relationship with Mr. Barnes Was Emotionally and Physically Abusive.

102. In October of her eighth-grade year, Jamie did in fact fall victim to an abusive relationship when she became involved with Mr. Barnes. Dr. Beyer administered a 14-item questionnaire about coercive and violent behaviors in relationships to Jamie, and she confirmed that 13 of them occurred in her relationship with Mr. Barnes – “a troublingly high number in any

case, but especially for a relationship involving a 13- or 14-year-old.” (App. R, Dr. M.B. Cert. at 15.) Those behaviors include:

- Feeling anxious or nervous around him
- Watching what she was doing in order to avoid making him angry or upset
- Obligated or coerced into having sex with him
- His checking up on what she had been doing and not believing her answers
- His jealousy, such as accusing her of having an interest in other guys
- Seeing less of her friends because of his behavior
- His behavior making her feel as if she were wrong
- His threatening to harm her
- Trying to please him rather than herself
- His keeping her from going out or doing things she wanted to do
- Feeling that nothing she did was good enough for him
- His saying that if she tried to break up, he would kill himself or her
- His always making excuses for his behavior (such as “The alcohol made me do it” or “I was just joking”)

(App. R, Dr. M.B. Cert. at 15.)¹¹

103. More specifically, Mr. Barnes would dictate what Jamie was allowed to wear, would monitor her communications with friends, and would yell at and physically threaten her friends and her. (App. O, J.S. Cert. ¶¶ 20, 22.) Indeed, Mr. Barnes did not just threaten her; he “would become physical” and harm her when Jamie “did or said something he did not like.” (App. O, J.S. Cert. ¶ 23.) At times he would “grab [her] arm so hard he would leave finger marks,” “slap[] her across the face for saying things he did not like,” and, on several occasions, bend her “over his knee and spank[]” her. (App. O, J.S. Cert. ¶ 23.) On one of those occasions, she noticed “he had broken all the blood vessels in [her] buttocks.” (App. O, J.S. Cert. ¶ 23.)

104. The abusive nature of their relationship was evident in the text messages between Mr. Barnes and Jamie. For example, Mr. Barnes references how he will “take what I want,” and

¹¹ Several of these markers are corroborated by the text messages between Jamie and Caleb, the sexual assault report which demonstrates physical abuse, and her friends’ observations. *See* (Texts Between Jamie Silvonek & Caleb Barnes, Commw.’s Decert. Ex. 8, at 179.); (App. V, Def’s Investigator’s Notes.); (Sexual Assault Report, Commw.’s Decert. Ex. 10.)

tells Jamie that she “will do what [he] want[s] more often than [she] think[s].” (Texts Between Jamie Silvonek & Caleb Barnes, Commw.’s Decert. Ex. 8, at 63.) In other messages, he tells Jamie to “behave” so he does not have to “deal with” her, and he refers to her as his “property” and thus “subject to [his] authority.” (Texts Between Jamie Silvonek & Caleb Barnes, Commw.’s Decert. Ex. 8, at 127, 164.) He demands to know who she is talking to insisting that he “deserve[s] to know.” (Texts Between Jamie Silvonek & Caleb Barnes, Commw.’s Decert. Ex. 8, at 179.) He also describes himself as “angry” and “evil.” (Texts Between Jamie Silvonek & Caleb Barnes, Commw.’s Decert. Ex. 8, at 42, 50.)

105. Jamie describes feeling pressured and coerced into agreeing to have sex with Mr. Barnes. She repeatedly told him to stop during the first time they had sex, a week before the offense. (App. O, J.S. Cert. ¶ 24.) She did not consent to intercourse during either of the two subsequent times they had sex, and after the final time, he put his hand on her throat so forcefully it left a bruise. (App. O, J.S. Cert. ¶ 24.)

106. Although few people in Jamie’s life were aware of her relationship with Mr. Barnes, many of her close friends and family noticed changes in Jamie during the period of their relationship. Her grandmother describes how Jamie stopped sleeping with her on the nights she would visit and became more interested in shopping and “grownup clothing.” (App. A, M.L. Cert. ¶¶ 3, 7.) Her father noticed changes in her behavior (App. E, D.S. Cert. ¶ 7, 8), and Heather Lesko observed that she stopped visiting as regularly. (App. K, H.L. Cert. ¶ 13.) Friends describe how she lost interest in the activities and friends she had cared about and became “totally focused on Caleb.” (App. G, M.A. Cert. ¶ 9; *see also* App. F, B.A. Cert. ¶ 7.)

107. At the time, Jamie she did not realize that “these were characteristics of risky intimate partner violence that was unacceptable.” (App. R, Dr. M.B. Cert. at 16). She “thought she

had to tolerate his aberrant behavior to keep him,” and he would convince her their relationship had many positive features. (App. R, Dr. M.B. Cert. at 16). Jamie explains: “He was insanely jealous and controlling. I thought his controlling me, telling me who I could be friends with meant he loved me. I was flattered. He must love me so much. I felt wanted for the first time in my life. He never talked about my face. He said I was beautiful. He liked my body. He cared so much that he would hit me.” (App. R, Dr. M.B. Cert. at 16).

v. The Combined Effect of Jamie’s Untreated Emotional Trauma, Abusive Relationship with Mr. Barnes, Developmental Immaturity, and Nonverbal Learning Disability Directly Contributed to her Involvement in the Crime.

108. As is explained more fully in Dr. Beyer’s attached report, Jamie’s untreated emotional trauma, abuse at the hands of Mr. Barnes, developmental immaturity, and nonverbal learning disability together substantially influence decision-making and behavior leading up to her mother’s death, and directly led to her involvement in the offense. (App. R, Dr. M.B. Cert. at 22.)

109. Substantial research demonstrates that lack of maturity and behavioral changes are characteristic of adolescence. *See* (App. R, Dr. M.B. Cert. at 8-10.) Dr. Beyer describes how girls in particular respond to these developmental changes, noting that they tend to have a “relationship focus” that creates worries about loss of friendships and closeness” that can “dominate girls’ thinking,” that they rely more on peers and parents in coping with stress, and that they “experience more stress related to simultaneously occurring developmental transitions (e.g., puberty and the transition to middle school).” (App. R, Dr. M.B. Cert. at 10.) (quoting M. Wangby, L. Bergman & D. Magnusson, *Development of Adjustment Problems in Girls*, 70 CHILD DEVELOPMENT 678–699 (1999)) (internal quotation marks omitted). Dr. Beyer notes several ways in which, at the time leading up to the offense, Jamie manifested the immature thinking common in adolescents, including that: she was impulsive and did not anticipate the outcomes of her actions; her

friendships were extremely important to her and “she relied almost exclusively on friends because she was afraid to confide in her parents and therapist”; she minimized the risks of social media and viewed text messages and other social media communications as often nonliteral; she needed adult guidance to help her learn to use good judgment and see risks; and her identity was in flux and her moral reasoning still developing. (App. R, Dr. M.B. Cert. at 10-13.)

110. Jamie’s typical adolescent immature thinking, combined with her untreated emotional trauma and difficulty reading cues due to her nonverbal learning disability, made her highly vulnerable to – and unable to disentangle herself from – the abusive relationship she found herself in. Because of her trauma, Jamie “believed no one would love her because of her facial disfigurement and body,” which caused her to depend on Mr. Barnes to make her feel wanted and loved. (App. R, Dr. M.B. Cert. at 22.) Because of her ignorance and inexperience, she did not recognize that his treatment of her was in fact a form of domestic violence. (App. R, Dr. M.B. Cert. at 21.) Because of her immature thinking, “Jamie could not look ahead and anticipate . . . that his violence could eventually scare her or harm her or make her conclude the relationship was too unsafe to continue.” (App. R, Dr. M.B. Cert. at 21.) And, “[b]ecause of her difficulty reading cues, Jamie did not recognize that Mr. Barnes actually could commit a violent act.” (App. R, Dr. M.B. Cert. at 22.) As Jamie explained: “I was willing to endure anything to hear that he loved me and couldn’t live without me. I was a young girl so in love that I was thinking emotionally with no ability to sit back and see how unhealthy the relationship was.” (App. R, Dr. M.B. Cert. at 23.)

111. These features of Jamie’s abusive relationship, combined with the broader effects of her untreated trauma, desperation for love, inability to read cues, and immature thinking, to substantially influence Jamie’s poor judgment and poor decision-making around the offense. (App. R, Dr. M.B. Cert. at 22.) As Dr. Beyer explains, “when Jamie looked out the window and saw her

mother and Mr. Barnes talking together” on the day of the offense, she flew into a temper tantrum, and, “driven by her worry that her mother would chase the only man who would love her out of her life,” sent “desperate texts” that were not meant literally, but instead reflected “harmless, enraged venting” that was not uncommon among her friends at the time. (App. R, Dr. M.B. Cert. at 22-23.) “In addition to [the] trauma and immaturity behind her texts,” Jamie’s immaturity and nonverbal learning disability combined to cause her to misread Mr. Barnes’s intentions. (App. R, Dr. M.B. Cert. at 23.) Jamie thought Mr. Barnes realized that her texts were a temper tantrum, and not meant literally, and her immaturity prevented her from realizing that he was going to kill her mother and was capable of doing so. (App. R, Dr. M.B. Cert. at 23.) Once the assault actually began, the shock and stress of the situation further limited Jamie’s decision-making, and explain why she was “paralyzed” and unable to stop his actions. (App. R, Dr. M.B. Cert. at 23.)

112. The interaction of emotional trauma, developmental immaturity, and disability also impacted Jamie’s post-offense behavior. (App. R, Dr. M.B. Cert. at 24.) The shock from the experience limited her ability to talk about and process the offense and her involvement in it, and she required adult guidance and a therapeutic process to recognize that her relationship with Mr. Barnes was abusive and harmful, understand how she came to depend on that relationship, and to accept responsibility for her role in the offense. (App. R, Dr. M.B. Cert. at 24.) Her effort to contact Mr. Barnes from jail was not surprising, as she “was still in love with him” and “held onto the childish fantasy that they could continue their relationship.” (App. R, Dr. M.B. Cert. at 26.) And her initial impulse to lie and cover up her involvement in the offense were also to be expected, as “for many months she was not clear in her own mind what her role had been in the tragedy.” (App. R, Dr. M.B. Cert. at 24.)

113. In short, Jamie’s behavior leading up to, during, and after the offense was the

product of “the complex weaving together of the effects of trauma that made her vulnerable to depending on a man who said he loved her, her immature thinking and unformed identity, her emotional childishness, her difficulty in reading social cues, and being coerced in a domestic violence relationship.” (App. R, Dr. M.B. Cert. at 24-25.)

vi. Key Community Members Remained Supportive of Jamie After the Offense.

114. Following the offense, Jamie received tremendous support from community members, including those most affected by the offense. These individuals cared about Mrs. Silvonek and wanted to ensure Jamie was held accountable for her actions, while also believing that Jamie did not pose an ongoing threat and that Mrs. Silvonek would have wanted her to have a meaningful chance at life outside of prison. For example:

a. Lee Anne Allison feels that Jamie “needs to be punished, yes, but Jamie should have a chance at a meaningful life outside. Cheryl would have wanted that.” (App. C, L.A.A. Cert. ¶ 10.)

b. Mrs. Silvonek was one of Ronnie Andrietta’s “best friends,” and she “miss[es] her every day still,” but she “know[s] this isn’t what Cheryl would want for Jamie. She would have wanted Jamie to be punished, but she would want her to come home sooner than this.” (App. H, V.A. Cert. ¶ 8.)

c. Jamie’s aunt Tonya feels that, despite her offense, Jamie is “a good kid and she can offer the world more than she will take from it going forward. Jamie’s not the evil person she was portrayed as, and her mother wouldn’t have wanted this for her.” (App. D, T.L. Cert. ¶ 17.)

d. David Silvonek, Mrs. Silvonek’s husband, has been adamant from the beginning that Jamie would be best served in the juvenile system and has

protested, in his wife's memory, Jamie being certified as an adult. He believes strongly that Mrs. Silvonek would have wanted Jamie in the juvenile system and that retaining Jamie in the adult system only harmed him and his family more.

115. There were also many individuals willing to support Jamie in her rehabilitation and treatment through the juvenile system. In addition to the numerous family and friends already described, Jimmy Lee Werley, the pastor from Jamie's church who became her spiritual advisor while she was incarcerated at Lehigh County Jail, would have been willing to continue in that role had she been transferred to the juvenile system. Indeed, Mr. Werley believes that "[n]o matter where Jamie ends up," she will "be a productive member of society and, more importantly, a force for good." (App. N, J.L.W. Cert. ¶ 7.)

vii. This Evidence Demonstrates Jamie's Amenability to Treatment in the Juvenile System.

116. All of this substantial evidence speaks directly to the factors relevant to decertification, and clearly demonstrates that the public interest would have been best served by transferring the case to the juvenile system. 42 Pa.C.S. § 6355(a).

117. With regard to the impact of the offense on the victim and community, while the crime here is undeniably serious, members of the community – including those closest to the victim – felt that Mrs. Silvonek would not have wanted Jamie to be tried as an adult and incarcerated for decades, but instead would have wanted her to receive treatment and be rehabilitated through the juvenile system. *See id.* at § 6355(a)(4)(iii)(A), (B). Further, no one who knew Jamie describes feeling that she posed any sort of ongoing threat to the safety of the public, and the violence risk assessments conducted after the offense demonstrate she has a low risk of future dangerousness. (App. R, Dr. M.B. Cert. at 28 (citing Dattilio Expert Report (citation omitted))); *see also* 42 Pa.C.S. § 6355(a)(4)(iii)(C).

118. As to the nature and circumstances of the offense and Jamie's degree of culpability, *see id.* at § 6355(a)(4)(iii)(D), (E), the evidence described above shows that Jamie was far from the "puppetmaster" controlling Mr. Barnes or the "mastermind" behind the offense; instead, she was "an emotionally immature, traumatized 14-year-old driven by unmanageable anxiety, desperation, love, sadness and loneliness." (App. R, Dr. M.B. Cert. at 19.) These traits, combined with typical early adolescent immaturity and her nonverbal learning disability, limited her ability to predict the outcomes of her actions, read emotional cues, and make rational decisions. (App. R, Dr. M.B. Cert. at 19.) These limitations, in turn, render her less culpable for her conduct. *See Miller*, 567 U.S. at 472 (describing how adolescents' "transient rashness, proclivity for risk, and inability to assess consequences" lessen their "moral culpability" and enhance their prospects for reform) (internal quotations omitted).

119. Finally, the above evidence demonstrates Jamie was highly amenable to treatment. As Dr. Beyer explains, Jamie had all of the characteristics of "adolescent-limited delinquency," including that her first act of delinquency occurred in her teenage years, she was involved in positive behavior in addition to the delinquent act, the delinquent act occurred with others, she "play[ed] a small part in relation to others," and the acts were the "result of bad judgment leading to dangerous situations." (App. R, Dr. M.B. Cert. at 27.) Indeed, "Jamie had no previous delinquent behavior, was a college-bound, bored 8th grader looking forward to the challenges of high school and had no history of aggression." (App. R, Dr. M.B. Cert. at 25.) She was also remorseful for her conduct. Despite being in a "state of disbelief" following her mother's death, which can make it challenging for teenagers to express remorse, Jamie tried to "express her sorrow, shame and recognition that she had harmed everyone who cared for her mother." (App. R, Dr. M.B. Cert. at 25-26.) And she gave every indication of being able to benefit from trauma treatment and other

rehabilitation programs. Her prior therapy and medication had been helpful, but had not gone deep enough or addressed her underlying trauma. (App. R, Dr. M.B. Cert. at 19.) With “trauma treatment in a juvenile program and skilled guidance in maturing her thinking and forming a stable positive identity, [Jamie] would have developed into a productive adult.” (App. R, Dr. M.B. Cert. at 29.)

120. In sum, the effects of Jamie’s trauma, her developmental immaturity, her problems reading social cues, and coercion by a violent older male “taken together explain her involvement in this horrific tragedy.” (App. R, Dr. M.B. Cert. at 30.) “At 14, Jamie could have recovered from trauma and completed a juvenile rehabilitation program ready to make positive contributions to the community.” (App. R, Dr. M.B. Cert. at 30.) In the juvenile system, Jamie would have had plenty of time, seven years, to be rehabilitated. The public interest would therefore have been best served by transferring her case to the juvenile system, which was designed for precisely these circumstances.

B. Prior Counsel Was Ineffective for Failing to Investigate, Develop, and Present this Information to the Court.

121. This true portrait of Jamie – of “an emotionally immature, traumatized 14-year-old driven by unmanageable anxiety, desperation, love, sadness and loneliness” (App. R, Dr. M.B. at 19) – never reached the court. Indeed, Prior Counsel failed to even recognize that emotional trauma or intimate partner violence might be issues in this case, and thus failed to adequately investigate or present to the court the information necessary to assess Jamie’s amenability to treatment. He compounded this critical error by failing to meet his minimum duty to communicate effectively with his client, instead actively shutting down open lines of communication and dismissing her efforts to share highly relevant details about her relationship with her co-defendant. Further, despite bearing the burden of proof, the record shows that Prior Counsel presented neither a single

favorable lay witness nor any direct evidence of Jamie’s background or developmental characteristics or traits to support her request for decertification. Moreover, the information that *did* reach the court was not presented effectively; Prior Counsel relied almost exclusively upon two experts, yet he failed provide them with all of the available evidence necessary to protect them from impeachment, and ignored the foundational Supreme Court jurisprudence necessary to provide proper legal context to their conclusions. Prior Counsel also failed to rebut the Commonwealth’s evidence and presented inaccurate and incomplete information about the dispositional alternatives available in the juvenile justice system. While each of Counsel’s failures alone could have affected the outcome of the decertification proceeding, the cumulative effect of these errors establishes far more than a “reasonable probability” that the result of the proceeding would have been different. *See Pierce*, 786 A.2d at 213. Because of Prior Counsel’s failure to meet his minimum obligations toward his client, the court accepted the Commonwealth’s wholly inaccurate portrayal of Jamie as “a highly intelligent and manipulative young woman” with sociopathic tendencies who was not amenable to treatment because she lacks “any mental infirmity or disorder” to treat – conclusions that not only defy logic, but also fly in the face of the abundant available evidence to the contrary.

i. Prior Counsel Failed to Identify Emotional Trauma or Intimate Partner Violence as Relevant Issues in this Case.

122. One of Prior Counsel’s most critical failures – which led to many subsequent missteps – is that he never identified emotional trauma or intimate partner violence as potentially relevant issues in Jamie’s case. Despite abundant evidence of the abuse Jamie experienced in her relationship with Mr. Barnes, Prior Counsel not only failed to investigate the extent of that abuse or its possible effects on Jamie, he introduced evidence at the decertification hearing suggesting she had never been a victim of abuse of any sort. *See* (Decertification Hr’g Tr. 10/29/15, 25:8-9)

(“She was never the victim of any physical, sexual or psychological abuse.”). As for Jamie’s untreated emotional trauma, the record before the court was virtually silent as to it, despite numerous red flags in the information Prior Counsel received, including evidence of her self-harming behavior, the emotional effects of her facial disfigurement, and her retreat into the online world. Prior Counsel’s failure to even identify these issues – much less investigate or present evidence showing their significance – caused Jamie prejudice, as that error prevented Prior Counsel from explaining the reasons behind Jamie’s decision-making and behavior to the court, which was critical to assessing her amenability to treatment in the juvenile system.

123. There is no indication in the record that Prior Counsel realized Jamie might have been in an abusive relationship or have suffered prior emotional trauma. As discussed herein, Prior Counsel neglected to provide his experts with physical evidence of Jamie’s sexual abuse, he never consulted with a domestic violence expert or asked his experts to consider the potential role of domestic violence, he failed to pursue obvious leads about her trauma, including information about her self-harming behavior, and at no point did he characterize any of Jamie’s experiences as abuse, trauma,¹² or domestic violence. Put simply, these concepts were entirely absent from his investigation, theory of the case, and factual presentation to the court.

