IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	**CP-39-CR-2141-2015**
	:	
JAMIE SILVONEK	:	

COMMONWEALTH'S POST-PCRA HEARING BRIEF

TO THE HONORABLE, THE JUDGE OF SAID COURT:

JAMES B. MARTIN, District Attorney of Lehigh County, by and through Chief Deputy District Attorney HEATHER F. GALLAGHER, Chief Deputy District Attorney JEFFREY S. DIMMIG, and Assistant District Attorney, EDRIANA SYMIA, respectfully represents:

STATEMENT OF THE CASE

On April 1, 2015, Jamie Silvonek (hereinafter, "Petitioner") was charged with Criminal Homicide, 18 Pa. C.S.A. §2501, Criminal Conspiracy to Commit Homicide,18 Pa. C.S.A. §903; 18 Pa. C.S.A. §2501; Tampering with Evidence, 18 Pa. C.S.A. §4910(1); and Abuse of Corpse, 18 Pa. C.S.A. §5510, for the conspiratorial murder plot and execution to kill her mother with co-defendant Caleb Barnes. Now, Defendant seeks relief pursuant to Pennsylvania's Post Conviction Relief Act ("PCRA"), codified as 42 Pa.C.S.A. §9541 *et seq.*, on the basis of ineffective assistance of trial counsel. No relief is due.

Factual and Procedural History

Petitioner was represented on the previously-listed charges by privately-hired counsel, John Waldron, Esquire. Attorney Waldron was retained by the Silvonek family within twenty-

four (24) to forty-eight (48) hours of Cheryl Silvonek's murder. [*See* N.T., dated 10/4/2021, p. 102]. Attorney Waldron is a seasoned attorney based in Lehigh County but has practiced law throughout Pennsylvania and Federal Court for nearly 40 years. [*See* N.T., dated 10/4/2021, pp. 93-96]. In addition to his defense of adult criminal matters, Attorney Waldron has played a role in the juvenile system from many aspects in the course of his career; specifically, Attorney Waldron spent time as a juvenile prosecutor, a juvenile master, and most recently as a juvenile defense attorney. [*Id.*, pp. 92-93].

As stated by the Pennsylvania Superior Court, "[t]he underlying facts of this matter are particularly important to the disposition of this matter and must be understood to provide the needed context to the trial court's determination and [the Superior Court's] ruling." ***See*** Commonwealth v. Silvonek, 2017 WL 3411919, *1 (Pa. Super. 2017). Similarly, the facts of this case are highly relevant to Attorney Waldron's representation of Jamie Silvonek.

The trial court issued an opinion which set forth a thorough recitation of the facts. Those relevant portions of the facts are summarized as follows:

> The incident which brought about this prosecution is alleged to have occurred on March 15, 2015. On this date, Lieutenant Michael Sorrentino of the South Whitehall Township Police Department received a call from his supervisor that Officers had been dispatched to the 5700 block of Haasadahl Road, Allentown, South Whitehall Township, Lehigh County, Pennsylvania, for a suspicious vehicle with blood inside, but when they arrived, the vehicle was gone. However, the Officers noted what appeared to be a shallow grave along the creek.
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> Lieutenant Sorrentino instructed that the area be secured and advised that he would be there shortly. Lieutenant Sorrentino arrived on scene at approximately 5:00 A.M. It was still dark outside and there was snow on the ground. The Fire Department was also on scene and had set up exterior lighting. Lieutenant Sorrentino acquired from the Fire Department a thermal imaging camera in order to scan the area of the suspected shallow grave. Using this device, Lieutenant Sorrentino could discern a torso and the faint outline of an arm. While Sergeant Edelheiser illuminated the area with a flashlight, Lieutenant Sorrentino used a

shovel to begin digging away the dirt. When two (2) legs became visible as a result of his digging, he immediately contacted other authorities for assistance.