124. Prior Counsel had no reasonable basis for failing to recognize that prior trauma and intimate partner violence might be issues in this case. At the time of Jamie’s decertification proceeding, each of these concepts were extremely well-established and understood to be key factors in representing children charged with crimes. Childhood trauma and mental health issues

¹² The only mention of trauma by Prior Counsel is in reference to Jamie’s Post-Traumatic Stress Disorder following the offense; he never describes any of her *pre*-offense experiences as traumatic.

have been studied for decades,¹³ and there are numerous readily available resources for attorneys representing children on childhood trauma and its effects. *See* (App. U, Michelle Mason, J.D., Cert. ¶ 10 [hereinafter M.M. Cert.].)¹⁴ Research on intimate partner violence generally, and teen dating violence more specifically, has been widely discussed and disseminated since well before 2015. *See* (App. R, Dr. M.B. Cert. at 14-15 & 21, including footnotes.) And standards of juvenile defense make clear that a minimally competent attorney representing a child charged in adult criminal court must have the training and expertise needed to understand and explore these issues. *See* NATIONAL JUVENILE DEFENSE STANDARDS, Standard 1.3, commentary (“Juvenile defenders need to . . . be able to recognize, consider, and address how disabilities, trauma, and immaturity affect youths’ behaviors, relationships, and perceptions of safety.”).

125. Additionally, there were countless red flags in even the limited information Prior Counsel received that should have put him on notice that intimate partner abuse and emotional trauma were relevant issues in this case. *See Wiggins*, 539 U.S. at 525 (concluding that the limited scope of a mitigation investigation was “unreasonable in light of what counsel actually discovered” in the records); *see also Bailey*, 390 A.2d at 170 (finding that defense counsel was ineffective for failing to investigate defendant’s potential intoxication defense despite evidence he had been drinking, even though defendant denied being intoxicated). First, the notes from Prior Counsel’s investigator reveal that many of the witnesses who were interviewed shared important details about Jamie’s background that should have prompted a follow up. For instance, most of the witnesses

¹³ The first results of the well-known Adverse Childhood Experiences study were published in 1998, and in 2000 Congress created the National Child Traumatic Stress Network to improve access to services and resources.

¹⁴ For just a sampling of the numerous resources available on these topics, see the Pennsylvania Coalition Against Domestic Violence’s webinars and trainings offered, <https://www.pcadv.org/resources/>, and the American Psychological Association’s list of identified experts on adolescent trauma, <https://locator.apa.org/resultsS/1/Pennsylvania/>.

who knew Jamie mentioned her facial scarring or physical changes and alluded to their potential impact on Jamie. *See generally* (App. V, Def.’s Investigator’s Notes.¹⁵) Several of her friends and neighbors describe her emotional immaturity, and others note changes in her behavior leading up to the offense. *See generally* (App. V, Def.’s Investigator’s Notes.) Her friends who knew about Mr. Barnes described hints of possible manipulation, coercion, and threatening behavior in that relationship. *See generally* (App. V, Def.’s Investigator’s Notes.) Yet none of these witnesses were followed up at all by the legal team, and none of their information was presented to the court.

126. Further, there were numerous signs of Jamie’s emotional trauma and intimate partner violence in the records and other physical evidence Prior Counsel received. With regard to Jamie’s prior trauma, the voluminous notes from Ms. Brandolino, (Lisa E. Brandolino Psychotherapy Recs., Commw.’s Decert. Ex. 24), Dr. Campion’s records, (John F. Campion, M.D. Psychiatric Recs., Commw.’s Decert Ex. 25), and Jamie’s social media posts, (App. S, Instagram Posts; App. T, Twitter Posts), all suggest she had suffered some form of past trauma. As for the physical and emotional abuse Jamie experienced in her relationship with Mr. Barnes, there is ample evidence of it in the record. In addition to the text messages demonstrating his controlling behavior, there is alarming evidence of Mr. Barnes’s violent tendencies, emotional imbalance, and alcoholism. His diary includes quotes like “When I was dancing with someone with a knife in my hand. When I was drunk and surrounded by music, I really felt alive”, as well as repeated references to fighting, wanting to be a good fighter, and needing to prove himself. (App. W, Caleb Barnes’ Diary Excerpts.) Further, in the military records Jamie’s Prior Counsel had obtained documents regarding Mr. Barnes’ suicide attempt in February 2014, in which he drunkenly stabbed himself with a knife and violently resisted apprehension. (App. X, Caleb Barnes’ Military Police

¹⁵ Witness One’s name has been redacted from the notes to protect her identity in accordance with prior court orders.

Report Excerpts.) And, perhaps most ominously, there was a file on his computer of images of his knives entitled “My Killers.” (App. Y, July 3, 2015 Digital Forensic Report Excerpts.)

127. Even more significantly, there were multiple objective sources of evidence verifying some of the specific physical abuse that Jamie later described. In the sexual assault report completed the day after the offense, the physician evaluating Jamie described bruising on her “neck, buttock, and left posterior thigh,” consistent with someone “forcibly restraining the throat” and “high velocity slaps.” (Report of Suspected Child Abuse, Commw.’s Decert. Ex. 10, at 7.) Similarly, during Jamie’s police interrogation, her interviewers describe a notable “green mark on her neck.” (Jamie’s Interrogation Tr. 3/15/2015, at 21.) Yet these explicit descriptions of substantial physical abuse prompted no follow up or further investigation.

128. Finally, despite the barriers to effective attorney-client communication, discussed below, Prior Counsel’s also failed to pursue leads or insights Jamie did provide. (App. O, J.S. Cert. ¶ 44.) In particular, Jamie told Prior Counsel that Mr. Barnes had physically hurt her, but Prior Counsel was dismissive of her statements and told her she “was trying to avoid responsibility.” (App. O, J.S. Cert. ¶ 43.) No member of her legal team seemed “interested in talking about the dynamics of [her] relationship with [Mr. Barnes], other than questioning [her] about what [she] did to ‘manipulate’ [him].” (App. O, J.S. Cert. ¶ 43.). More generally, despite raising questions about character witnesses and other information about her background, Jamie found her legal team to be “focused almost exclusively on the facts of the offense” and never asked about her relationship with her family or her life leading up to the offense. (App. O, J.S. Cert. ¶ 42.)

129. In the hands of a minimally competent children’s defense attorney, the information available should have raised questions about trauma and intimate partner abuse and their potential impact on Jamie’s behavior. Prior Counsel’s failure to recognize the possibility that abuse or

trauma might be relevant facts in this case caused numerous subsequent errors that proved devastating to Jamie's case. First, because Prior Counsel failed to recognize that trauma and intimate partner abuse might be relevant issues, his investigation was ineffective. As discussed above, Prior Counsel failed to pursue leads that should have been obvious. He also failed to provide his experts any direction or guidance that might have prompted them to explore these issues, and neglected to provide them with key evidence documenting Jamie's abuse. (App. Q, Dr. S.B. Cert. ¶¶ 3, 6-10; App. P, Dr. F.M.D. Cert. ¶¶ 8-10.) Had he flagged for them the potential legal significance of any possible abuse or past trauma, or at the very least given them the necessary evidence, they might have probed those topics more deeply with Jamie, resulting in a fuller presentation to the court. *See* (App. R, Dr. M.B. Cert. at 21-22.) (describing the prior experts' "surprising failure to address the coercive and abusive nature of Jamie's relationship with Mr. Barnes" and noting that "[i]t is possible the experts did not inquire about the details of her relationship with Mr. Barnes"). Prior Counsel also could have consulted an expert on intimate partner violence or adolescent trauma. Indeed, Dr. Beyer found it "surprising that an expert on intimate partner violence was not hired, based on what was known about Jamie's relationship with Mr. Barnes." (App. R, Dr. M.B. Cert. at 21.)

130. Second, Prior Counsel failed to ensure that key factual information his investigation did reveal about Jamie's untreated trauma reached the court. The rapid physical changes that accompanied an early start to puberty for Jamie were not mentioned in any of the expert reports or testimony before the court, and their effects on Jamie's mental health were never described. Nor was there any mention of her struggles with her sexuality, sexual experimentation with other girls, or online relationship with a transgender man. Although there were references in the expert reports and social media posts to her suicidal ideation, *see, e.g.*, (Dr. Berkowitz's Report, Def.'s Decert.

Ex. 4, at 4), the record is silent as to her significant history of self-harming behavior. *See* (Dr. Dattilio's Report, Def.'s Decert. Ex. 2, at 21) ("While there is some vague mention of suicidal ideation, there was no history of self-harm or suicidal attempts."). Perhaps most notably, neither party presented any information on Jamie's chronic belief that she was a disappointment to her family, or about her feelings of betrayal and rejection by her family. In fact, all of the evidence presented at the decertification hearing suggested she had a perfect family dynamic, in which "her parents got along well with each other and experienced few major arguments" (*id.* at 4), "she had few problems with her parents" (*id.*), and in general she had "the best childhood" experience (Dr. John O'Brien's Report, Commw.'s Decert. Ex. 23, at 20).

131. Further, to the extent some of the underlying factors that contributed to Jamie's untreated emotional trauma were presented to the court, the information was incomplete at best. Each of the experts mentions Jamie's facial disfigurement, but they describe it in dramatically different ways, ranging from Dr. Dattilio's characterization of it as a "slight residual disfigurement" (Dr. Dattilio's Report, Def.'s Decert. Ex. 2, at 3), to Dr. O'Brien's portrayal of a "[p]rominent facial disfigurement" with an "asymmetric smile" (Dr. John O'Brien's Report, Commw.'s Decert. Ex. 23, at 19), to Dr. Berkowitz's surprise at "the extent of her left facial disfigurement, which appeared much worse than in her photographs" (Dr. Berkowitz's Report, Def.'s Decert. Ex. 4, at 2). Only Dr. Berkowitz ascribes any significance to the defect, which he concludes "may play a role in some of her choices and behavior," and none of the prior experts recognized the traumatic impact of Jamie's family's efforts to correct the deformity. (*Id.* at 5.) Similarly, information about Jamie's changing religious beliefs is present in some of the physical evidence and expert reports, *see, e.g.*, (Dr. Dattilio's Report, Def.'s Decert. Ex. 2, at 5), but there is no information about her family's reaction to these changes or their potential impact on Jamie.

Never are these or any other aspects of Jamie’s background described as a form of emotional trauma, nor – with the exception of Dr. Berkowitz’s discussion of her facial disfigurement – are they connected in any way to Jamie’s struggles with depression and anxiety. *See* (Dr. Berkowitz’s Report, Def.’s Decert. Ex. 4, at 10.) (noting simply that “her disfigurement likely played a role [in] her development of a Major Depressive Disorder).) In fact, although Jamie’s struggles with anxiety and depression were well documented in the record before the decertification court, a possible *source* of those struggles is barely mentioned, leaving her mental illness – like her behavior leading up to the offense – to seem to come out of thin air. *See* (Dr. Dattilio’s Report, Def.’s Decert. Ex. 2, at 17 (“The records also indicate that Miss Silvonek first reported experiencing sadness at the age of 10 years without any clear stressor or trigger.”).)

132. Similarly, although there was information in the record describing abusive conduct by Mr. Barnes, neither Prior Counsel nor any of the experts framed or contextualized that conduct for what it was: a form of domestic violence. For instance, Dr. Dattilio’s report is replete with descriptions of abusive conduct: he relates how Mr. Barnes threatened to kidnap Jamie, would become angry when Jamie failed to return his calls, was extremely possessive and manipulative of Jamie, pressed Jamie to acquiesce to increasingly violative sexual contact, threatened to kill her friend, and would “slap [Jamie’s] buttocks and bite her on the neck” during intercourse. *See (Id.* at 8-11.) But she is never characterized – in Dr. Dattilio’s report or anywhere else – as a victim of an abusive relationship. Rather, she is described as having been “swept up in a relationship” that had undue impact on her. (*Id.* at 25.) As discussed below, this failure to fully and accurately describe the dynamics of Jamie’s relationship with Mr. Barnes prevented the court from learning and understanding the scope and nature of its impact on Jamie’s behavior and decision-making. *See* (App. R, Dr. M.B. Cert. at 20 (“Jamie’s defense team, however, did not present the court with

evidence regarding the abusive and coercive nature of Jamie’s relationship with Mr. Barnes – a critical factor in understanding Jamie’s behavior and decision-making in the time leading up to her mother’s murder, Jamie’s role in the death of her mother and her behavior thereafter.)

133. And, most critically, Prior Counsel’s failure to recognize Jamie’s trauma or abuse rendered him unable to explain how all of Jamie’s characteristics – her untreated trauma, her nonverbal learning disability, her emotional immaturity, and her exposure to intimate partner abuse – “interacted with each other and created an entire overarching context that directly contributed to Jamie’s involvement in the crime and her behavior thereafter.” (App. R, Dr. M.B. Cert. at 22.) Although the prior experts mentioned some of this relevant information, noting Jamie’s emotion-driven actions, immaturity leading to her being influenced by an older male, facial disfigurement, problems reading social cues, and emotional immaturity, they did not convey that “it was the combination of all five characteristics together that provide the necessary context of her involvement in the offense,” that “without one or two of her unique characteristics she might well not have found herself in the tragic situation she did not know how to extricate herself from;” or the degree to which “her facial disfigurement and early physical development and other trauma she experienced put her at even greater risk of desperately needing a romantic partner who loved her.” (App. R, Dr. M.B. Cert. at 22.) Indeed, when viewed individually, each of the two defense experts presented only limited glimpses into this vital context, with Dr. Dattilio describing Jamie’s high intelligence and emotional immaturity, and Dr. Berkowitz highlighting her facial disfigurement and nonverbal learning disability. With neither expert describing her untreated trauma or abusive relationship, and Prior Counsel failing to pull the pieces together into a cohesive explanation for the court about Jamie’s decision-making and behavior, the court was left with a wholly inadequate factual basis upon which to make a decertification determination.

ii. Prior Counsel Failed to Communicate Effectively with his Client, Hindering His Investigation and Case Presentation.

134. Prior Counsel also failed in his basic obligation to communicate effectively with his client, actively closing off lines of communication and betraying client confidences. These errors prevented him from learning important details about Jamie’s past emotional trauma and abusive relationship that were vital to explaining her role in the offense.

135. At all stages of representation, attorneys defending juveniles must “communicat[e] with young clients in a developmentally appropriate and effective manner,” and to be “properly trained in effective adolescent interviewing techniques.” NATIONAL JUVENILE DEFENSE STANDARDS, Standard 1.3. Further, juvenile defenders have a duty to “recognize barriers to effective communication” and “take all necessary steps to ensure that differences, immaturity, or disabilities do not inhibit the attorney-client communication.” *Id.*, Standard 2.6. Where necessary, such steps may include “enlisting the help of outside experts or other third parties,” such as social workers or psychologists. *Id.*; *see also* A. JUVENILE DEFENSE PERFORMANCE GUIDELINES, Guideline 9 § 2(B) (“[C]ounsel should actively use the services of experts, such as social workers, psychologists and investigators[,]” and “should seek funding” when needed “to support these essential defense services”).

136. Indeed, Michelle Mason, a long-time juvenile public defender who has handled hundreds of decertification proceedings, confirms that social workers or other third parties are routinely needed due to the complexities of establishing a trusting attorney-client relationship with a juvenile client. (App. U, M.M. Cert. ¶ 9.) “Particularly with young clients, it takes extensive time to build trust and establish a rapport with the client,” especially when a child has experienced trauma, which “can cause them to mistrust authority figures” and “complicate building the attorney-client relationship.” (App. U, M.M. Cert. ¶ 6, 8.) As Ms. Mason explains, “[g]ender

dynamics can further exacerbate the challenges” of building trust with juvenile clients, as “[y]oung female defendants often have a particularly difficult time opening up to older, male attorneys, especially if they have any history of abuse.” (App. U, M.M. Cert. ¶ 9.) But, notwithstanding these challenges, effective juvenile representation demands that counsel take the steps necessary, including enlisting third parties where needed, “to ensure open communication with the defense team.” (App. U, M.M. Cert. ¶ 9.)

137. Prior Counsel failed to meet these basic obligations, conducting his interviews with Jamie in a manner that was not only developmentally inappropriate – it actively frustrated open attorney-client communication. Jamie describes how Prior Counsel and his paralegal, Laura Melville, often took a “good cop/bad cop” approach to interviewing Jamie, where Laura would berate Jamie – yelling and cursing at her, and even calling her a “fucking liar” – while Prior Counsel took a more laid-back approach. (App. O, J.S. Cert. ¶ 39.) Emails between Prior Counsel and Jamie’s father, David, confirm these aggressive interview tactics. In early April 2015, just weeks after the murder, David tells Prior Counsel: “I told her over and over that she must be totally honest about everything. John you sit her down scream and holler if you have to.” (App. E, D.S. Cert., Exhibit A: E-Mail and Text Correspondence Excerpts.) In another email to Laura Melville, David states: “you have permission to lay in to [sic] her big[]time.” (App. E, D.S. Cert., Exhibit A: E-Mail and Text Correspondence Excerpts.) This encouragement by Jamie’s father corroborates – but in no way excuses – Prior Counsel’s harsh, aggressive interview tactics; as her attorney, Prior Counsel bore the responsibility to effectively and appropriately communicate with his client. Jamie was his client in this matter; taking direction from her father was contrary to his attorney-client relationship with Jamie. *See* NATIONAL JUVENILE DEFENSE STANDARDS, Standard 2.5 (“Counsel may not permit a third party, including a parent, to interfere with counsel’s

assessment of the case” or representation more generally.).

138. Prior Counsel’s aggressive, adversarial approach caused Jamie either to “clam up” and feel “so nervous [she] was frozen to [her] chair,” or to say whatever she thought her interviewers wanted to hear, trying to win their approval. (App. O, J.S. Cert. ¶ 39.) This reaction is to be expected, as it conforms with what we know about adolescent development — especially concerning very young adolescents. As Michelle Mason explains: “children are more likely to provide answers they think adults want to hear even if that is not the truth, and they are very susceptible to suggestion and perceived intimidation,” a conclusion supported by substantial research on juvenile defendants.¹⁶ (App. U, M.M. Cert. ¶ 6.)

139. Dr. Marty Beyer confirms that many of these challenges were present for Jamie. Dr. Beyer met with Jamie for approximately 12 hours over a two-day period in March 2019. Based on her assessment, Dr. Beyer explains:

Because of past trauma and her longstanding belief that she was not acceptable, Jamie would likely have been unusually sensitive and to have felt hurt and withdrawn from adults she perceived as disapproving. Especially after her mother’s death, her PTSD would likely have interfered with her ability to concentrate and to discuss her family relationships, her decision-making, or her relationship with Mr. Barnes. Confrontation about lying—while understandably a concern of all the adults involved—would likely have interfered with her being able to trust even the individuals who were helping her.

(App. R, Dr. M.B. Cert. at 24.)

¹⁶ See, e.g., Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003); Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 L. & PSYCHOL. REV. 53, 69 (2007); Thomas Grisso, et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 357 (2003).

¹⁶ See Julian D. Ford et al., *Pathways from Traumatic Child Victimization to Delinquency: Implications for Juvenile and Permanency Court Proceedings and Decisions*, 57 JUV. & FAM. CT. J. 13, 13 (2006); Gordon R. Hodas, Penn. Off. of Mental Health & Substance Abuse Servs., *Responding to Childhood Trauma: The Promise and Practice of Trauma Informed Case* 17 (2006).

140. In addition to her legal team’s hostile interview tactics, Jamie also experienced breaches of attorney-client confidentiality that caused her to further mistrust her legal team. She describes how “[c]onfidential information I told my legal team often made it back to my dad without my permission,” which made her “hesitant to talk to them honestly.” (App. O, J.S. Cert. ¶ 41.) She felt that she, Prior Counsel, and her father had a “triangle relationship” where “everything I told my attorney got back to my dad, and my dad was often the one who informed me of updates to my case.” (App. O, J.S. Cert. ¶ 41.)

141. Prior Counsel had no reasonable basis for failing to effectively communicate with Jamie. Although it is true that developing an open, trusting relationship with a young, traumatized client can be challenging, and “[i]t would have taken skillful interviewing to investigate the intimate partner violence” and past trauma that influenced Jamie’s behavior at the time (App. R, Dr. M.B. Cert. at 21), effective client communication is one of the core responsibilities of juvenile defense attorneys (indeed, all attorneys). *See* NATIONAL JUVENILE DEFENSE STANDARDS, Standards 1.3, 2.6. Moreover, the challenges to effective communication present in Jamie’s case are nothing out of the ordinary, given the prevalence of past trauma and abuse among girls involved in the justice system. *See* (App. U, M.M. Cert. ¶¶ 7, 9.) Based on Dr. Beyer’s assessment of Jamie, “[i]t seems likely that if she trusted an evaluator who educated her about intimate partner violence, Jamie would have opened up about it.” (App. R, Dr. M.B. Cert. at 21); *see also id.* (“In my experience with interviews spanning several days even traumatized adolescents gradually develop sufficient trust to divulge their secrets.”). The evidence here shows that not only did Prior Counsel lack the requisite skill in communicating with young clients to build that trust, he actively shut down open communication by breaching his client’s confidence and permitting her to be treated with hostility by members of the legal team.

142. Further, even if Prior Counsel had tried but struggled to build a relationship with Jamie, he still would not have a reasonable basis for failing to do so, as he had the duty to enlist support if needed. *See* NATIONAL JUVENILE DEFENSE STANDARDS, Standards 2.6; A. JUVENILE DEFENSE PERFORMANCE GUIDELINES, Guideline 9 § 2(B). In fact, there were multiple known individuals available at the time who could have assisted him in that regard. First, Nicholas Jupina, a social worker with whom Jamie was meeting regularly at the Lehigh County Jail, had been recommended by Dr. Dattilio and was known to Prior Counsel. (App. J, N.J. Cert. ¶ 2; App. O, J.S. Cert. ¶ 48.) Mr. Jupina was able to build an open, trusting relationship with Jamie at the time of the preparation for decertification, and both he and Jamie would have been happy to have him work with the defense team on her case. (App. J, N.J. Cert. ¶ 2-4.); (App. O, J.S. Cert. ¶ 44.) Additionally, Jimmy Lee Werley, the pastor at Jamie’s church prior to the offense, started visiting her regularly as soon as she was incarcerated and soon became her spiritual advisor. (App. N, J.L.W. Cert. ¶ 4, 5.) Both Jamie and Mr. Werley report that they built an open, trusting relationship, and Mr. Werley would likewise have assisted with Jamie’s representation and defense if asked. (App. O, J.S. Cert. ¶ 36.); (App. N, J.L.W. Cert. ¶¶ 2, 5.) Jamie’s positive relationships with Mr. Jupina and Mr. Werley show both that it was possible to build trust and communicate effectively with Jamie at the time, and that Prior Counsel actually had access to individuals who could have assisted him in fulfilling his duty to communicate effectively with his client if he was himself struggling to do so.

143. Prior Counsel’s failure to communicate effectively with Jamie caused her tremendous prejudice. Had someone with the skill necessary to work with a young client interviewed her, Jamie could have shared key details about her past emotional trauma, including:

- the emotional impact of her facial disfigurement, *see* (App. O, J.S. Cert. ¶ 5.);

- scope of her insecurity and depression during early adolescence, *see* (App. O, J.S. Cert. ¶¶ 6, 7, 10.);
- her history of self-harm, *see* (App. O, J.S. Cert. ¶¶ 6, 8.);
- her retreat into the online world, *see* (App. O, J.S. Cert. ¶¶ 9, 14.);
- her fraught relationship with her father, *see* (App. O, J.S. Cert. ¶¶ 2, 4, 26.);
- her struggles with her sexuality and relationships, *see* (App. O, J.S. Cert. ¶¶ 14-17.);
- the extent of intimate partner violence she experienced, *see* (App. O, J.S. Cert. ¶¶ 16-25.)

144. As demonstrated above, *see supra* Section I.A, this information was vital to understanding Jamie’s behavior and decision-making leading up to, during, after the offense, which are key to assessing her amenability to treatment in the juvenile system. Prior Counsel’s failure to learn this information from his client significantly impeded his ability to effectively defend her, leaving the court with the inaccurate, one-dimensional portrayal of Jamie as a manipulative mastermind; this flawed characterization formed the basis of the court’s decertification denial.

iii. Prior Counsel Failed to Investigate, Develop, and Present Testimony from One Lay Witness

a. Prior Counsel was ineffective for failing to present critical witnesses who could have testified to decertification factors on Jamie’s behalf.

145. Prior Counsel did not call a single lay witness on Jamie’s behalf at the decertification hearing, fundamentally hampering the presentation of Jamie’ true character and offering the court almost nothing to justify sending Jamie’s case back to juvenile court.

146. “To prevail on a claim that trial counsel was ineffective for failing to present a witness, a defendant must demonstrate that: (1) the witness existed; (2) counsel was either aware of or should have been aware of the witness’s existence; (3) the witness was willing and able to cooperate on behalf of the defendant; and (4) the proposed testimony was necessary to avoid prejudice to the defendant.” *Commonwealth v. Bryant*, 855 A.2d 726, 746 (Pa. 2004) (citing *Commonwealth v. Begley*, 780 A.2d 605, 630 (Pa. 2001)).

147. Counsel knew or should have known that there were over a dozen witnesses who were not only willing to testify but eager to ensure the court was familiar with Jamie’s overall character and life history. Jamie herself identified Bailey Allison, Lee Anne Allison, Milah Allison, Heather Lesko, Sara Senseman, and Nicholas Jupina, all of whom were willing to testify. (App. O, J.S. Cert. ¶ 44.)¹⁷ David Silvonek and Margaret Lynn were obviously known to Prior Counsel due to their factual involvement in Jamie’s case and as Jamie’s grandmother and father who supported her throughout this process; they were both eager to provide any assistance, including testimony, on Jamie’s behalf. (App. E, D.S. Cert. ¶ 2.); (App. A, M.L. Cert, ¶ 2.) Tonya Lynn is Jamie’s aunt who, throughout her decertification and trial, was supported of Jamie and regularly attended all of Jamie’s hearings. (App. D, T.L. Cert. ¶ 1, 13.) Mr. Silvonek identified Ronnie Andrietta and Ray Mueller as close family friends who were willing to testify on Jamie’s behalf. (App. E, D.S. Cert., Exhibit A; E-Mail and Text Correspondence Excerpts.) Mr. Silvonek also identified Erich Joella who ultimately spoke to Dr. Dattilio on Jamie’s behalf and was willing to testify. (App. I, E.J. Cert. ¶ 6, 7.) Finally, Jimmy Lee Werley became Jamie’s spiritual advisor at the county jail and regularly visited Jamie while she was incarcerated; he was also willing to

¹⁷ Mr. Silvonek independently named Bailey Allison, Lee Anne Allison, and Heather Lesko. (App. E, D.S. Cert., Exhibit A: E-Mail and Text Correspondence Excerpts.)

testify on her behalf and even contacted Prior Counsel to let him know he wanted to help with Jamie's case. (App. N, J.L.W. Cert. ¶ 2.)

148. It is undisputed that a presentation of a client's personal background, character traits, and community support from individuals who know them is critical to a decertification hearing. As the National Juvenile Defense Standards explain, when a client is facing potential adult prosecution, defense counsel should present testimony "by people who can provide insight into the client's character," including from teachers, counselors, community members, religious leaders, family members, and friends. NATIONAL JUVENILE DEFENSE STANDARDS, Commentary to Standard 8.4. Indeed, these standards emphasize that counsel must ensure that such evidence "is presented under oath and as part of the record at the hearing." *Id.*

149. Information about a juvenile defendant's temperament, general behavior, and history of violence can help illustrate the degree of threat to the community posed by the child. Details about a child's character from people who knew her well can also provide insight into her degree of culpability by shedding additional light on the circumstances that might have caused her to become involved in the offense. And lay witness observations and interactions are highly relevant to understanding a juvenile defendant's amenability to treatment, both because it helps demonstrate the child's level of maturity and degree of sophistication, and because the witnesses may themselves play a role in supporting a child's rehabilitation and treatment. 42 Pa.C.S. § 6355(a)(4)(iii).

150. The failure to present favorable witness testimony during a decertification is arguably ineffective even when an attorney believed he "had a strategic reason for not presenting character witnesses [because he] sought 'adjudication of a lesser-included offense as opposed to outright acquittal.'" *In the Interest of R.D.*, 44 A.3d 657, 668 (Pa. Super. Ct. 2012) (citations

omitted). Here, there is even less of a strategic rationale for excluding the above witnesses since Jamie was facing a homicide and associated charges, possibly exposing her to life without parole or at the very least decades in an adult prison if decertification was unsuccessful.

b. Prior Counsel Could Not Possess a Reasonable Basis for this Decision as He Conducted an Insufficient Investigation.

151. Considering the high degree of relevance of such character testimony to the decertification question, Prior Counsel's failure to introduce any mitigating evidence on Jamie's behalf was ineffective on its face as it lacked any cognizable rationale. Particularly for individuals whom the investigator spoke to and who provided favorable information, there is no justification for counsel failing to present their testimony. *See* NATIONAL JUVENILE DEFENSE STANDARDS, Standard 8.4 (counsel must "[p]resent all facts, mitigating evidence, and testimony that may convince the court to keep the client in juvenile court."); *see generally*, (App. C, L.A.A. Cert.); (App. K, H.L. Cert.); (App. H, V.A. Cert.); (App. L, R.M. Cert.)

152. Furthermore, as Prior Counsel did not conduct a sufficient investigation, he was incapable of making a strategic decision to exclude the testimony from each of these witnesses. Although counsel's strategic decisions following a thorough investigation generally cannot be challenged, "strategic choices made following a less than complete investigation are reasonable precisely to the extent that reasonable professional judgment supports the limitation of the investigation." *Commonwealth v. Bridges*, 886 A.2d 1127, 1132 (Pa. 2005).

153. As the Pennsylvania Supreme Court has repeatedly recognized, criminal defense attorneys "must conduct appropriate investigations, both factual and legal, to determine what matters of defense can be developed." *Bailey*, 390 A.2d at 170; *see also Commonwealth v. Mitchell*, 105 A.3d 1257, 1276 (Pa. 2014) (citing *Commonwealth v. Basemore*, 744 A.2d 717 (Pa. 2000)). This duty to investigate includes, at a minimum, the duty to interview potential witnesses

and “to make an independent investigation of the facts and circumstances of the case.” *United States v. Kauffman*, 109 F.3d 186, 190 (3d Cir. 1997) (quoting *Nealy v. Cabana*, 764 F.2d 1173, 1177 (5th Cir. 1985)). Defense counsel must also explore all avenues leading to relevant facts, “even if counsel thinks that the particular avenue in question offers little chance of leading to a successful defense.” *Commonwealth v. McCaskill*, 468 A.2d 472, 478 (Pa. Super. Ct. 1983); *see also Bailey*, 390 A.2d at 170; *Commonwealth v. Gainor*, 432 A.2d 1116 (Pa. Super. Ct. 1981); ABA Standard 4-4.1 (duty to investigate “is not terminated by factors such as the apparent force of the prosecution’s evidence, a client’s alleged admissions to others . . . , a client’s expressed desire to plead guilty . . . , or statements to defense counsel supporting guilt”). Professional standards governing representation of juveniles further specify that, “in any case where the client may be prosecuted in adult court,” the investigation must explore both the “circumstances of the allegation and the client’s background.” NATIONAL JUVENILE DEFENSE STANDARDS, Standard 8.3; *see also* A. JUVENILE DEFENSE PERFORMANCE GUIDELINES, Guideline 9.2 (“[C]ounsel has an obligation to actively investigate the social, psychological, and educational history of the child.”). This obligation always falls at the feet of counsel, even when an investigator is utilized as “counsel is not thereby relieved of the responsibility for the effectiveness of the investigation.” *Commonwealth v. Borelli*, 431 A.2d 1067, 1070 (Pa. Super. Ct. 1981) (citing ABA Committee on Professional Ethics, Formal Opinion No. 316).

154. Here, Prior Counsel did not himself interview a single person, other than Jamie, in preparation for her decertification hearing. (App. B, J.W. Cert. ¶ 2 [hereinafter J.W. Cert.]) Instead, Prior Counsel hired an investigator, Joe Brown, to identify and speak with potential witnesses. (App. B, J.W. Cert. ¶ 2.) Mr. Brown conducted initial interviews of many important potential witnesses, but no one from the legal team, including Mr. Brown, interviewed a single immediate

family member, teacher, or medical or mental health provider of Jamie's for consideration as testifying witnesses. Thus, Prior Counsel cannot argue that his decision to failure to present any of the foregoing testimony was a strategic choice since he did not know what the witnesses would say or how they would present on the stand.

c. The Lack of Favorable Witnesses Prejudiced Jamie as Necessary Facts Were Then Absent from the Record, There Were No Facts to Corroborate Expert Testimony, and Nothing Rebutted the Commonwealth's Characterization of Jamie.

155. This failure to call a single witness caused substantial prejudice as Jamie's fate was effectively sealed without such testimony or evidence. The Commonwealth's un rebutted character evidence proved persuasive in both the court decertification decision and the affirmance of that decision by the Superior Court on appeal.

156. Each of the above potential witnesses was willing to provide highly relevant testimony on Jamie's behalf. Individually and collectively their testimony would have shifted the narrative around Jamie's character and amenability to treatment. They were available to speak to a variety of the decertification factors, including but not limited to the impact of the crime on the community, the lack of violent tendencies in Jamie, the aberrational nature of the offense, the ample support available for Jamie to reenter the community after a juvenile disposition, Jamie's emotional immaturity and naivety, and most importantly, Jamie's overall character supporting an amenability to treatment. The witnesses counsel failed to call — who knew Jamie all or most of her life — would have described a loving, sweet, emotionally immature, and pleasant girl who started to struggle as she hit puberty. They would have reinforced that Jamie was indeed amenable to treatment because her true character was positive and the offense more reflective of a teenager in over her head with emotions and trauma. If *any* of the favorable witnesses had been called, Jamie would have had the benefit of a positive narrative showing she was a sweet, emotionally

immature, and promising young girl.

157. Rather than this narrative being presented, though, the court was left with only the Commonwealth's portrayal of Jamie, which was grossly inaccurate. From the outset of her case, Jamie was portrayed as manipulative and disliked by her peers and teachers. The court's decertification decision is replete with references to Jamie's character that were wholly based on this early framing of her character by Commonwealth witnesses who barely knew her and whose characterizations were unfounded. *See generally*, (Decert. Op.) Rather than the court receiving a full picture of who Jamie was before and leading up to the offense, the court had only a collapsed snapshot of her behavior during the most trying period in her life, and utterly without context. Almost every decertification factor could have been further illuminated by the missing witnesses whose testimony would have fundamentally altered the court's understanding of Jamie's amenability to treatment.

158. Furthermore, the court credited Dr. O'Brien's opinions precisely because they were consistent with what the court was led to believe was the pervasive view of Jamie by the community and her teachers. Dr. Dattilio was even discredited because his opinions of Jamie were inconsistent with Ms. Haberstroh's testimony and Dr. O'Brien's exaggerated version of Jamie's reputation. Had defense witnesses been called, they could have demonstrated that Dr. Dattilio's opinion of Jamie was consistent with the views of many more people who knew Jamie more intimately, eliminating a ground for impeaching the defense expert.

d. Prior Counsel's Ineffectiveness Additionally Prejudiced Jamie as Witnesses Could Have Impeached Ms. Haberstroh's Testimony.

159. Prior Counsel's failure to call favorable witnesses on Jamie's behalf is only exacerbated by the availability of witnesses that could have undermined the Commonwealth's only

witness around Jamie's character, Diane Haberstroh. Where "credibility of the witnesses is of paramount importance." *Commonwealth v. Weiss*, 606 A.2d 439, 442 (Pa. 1992). Therefore, Prior Counsel had an obligation to call witnesses to impeach Ms. Haberstroh's credibility when the case "came down to whether the [trier of fact] believed the defendant or a single Commonwealth witness." *Commonwealth v. Crispell*, 193 A.3d 919, 931 (Pa. 2018). At the very least, "a contention that counsel failed to employ evidence which 'would have been helpful . . . to impeach the Commonwealth's witnesses and was available to counsel at the time of trial' possesses arguable merit." *Commonwealth v. Whiting*, 517 A.2d 1327, 1336 (1986) (citations omitted).

160. The Commonwealth's narrative largely stemmed from Ms. Haberstroh's testimony. However, she was not one of Jamie's teachers, had only known her for approximately six months, and had actually invited Jamie to her home just days before the offense. Despite her limited knowledge and experience with Jamie, Ms. Haberstroh testified that Jamie was manipulative and a "chameleon." (Decert. Op. at 29.) The court also adopted the teacher's opinion that Jamie was "very good at reading people and utilizing social cues" even though the teacher had no proper expertise to provide such an opinion. (Decert. Op. at 29.) Dr. O'Brien's characterizations of Jamie as a manipulative and disliked teenager also relied upon this testimony. (Dr. O'Brien's Report, Commw.'s Decert. Ex. 23, at 25.)

161. Aside from talking to Jamie, had Prior Counsel spoken to Jamie's grandmother, about Ms. Haberstroh's expected testimony, he would have learned that Ms. Haberstroh had an apparently different view of Jamie right up until the offense. (App. A, M.L. Cert. ¶ 23.) At the manufacturing event, Ms. Haberstroh learned that Jamie regularly visited her grandmother in Jim Thorpe near Ms. Haberstroh's home. (App. A, M.L. Cert. ¶ 23.) Upon learning this, the teacher provided Jamie with her cell phone number and told her that she could come by and visit next time

she was seeing her grandmother. (App. A, M.L. Cert. ¶ 23.) Jamie's grandmother observed nothing but warmth from Ms. Haberstroh towards Jamie. (App. A, M.L. Cert. ¶ 23, 24.) Similarly, a conversation with Erich Joella, one of Jamie's actual teachers, would have revealed that Ms. Haberstroh had spoken favorably of Jamie regarding the project and was impressed with her. (App. I, E.J. Cert. ¶ 14.) Finally, Ms. Haberstroh's number was in Jamie's cell phone and could have been easily located by prior counsel to corroborate this interaction.

162. Prior Counsel knew that the Commonwealth planned to call Ms. Haberstroh, had received notes of the police interviews with her, and had seen Dr. O'Brien's report with these inaccurate characterizations. Even if he had no obligation to affirmatively call favorable witnesses, a standard hard to conceive of when defense bears the burden of proof, the obligation at least arose once he was on notice of Ms. Haberstroh's testimony.

163. Since Ms. Haberstroh was the only witness to talk about Jamie at the decertification, the weight of her statement was unparalleled. Not only did Dr. O'Brien rely on her characterizations (Dr. O'Brien's Report, Commw.'s Decert. Ex. 23, at 25), but the court credited his opinion in part because it was consistent with her testimony, *see* (Decert. Op. at 28-30, 32-33) (rejecting Dr. Dattilio's opinion in part because it is inconsistent with Ms. Haberstroh and accepting Dr. O'Brien's conclusions.) Therefore, undermining Ms. Haberstroh's characterizations would have simultaneously undermined Dr. O'Brien's opinions. Ms. Haberstroh's inaccurate depiction of Jamie dictated a characterization of her from the beginning of the investigation and allowed a picture of Jamie to be painted that could not have been farther from the truth. Counsel's failure prejudiced Jamie as the teacher's characterization was allowed to stand uncontested and as the foundation for Dr. O'Brien's report. Calling either Mrs. Lynn or Mr

Joella would have greatly undermined Ms. Haberstroh's credibility, leaving the Commonwealth with a discredited lay witness and substantially weakened expert.

iv. Prior Counsel Failed to Investigate or Argue the Legal Significance of Adolescent Development Research.

164. Prior Counsel was also ineffective in failing to research and present to the court the landmark United States Supreme Court cases discussing the developmental characteristics that distinguish children from adult defendants and establishing the legal significance of those differences. *Miller*, 567 U.S. 460, *Eddings v. Oklahoma*, 455 U.S. 104, 116 (1982); *Roper*, 543 U.S. at 569; *Bellotti v. Baird*, 443 U.S. 622, 635 (1979); *Haley*, 332 U.S. at 599; *Gallegos*, 370 U.S. at 54. These cases are foundational to all aspects of juvenile defense, but especially to representation of children charged in adult criminal court, as they recognize constitutional limitations on the court's ability to impose the harshest adult sentences on children and specifically recognize, as a matter of constitutional law, the reduced culpability of child offenders. There is no indication in the record that Prior Counsel was familiar with these cases, and his failure to call them to the court's attention prejudiced Jamie's case, as it directly contributed to the impeachment of one of his experts and prevented him from effectively explaining Jamie's decision-making and conduct.