Immediately thereafter, Lieutenant Sorrentino learned that the suspicious vehicle was located approximately one (1) mile away, at the edge of a pond in South Whitehall Township. The vehicle was located in the area of Applewood Drive and Huckleberry Road. The ignition of the vehicle was turned on and the lights were still on. In addition, there was a significant amount of blood inside of the cabin portion of the vehicle, primarily in the front driver's and the front passenger's compartments. The registration on the plate revealed that the owners of the vehicle were Dave and Cheryl Silvonek, who lived at 1516 Randi Lane in Upper Macungie Township, Lehigh County, Pennsylvania.

Lieutenant Sorrentino acquired a JNET photograph of Cheryl Silvonek. Based on this photograph, preliminarily, the woman in the shallow grave was then identified as Cheryl Silvonek. At approximately 6:00 A.M. on March 15, 2015, Detective Richard Heffelfinger of the Lehigh County District Attorney's Office, assigned to the homicide task force, was called to the scene for a 'suspicious death." He arrived at 6:45 A.M. After viewing this scene and speaking with Lieutenant Sorrentino, Detective Heffelfinger proceeded to the Silvonek residence to assist the other law enforcement agencies. Upper Macungie Township Officers and South Whitehall Township Officers were already in route to the Silvonek residence. Several officers then attempted to make contact with anybody inside the residence by knocking on the front door. David Silvonek responded. He had been sleeping and indicated that he did not think that anyone else was home at that time. Mr. Silvonek granted permission for the Officers to search the residence. When Detective Heffelfinger looked into what appeared to be a girl's bedroom, he observed a male in the bed. This male was later identified as Co -Defendant Caleb Barnes. In addition, Sergeant Heffelfinger saw at least one (1) knife and a cell phone on the floor of this bedroom, and a cell phone on the headboard of the bed. Consequently, Sergeant Heffelfinger summoned uniformed officers to enter the room. He then noted a female in the bed, holding the sheets up to her chest. This person was later identified as Defendant Jamie Silvonek, the fourteen (14) year old daughter of David and Cheryl Silvonek. However, Cheryl Silvonek remained unaccounted for.

At this time, approximately 8:15 A.M. to 8:30 A.M., Co -Defendant Barnes, Defendant Silvonek, and Mr. Silvonek were transported to South Whitehall Township for questioning by uniformed police officers. These three (3) people of interest were separated and put into different interview rooms. Each interview room was approximately fifteen (15') feet by fifteen (15) feet, with a table and several chairs. In addition, each of the interrogation rooms had a window in it. Detective Heffelfinger spoke with Mr. Silvonek first at around 9:00 A.M. He inquired of Mr. Silvonek if there was an adult individual whom he could call in order to be present with Defendant Jamie

Silvonek during the questioning, in light of the fact that she was fourteen (14) years old. Mr. Silvonek indicated that his mother-in-law, Margaret Lynn, should be contacted.

Consequently, Ms. Lynn was contacted by Detective Heffelfmger. She was informed that
Cheryl Silvonek was missing and that Mr. Silvonek and Defendant Jamie Silvonek were at the police station for questioning. Ms. Lynn agreed to come to the police station, but advised Detective Heffelfinger that it would take time to arrive, because she lived in Jim Thorpe. As Detective Heffelfinger was concluding the interview with Mr. Silvonek, Defendant Silvonek's grandmother arrived at the South Whitehall Township Police Department, and she agreed to sit in with Defendant Silvonek during the interview.

The Officers allowed Defendant Silvonek time to speak with her grandmother in private for approximately fifteen (15) minutes prior to interviewing her. Prior to leaving Ms. Lynn alone with her granddaughter, Detective Heffelfinger provided them with a South Whitehall Township Police Department Warning of Miranda rights form to read and discuss. It should be noted that it was determined that the authorities would interview Defendant Jamie Silvonek prior to Co -Defendant Caleb Barnes, because Mr. Silvonek did not have any idea who Co -Defendant Caleb Barnes was. Consequently, it was imperative to speak with Defendant Jamie Silvonek to learn the circumstances surrounding Co - Defendant Barnes's presence at the Silvonek residence and how he fit into the picture generally.