165. In a series of cases from 2005 to 2016, the United States Supreme Court has repeatedly highlighted the relevance of adolescent development to constitutional standards relating to culpability. See *Miller*, 567 U.S. at 465 (striking down mandatory imposition of life without parole sentences for juveniles); *Graham*, 560 U.S. at 82 (striking down life without parole sentences for juveniles convicted of nonhomicide offenses); *Roper*, 543 U.S. at 578-79 (striking down the juvenile death penalty as unconstitutional); see also *Montgomery*, 136 S. Ct. at 733 (holding *Miller* retroactive on collateral review). These cases focus on three key characteristics

that distinguish children from adults: “[a]s compared to adults, juveniles have a ‘lack of maturity and an underdeveloped sense of responsibility’; they ‘are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure’; and their characters are ‘not as well formed.’” *Graham*, 560 U.S. at 68 (citing *Roper*, 543 U.S. at 569-70). Together, these cases stand for the proposition that there are key developmental differences between children and adults which bear directly on their criminal culpability and eligibility for certain severe sentences, regardless of the heinousness of the crime, and in fact require, *as a matter of constitutional law*, that children be held to a different legal standard in criminal law.

166. An attorney’s duty to investigate includes the duty to conduct basic legal research. *Bailey*, 390 A.2d at 170 (“And, of course, the duty to investigate also requires adequate legal research.”). In the context of juvenile representation, this duty necessarily includes understanding the major Supreme Court cases establishing the legal significance of adolescent development research. *See* NATIONAL JUVENILE DEFENSE STANDARDS, Standard 1.1 (“Counsel must be knowledgeable about adolescent development and the special status youth in the legal system” and “must be familiar with relevant . . . case law”). Yet there is no indication that Prior Counsel had any familiarity with these cases. As Prior Counsel did not submit a brief in support of his motion for decertification, he provided the court with no written memorandum addressing the relevance of this case law to the issue of decertification. Nor does he cite to them in any of his other briefing or mention them in any of his oral statements before the court. Put simply, there seems to have been no consideration of this key, transformational jurisprudence during Jamie’s decertification proceeding.¹⁸

¹⁸ Although Dr. Dattilio discusses some of the underlying research in his report, he does not cite to any of the legal jurisprudence on the topic. *See* (Dr. Dattilio’s Report, Def.’s Decert. Ex. 2, at 26.) Dr. Berkowitz mentions the Supreme Court rulings in his report and briefly in his oral testimony, *see* (Dr. Berkowitz’s Report, Def.’s Decert. Ex. 4, at 7;

167. Given the prominence of this jurisprudence at the time of Jamie’s decertification hearing, there can be no reasonable basis for Prior Counsel’s failure to bring this scientific research and related case law to the attention of the court. These cases articulate a reduced degree of culpability for young offenders and define the sentencing parameters for juveniles facing prosecution and conviction for serious crimes in adult criminal court, which are precisely the issues present here. *See Miller*, 567 U.S. at 471 (“Because juveniles have diminished culpability and greater prospects for reform, . . . they are less deserving of the most severe punishments.”) (internal citation and quotation marks omitted). While plainly relevant at sentencing, they are no less central to decertification, as they describe many of the characteristics of juveniles that must be considered in determining their amenability to treatment, including their maturity, degree of criminal sophistication, degree of culpability and potential for rehabilitation. *See Graham*, 560 U.S. at 68.

168. More generally, an understanding of adolescent development research as explained in *Roper*, *Graham*, and *Miller* was necessary to properly understand and explain Jamie’s decision-making and behavior. As Dr. Beyer explains, the research cited in these cases “shows that even older teenagers handle information processing, judgment and the management of emotions differently from adults and that teen brains are physiologically underdeveloped in the areas that control impulses, foresee consequences, and temper emotions” (App. R, Dr. M.B. Cert. at 9.) These characteristics, which are even more pronounced in younger teens like Jamie, help explain Jamie’s behavior. (App. R, Dr. M.B. Cert. at 9-10.) Indeed, Jamie demonstrated the immature judgment common in adolescents, failing to anticipate the outcomes of her actions, placing high value on peer relationships, minimizing the risks of text messages and other social media communications, and requiring adult guidance to extricate herself from harmful situations and

(Decert. Hr’g Tr. 11/2/15, 67:11-20, 76:1-6.), but Prior Counsel – whose responsibility it is to present the relevant legal arguments – never discusses or cites to them.

relationships. (App. R, Dr. M.B. Cert. at 10-13.) She also had a strong capacity for change, as her weaknesses and errors in judgment reflected her maturity at the time and “incomplete identity,” “rather than ingrained or enduring aspects of personality or worldview” (App. R, Dr. M.B. Cert. at 29.) – another classic feature of adolescence recognized by the United States Supreme Court. *See Miller*, 567 U.S. 460, at 471-72.

169. Counsel’s failure to bring this foundational legal research to the court directly affected the outcome of the decertification proceeding. Because the court was not briefed on the controlling law, it improperly rejected the expert testimony of Dr. Berkowitz on the basis that “he admitted that his own personal belief” that “no teenager should be held to the same legal standard as an adult,” not recognizing that this was precisely the holding of the United States Supreme Court in four different cases decided between 2005-2012. (Decert. Op. at 31.); *see Miller*, 567 U.S. at 471 (“*Roper* and *Graham* establish that children are constitutionally different than adults for purposes of sentencing.”). If Prior Counsel had properly familiarized himself with the relevant case law and the underlying research in *Roper*, 543 U.S. 551, *Graham*, and *Miller*, he could have easily rehabilitated Dr. Berkowitz on this point.

170. In short, adequate understanding and presentation of these key cases would have allowed Prior Counsel to protect his expert from impeachment and provide the background necessary to understand one of the key drivers of Jamie’s behavior and decision-making. Had he presented this foundational jurisprudence to the court, there is a “reasonable probability” the outcome of the decertification proceeding would have been different. *See Pierce*, 786 A.2d at 213.

- v. **Prior Counsel Failed to Provide His Experts with the Relevant Evidence Needed to Protect Them from Impeachment.**
 - a. **Prior Counsel’s Failures Resulted in His Experts Being Impeached as He Did Not Take the Basic and Critical Step of Ensuring They Had All Necessary Documentation Prior to**

Preparing Their Reports and Testifying.

171. Counsel is responsible for ensuring experts are prepared for their testimony and cannot improperly cede control of the case to an expert. As part of this obligation, “counsel should provide the expert with *all information reasonably necessary* to support a full and fair opinion” absent confidentiality concerns. *See* Standard 4-4.4, Relationship With Expert Witnesses (2015), Am. Bar Ass’n, Criminal Justice Standards for Def. Function. “Counsel should inform the expert of anticipated objections to the expert’s qualifications or testimony likely to be raised by the prosecution.” NATIONAL JUVENILE DEFENSE STANDARDS, Standard 5.8, Prepare and Examine Non-Client Defense Witnesses, Commentary. This burden is only heightened in a decertification proceeding where the burden to prove amenability to treatment in the juvenile system is on the defendant.

172. Rather than affirmatively prepare Dr. Dattilio and Dr. Berkowitz, though, Prior Counsel neglected basic duties of a defense attorney. After retaining Dr. Dattilio and Dr. Berkowitz, Prior Counsel provided no guidance to his experts as to theories of the case; abandoned attempts to conduct his own investigation to bolster their testimony; failed to familiarize himself with the relevant fields of expertise; ignored Dr. Berkowitz’s need to conduct further evaluations as he was provided less than a month to issue his report; and, most astonishingly, Prior Counsel did not provide key aspects of the prosecution’s discovery.

173. Dr. Dattilio did not have the following discovery provided by the Commonwealth at the time of his testimony:

- a. Reports that the offense allegedly took place over the course of 20 minutes
- b. The post-offense video of Jamie and her co-defendant in Walmart
- c. Almost two-thirds of the text messages between Jamie and her co-defendant

- d. A letter written from Jamie to her co-defendant while she was incarcerated at Lehigh County Jail
- e. Portions of the preliminary hearing transcript which were fully incorporated into the decertification record
- f. The sexual assault report filed after the offense along with the medical evaluation conducted

(Decert. Op. at 27; *see also* Decert. Hr’g Tr. 10/29/15, 60:4-11, 68:20-23, 69:12-14, 70:14-25, 78:2-7.)

174. Dr. Berkowitz faced a similar impeachment for failure to consider the following critical discovery that was relied upon by the Commonwealth:

- a. Interview notes from Jamie’s teachers or information from his own interviews
- b. Jamie’s school records
- c. The post-offense video of Jamie and her co-defendant in Walmart
- d. A large section of the text messages between Jamie and her co-defendant
- e. Psychiatric records of Dr. John Campion, M.D. or treatment records from Lisa Brandolino
- f. The sexual assault report filed after the offense along with the medical evaluation conducted
- g. Social media posts by Jamie

(Decert. Op. at 30); (App. Q, Dr. S.B. Cert. ¶¶ 4,6,8.); Decert. Hr’g Tr. 11/2/15, 44:11-25, 45:1-7, 48:4-7, 48:12-24, 51:2-25, 55:4-6, 72:20-25, 73:1.)

175. Each piece of the above evidence was a critical component of the first-degree

murder charge or the Commonwealth's overall picture of Jamie as the "mastermind."

176. Defense experts also concede that they would have wanted to receive the following information from Prior Counsel, which is all evidence that the defense had or should have obtained: evidence of family discord, including Mr. Silvonek's alleged affairs, the disconnect that grew in the family when Jamie's brother left for college, the history of depression in the family, or the critical remarks made by Jamie's father towards Jamie and her mother. (App. P, Dr. F.M.D. Cert. ¶¶ 3-10; App. Q, Dr. S.B. Cert. ¶¶ 6-10.) This evidence would have been beneficial in addition to the evidence of domestic violence and trauma that was highlighted in Section B.i.¹⁹

177. Without the full discovery packet, Dr. Dattilio's entire testimony was disregarded as the court found his opinion "constrained" by "the Defendant's version of events." (Decert. Op. at 29.) Aside from taking issue with Dr. Dattilio lacking critical pieces of evidence, the court also questioned the defense expert's characterization of Jamie's family as a "cohesive family unit" when there were clearly escalating tensions between her and her mother. (Decert. Hr'g Tr. 10/29/15 99:14-20.)

178. The court discredited Dr. Berkowitz's foundations for his opinions since he had not reviewed the evidence considered by Dr. O'Brien and had not talked to any witnesses himself. (Decert. Op. at 30-31) Further, the court did not adopt Dr. Berkowitz's opinions regarding Jamie's non-verbal learning disability due to the conflicting evidence on the record. *Id.*

b. Prior Counsel Had No Reasonable Basis for Failing to Properly Prepare His Experts.

179. There was no conceivable reason for Prior Counsel to withhold the evidence provided by the prosecution in discovery from defense experts. Dr. Dattilio and Dr. Berkowitz

¹⁹ Even though Dr. Dattilio conducted interviews, it is worth noting that he received no guidance as to mitigating evidence or substance to cover in those interviews since "counsel did not provide [Dr. Dattilio] with a list of witnesses to interview or summaries of any interviews conducted by the defense team." (App. P, Dr. F.M.D. Cert. ¶ 5.)

both would have wanted the information for their evaluations. Dr. Dattilio states in his certification, he “expect[s], prior to [his] testimony in a matter, all of the evidence that has been provided to the Commonwealth’s expert.” (App. P, Dr. F.M.D. Cert. ¶ 4.) Aside from the impeachment evidence, Dr. Dattilio and Dr. Berkowitz would have found information regarding Jamie’s family dynamics, additional information regarding the dynamics between Jamie and Mr. Barnes, and her mental health treatment after the offense, which would have aided them in their evaluation and bolstered their opinions. (App. P, Dr. F.M.D. Cert. ¶¶6- 9; App. Q, Dr. S.B. Cert. ¶¶ 6-10.)

180. Prior Counsel knew that the Commonwealth was relying on the evidence provided in discovery for a first-degree murder charge as well as Jamie’s alleged involvement in the offense for decertification. Prior Counsel knew that the bulk of this information was also provided to the Commonwealth’s expert once he received Dr. O’Brien’s report.

181. Considering the above, there was no reasonable basis for Prior Counsel’s failure.

c. Prior Counsel’s Ineffectiveness Prejudiced Jamie as the Impeachment of Both Experts Created a Record Void of Any Favorable Evidence on Jamie’s Behalf.

182. Overall, Prior Counsel prejudiced Jamie’s case as his failures resulted in the court disregarding both of his experts’ opinions regarding Jamie’s amenability to treatment. As Prior Counsel’s entire strategy hinged on his experts, this left Prior Counsel stranded with no additional tools to meet his burden, and left Jamie without effective representation that could meaningfully advocate for her transfer to juvenile court.

183. It was hardly surprising that the court and the Commonwealth were concerned with Jamie’s shifting stories and factual discrepancies from her interrogation and interviews with the experts. Any time a client’s story changes over time, counsel must be prepared to account for that

change. Had Dr. Dattilio been provided the full evidence from the Commonwealth, Dr. Dattilio could have addressed the facts and discrepancies with Jamie, incorporated them into his report, and thus insulated himself from such impeachment. Had Dr. Dattilio been properly prepared to do so, there is a reasonable probability that the court would have credited his opinion. After all, the court noted that it rejected his opinion due to the above flaws “despite highly regarding and respecting him as a clinical and forensic psychologist.” (Decert. Op. at 30.) Dr. Dattilio was not discredited due to his qualifications or expertise; rather it was his inability to withstand cross-examination about evidence he never saw and that the court believed to be a critical foundation for any expert opinion in the case.

184. Dr. Berkowitz could have been more prepared and further bolstered his opinions had he simply been provided sufficient time to prepare. Instead, “the time between [his] first contact with Dr. Dattilio[, who was responsible for bringing him onto the case,] and Jamie’s decertification hearing was relatively short – just a few weeks. The abbreviated time between [his] retention and the hearing limited the scope of what [he] was able to do by way of testing, evaluation and analysis.” (App. Q, Dr. S.B. Cert. ¶ 4.) Dr. Berkowitz “recommended further neurological testing to better assess the severity of [Jamie’s] deficits, including testing to assess whether she is on the autism spectrum”. (App. Q, Dr. S.B. Cert. ¶ 5.) It is Dr. Berkowitz’s “understanding that the testing [he] recommended was never done.” (App. Q, Dr. S.B. Cert. ¶ 5.) Dr. Dattilio concurs that additional testing “would have been relevant to an assessment of the factors to be considered” (App. P, Dr. F.M.D. Cert. ¶ 10.) However, Dr. Berkowitz was limited in that regard since counsel retained him with insufficient time prior to the hearing and then failed to request a continuance.

185. Furthermore, Dr. Berkowitz could have withstood cross-examination had he been

provided the additional documentation. Now that Dr. Berkowitz has been provided all of the above evidence except for the Walmart video, and treatment notes from Mr. Jupina who treated Jamie at the county jail, he maintains his original opinions. Dr. Berkowitz could now add the following:

- a. Jamie’s prior psychiatric and mental health records, including “[t]he age of onset of Jamie’s emotional issues and the treaters notes were consistent with Jamie having a non-verbal learning disability coupled with high intelligence, as many such individuals experience anxiety and depression.” (App. Q, Dr. S.B. Cert. ¶ 6.)
- b. Dr. Berkowitz “would have asked to consult with [Mr. Jupina] and/or review his notes. . . . [Mr. Jupina’s certification] confirms [Dr. Berkowitz’s] impressions of Jamie as a highly intelligent girl with a significant non-verbal learning disability and emotional immaturity,” and Mr. Jupina’s treatment notes would have corroborated his opinion and provided important additional context. (App. Q, Dr. S.B. Cert. ¶ 7.)
- c. He “believe[s] that, if [he] had been given the opportunity to address [the missing] evidence at the decertification hearing, [he] could have provided important context for its consideration that [he does] not believe came through at the hearing.” (App. Q, Dr. S.B. Cert. ¶ 9.)
- d. Specifically, he believes the full set of text messages “are consistent with [his] assessment of her as a girl with high intelligence but significant emotional immaturity,” and he could have placed them “in their proper context” with a full review. (App. Q, Dr. S.B. Cert. ¶ 9.)
- e. “[A]ny evidence of intimate partner violence in Jamie’s relationship with

Caleb Barnes would have been highly relevant to [his] assessment of Jamie and [his] opinions regarding her culpability and amenability to treatment.”

(App. Q, Dr. S.B. Cert. ¶ 10.)

186. Had counsel effectively prepared his experts, the court would not have been confined to rule on a record reflecting a one-sided, unchallenged view of Jamie.

vi. Prior Counsel Deprived Jamie of Effective Representation When He Failed to Adequately Cross Examine the Commonwealth’s Expert.

a. Prior Counsel Failed to Demonstrate that Dr. O’Brien’s Report Was Devoid of an Accurate Factual Premise.

187. Defense attorneys generally have an obligation to “interview not only [their] own witnesses but also those that the government intends to call, when they are accessible.” *Bailey*, 390 A.2d at 170; *see also Commonwealth v. Baxter*, 640 A.2d 1271, 1275 fn. 3 (Pa. 1994) (“[T]he prosecution’s file is not a substitute for an independent investigation by defense counsel.”) (quoting *Commonwealth v. Mabie*, 359 A.2d 369, 374 (Pa. 1976)) (alteration in original). Furthermore, “[c]ross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested,” *Davis v. Alaska*, 415 U.S. 308, 316, (1974), and is thus enshrined in the Confrontation Clause. *See Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986) (explaining that the Confrontation Clause requires a defendant to be able to appropriately cross-examine a witness to allow the trier of fact to determine the reliability of a witness). Since cross-examination is utilized to undermine the general credibility of a witness and is a significant trial strategy, “counsel need not introduce expert testimony on his client’s behalf if he is able effectively to cross-examine prosecution witnesses and elicit helpful testimony.” *Commonwealth v. Chmiel*, 30 A.3d 1111, 1143 (Pa. 2011) (internal quotation marks omitted) (citations omitted). Therefore, counsel can be ineffective for failing to impeach a witness or to elicit favorable testimony if the

defense can show “that the absent evidence would have been beneficial to the defense.” *Commonwealth v. Strutt*, 624 A.2d 162, 165 (Pa. Super. Ct. 1993) (citing *Commonwealth v. Durst*, 559 A.2d 504 (Pa. 1989) (failure to adequately cross-examine eyewitness constituted ineffectiveness); *see also Baxter*, 640 A.2d at 1274 (casting doubt on Commonwealth’s primary witness is “essential”); *Commonwealth v. Birch*, 616 A.3d 977, 978 (Pa. 1992) (explaining that adequate cross-examination to demonstrate bias is important where case is dependent on witness’s credibility).

188. Here, defense counsel was unable to conduct an effective cross-examination because his investigation was woefully inadequate. *See ABA Standards 4-4.1* (“Counsel’s investigation should also include evaluation of the prosecution’s evidence . . . and consideration of inconsistencies [and] potential avenues of impeachment of a prosecution witness.”) No one from the defense team attempted to reach out to the numerous known individuals the Commonwealth spoke with, including Jamie’s classmate and key witnesses Witness One, who alleged overhearing a conversation between Jamie and Mr. Barnes about killing Jamie’s parents; Diane Haberstroh, the teacher who testified against Jamie during the decertification hearing; and numerous other teachers whom police interviewed that said positive things about Jamie but the Commonwealth never called as witnesses. (App. B, J.W. Cert. ¶¶ 2-3.); *see generally* (App. V, Def’s Investigator’s Notes.) Had Prior Counsel conducted a proper investigation of the Commonwealth’s case, he would have been prepared to rebut the Commonwealth’s evidence by effectively cross-examining Dr. O’Brien’s factual foundation.

189. Instead of conducting a rigorous cross examination, though, Prior Counsel failed to challenge Dr. O’Brien’s factual basis for his conclusions. *See generally* (Decert. Hr’g Tr. 10/29/15, 202:4-227:9.) Rather than question Dr. O’Brien’s sources and broad characterizations, Prior

Counsel conducted the cross-examination as if Dr. O'Brien's foundation was based on a proper understanding of the community's opinions of Jamie and her underlying characteristics. *See* (Decert. Hr'g Tr. 10/29/15, 202:4-227:9.) Dr. O'Brien made sweeping generalizations of who Jamie was as a person and how she was perceived by those around her. However, there is no corroborating evidence to support his generalizations and ample evidence that contradicts his conclusions which Prior Counsel could have easily introduced.

190. For example, Dr. O'Brien extensively quotes descriptions of Jamie as conclusive of her reputation at school, painting her as generally disliked by school staff — a portrait that was incomplete if not wholly inaccurate. *See, e.g.*, (Decert. Hr'g Tr. 10/29/15, 164:24-165:15.) Dr. O'Brien's characterizations by school personnel can be traced to two teachers, Ms. Diane Haberstroh and Mr. Brian Holtzhafer. Neither of these individuals taught Jamie. Ms. Haberstroh had only been the teacher on an extracurricular project Jamie participated on starting in October 2014, at the same time that Jamie was becoming involved with Mr. Barnes. Mr. Holtzhafer on the other hand only knew Jamie because her locker was next to his classroom. (App. AA, Incident Report Excerpts.) Prior Counsel never mentioned their extremely limited exposure to Jamie or questioned Dr. O'Brien as to the accuracy of their descriptions considering how little interaction they had with Jamie.

191. In the same investigative documents Dr. O'Brien reviewed, three teachers spoke favorably of Jamie and her principal similarly spoke positively. (App. AA, Incident Report Excerpts.) Ms. Strohl, Jamie's counselor, did not agree with the description of Jamie as a psychological bully and thought Jamie had a positive personality. Ms. Schlaner,²⁰ Jamie's homeroom teacher, described Jamie as "a nice kid and pleasant" who did not have "any problems

²⁰ Police records misspell Ms. Schlaner's last name as "Schlander."

academically or socially.” (App. AA, Incident Report Excerpts.) Ms. Miller, Jamie’s civics teacher, said Jamie was “personable and no problem in class. One of her best students ever.” Even the principal, Mr. Gombos, said Jamie was personable and “the best student in the building academically.” (App. AA, Incident Report Excerpts.) Prior Counsel never questioned Dr. O’Brien about these conflicting characterizations. Furthermore, Prior Counsel did not ask Dr. O’Brien about Jamie school records — which he knew Dr. O’Brien did not review. Her school records were similarly replete with favorable descriptions. On her 8th grade report card teachers note that Jamie “displays a positive/enthusiastic attitude,” “participates productively in class,” and “displays consistent effort.” (Parkland School District Records, Commw.’s Decert. Ex. 6, at 2-5.) Her 6th and 7th grade report cards similarly note that she “makes [the] classroom experiences pleasant,” shows interest in her classes, and that her “performance is outstanding.” (Parkland School District Records, Commw.’s Decert. Ex. 6, at 12.) There is only one class, media center, that Jamie is noted as needing to be more engaged – a far cry from the picture painted by Dr. O’Brien’s testimony.²¹ (Parkland School District Records, Commw.’s Decert. Ex. 6, at 11.)

192. Dr. O’Brien similarly casts Jamie as widely viewed as manipulative, changing herself to achieve a desired outcome. Again, this perception comes from two teachers who did not know Jamie and one parent of a friend. Other teachers do not describe her in this light. The characterization of Jamie as a perceptive “chameleon” also largely originates with Ms. Haberstroh’s description of a conversation she had with Jamie about her career goals. However, as discussed in B.III.d., Ms. Haberstroh had insufficient interactions with Jamie to truly know

²¹ Counsel also should have highlighted that Dr. O’Brien did not interview any teachers as the trial court discredited Dr. Berkowitz for failing to speak to any teachers. Further, Prior Counsel could have assuredly impeached Dr. O’Brien had he conducted a full investigation and presented the lay witnesses as argued in Section B.III since the overwhelming evidence would have contradicted the scarce testimony relied upon by Dr. O’Brien.

Jamie's character and should have been impeached. Dr. O'Brien also ignored descriptions of Jamie as insecure, considerate of others, pleasant, and wanting to please people.

193. Dr. O'Brien then emphasizes that Jamie would be able to manipulate her way through a juvenile facility because she reported improving in therapy during a time that "she became less reliable in terms of completion of school work." (Dr. O'Brien's Report, Commw.'s Decert. Ex. 23, at 2.) Dr. O'Brien basically concluded that Jamie reporting making some improvements in therapy while missing school work as indicative of Jamie being incapable of engaging in effective treatment. Aside from Ms. Haberstroh's project, only two teachers, Ms. Schlander and Ms. Miller, noted Jamie struggling to complete a couple assignments in their classes. However, Ms. Miller only noticed this behavior in the last month or so and Ms. Schlander did not observe this change in behavior until the start of February 28, 2015. (App. AA, Incident Report Excerpts.) Dr. O'Brien utilizes this inconsistency to try and bolster his opinion that Jamie is not amenable to treatment because she does not accurately convey her symptoms. However, there was nothing inconsistent between Jamie's records in this regard.

194. Finally, Jamie is regularly characterized as a liar and good at "switching things around" by Dr. O'Brien. (Decertification Hr'g Tr. 10/29/15, 171:9.) He relied on Jamie's characterization of her sexual interactions with Mr. Barnes during the sexual assault evaluation compared as support for this description is particularly egregious as he maintains that Jamie was the manipulator of Mr. Barnes in their sexual interactions. Such an argument not only contradicts common sense but also flies in the face of both the physical evidence and Pennsylvania's statutory sexual assault law, 18 Pa. C.S. § 3122.1, which recognizes that the power dynamic is inherently in favor of the adult and that a child Jamie's age *cannot* consent to a sexual relationship. Consent is not a defense to protect children from "older, more mature individuals [who] are in a position that

would allow them to take advantage of the immaturity and poor judgment of very young minors.” *Commonwealth v. Albert*, 758 A.2d 1149, 1154 (Pa. 2000). And there was ample evidence of intimate partner violence between Jamie and Mr. Barnes. The sexual assault report itself notes bruising on Jamie’s neck and buttocks consistent with domestic violence and her description of him being controlling or violent at times. (Sexual Assault Report, Commw.’s Decert. Ex. 10, at 7.) That she is not entirely consistent in that version of events or events surrounding the crime is consistent with her developmental age along with other allegations of her lying about her age. (App. R, Dr. M.B. Cert. at 24-26.)

195. A full review of Dr. O’Brien’s report shows that there is not a single factual basis for his opinions that is consistent with the entirety of the evidence available. Despite extensive contradictory evidence, Dr. O’Brien’s exaggerated or inaccurate factual bases for his opinions were left unchallenged, with no reasonable basis for doing so. Without effective cross examination of Dr. O’Brien, Jamie was prejudiced as it left Dr. O’Brien as the sole expert whose opinion was accepted by the court. Also, the court’s opinion denying decertification is replete with the very factual underpinnings Prior Counsel failed to challenge — readily establishing prejudice to Jamie as a consequence. *See generally* (Decert. Op. at 28-32.)

b. Prior Counsel Failed to Appropriately Attack Dr. O’Brien’s Conclusions as Inconsistent with Psychological Research and Existing Law.

196. In addition to failing to cross-examine Dr. O’Brien’s factual assumptions, Prior Counsel failed to challenge Dr. O’Brien’s ultimate conclusions regarding Jamie’s amenability to treatment as inconsistent with psychological research and accepted norms in the field. Dr. O’Brien not only committed a legal error but also disregarded ample research when he concluded that Jamie’s offense was not “the result of an immature and developing brain.” (Dr. O’Brien’s Report,

Commw.’s Decert. Ex. 23, at 25.) The United States Supreme Court, in adopting the prevailing consensus of the American Psychological Association and other professional organizations, held that all juvenile brains are indeed developing throughout the teenage years, thereby reducing their culpability. *See Miller*, 567 U.S. at 472 & n.5 (citing to the American Psychological Association’s amicus brief and the “ever-growing body of research” demonstrating juveniles’ diminished culpability). All fourteen-year-olds suffer from key developmental deficiencies – i.e., impulsivity, recklessness, susceptibility to peer influence, etc. – as neurological development continues until the mid-20s. *Id.* Furthermore, for young teenagers such as Jamie, these developmental characteristics are only more pronounced. *See* (App. R, Dr. M.B. Cert. at 8-10.) Prior Counsel was ineffective in failing to impeach Dr. O’Brien and confronting him with prevailing research showing behavioral and neurological development reduces culpability despite an individual’s intelligence.

197. Prior Counsel also did not challenge Dr. O’Brien’s failure to account for the dynamics of intimate partner violence between Jamie and Mr. Barnes and how that may have impacted her behavior. Dr. O’Brien criticizes Jamie for stating that she was drawn into Mr. Barnes or that she lost her way as a result of the relationship. *See* (Dr. O’Brien’s Report, Commw.’s Decert. Ex. 23, at 25.) Dr. O’Brien considered this to be attempting to sidestep her responsibility. *See (Id.)* However, his characterization of the relationship is inconsistent with intimate partner violence, particularly for teenagers. *See* (App. R, Dr. M.B. Cert. at 14-17.) If Prior Counsel had properly prepared for the case, he could have discredited Dr. O’Brien’s sidestepping of the impact of the coercive relationship on Jamie.

198. Dr. O’Brien also violated professional standards in his discussion of personality since Jamie was too young for diagnosing such behavior. He concedes that she is too young for

any Cluster B diagnoses, but then proceeds to apply such labels to her. *See* (Dr. O’Brien’s Report, Commw.’s Decert. Ex. 23, at 25.) His dismissal of adolescent development is again highlighted when he characterizes these traits as “evolving” (*id.*), ignoring that the diagnoses are not permitted because youth’s brains are developing and overwhelmingly adolescents age out of such characteristics, (App. R, Dr. M.B. Cert. at 26-27.). Prior Counsel not only ignored such research, but he also did not force Dr. O’Brien to reconcile his conclusions with the well-established research that the vast majority of youth, and even those who commit heinous crimes, age out of criminal behavior.

199. Prior Counsel even failed to question Dr. O’Brien adoption of a lay person’s characterization of Jamie as a “sociopath.” Mr. Holtzhafer’s characterization of Jamie as a “sociopath” who doesn’t think “societal values and norms” apply to her derives from his view that her social media engagement expressed “very liberal societal values and norms” and because Jamie “had strong women’s rights beliefs.” (App. AA, Incident Report Excerpts); *see also* (Dr. O’Brien’s Report, Commw.’s Decert. Ex. 23, at 25 (stating that Jamie “has been noted to be psychologically bullying and sociopathic in her beliefs of being above and not governed by expectation and rules that govern other people”).) Aside from the professional violation inherent in Dr. O’Brien’s reliance on a lay person’s use of a diagnostic label to describe Jamie — a label impermissible under the DSM — Mr. Holtzhafer’s descriptions lose even more credibility when contextualized. More significantly, Prior Counsel failed to properly debunk the absolute myth that Jamie could be exhibiting “sociopathic” tendencies as a teenager.

c. Prior Counsel’s Ineffectiveness Resulted in the court Only Adopting Dr. O’Brien’s Conclusions, Causing Prejudice to Jamie’s Case.

200. As a result of Prior Counsel’s ineffectiveness, the court adopted Dr. O’Brien’s

inaccurate impressions of Jamie and ultimately his flawed conclusions. The decertification opinion reflects the Commonwealth's view of Jamie as "manipulative" and an "individual who could size up her audience" or somehow demonstrating an exceptional adeptness at social interactions despite her age. The court thus concluded that it would be impossible to know the progress Jamie was making in treatment.

201. In light of the reasoning behind the decertification opinion, Prior Counsel's failures to properly undermine Dr. O'Brien caused cumulative prejudice since Dr. O'Brien's opinions were never subjected to a rigorous cross-examination based upon even a minimally competent investigation. Prior Counsel was ill-equipped to challenge Dr. O'Brien's qualifications, his underlying facts, and his ultimate conclusions. A proper cross-examination, argument, or presentation of favorable defense witnesses would have demonstrated that Dr. O'Brien ignored positive interviews, relied on witnesses with limited knowledge of Jamie, and did not have or failed to consider substantial mitigating information. With a proper case presentation, counsel could have impeached Dr. O'Brien or at least significantly undermined the narrative he provided to the court. Dr. O'Brien's characterization stuck with Jamie through the criminal court proceedings and was fully embraced by the court. Since Dr. O'Brien was unchallenged by Prior Counsel, despite the impeachment of his own experts, there is a reasonable probability that the collective errors prejudiced Jamie.

vii. Prior Counsel Failed to Investigate or Present Accurate Evidence on the Adequacy of Dispositional Alternatives Available in the Juvenile and Adult Criminal Justice Systems.

202. Finally, Prior Counsel failed to present accurate evidence to the court on one of the key statutory factors governing the decertification determination: the adequacy and duration of dispositional alternatives available in the juvenile justice system and in the adult criminal justice

system. *See* 42 Pa.C.S. § 6355(a)(4)(iii). The information presented by Prior Counsel on this factor was both wrong and incomplete, and it left the court with a wholly inaccurate view of Jamie’s potential for rehabilitation and treatment in the juvenile justice system or the contrary options in the adult system. This inaccurate view figured prominently in the court’s decertification decision, demonstrating that Prior Counsel’s failure to effectively present this key information was highly prejudicial to Jamie.

203. The evidence Prior Counsel presented to the court on the available dispositional alternatives consisted entirely of the testimony of Lisa Costello, an intake officer for the Juvenile Probation Department of Lehigh County. Prior Counsel had not asked Ms. Costello to conduct an intake assessment of Jamie, and so she was unable to offer any views on which juvenile placements and treatment programs would be appropriate for Jamie specifically.²² *See* (Decert. Hr’g Tr. 10/29/15, at 105-06.) Instead, Ms. Costello testified generally about the various programs available at the two secure girls’ facilities in Pennsylvania.²³ She then described the common stepdown pathways as individuals progress in treatment, highlighting that many juvenile offenders are stepped down into a less restrictive environment after one or two years, and that most of the treatment programs in these facilities are 9-12 months long. *Id.* (Decert. Hr’g Tr. 10/29/15, at 107-11; 116-21.)

204. At best, this testimony was irrelevant to Jamie’s decertification proceeding, as it provided no information about the dispositional options available to Jamie specifically. In fact,

²² Based on the transcript of the decertification proceeding, it appears that Prior Counsel was under the impression that Ms. Costello could not conduct an assessment of Jamie while she was in adult court, as he objected to the Commonwealth’s line of questioning highlighting Ms. Costello’s failure to assess Jamie specifically, stating: “she’s in adult court right now so how can an assessment have been done?”. (Decertification Hr’g Tr. 10/29/15, 112.) Ms. Costello then testified that she has in fact done assessments on people in adult court previously, *id.*, which Ms. Mason confirms is commonplace in preparation for decertification proceedings, *see* (App. U, M.M. Cert. ¶ 11.)

²³ No evidence was offered on the numerous secure girls’ facilities potentially available out of state. *See* Youth First, Youth Prison Locations, <https://www.nokidsinprison.org/explore/youth-prison-locations> (last visited on May 2, 2019).

Ms. Costello could not even offer information on the possible options for someone with similar characteristics or charges. *See id.* at 123. Prior Counsel unfortunately made her limited testimony even more problematic for Jamie. At no point did Prior Counsel clarify that Ms. Costello's description of the length of various treatment programs and common stepdown pathways reflected the experience of the typical juvenile confined in these placements, many of whom are placed for property offenses, technical probation violations, drug offenses, and even status offenses such as truancy or running away. *See* Office of Juvenile Justice and Delinquency Prevention, CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT: 1997-2015, *Detailed Offense Profile by Placement Status for Pennsylvania, 2015*. Retrieved from https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/Offense_Adj.asp (showing that approximately 500 of the 2,427 juveniles sent to residential placement in 2015 committed violent crimes). Prior Counsel also failed to demonstrate that, although homicides by children are thankfully rare, children charged with homicide are regularly decertified and treated by the juvenile justice system. *See id.* (showing that 12 juveniles adjudicated for criminal homicide were committed to residential placement through the juvenile system in 2015).

205. Lacking this necessary context, the court was left with the false impression that Jamie's options within the juvenile justice system would resemble those of youth charged with much less serious offenses. *See* (Decert. Op. at 33-34 (stating that "[t]he entire treatment program is designed to last only nine (9) to twelve (12) months," and concluding that, because of Jamie's history and "lack of any recognized mental disorder," "it could be expected that [she] would excel in any placement and be recommended for release within this brief time frame").) Further, Prior Counsel failed to cite to the statutory framework governing dispositional options, which would have demonstrated that, notwithstanding the design of any particular treatment program, the

juvenile court has the authority to impose an initial commitment period of as long as four years, which the court can then extend further as needed until the youth turns 21. 42 Pa.C.S.A. § 6353(a). Thus, someone like Jamie, who was only 14 years old at the time of her decertification proceeding, could have been ordered to be committed to a secure institution until she was 18 years old, with the possibility to extend that period for another three years, until age 21, if necessary. The notion that Jamie might have been released to the community after a mere 9 to 12 months, as the court ultimately concluded, was neither legally nor factually likely or accurate.

206. Prior Counsel further failed to effectively challenge the Commonwealth's presentation of the treatment options available at SCI Muncy, where Jamie would likely be (and was in fact) incarcerated upon conviction as an adult. Prior Counsel did not interview Commonwealth witness Deputy Frantz or other officials from the prison prior to the decertification hearing, nor does he appear to have researched the Youthful Offender Unit at the prison. Had Prior Counsel properly investigated this option, he could have effectively cross-examined Deputy Frantz and exposed the reality Jamie would experience when sentenced as an adult.²⁴ In particular, Prior Counsel could have established that Jamie would largely be held in solitary confinement for the initial three years of her incarceration due to the low numbers of juveniles held at the adult prison. *See* (App. U, M.M. Cert. ¶ 12). He could have also undermined Deputy Frantz's assertion that Muncy's options for "rule breakers" made the environment more effective; cross-examination would have established that those responses are restricting programming, solitary confinement, withholding key communications with the outside world (either through phone or in-person visits),

²⁴Prior Counsel also failed to object to Deputy Frantz improperly opining that SCI Muncy was more therapeutic than juvenile placements. Deputy Frantz was not qualified as an expert, does not have expertise to speak to what is a more therapeutic environment, and should not have been allowed to provide such an opinion in his testimony. Deputy Frantz also had not worked at Danville in almost a decade, making even his limited personal experience outdated.

and other tactics that have proven harmful, not therapeutic, particularly when utilized with children. Finally, Prior Counsel could have elicited testimony as to the lack of programming once Jamie completed the initial 40-week program. After completing the program, it is simply repeated over again, adding no additional therapeutic value.

207. Prior Counsel had no reasonable basis for failing to present complete and accurate information about the dispositional alternatives available to Jamie specifically through the juvenile system, and to rebut the Commonwealth’s presentation of the options available at Muncy Prison. The obligation to accurately present the disposition options available to the court is a core requirement of effective juvenile defense. *See* National Juvenile Defender Center & National Legal Aid & Defender Association, TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS (2012) (originally adopted in 2004), Retrieved from https://njdc.info/wp-content/uploads/2013/11/NJDC_10_Core_Principles_Oct_2012.pdf (describing the “obligation to present independent treatment and disposition alternatives to the court”); NATIONAL JUVENILE DEFENSE STANDARDS, Standard 6.2 (requiring familiarity with the range of disposition alternatives), 8.1 (requiring that counsel be “knowledgeable and aware” of the treatment and services in adult facilities when their clients face prosecution in adult court); 8.4 (requiring presentation of evidence of treatment options at decertification hearing); PA. JUVENILE DEFENSE PERFORMANCE GUIDELINES, Guideline 6 § 1(B) (“Counsel must know the local, state and national dispositional alternatives available to the client”). In fact, the National Juvenile Defense Standards require the attorney to present evidence on “the availability of *tailored* treatment options in juvenile court.” Standard 8.4(e)(3) (emphasis added).

208. As Michelle Mason explains, “[o]ne of the most critical factors in a decertification

hearing is ensuring that the court understands the array of treatment options available through both the juvenile and adult systems.” (App. U, M.M. Cert ¶ 11.) To do so, standard practice is “to always call various, appropriate juvenile facilities to seek placement approvals . . . before the decertification hearing,” so that the court understands “the full trajectory” of the specific client’s “likely experience through the juvenile system, including the eventual step-down options, other forms of community supervision and support, and educational programs.” (App. U, M.M. Cert. ¶ 11.) Prior Counsel had no reasonable basis for failing to do so here. Although Prior Counsel appears to have been under the impression that Ms. Costello could not conduct an assessment of Jamie while she was in adult court,²⁵ Ms. Costello testified on cross-examination that she has in fact done assessments of people in adult court previously (Decertification Hr'g Tr. 10/29/15, 112), and Ms. Mason confirms that seeking assessments in preparation for decertification proceedings is necessary and routine (App. U, M.M. Cert ¶ 11).