At the commencement of the recorded interview at approximately 11:30 A.M., the South Whitehall Township Police Department Warning of Miranda rights form was read to Defendant Silvonek and Ms. Lynn. Defendant Silvonek agreed to waive her Miranda rights, and both she and Ms. Lynn executed the form. Detective Heffelfinger informed Defendant Silvonek that they were investigating the disappearance of her mother, and that her mother's vehicle was found under suspicious circumstances.
Defendant Jamie Silvonek indicated that around 6:00 P.M., the night before, her mother had driven her to a concert in Wilkes-Barre, Pennsylvania. The mother waited in the car until the conclusion of the concert and drove her daughter back to the Lehigh Valley area. They drove to Chris's Diner, where the mother waited in the car while Defendant Jamie Silvonek ate breakfast. They arrived home at 1:00 A.M., and Defendant Silvonek got
out of the car. Defendant Silvonek indicated that a conversation ensued involving her mother going out to buy spinach. According to Defendant Silvonek, she went upstairs to bed. In addition, Defendant Jamie Silvonek explained to Detective Heffelfinger her relationship with Co -Defendant Caleb Barnes. She indicated that she met him at a concert in Philadelphia in October of 2014. Co -Defendant Barnes was supposed to meet her after the concert on March 15, 2015. After Defendant Jamie Silvonek had gone to bed, she was

awakened by Co -Defendant Barnes shaking her and inquiring of her what store is open 24 hours a day. To this, Defendant Silvonek responded, "Walmart." Thereafter, she indicated that Co -Defendant Barnes took her from the house and drove wildly to Walmart in Trexlertown, Pennsylvania.

In the store, Co -Defendant Caleb Barnes was rushing around buying rubbing alcohol, a flashlight, a file and other items. Upon their return to the residence, Defendant Jamie Silvonek returned to bed, while Co -Defendant Caleb Barnes disappeared for a while. When he returned, he woke her up again, held her down and had non-consensual sex with her. Defendant Jamie Silvonek told the officers that Co -Defendant Caleb Barnes told her that he "slit her throat and then buried" her mother.
At the part of the interview in which Defendant Silvonek stated that Co - Defendant Barnes had slit her mother's throat, the elderly Ms. Lynn became hysterical and had to be removed from the interview room. Ms. Lynn remained in the South Whitehall Township Police Department. It was inquired of Defendant Silvonek if she wanted to continue with the interview in the absence of her grandmother, and she agreed to continue speaking with the authorities. Defendant Silvonek was told that she could take a break and speak with her grandmother at any time, but she never exercised this option. Throughout the interview process, Defendant Jamie Silvonek's story evolved.

After approximately one (1) hour into the interview, Defendant Jarnie Silvonek related a different story to the authorities. This version entailed that Co - Defendant Caleb Barnes came to the house prior to the concert and that her mother had agreed to take them both to the concert. They arrived early to the concert and her mother left them alone in the vehicle where they had consensual sex. When her mother returned to the vehicle, she caught them in the vehicle with Defendant Silvonek's pants off. Her mother did not say anything to them at that time. Shortly thereafter, Co -Defendant Barnes and Defendant
Silvonek went to the concert.

After the concert, Defendant Jamie Silvonek's mother drove them back to the Lehigh Valley area where Defendant Silvonek and Co -Defendant Barnes had breakfast together
at Chris's Diner located on Tilghman Street in Kuhnsville, Upper Macungie, Lehigh County. Defendant Jamie Silvonek's mother waited in the car. After breakfast, Defendant Jamie Silvonek's mother drove them home. Defendant Silvonek further related that Co -Defendant Barnes was seated in the rear of the vehicle behind the driver's side and Defendant Silvonek was seated behind the front passenger seat. Defendant Jamie Silvonek indicated that once they were in the driveway of her residence, Co -Defendant Caleb Barnes reached around the front seat and grabbed her mother by the throat and began choking her. Mrs. Silvonek was begging for her life and was pleading for
her daughter to help her. At one part, Mrs. Silvonek used her foot to sound the car horn. Co - Defendant Barnes struck Mrs. Silvonek in the face multiple times

during the struggle and ultimately pulled out a knife and stabbed Mrs. Silvonek. Defendant Silvonek related that Co -Defendant Barnes did this because he did not want Cheryl Silvonek standing
between him and Defendant Silvonek being together.

At this point, Defendant Jamie Silvonek continued to put the blame entirely on Co -Defendant Caleb Barnes: she related that he moved Mrs. Silvonek to the passenger seat; drove the vehicle to the traffic circle area of the development; drove to Walmart in his vehicle, where he purchased disinfectant wipes, rubbing alcohol, a file, a box cutter, a flashlight, and leather gloves; drove back to the Silvonek residence; got into Mrs. Silvonek's vehicle and drove it Haasadahl Road; removed Mrs. Silvonek's body from the vehicle; dragged her into the woods; and buried her body by the pond. While he was burying the body, they noticed a man with a flashlight and they hid.

After the man left, they returned to the Silvonek residence. Then, they took the vehicle to the area of Applewood Drive and Huckleberry Road, and Co -Defendant Caleb Barnes disposed of the vehicle in the pond. They then returned to the Silvonek residence and washed their clothes and got into bed together. Defendant Jamie Silvonek claimed that they then had non-consensual intercourse. Defendant Jamie Silvonek explained that her mother had found out that Co -Defendant Caleb Barnes was twenty (20) years old and a soldier at Fort Meade. Mrs. Silvonek had shown Co -Defendant Barnes her daughter's passport to prove to him that her daughter was only fourteen (14) years old.

During the interview, Detective Heffelfinger noted that Defendant Jamie Silvonek had a scratch on her neck, dirt under her fingernails, mud in the webbing of her thumb, scratches on her knuckles, a scratch on her wrist, and a broken acrylic fingernail. The interview lasted approximately one and a half (1 1/2) hours. In addition, Defendant Jamie Silvonek provided the Officers with verbal consent to search her cell phone and even furnished them with the pass code and service provider. Ultimately, a search warrant was obtained for this cell phone.

During the interview, Defendant Jamie Silvonek was not handcuffed or tethered. She had access to the bathroom facilities and was offered water several times. In fact, she did eat and had something to drink. This interview was conducted in essentially two (2) parts. The first part lasted for approximately one and half (1 1/2) hours (from 11:30 A.M. until 1:00 P.M.) and second part occurred at approximately 5:30 P.M. for about one (1) hour. To further the investigation, during this break between the two (2) phases of the interview, Detective Heffelfinger spoke with Co -Defendant Caleb Barnes, as well as Witness Number One with regard to telephone conversations that Defendant Silvonek alleged
occurred among her, Witness Number One, and Co -Defendant Barnes.

At no time during the interview process was Detective Heffelfinger loud or yelling at Defendant Silvonek. Indeed, his demeanor was calm and cordial throughout the interview process. Detective Heffelfinger was dressed in a sports coat, sweater, and blue jeans. He was not displaying a gun holster, nor did he issue any threats to her. After the interview with Defendant Jamie Silvonek concluded, Detective Heffelfinger and Detective Adam Miller of the Upper Macungie Police Department interviewed Co -Defendant Caleb Barnes. This interview commenced at approximately 2:30 P.M. Co -
Defendant Barnes was dressed in black basketball shorts and an emergency blanket provided to him by the authorities, as he was not wearing a shirt at the time that he was encountered at the Silvonek residence. The interview room was heated and was a comfortable temperature.