209. As for rebutting the Commonwealth’s presentation of the options available at Muncy, in addition to his basic defense obligation to rebut government evidence where possible, Prior Counsel bore the burden of proof, and thus had the affirmative obligation both to present the options through the juvenile system and compare those to the options available through the adult system. *See* 42 Pa.C.S. § 6322(a). Indeed, Ms. Mason explains that attorneys representing clients in decertification proceedings must “present concrete information on the options available through the adult system,” including demonstrating to the court that young, female clients “will likely spend most of their time effectively in solitary confinement, by virtue of being the only youth at the prison.” (App. U, M.M. Cert ¶ 13.)

²⁵ Prior Counsel objected to the Commonwealth’s line of questioning highlighting Ms. Costello’s failure to assess Jamie specifically, stating: “she’s in adult court right now so how can an assessment have been done?”. (Decertification Hr’g Tr. 10/29/15, 112.)

210. Prior Counsel's failure to present accurate and complete information about Jamie's dispositional options were highly prejudicial. The court specifically noted in the decertification decision Prior Counsel's failure to offer testimony "as to the appropriateness of any juvenile placement facility for this specific Defendant." (Decert. Op. at 33.) Further, the false impression created by Ms. Costello's testimony that Jamie might be released in just 9 to 12 months proved highly significant to the decertification decision, as it formed the basis for the court's conclusion that "the juvenile system is inadequate to supervise, treat or rehabilitate the Defendant." Decert. Decision at 35. Additionally, the court's inaccurate perception of the therapeutic options available at Muncy Prison caused her to conclude that it is "more conducive to treatment" than the juvenile options. *Id.* at 36. Had Prior Counsel adequately introduced evidence of Jamie's specific dispositional options within both the juvenile and adult systems, there is a reasonable probability that the court would not have reached these inaccurate conclusions, and that the outcome of the decertification proceeding would have been different.

C. Prior Counsel's Errors at Jamie's Decertification, Individually and in Combination, Caused Prejudice.

211. As discussed above, each of Prior Counsel's errors in representing Jamie at decertification caused prejudice, as there is a reasonable probability that the outcome would have been different had Prior Counsel identified emotional trauma or intimate partner abuse as potential issues; communicated effectively with his client; called lay witnesses who knew Jamie well and who were favorable to her; adequately prepared his experts; briefed and educated the court on crucial and controlling Supreme Court jurisprudence; effectively cross-examined the Commonwealth's expert; or accurately presented the dispositional options available through the juvenile system.

212. The combined effect of these errors was catastrophic. First, without the benefit of evidence of Jamie’s untreated emotional trauma and intimate partner abuse, or the combined effects of these and other characteristics on Jamie’s decision-making and behavior, the court was unable to properly assess key factors relevant to decertification, including her relative degree of culpability, the likelihood that she would pose a threat to the public, and her amenability to treatment. *See* (App. R, Dr. M.B. Cert. at 22.)

213. But worse still, left without the factual underpinning needed to understand Jamie’s actions, the court was forced to fill in gaps, concluding that she was likely a budding sociopath who “could potentially kill anybody.” (Decert. Op. at 26.) In other words, the failure to effectively and accurately explain Jamie’s behavior condemned her, as it left sociopathy or psychopathy as the only seemingly plausible explanations for her involvement in this horrific crime, notwithstanding the utter lack of evidence of any other violent or anti-social conduct, before or since.

214. More specifically, Prior Counsel’s failure to investigate and present highly relevant evidence; to provide his experts with the necessary evidence; and to effectively rebut the Commonwealth’s evidence led directly to the following erroneous findings and conclusions by the court:

a. That Jamie “was completely culpable in this crime,” to the same – if not a greater – degree than Mr. Barnes. (Decert. Op. at 25, n.12; *see also id.* (finding that “[b]ut for [Jamie,] Co-Defendant Caleb Barnes never would have killed the victim”))

b. The categorical rejection of Dr. Dattilio’s and Dr. Berkowitz’s opinions, due to their failure to review all of the relevant evidence. (Decert. Op. at 30-31.)

c. The adoption of the Commonwealth expert’s opinion that Jamie was “a highly intelligent and manipulative young woman” who was not a “fearful or emotionally overpowered passive participant.” (Decert. Op. at 31-33.)

d. The conclusion that Jamie would likely be released in less than two years if she were transferred to the juvenile system. (Decert. Op. at 35.)

e. The finding and legal conclusion that Jamie’s amenability to treatment was “beyond questionable” because she does not “suffer from any mental infirmity” and “lacks any recognized diagnosis.” *See* (Decert. Op. at 33 n.18.)

215. Had Prior Counsel effectively presented evidence of the alternative, and far more plausible, explanation for her behavior – that the combined “effects of trauma, her immaturity, her problems reading cues and being coerced by a violent older male . . . together explain her involvement in this horrific tragedy” – it is highly likely the outcome of the proceeding would have been different. (App. R, Dr. M.B. Cert. at 30.) *See Commonwealth v. Johnson*, 966 A.2d at 532 (“[I]f multiple instances of deficient performance are found, the assessment of prejudice properly may be premised upon cumulation.”) (citing *Perry*, 644 A.2d at 709).

V. PRIOR COUNSEL WAS INEFFECTIVE IN FAILING TO APPEAL THE COURT’S LEGAL ERROR REGARDING JAMIE’S AMENABILITY TO TREATMENT.

216. Prior Counsel was ineffective for failing to appeal the court’s holding that Jamie required a mental infirmity or disorder to be amenable to treatment. Specifically, the court stated, “This Court notes that Dr. Dattilio, Dr. Berkowitz, nor Dr. O’Brien found the Defendant to suffer from any mental infirmity or disorder recognized by the DSM-V. As the Defendant lacks any recognized diagnosis, her amenability to treatment is beyond questionable.” (Decert. Op. at 33 n.18.)

217. With this holding the court committed the same error as the court in *Kocher*, 602 A.2d 1308. In *Kocher*, the Superior Court held that requiring a mental defect or disorder to cause the crime “contravenes the legislative intent of the amendments to the Juvenile Act that allow transfer of a murder case from criminal to juvenile proceedings.” *Id.* at 1313 (citing 42 Pa.C.S. § 6322(a)). Such a holding “precludes the weighing of any factors to determine amenability once the court establishes that no disease or defect caused the killing.” *Id.* While a court may consider mental soundness, “to find that a lack of mental disorder is dispositive of the entire amenability question is to distort the clear legislative scheme.” *Id.* at 1315. Therefore, even though the court in *Kocher* considered a variety of other factors,²⁶ this portion of its holding required remand as an abuse of discretion. *Id.*

218. Similarly, the court’s finding here that Jamie’s lack of diagnosis from the DSM-V made her “amenability to treatment . . . beyond questionable” precluded proper consideration of

²⁶ The trial court’s decision in *Kocher* is remarkably similar to Jamie’s in terms of factors that weighed in favor and against decertification. In favor of decertification the trial court in *Kocher* found the defendant to be a normal student who possessed “above-average intelligence with an above-average school record. The trial court continued:

He was a good student who exhibited occasional inattentiveness. He related well to others in his school, community, and church, and he possessed an average level of maturity and physical development. His home life was stable, close-knit, and supportive. The child exhibited no physical, mental, emotional, or behavioral disorders and had no previous criminal or delinquent history.

Kocher, 602 A.2d at 1312.

The trial court then weighed the following against *Kocher*:

Conversely, the trial court's analysis of the nature of the crime and the level of criminal sophistication weighed against the petitioner's petition for transfer. When he fired the rifle, he endangered the driver of the snowmobile and the other children playing in the area. His manipulation of the gun and the window, and his dishonesty about the cut on his forehead to his parents and police reflected an adult level of criminal sophistication and knowledge. He appeared to show no remorse for the crime. The petitioner was quoted as saying, “If you don't think about it, you won't be sad,” to one of the neighbors' children as the victim lay dying in the Rattis' home.

Id.

any of the other decertification factors. (Decert. Op. at 33 n.18.) Prior Counsel should have therefore raised this issue on appeal as it was a clear abuse of discretion. There was no reasonable basis for failing to even brief the issue, particularly as it would have resulted in Jamie receiving a new decertification hearing. Prior Counsel's failure prejudiced Jamie as it resulted in her appeal being denied.

VI. PRIOR COUNSEL DEPRIVED JAMIE OF EFFECTIVE ASSISTANCE OF COUNSEL WHEN HE FAILED TO EXCLUDE HIGHLY PREJUDICIAL TEXT MESSAGES THAT ADVERSELY AFFECTED THE OUTCOME OF MULTIPLE PROCEEDINGS IN JAMIE'S CASE.

219. Prior Counsel's failure to move to exclude highly prejudicial text messages from the preliminary hearing, the decertification hearing, and trial prior to her pleading guilty, constituted ineffective assistance of counsel.²⁷

A. Prior Counsel's Ineffectiveness for Failing to Move to Exclude the Text Messages Purportedly Authored by Jamie Has Arguable Merit.

220. The Commonwealth relied on certain text messages sent from Jamie's cell phone and purportedly from Jamie to substantiate the first-degree murder charges that Jamie (allegedly) devised a scheme to kill and was a willing participant in the killing of her mother. However, Prior Counsel did not demand, and the Commonwealth did not provide, any evidence that Jamie was the actual author of such text messages at the preliminary hearing. Additionally, even if that was unsuccessful at the preliminary hearing, Prior Counsel was clearly ineffective for failing to file a motion *in limine* to exclude the text messages prior to the decertification hearing and plea.

221. Pennsylvania courts have noted that, "the difficulty that frequently arises in e-mail and text message cases is establishing authorship. . . . Text messages are sent from the cellular phone bearing the telephone number identified in the text message and received on a phone

²⁷ The term "text messages" means the more than 6,000 text messages presented to, and reviewed by, the court in the Defendant's Motion to Transfer Proceedings to Juvenile Court. (Decert. Op. at 37 n.19.)

associated with the number to which they are transmitted. The identifying information is contained in the text message on the cellular telephone. However, as with e-mail accounts, cellular telephones are not always exclusively used by the person to whom the phone number is assigned.” *Commonwealth v. Koch*, 39 A.3d 996, 1004-05 (Pa. Super. Ct. 2011).²⁸

222. It is black letter law that evidence that is being offered “must be authenticated by other evidence establishing a connection between the offered evidence and the parties or events which are the subject of the litigation.” *Commonwealth v. Pollock*, 606 A.2d 500, 506 (Pa. Super. Ct. 1992). In order to “satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Pa.R.E. 901(a). The Pennsylvania Rules of Evidence provide a list of examples that satisfy the authentication requirement, none of which Prior Counsel required the Commonwealth to use to authenticate the text messages. *See* Pa.R.E. 901(b)(1)-(10).

223. “[E]-mails and text messages are documents and subject to the same requirements for authenticity as non-electronic documents generally.” *Koch*, 39 A.3d at 1004. “A document may be authenticated by direct proof, such as the testimony of a witness who saw the author sign the document, acknowledgment of execution by the signer, admission of authenticity by an adverse party, or proof that the document or its signature is in the purported author’s handwriting.” *Id.* “A document also may be authenticated by circumstantial evidence, a practice which is ‘uniformly recognized as permissible.’” *Id.* (citing *Commonwealth v. Brooks*, 508 A.2d 316 (Pa. Super. Ct. 1986)). The party seeking admission must introduce evidence that corroborates the identity of the author of the text messages. *See Koch*, 39 A.3d at 1004. While text messages can be linked to a certain cell phone, “cellular telephones are not always exclusively used by the person to whom the

²⁸ *Koch* has been recognized as “the controlling legal precedent in Pennsylvania for the authentication of electronic communications.” *Commonwealth v. Mangel*, 181 A.3d 1154, 1164 (Pa. Super. Ct. 2018).

phone number is assigned.” *Id.* at 1005. Therefore, mere ownership of a cell phone is not sufficient to prove the authorship of particular text messages. *Commonwealth v. Mosley*, 114 A.3d 1072, 1081–82 (Pa. Super. Ct. 2015) (Authentication of text message requires “more than mere confirmation that the number or address belonged to a particular person.”). A party seeking to admit text messages must also present evidence “which tends to corroborate the identity of the sender.” *Id.* at 1083.

224. The facts of this case are analogous to *Commonwealth v. Koch*, where the Pennsylvania Superior Court granted a new trial when (1) the defendant’s text messages had not been authenticated; (2) the messages were inadmissible hearsay that were not offered for any reason other than to show the truth of the matter asserted as to the content of the messages; and (3) admission of the unauthenticated hearsay messages was not harmless error because the prejudicial effect of the evidence was “so pervasive in tending to show that [defendant] took an active role in an illicit [drug selling] enterprise that it [could not] be deemed harmless.” *See Commonwealth v. Koch*, 39 A.3d at 1005–07.

225. Prior Counsel did not object to the introduction of the text messages or otherwise require that the Commonwealth provide any authentication of the text messages purportedly sent by Jamie at the preliminary hearing, which is a “prerequisite to admissibility.” *See Koch*, 39 A.3d at 1005. Jamie concedes that the Commonwealth correctly identified that the text messages were sent from a telephone number that belonged to her and that the text messages were an accurate reproduction of the text messages on her mobile phone. However, “authentication of electronic communications, like documents, requires more than mere confirmation that the number or address belonged to a particular person.” *Id.* In *Koch*, the court found that the court erred in admitting text messages into evidence since “[g]largely absent in this case [was] any evidence tending to

substantiate that [the defendant] wrote the drug-related text messages. No testimony was presented from persons who sent or received the text messages.” *Id.* at 1005. In fact, there was clear evidence on the record from Dr. Dattilio’s cross-examination during the Motion to Transfer to Juvenile Court Hearing, that Mr. Barnes took Jamie’s phone and would text from it. (Motion to Transfer to Juvenile Court Hearing Transcript 64-65.) This testimony indicates Prior Counsel’s knowledge that at least some of the text messages were not authored by Jamie, yet Prior Counsel inexplicitly still failed to object to the admission of such text messages. Prior Counsel is clearly ineffective because he failed to require the Commonwealth to follow standard evidence admissibility rules and require the Commonwealth to authenticate the text messages.²⁹

226. Regardless of whether the text messages were kept out of the preliminary hearing, Prior Counsel’s failure to file a motion *in limine* to exclude the text messages prior to the decertification hearing or guilty plea was clearly ineffective, especially after Prior Counsel learned how prejudicial the text messages would be to Jamie’s case. Since the text messages were never authenticated, they would not have been admissible if Prior Counsel had filed a motion *in limine* to exclude the text messages.

B. There Is No Objectively Reasonable Basis for Prior Counsel’s Failure to Seek to Exclude the Text Messages.

227. “When assessing whether counsel had a reasonable basis for his act or omission, the question is not whether there were other courses of action that counsel could have taken, but whether counsel’s decision had any basis reasonably designed to effectuate his client’s interest. . . . [T]his cannot be a hindsight evaluation of counsel’s performance but requires an examination of

²⁹ Prior Counsel could have also challenged the admissibility of the text messages based on inadmissible hearsay, which is closely related to the Commonwealth’s failure to prove that such text messages were made by Jamie. “Arguably, the text messages could have been admitted under the exception to the Pennsylvania hearsay rule for admissions of a party opponent. *See* Pa.R.E. 803(25). However, they are not party admissions because the Commonwealth was unable to prove that Appellant was the author.” *Koch*, 39 A.3d at 1006.

whether counsel made an informed choice, which at the time the decision was made reasonably could have been considered to advance and protect the defendant's interests. Our evaluation of counsel's performance is 'highly deferential.'" *Commonwealth v. Williams*, 141 A.3d 440, 463 (2016) (internal citations and quotations omitted).

228. Prior Counsel made no attempt to require the Commonwealth to authenticate the text messages. Based on the record, it is unlikely that the Commonwealth would have been able to do so. Accordingly, Prior Counsel's failure to exclude, or to move to exclude, the text messages from the preliminary hearing or decertification hearing was highly prejudicial, since they were relied upon to support the highest degree of murder. Under these circumstances, Prior Counsel could not possibly have had any reasonable basis designed to effectuate Jamie's interest. Furthermore, failing to attempt to exclude them prior to advising Jamie to plead guilty could possess no reasonable basis since counsel then did not know what evidence would be permitted in front of a jury. Without the text messages, not only would the exclusion of certain evidence change trial strategy, but Jamie would have been advised that one of the most critical pieces used against her would be excluded, fundamentally changing her calculus as to whether to proceed to a jury.

C. Jamie Was Prejudiced by Prior Counsel's Failure.

229. It is clear without even an extensive analysis that Prior Counsel's failure to exclude highly prejudicial text messages from Jamie's proceedings caused Jamie prejudice. The text messages were the primary evidence the Commonwealth cited to show that Jamie was the instigator behind the killing of her mother. In fact, in the Superior Court's decision affirming the ruling below, the court cites to a footnote quoting a text purportedly from Jamie to support the proposition that "Silvonek was the instigator and willing participant in the murder." *Commonwealth v. Silvonek*, 2017 WL 3411919 at *2 (Pa. Super. Ct. 2017). Similarly, in Judge

Dantos' Order denying Jamie's transfer to the Juvenile Court, Judge Dantos relied heavily on text messages purportedly from Jamie to support her assertion that Jamie was not in fact surprised by the killing or an unwilling participant in her mother's murder. *See* (Decert. Op. at 27.)³⁰

230. The failure to challenge the text messages was ineffective and adversely affected Jamie's outcome as it resulted in Jamie being held over in adult court, facing a first degree murder charge — a “worst possible outcome” which , factored heavily into the denial of decertification, and placed substantial pressure on Jamie to accept a plea.

VII. PRIOR COUNSEL'S MINIMAL ATTEMPT TO EXCLUDE JAMIE'S STATEMENTS DURING INTERROGATION CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL.

231. Less than eight hours after the offense, and nearly sleepless, Jamie was transported to the police station to be interrogated. Questioning did not conclude until ten hours later. After being initially left alone in an interrogation room for almost two and a half hours, Jamie was questioned off and on by two detectives and a district attorney for two hours; they then depart, saying they will give her a “minute,” but leave her alone in the room again for nearly an hour and a half. They return to ask a few more questions and receive her consent to take physical evidence from her body. Jamie is left alone again for two and a half hours before the three men return for another hour of questioning.

232. As a supposed precaution because Jamie was just a couple of weeks past her fourteenth birthday, the officers and district attorney requested Jamie's maternal grandmother to be present for the interrogation. At this point the investigation had been declared a suspicious death, officers had found a body in a shallow grave near Mrs. Silvonek's abandoned car, and homicide detectives were handling the interrogations. Knowing full well that Mrs. Lynn was about

³⁰ Judge Dantos also noted in her Order that she reviewed over 6,000 text messages purportedly sent and/or received by Jamie in connection with the Motion to Transfer Proceedings to Juvenile Court. *See* (Decert. Op. at 37, n.19.)

to learn of her daughter's death during the interrogation, the homicide detectives and district attorney kept Mrs. Lynn in the dark. While Mrs. Lynn knew that her daughter was missing, she did not suspect any foul play and she was not told Jamie was a person of interest in Mrs. Silvonek's disappearance. Without the critical context that her granddaughter could be facing a homicide charge, Mrs. Lynn was given only six minutes to supposedly talk to Jamie about her *Miranda* rights. Both Jamie and her grandmother affirm that they did not discuss Jamie's rights during these six minutes. The officers then returned, had them execute the Miranda waiver, and proceeded with interrogation.

233. Part way through the interview, it became clear that Mrs. Lynn realized something had happened to her daughter. When Jamie stated that Mr. Barnes stabbed Mrs. Silvonek, Mrs. Lynn completely fell apart. Jamie noted how difficult it was to proceed with questioning while Mrs. Lynn was sobbing; officers were unable to console Mrs. Lynn. Jamie asked if they could give her something, and then the detective ordered Mrs. Lynn to be removed from the room. As she was leaving, Jamie told her grandmother, "I love you, okay. We're going to get through this. Okay?" Her grandmother, still crying, replied, "Not without your mother." In this moment, when Jamie needed a supportive adult the most, her grandmother was understandably overcome with grief and emotionally incapable of supporting her granddaughter.

234. Prior Counsel first raised the issue of suppression *after* the preliminary hearing in the Omnibus Pretrial Motion. The motion did not include any case citations and made basic factual assertions reflecting his lack of investigation prior to filing the motion. For example, Prior Counsel

never talked to Jamie or her grandmother regarding their conversation during that six minutes they were left alone.

235. A hearing on the motion was conducted the day before the decertification hearing. The hearing transcript demonstrates that counsel approached this as standard suppression rather than one tailored to a barely 14-year-old girl who had absolutely no experience with law enforcement being influenced by the presence of the victim's mother. *See generally*, (Suppression Transcript). Prior Counsel made no argument at the hearing, instead requesting to brief the issue instead.

236. Prior Counsel then proceeded to the decertification hearing *without* a ruling on the motion, and subsequently filed his brief in support of the motion.

A. Prior Counsel Inadequately Challenged Jamie's Waiver.

237. Prior Counsel's brief in support of the motion includes a mere four pages of substantive argument that Jamie's *Miranda* waiver was not knowing, intelligent, and voluntary. Nearly half of that substantive discussion simply restates basic case law that juveniles are entitled to the same protections as adults, that a custodial interrogation requires *Miranda* warnings, and then cites two cases regarding the standard for a waiver being knowing, intelligent, and voluntary.

238. The other two pages include one paragraph on each of his three arguments:

- a. Prior Counsel first argues "deception" but does not include a single case citation supporting his argument. Instead, he recites a few of the facts and then his entire argument is that the officers "could infer [Mrs. Lynn] would be interested in helping find her daughter" and that Mrs. Lynn's presence "was an act of subterfuge in order to help convince Jamie Silvonek to waive her *Miranda* rights.

In essence, Jamie Silvonek’s grandmother became an ally of the investigation rather than an interested adult concerned for Jamie Silvonek’s welfare.”

b. He next argues that Jamie lacked awareness or comprehension. In support, he makes reference to Jamie asking where her father is and whether what is occurring is part of an investigation. He again cites no case law.

c. Finally, Prior Counsel argues that Jamie’s confession was “coerced.” In support of this argument, he notes that the officers and Jamie’s grandmother, along with Jamie, said that they can ask her “whatever.” Prior Counsel then baldly asserts, “Based on these circumstances she [felt] compelled to answer any and all questions.” There is no citation to case law.

239. Despite Prior Counsel’s constitutionally inadequate motion, , t there were ample grounds to find Jamie’s waiver was not knowing, voluntary, or intelligent.

240. Prior Counsel did not provide any of the underlying research or case law regarding the significance of Jamie’s young age as placing her at a significant disadvantage in waiving her rights. Children subject to police interrogation need “protection” in light of their “unequal footing” with their interrogators. *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962). Specifically, the United States Supreme Court has repeatedly recognized that the “greatest care” must be taken when questioning children to ensure their confessions are voluntary. *In re Gault*, 387 U.S. at 45, 55. *See also Haley*, 332 U.S. at 599-600; *J.D.B.*, 564 U.S. at 271-72. This caution extends to ensuring children’s *Miranda* waivers are made knowingly, intelligently, and voluntarily. *See Commonwealth v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984). Building upon the longstanding framework developed in *Haley*, *Gallegos*, and *J.D.B.*, recent cases continue to emphasize that “children are constitutionally different from adults” and thus are entitled to special protections.

See Miller, 567 U.S. at 471. The court has rooted its conclusions—that youth merit distinctive treatment under the law—in scientific research showing that teenagers are more impulsive, more susceptible to coercion, and less mature than adults. *See J.D.B.*, 564 U.S. at 280 (2011); *Graham*, 560 U.S. 48, 68-69 (2010); *see also Miller*, 567 U.S. at 471-72; *Roper*, 543 U.S. at 569-70. This immaturity and impetuosity make youth particularly vulnerable in decisions to waive their *Miranda* rights and to give inculpatory statements in a high-stress interrogation setting.

241. Given the court’s repeated emphasis on Jamie’s intelligence (Jamie “is quite intelligent for her age;” Jamie “is in the superior range of intelligence”), it was imperative that Prior Counsel educate the court on the law concerning juvenile interrogations and confessions, and the underlying developmental research supporting it. In the absence of Prior Counsel educating the court, it is not surprising that the court never itself cites to this research. Or that it wrongly believed that Jamie’s intelligence trumped the prevailing developmental research. Researchers have found that among youth ages thirteen to seventeen, “*even the most sophisticated and mature youth were able to recall only 50 percent of Miranda content one minute after the warnings were administered.*” Naomi E.S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, *Waving Good-Bye to Waiver: A Developmental Argument Against Youths’ Waiver of Miranda Rights*, 21 N.Y.U. J. Legis. & Pub. Pol’y 1, 33 (2018) (emphasis added). Among youth who are between twelve and nineteen, around 94 percent exhibit “less than adequate appreciation of the significance and consequence of waiving their rights.” *Id.* at 31. Jamie’s young age made her particularly vulnerable in this high-stress environment and impacted her ability to fully comprehend the nature of the rights she was waiving or the consequences of doing so; her intelligence did not alter that scientific fact.

242. In addition to misapprehending the significance of Jamie's age, the court also misunderstood the role Mrs. Lynn played during Jamie's interrogation due to Prior Counsel's cursory briefing. It was not merely that Mrs. Lynn became upset and left the room. Due to her presence *in the room*, Jamie was focused on ensuring that her grandmother did not find out what happened and on protecting her. Rather than being a protective force herself, Mrs. Lynn's presence acted as a motivation for Jamie to avoid invoking her rights and to lie to protect her. Prior Counsel inexplicably fails to highlight that even the district attorney recognizes the problematic nature of this dynamic during the interrogation, stating, "obviously, this is troubling for your grandmother;" "she's here as being you're (sic) interested adult . . . It's just, as you can imagine, hard for your grandmother as well, so;" "for her to stay here, . . . I think it's, it's difficult." There was no way for Jamie to honestly speak to her grandmother about her rights or invoke her rights at the beginning of the interrogation without having to simultaneously admit to her grandmother that she was somehow involved in Mrs. Lynn's daughter's disappearance.

243. Prior Counsel's failure to educate the court is also demonstrated by the court's erroneous statement in its opinion that Jamie was given 15 minutes to discuss her rights with her grandmother. As the transcript reflects, Jamie and her grandmother were only given six minutes. (Jamie's Interrogation Tr., p. 6) (Noting a break at 11:25:48.388 a.m. with the interview resuming at 11:31:52:562 a.m.)³¹ Furthermore, had Prior Counsel interviewed Mrs. Lynn and called her at the suppression hearing, the court would have known that Mrs. Lynn was completely unaware of the basis for Jamie's interrogation by the police, completely inexperienced with the criminal justice system, and completely unfocused on protecting Jamie's rights. Instead, the court was left with the officer's impression that Mrs. Lynn was able to advise Jamie. The hearing record also created the

³¹ The detective also inaccurately testified that Jamie and her grandmother were provided 10 minutes. (Suppression Hr'g Tr. 19:15-16, 19-20.)

false — and incontrovertible — impression that Jamie and her grandmother actually discussed her rights during that 6 minutes, but Mrs. Lynn is adamant that they did not. (App. A, M.L. Cert. ¶ #.)

244. Prior Counsel also failed to educate the court that aggressive tactics are unnecessary for youth to still feel the pressure of adults. The court conducted a typical analysis regarding coercion of adults by interrogators but failed to appreciate that two detectives and a district attorney would have immense influence over a young girl. *See* Elizabeth Scott & Larry Steinberg, *RETHINKING JUVENILE JUSTICE*, at 440 (Harvard University Press, 2008) (concluding that adolescents have “a much stronger tendency . . . to make choices in compliance with the perceived desires of authority figures” than adults).

245. Considering the totality of the circumstances, had Prior Counsel properly investigated, researched, and presented the issues surrounding Jamie’s *Miranda* waiver, there would have been adequate grounds for the court to suppress her statements. *See, e.g., In re T.B.*, 11 A.3d 500, 506 (Pa. Super. Ct. 2010) (waiver deemed unintelligent and unknowing due to T.B. being placed in holding cell for two hours, T.B. having no experience with police, and T.B.’s mother was not informed of her son’s *Miranda* rights or asked to be present for the interrogation); *In re Interest of J.N.W.*, 197 A.3d 274, 284 (Pa. Super. Ct. 2018) (upholding suppression due to “[t]he officers’ demeanor, her mother’s own urging for her to answer the questions posed, her demonstrated reluctance to do so, and the very lengthy interview time all weigh toward [J.N.W.’s] statements not constituting a voluntary waiver)

246. Given the extreme severity of the charge and potential punishment that Jamie was facing, the decades-old body of case law singling out children’s confessions for special legal protections, and the supportive evidence readily available to Prior Counsel, there can be no

reasonable nor strategic basis for failing to thoroughly research, argue and present testimony opposing the unconstitutional use of Jamie's statements against her.

B. There Is a Reasonable Probability that Jamie's Statements Would Have Been Excluded as Involuntary Had Prior Counsel Investigated, Researched, and Presented the Issue.

247. Prior Counsel did not raise the independent argument that Jamie's statement was involuntary in either his motion or supporting brief.

248. Voluntariness of a confession is a "distinct and independent requirement for the admission of a confession into evidence." *Cephas*, 522 A.2d at 65. The Pennsylvania Supreme Court has stated that "[a]lthough there is no single litmus-paper test for determining the voluntariness of a confession, it must be established that the decision to speak was a product of a free and unconstrained choice of its maker." *Hughes*, 555 A.2d at 1273 (quoting *Commonwealth v. Kichline*, 361 A.2d 282, 289-90 (1976)). For youth, "[a]ll of the attending facts and circumstances must be considered and weighed in determining whether a juvenile's confession was knowingly and freely given. Among those factors are the juvenile's youth, experience, comprehension, and the presence or absence of an interested adult." *Williams*, 475 A.2d at 1288. The court will also consider factors such as the duration and means of an interrogation, the attitude of the interrogator, and "any and all other factors that could drain a person's ability to withstand suggestion and coercion." *Commonwealth v. Nester*, 709 A.2d 879, 882 (Pa. 1998). For example, the court suppressed a fourteen-year-old's incriminating statements in *Interest of C.L.*, where the appellant had no prior experience with the juvenile justice system, acknowledged his understanding of his *Miranda* rights in the presence of his parents, and then confessed outside the presence of his parents. 714 A.2d 1074, 1075-76 (1998).

249. In this case, the police used a combination of intimidation, coercion and deception to extract an involuntary statement from Jamie. The officers vacillated between isolating Jamie in the barren interrogation room and crowding the room with law enforcement as an intimidation tactic. At any given time during questioning, there were between one and four adult males in the room. At one point there were two detectives and the district attorney in the interview room, alternating interrogating Jamie. *See* (Jamie’s Interrogation Tr. 3/15/2015, 91-92.)

250. As explained above, the inclusion of her grandmother did not help Jamie. Instead, her grandmother essentially became another *de facto* investigator—concerned about the death of her daughter—who urged Jamie to cooperate with police. At one point her grandmother even joined in the questioning. (Jamie’s Interrogation Tr. 3/15/2015, 26.) (“He washed his clothes?”).

251. The police also used Mrs. Lynn to extract a confession from Jamie, knowing how difficult it would be for her to hear the circumstances of her daughter’s disappearance. When Jamie first mentions her mother is dead, Mrs. Lynn utterly falls apart, prompting the district attorney to escort her from the room because she is inhibiting their ability to continue questioning Jamie. *Id.* at 32. The police then continued their line of questioning outside the presence of any interested adult, and Jamie acknowledged that she was at the scene when her mother died. *Id.* at 40. For the rest of the afternoon, Jamie was questioned without an interested adult or guardian by her side.

252. Given her inexperience with police, it was also difficult for Jamie to understand she did not have to provide *any* statements at all or that she could stop talking at *any* point. At one point, as Jamie becomes increasingly upset during this prolonged interrogation, Detective Heffelfinger tells her “Just keep going,” then shortly after, “Just keep talking,” and immediately after that admonition *another officer*, Detective Sorrentino says, “Keep talking.” (Jamie’s Interrogation Tr. 3/15/2015, 31.) Jamie stated she “felt really uncomfortable during the whole

interrogation” and “the whole thing felt very coercive.” (App. O, J.S. Cert. ¶ 32.) Thomas Grisso, a leading expert on adolescent development, has found that “[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent.” Thomas Grisso et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333, 357 (2003).

253. There was no reasonable basis for counsel to fail to challenge the voluntariness of Jamie’s statements in his suppression motion. Had Prior Counsel properly presented this argument to the court, there was a reasonable probability that Jamie’s statement would have been excluded.

C. Counsel’s Failure to Exclude Jamie’s Statement Prejudiced Her at the Preliminary Hearing, Decertification Hearing, and Prior to Trial as She Entered a Plea.

254. Prior Counsel’s inadequate briefing, omission of critical case law and analysis, and willingness to proceed to a decertification hearing without a ruling on this motion demonstrates that Prior Counsel “did not function as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Commonwealth v. Drass*, 718 A.2d 816, 823 (Pa. Super. Ct. 1998). Prior Counsel’s actions prejudiced Jamie as the suppression of her confession would have fundamentally altered the decertification hearing and outcome, her decision to plead guilty, and her conviction and sentence.

255. The lower court relied heavily on Jamie’s statements and the interrogation in its decertification opinion. For example, the court states that [t]hroughout the interview process, Defendant Jamie Silvonek’s story evolved.” (Decert. Op. at 11.) The court relied on Jamie’s inconsistencies to frame her as a “threat to the safety of the public or any individual” who is not amenable to treatment as a juvenile. (Decert. Op. at 26.); *see also* 42 Pa.C.S. § 6355(a)(4)(iii)(C).

Prior Counsel's failure to aggressively argue for suppression of her statements was deeply prejudicial.

256. The inconsistencies in Jamie's statements after her invalid *Miranda* waiver and after the break in the interrogation were because of the lingering trauma from the recent offense. These inconsistencies were used against Jamie at decertification to inaccurately and unfairly portray her as a lying manipulator. In fact, as Jamie stated to Dr. Marty Beyer, "she was in shock and was unable to talk about what really happened; indeed, for many months she was not clear in her own mind what her role had been in the tragedy, nor did she know what was going to happen or how to take responsibility for it." (App. R, Dr. M.B. Cert. at 24.)

257. Without this critical information, the court concluded Jamie was not amenable to rehabilitation because she could not reconcile the details of the offense: "Without accepting responsibility and recognizing the problems, the likelihood that rehabilitation will be successful is greatly diminished." (Decert. Op. at 26.) As the court wrote, "the Defendant has presented many different versions of the events, as they are constantly changing." (Decert. Op. at 27.)

258. The court also weighed Jamie's intelligence against her because the court was not provided crucial information about the way youthfulness and immaturity impacted Jamie's perception of the interrogation. Specifically, the court attributed Jamie's "intelligence and manipulation" as essential elements of a desired goal of murder. (Decert. Op. at 25.) These inaccurate statements underpinned the court's decision to deny decertification and should have been preempted with Prior Counsel's suppression.

259. Aside from impacting the decertification, successful suppression would have completely altered the dynamics surrounding Jamie's decision to plead guilty. Because counsel was ineffective, the confession would have been admitted if Jamie went to trial, thus influencing

how Prior Counsel advised Jamie and evaluated the case. Without the confession, the case against Jamie would have been much weaker, certainly with respect to the degree of guilt, and particularly considering the weight that juries afford to confessions.

260. Furthermore, the confession was given almost as much weight as her text messages in the court's determination to deem Jamie's conduct first-degree murder. The court's reliance on it during her decertification hearing underscored how damning the court considered her confession, which further put pressure on Jamie to plead guilty.

261. At the very least, counsel's repeated failure to either move to exclude the statements or to effectively argue why the statements should be suppressed constitute cumulative prejudice. If Prior Counsel had effectively excluded the statements, it is reasonable to believe that Jamie could have been decertified to juvenile court, offered less than first-degree, pled to a lesser sentence, or elected to go to trial.

VIII. JAMIE'S GUILTY PLEA WAS NOT KNOWING OR VOLUNTARY.

262. The "right to effective counsel extends to the plea process, as well as during trial." *Commonwealth v. Wah*, 42 A.3d 335, 338 (Pa. Super. Ct. 2012) (citation omitted). "A defendant is permitted to withdraw [her] guilty plea under the PCRA if ineffective assistance of counsel caused the defendant to enter an involuntary plea of guilty." *Commonwealth v. Kersteter*, 877 A.2d 466, 468 (Pa. Super. Ct. 2005) (citation omitted).

263. Here, Jamie's plea was not knowing or voluntary in multiple ways: 1) the trial judge improperly involved herself in the plea negotiations thereby voiding the possibility of a voluntary plea; 2) Prior Counsel failed to investigate and present Jamie with full information to enter a knowing and voluntary plea; and 3) Prior Counsel erroneously advised Jamie that the Commonwealth may advocate for a lower sentence depending on her testimony against Mr.

Barnes.³²

A. The Trial Judge’s Involvement in Negotiations Renders Jamie’s Plea Involuntary.

264. Prior Counsel was ineffective for failing to challenge the court’s involvement in the plea negotiation process and for actively involving the court despite well-established law in this Commonwealth prohibiting such conduct. “It is settled that a plea entered on the basis of a sentencing agreement in which the judge participates cannot be considered voluntary.” *Commonwealth v. Johnson*, 875 A.2d 328, 331 (Pa. Super. Ct. 2005) (citing *Commonwealth v. Evans*, 252 A.2d 689 (1969)); *see also Commonwealth v. McNeal*, 120 A.3d 313, 318 n.1 (Pa. Super. Ct. 2015) (articulating that judges are prohibited from engaging in plea bargain discussions). According to the Pennsylvania Supreme Court, the rule is black and white:

“[t]he unequal positions of judge and the accused, one with power to commit to prison and the other deeply concerned to avoid prison, at once raises a question of fundamental fairness. When a judge became a participant in plea bargain he brings to bear the full force and majesty of his office. His awesome power to impose a substantially longer or even maximum sentence in excess of that proposed is present whether referred to or not.”

Evans, 352 A.2d at 691 (quoting *United States ex rel. Elksins v. Gilligan*, 256 F. Supp. 244, 254 (S.D.N.Y. 1966)). Indeed, a “defendant needs no reminder that if [s]he rejects the [court’s] proposal, [and] stands upon his right to trial and is convicted, [s]he faces a significantly longer sentence.” *Id.* (emphasis added)).

265. Even the relevant ABA standards establish that it is against professional norms for a judge to participate in the plea process except when the parties request a conference for the court to “indicate whether [it] would accept the terms as proposed.” ABA Criminal Justice Standards:

³² Even if Prior Counsel wanted a young client to maintain hope, that is no excuse for disregarding his duty to ensure Jamie was properly and accurately advised to make an informed decision.

Pleas of Guilty, s 14-3.3(d) (adopted by *Evans*, 252 A.3d at 691 n.*. (the standard was previously Section 3.3(b)).³³

266. In Jamie’s case, Prior Counsel and the Commonwealth had not begun negotiations nor was there an understanding that a plea would be reached prior to the improper status conference with the judge. (App. B, J.W. Cert. ¶¶ 6, 9.) During that prohibited status conference, the Honorable Judge Dantos “made it clear that she would not accept a guilty plea agreement with a minimum sentence of 25 years” and “[t]he lowest sentence she was willing to accept was 35 years.” (App. B, J.W. Cert. ¶ 7.)

267. Prior Counsel not only failed to object to Judge Dantos’ involvement in the negotiation process, but he actively requested the violation of his client’s rights. *See* (App. B, J.W. Cert. ¶ 6.) Prior Counsel then continued the breach of his client’s rights when he communicated to Jamie that the court would not accept any negotiations below a 35-year minimum, thereby improperly and inherently tainting her plea evaluation, and started negotiations with the Commonwealth based on the judge’s improperly provided mandate. (App. B, J.W. Cert. ¶ 10.)³⁴

268. Considering the established law, Prior Counsel had no reasonable basis for failing to intervene when the judge improperly set the minimum threshold. *See Johnson*, 875 A.2d at 332 (finding counsel’s “inaction . . . unreasonable.”). And, the record is clear that, despite the fact that extensive grounds to appeal the voluntariness of Jamie’s plea existed once the judge participated in the plea negotiations existed, Prior Counsel failed to pursue the matter.

269. Since the court improperly set the minimum threshold on behalf of the parties, and

³³ The ABA Standards also note that the while “[d]iscussions related to plea negotiations at which the judge is present need not be recorded verbatim, so long as an appropriate record is made at the earliest opportunity.” ABA Criminal Justice Standards: Pleas of Guilty, s 14-3.3(d). Unfortunately, it appears no such record was made in Jamie’s case.

³⁴ Aside from Prior Counsel’s certification, there is also a letter that he sent to Jamie during the course of her direct appeal explaining that “Judge Dantos would not accept the 25 year minimum but she would only accept the 35 year minimum.” (App. Z, Sept. 25, 2017, Letter from Prior Counsel.)

Jamie knew of the court's involvement; Jamie's decision-making was fundamentally altered, rendering her incapable of entering a voluntary plea in front of her trial judge. The colloquy and resulting mandate from the court relative to an acceptable plea is exactly the type of prohibited conduct that courts in this Commonwealth have unequivocally confirmed taint a defendant's plea deal, thereby, severely prejudicing that defendant. Indeed, "[t]he unquestioned pressure placed on the defendant because of the judge's unique role inevitably taints the plea regardless of whether the judge fulfills his part of the bargain." *Evans*, 252 A.2d at 691; *see also Johnson*, 875 A.2d at 332 (finding prejudice when counsel failed to object to court's involvement in plea.)

270. Jamie should therefore be permitted to withdraw her guilty plea as a result of Prior Counsel's ineffectiveness and the court's improper involvement. *See Kersteter*. 877 A.2d at 468.

B. Due to Prior Counsel's Lack of Investigation and Counsel's Insufficient Explanation of Options and Possible Outcomes, Jamie Was Unable to Enter a Knowing and Voluntary Plea Agreement.

271. When an individual enters a plea based on the advice of counsel, "the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970)). Furthermore, "[i]n determining whether a guilty plea was entered knowingly and intelligently, a reviewing court must review all of the circumstances surrounding the entry of that plea." *Commonwealth v. Allen*, 732 A.2d 582, 587 (1999). When the plea involves a juvenile, "close scrutiny must be paid to the surrounding circumstances" due to "the problems that attach to the waiver by juveniles of their constitutional rights [such as their] 'ignorance of rights or of adolescent fantasy, right or despair.'" *Commonwealth v. Shaffer*, 449 A.2d 677, 681 (Pa. Super. Ct. 1982) (quoting *Gault*, 387 U.S. at 55).

272. Counsel is ineffective in the context of advising a client of a plea when his “investigation [in the case] . . . [is] not sufficient to apprise [a client] of the essential facts necessary to effectively advise” them. *Mabie*, 359 A.2d at 374; *see also* ABA Standards 4.6-2(d) (“counsel should not recommend to a defendant acceptance of a disposition without appropriate investigation.”). This investigation must consider all possible defenses and all potentially relevant mitigating evidence. *Boston v. Mooney*, 141 F.Supp.3d 352, 361 (E.D. Pa. 2015) (citation omitted).

273. After a proper investigation, counsel needs to advise the client regarding available alternatives and ensure to address important considerations in a client reaching a decision. *ABA Standards for Criminal Justice*, Standard 14–3.2(b) (3d ed.1999); *see also Boston*, 141 F. Supp. 3d at 359. This is because “[t]he duty of defense counsel is not only to give notice of a plea offer to the defendant, but also to timely and adequately explain the matter so the defendant may reach an informed decision. This duty requires counsel to provide an analysis of ‘the relative merits of the offer’ as compared to the strengths and weaknesses of the case, and provide ‘an accurate calculation of the client’s sentencing exposure if convicted.’” *Boston*, 141 F. Supp. at 361 (citations omitted).

274. The facts confirm that Prior Counsel’s investigation in Jamie’s case ceased well before her decertification hearing. Indeed, as discussed above, Prior Counsel did not properly investigate mitigating factors, identify character witnesses, or advocate on Jamie’s behalf to decrease the degree of homicide. Furthermore, Prior Counsel did not attempt to exclude Jamie’s text messages with Mr. Barnes or renew his motion to suppress Jamie’s confession, leaving him without full knowledge of what evidence would be permitted at trial. *See supra* Sections VI & VII. Both pieces of evidence were fundamental as to the degree of murder being sought by the Commonwealth.

275. Without a thorough investigation, Prior Counsel was ill-equipped to handle negotiations, but more notably, Prior Counsel did not engage in meaningful negotiations. When the Commonwealth confirmed that it intended to pursue with a first-degree charge, at a minimum, Prior Counsel should have provided some information, evidence, and/or argument to try and convince them otherwise. Instead of advocating, though, Prior Counsel did not provide any additional information during negotiations and, instead, simply rested on evidence adduced at the decertification hearing. (App. B, J.W. Cert. ¶ 6-9.)

276. Further, Prior Counsel did not discuss the associated charges with the Commonwealth or Jamie and, instead, focused solely on the homicide despite the associated charges carrying significant prison time. (App. B, J.W. Cert. ¶ 9.) As a direct result of this ineffective and incompetent conduct, Jamie pled guilty to all charges without discussions for alternative dispositions on the associated charges.

277. Similar to his hands-off approach with the Commonwealth, during the improper status conference in which the judge indicated that she would not accept a minimum sentence below 35 years, not only was counsel effectively silent; he was complicit in the judge's wrongful conduct by conveying her inappropriate and pressuring mandate to Jamie (App. B, J.W. Cert. ¶ 8-10.) Aside from failing to object to the impropriety, Prior Counsel did not inquire as to the judge's concerns or reasoning to determine if he could adjust his strategy or provide information to the judge that would persuade her to accept a lesser sentence. (App. B, J.W. Cert. ¶ 7-8.)

278. When counsel then proposed the plea agreement to Jamie, it was impossible for him to have had a solid grasp on the evidence that would be available to the Commonwealth at trial. To this end, the record confirms that he never conducted his own investigation, had not substantively engaged in negotiations, nor had he worked to assess the concerns that could be

addressed by an investigation. At a minimum, this lack of diligence left Prior Counsel ill-equipped to provide Jamie the landscape particular to her case. However, in reality, his ineffectiveness and incompetence inherently tainted Jamie's ability to evaluate knowingly, and voluntarily the plea deal in the first instance. *See Hill v. Lockhart*, 474 U.S. 52, 56 (1985).

279. In addition to lacking the specifics for Jamie's case, Prior Counsel failed to provide even the general information that Jamie needed to make a voluntary and knowing decision. Prior Counsel did not explain the degrees of murder to Jamie and, even his letter dated September 25, 2017, in which he explains felony murder during her appeal, does not properly explain the possibilities. (App. Z, Sept. 25, 2017, Letter from Prior Counsel.) Particularly considering the lack of first-degree convictions for non-shooters of Jamie's age, Jamie should have been advised of the possibility of receiving a conviction for second- or third-degree murder. Further, the record confirms that Prior Counsel did not explain the possibility of an open plea or a degree of guilt hearing, and Prior Counsel did not explain the mandatory minimum sentencing for corresponding degrees of murder. (App. O, J.S. Cert. ¶ 48-50.)

280. Prior Counsel's repeated and material failures in providing required information to Jamie fall flatly short of his obligation to provide her with sufficient information to make an informed decision. *See ABA Standards 4.6-2(a)* "[a]s early as practicable, and preferably before engaging in disposition discussions with the prosecutor, defense counsel should discuss with and advise the client about possible disposition options." *See also Commonwealth v. Persinger*, 615 A.2d 1305, 1308 (Pa. 1992) (court found ineffective assistance and held the guilty plea was not knowing, intelligent, and voluntary when counsel failed to inform Defendant that he could get consecutive sentences).

281. Since Prior Counsel's actions directly contravene standards of practice and general

law, there can be no reasonable basis for his failure to investigate and advocate properly on Jamie's behalf during plea negotiations.

282. Further, in addition to Prior Counsel having no reasonable basis for his decisions, his inadequacies caused prejudice. *Commonwealth v. Hickman*, 799 A.2d 136, 141 (Pa. Super. 2002) (“To succeed in showing prejudice, the defendant must show that it is reasonably probable that, but for counsel’s errors, [s]he would not have pleaded guilty and would have gone to trial. The ‘reasonable probability’ test is not a stringent one.”)³⁵ Here, Jamie reasonably relied on the belief that Prior Counsel had all of the necessary information to ensure that the plea offer conveyed was the best that could be obtained compared to the likely outcome at a trial. If Jamie had known that Prior Counsel had not conducted the needed investigation, could have presented significant mitigation for sentencing purposes, or that he had not fully engaged in negotiations, it is without question that a reasonable defendant would never have entered her guilty plea.

C. Prior Counsel Erroneously Advised Jamie Regarding Likely Minimum and Maximum Sentences Had She Proceeded to Trial.

283. Courts, including those in Pennsylvania, recognize that relief is available to a defendant where counsel provides legally unsound advice regarding the impact of the plea. *See Hickman*, 799 A.2d at 141 (erroneous advice concerning boot camp eligibility invalidated guilty plea as counsel was ineffective); *see also Hill*, 474 U.S. at 62 (counsel was ineffective for failing to advise client of statute’s impact on parole eligibility); *Baker v. Barbo*, 177 F.3d 149, 154 (3d Cir. 1999) (recognizing counsel can be ineffective for giving defendant false information about sentencing); *Meyers v. Gillis*, 142 F.3d 664, 667 (3d Cir. 1998) (counsel was ineffective in

³⁵ Rather, the test only requires “a probability sufficient to undermine confidence in the outcome.” *Nix v. Whiteside*, 475 U.S. 157, 175 (1986).

misrepresenting parole eligibility of a negotiated sentence).³⁶

284. Here, the record confirms that Prior Counsel made several inaccurate representations to Jamie regarding the impact of her plea, including statements that her sentence could be changed after entering a plea and representations leading her to believe there was a strong likelihood of a life without parole sentence at trial. (App. O, J.S. Cert. ¶ 47-48.) As a direct result of these misrepresentations, Jamie thought her choice was limited to either: (a) accepting the plea thereby preserving her ability to seek potentially a lower minimum sentence in the future (through appeals), or (b) a guaranteed life sentence in prison (effectively meaning death in prison). (App. O, J.S. Cert. ¶ 48.) As provided in more detail below, Prior Counsel's wrongful conduct requires the court to permit Jamie to withdraw her guilty plea.

285. First, Prior Counsel improperly advised Jamie that the Commonwealth may cooperate with changing Jamie's sentence after she testified against her co-defendant. (App. B, J.W. Cert. ¶ 11, 12.); (App. O, J.S. Cert. ¶ 48, 54.). This unsound advice left Jamie with an unreasonable impression because no agreement had ever been reached to that effect. (App. B, J.W. Cert. ¶ 12.) The improper and unsound advice was confirmed when Jamie was sentenced prior to providing her testimony. No experienced criminal defense attorney could have ever reasonably advised Jamie about a potential reduction where it had not been confirmed prior to her sentence.

286. Second, Prior Counsel improperly advised Jaime that her minimum sentence could be altered down the road rather than ensuring that she understood the nearly impossible process of having her sentence decreased after entering a plea. (App. B, J.W. Cert. ¶ 11-12.) This unsound advice became exponentially more erroneous when Prior Counsel failed to appeal Jamie's sentence, thus waiving any possible challenge she may have had at the time. Prior Counsel even

³⁶ According to the ABA Standards, "counsel should not knowingly make false statements of fact or law in the course of disposition discussions." ABA Std. 4.6-2(f).

concedes “[i]t is possible that Jamie believed her sentence would change down the road because of those conversations.” (App. B, J.W. ¶ 12.).

287. Third, Prior Counsel improperly stressed the likelihood of Jamie being sentenced to life without parole particularly as the Commonwealth had not filed notice to seek life which would have been required under Section 1102.1. As a result of Prior Counsel’s wrongful advice in this regard, Jamie reasonably understood that she would be guaranteed a life sentence if she went to trial. (App. O, J.S. Cert. ¶ 47.) While a life sentence was theoretically possible, Prior Counsel did not explain the statutory requirements before the court could impose life without parole or the surrounding legal framework as the result of *Miller*. In fact, Prior Counsel conceded in a letter dated – to Jamie that he did not recall life without parole being on the table during discussions, thereby making such an outcome a remote possibility. (App. Z, Sept. 25, 2017, Letter from Prior Counsel.)

288. Jamie should have been properly advised as to the *likely* outcomes had she proceeded to dispositions other than the negotiated plea. ABA Standards 4.6-3(e) (“counsel should investigate and be knowledgeable about sentencing procedures, law, and alternatives, collateral consequences and likely outcomes, and the practices of the sentencing judge, and advise the client on these topics before permitting the client to enter a negotiated disposition.”); ABA Standards 4-5.1(f) (“counsel should not intentionally understate or overstate the risks, hazards, or prospects of the case or exert undue influence on the client’s decisions regarding a plea”) (adopted in *Commonwealth v. Napper*, 385 A.2d 521, 524 (1978), previously 5.1(b).).

289. There is no reasonable basis for Prior Counsel failing to ensure that Jamie understood her realistic exposure if she proceeded to trial. There can never be a reasonable basis for providing inaccurate information to a client that induces them to accept a plea. *See Hickman*,

799 A.2d at 141; *Hill*, 474 U.S. at 62; *Baker*, 177 F.3d at 154 (3d Cir. 1999); *Meyers*, 142 F.3d at 667. Here, but for counsel’s inaccurate representations, Jamie would not have believed that her minimum sentence could feasibly be changed and would not have entered the plea.

290. The threat of life, and death, in prison is obviously a substantial one that is regularly used to induce an individual to take a plea. In Jamie’s case, had she known the true likelihood of a life without parole sentence being imposed (i.e., the remote possibility),³⁷ it is likely she would not have accepted the plea as the fear of life without parole was a driving force to her. (App. O, J.S. Cert. ¶ 48.)

D. Prior Counsel’s Multiple Errors Surrounding Jamie’s Guilty Plea Warrant a Finding of Cumulative Prejudice.

291. The cumulative effect of multiple errors can be considered in the prejudice analysis. *Commonwealth v. Bardo*, 105 A.3d 678, 717 (Pa. 2014). The Pennsylvania Supreme Court has

³⁷ The unreasonable nature of expecting a life without parole sentence is highlighted by how few 13 or 14-year olds received first-degree convictions in the last several decades. Since mid-1976, only half a dozen individuals across the state received such convictions. Donald Zoller was 14 in 1986 when he was convicted of three counts of first-degree murder for stabbing to death three neighbors. *Commonwealth v. Zoller*, No. 1676 WDA 2014, 2015 WL 6675508, at *1 (Pa. Super. Ct. 2015). Erik Vanzant was 14 in 1988 when he received first-degree murder for sexually assaulting a woman and throwing her down the stairs. Jamaal Abdul-Alim, *No Second Chances*, PHILADELPHIA WEEKLY, Feb. 20, 2009, available at http://www.philadelphiaweekly.com/news/no-second-chances/article_55c9033c-7afc-53be-aafc-095a5102b853.html; see also Docket No. CP-51-CR-0507511-1988. Michael Lehman is the only one who received first-degree despite not being a principal when he helped to lure a counselor at a juvenile facility to a room where he was stabbed to death, and Michael kept watch. *Commonwealth v. Mitchell*, 599 A.2d 624, 626-627 (Pa. 1991); see also Docket No. CP-67-CR-0002000-1988. In 1989 Wilfredo Caballero was 14 when he participated in the bludgeoning of a man to death with rocks and tree limbs, resulting in a first-degree murder conviction. Liz Evans Scoloro, *Parole Possible for Teen Killer in Springetts Bludgeoning Death*, YORK DISPATCH, Nov. 22, 2017, available at <https://www.yorkdispatch.com/story/news/crime/2017/11/22/parole-possible-teen-killer-springetts-bludgeoning-death/890141001/>. In the last quarter century, only two 13 or 14-year olds have received a first-degree murder conviction. Ricardo Cruz was 13 in 1992 when he shot onto a school playground, striking an 18-year-old. The Orlando Sentinel, *Boy, 14, Gets Life Term for Schoolyard Killing*, ORLANDO SENTINEL, Nov. 18, 1992, available at <https://www.orlandosentinel.com/news/os-xpm-1992-11-18-9211180562-story.html>; see also Docket No. CP-36-CR-0001173-1992. Then Qu’eed Batts was 14 when he shot two individuals, killing a sixteen-year-old and seriously injuring an eighteen-year-old in 2006. *Commonwealth v. Batts*, 163 A.3d 410, 417, 419 (Pa. 2017). Otherwise, 13 and 14 year olds received second-degree convictions, even when they were the principal. See Trina Garnett, Docket No. CP-23-CR-000598-1976 & 5988-1976; Richard Olds, Docket No. CP-02-CR-0006857-1979; Charles Manor, Docket No. CP-51-CR-1229101-1980; Richard Moore, Docket No. CP-51-CR-0624311-1985; Scott Noll, Docket No. CP-28-MD-0000467-1988; Stacey Torrance, Docket No. CP-51-CR-1031754-1988; Levar Jones, Docket No. CP-36-CR-0003302-1994; Maurice Williams, Docket No. CP-51-CR-0203961-1996; Daniel Castro, Docket No. CP-51-CR-0310323-1997; Michael Pendelton, Docket No. CP-02-CR-0008053-1997.

long recognized that, “if multiple instances of deficient performance are found, the assessment of prejudice properly may be premised upon cumulation.” *Johnson*, 966 A.2d at 532 (citing *Commonwealth v. Perry*, 644 A.2d 705, 709 (Pa. 1994) (finding prejudice from trial counsel’s multiple instances of ineffectiveness “in combination”)).

292. Considering the totality of circumstances, it becomes abundantly clear that Jamie suffered cumulative prejudice, thereby resulting in an involuntary and unknowing plea. Jamie was incredibly dependent on counsel’s advice considering the severity of her charges and possible sentences. Additionally, Jamie was 14 years old during this process, she had no prior record, and the adults in her life had no knowledge of the criminal justice system. Rather than receiving conscientious advice, though, Jamie was left to make a life-altering decision based on advice lacking a proper investigation, insufficient information regarding her options, and inaccurate representations around outcomes. As a result of Prior Counsel’s errors, Jamie believed that her best possible outcome was a sentence of not less than 35 years due to the judge’s involvement in her negotiations. Furthermore, Jamie believed that she was zealously represented during the negotiation process when in fact counsel had stopped his investigation, did not present any evidence on her behalf, and he failed to advocate for a different sentence after the judge expressed her opinion. Finally, Jamie believed that she was deciding between life without parole, arguably a remote outcome but one that seemed assured from her conversations with Prior Counsel, or the plea offer which included a minimum sentence that could be altered according to Prior Counsel, a near impossibility. *See* (App. O, J.S. Cert. ¶¶ 47, 48.) Therefore, not only did Jamie understand the basics of what she was choosing between, she did not have any of the surrounding framework needed for an informed decision. This left a 14-year-old girl with an already overwhelming decision to make feeling unrealistic pressure to accept a plea without knowing all of her options.

Had Jamie fully understood the inappropriate nature of the judge's involvement, her counsel's lack of advocacy, the possibility of receiving a lesser conviction, the minimum sentences associated with such convictions, and her realistic exposure at a jury trial, Jamie would not have entered the guilty plea.

IX. REQUESTED RELIEF

Based on the foregoing, Petitioner respectfully requests that this Court:

1. order an evidentiary hearing on this Petition;
2. order requested discovery as described above; and/or
3. vacate the order denying her Motion to Remand Case to Juvenile Division; and/or
4. order a new hearing on her decertification motion; and/or
5. vacate Petitioner's guilty plea and sentences; and/or
6. grant a new trial; and/or
7. order such other relief as appropriate.



Marsha L. Levick (No. 22535)
Karen U. Lindell (No. 314260)
Brooke L. McCarthy (No. 325155)
JUVENILE LAW CENTER
1315 Walnut St., 4th Floor
Philadelphia, PA 19107
(215) 625-0551
mlevick@jlc.org

Tracy Zurzolo Quinn (No. 71072)
Holland & Knight LLP
Cira Centre, Ste. 800
2929 Arch Street
Philadelphia, PA 19104
(215) 252-9522
Tracy.quinn@hkllaw.com

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