At the commencement of the interview, Co -Defendant Caleb Barnes was provided with Miranda warnings. In particular, the South Whitehall Township Police Department Warning of Miranda rights form was read to Co -Defendant Barnes by Detective Heffelfinger. Co -Defendant Barnes waived his Miranda rights by signing the form, and agreed to speak with the authorities. Co - Defendant Barnes spoke English, and seemed oriented to time and space. He appeared to understand all of the questions, although he was angry. Detective Heffelfinger indicated to Co -Defendant Caleb Barnes that they wanted to speak with him "about last night." Initially Co - Defendant Caleb Barnes indicated that he had just left Alexandria, Virginia and drove through the night to arrive at the Silvonek residence shortly before the Officers' arrival. He denied that he went to
a concert with Defendant Silvonek and indicated that he had no idea what the authorities were talking about. After Detective Heffelfinger told Co -Defendant Barnes that they had spoken with Defendant Silvonek who provided a totally different version of events, Co -
Defendant Barnes's demeanor immediately changed. Co -Defendant Barnes then told an entirely different story.

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Co -Defendant Caleb Barnes stated that Defendant Silvonek really had nothing to do with the events of that evening, and he "threw himself on the sword." Co -Defendant Barnes indicated that "I killed her [Defendant Silvonek's] mother, for absolutely no reason." Co -Defendant Caleb Barnes provided the authorities with consent to search the phone, as well as the pass code and service provider. Co -Defendant Caleb Barnes's cell phone was located in Defendant Silvonek's bedroom. Ultimately, a search warrant was obtained for this cell phone. Text messages between Co -Defendant Barnes and Defendant Silvonek were recovered.

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As part of the processing of the residence, a heavily blood -stained knife was located on a picnic table to the rear of the home. Barbara Bollinger, M.D., a

forensic pathologist at Forensic Pathologies Associates, and deemed by this Court to be an expert in the field of
forensic pathology, performed an autopsy on the victim, Cheryl Silvonek, on March 16, 2015, at 10:00 A.M. The cause of death was sharp force injuries" to the neck. Specifically, the victim suffered more than five (5) incised wounds to the head, neck and right clavicle region, as well as perforations of the strap muscles of the neck, right carotid artery, and internal jugular vein, and penetration of the trachea. Petechiae of the eyes were noted, along with a fracture of the hyoid bone, which evidenced that pressure had been applied to the neck and suggests strangulation. In addition, the victim had sub -scapular hemorrhaging and bruising. Dr. Bollinger opined that the superficial wounds and bruising on the victim's hands, thumb and wrist were consistent with defensive wounds. The manner of death was determined to be homicide.

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Witness Number One, an eighth grade girl, testified at the Preliminary Hearing that she was friends with Defendant Jamie Silvonek. She was aware of Co -Defendant Caleb Barnes's relationship with Defendant Silvonek, and that it had been going on for approximately six (6) months. This witness also knew that Co -Defendant Caleb Barnes was stationed at Fort Meade in Maryland, and that he was twenty (20) years old. Apparently, Defendant Silvonek had indicated that Co -Defendant Barnes believed her to be sixteen (16) or seventeen (17) years old, because she had lied to him about her age.

Defendant Jamie Silvonek told this witness that the week before, on Friday, March 6, 2015, Co -Defendant Barnes had gone to Defendant Silvonek's house and they spent the night together and had consensual sex in the basement of the Silvonek residence. When Cheryl Silvonek found the two of them together in the basement, she kicked Co -Defendant Caleb Barnes out of her house when she learned of his age. Cheryl Silvonek forbade them from seeing each other again. Sometime after this incident on Saturday, March 7, 2015, Witness Number One visited Defendant Silvonek at her residence. Unexpectedly, Defendant Silvonek brought up killing her parents to Witness Number One. She had mentioned, "What if my parents were killed?' At that time, Defendant Silvonek placed a telephone call to Co -Defendant Caleb Barnes, and put the telephone on speakerphone so that Witness Number One could hear the conversation.

While on the telephone with Co -Defendant Barnes, Defendant Silvonek stated, "I miss having sex with you." In addition, during the telephone conversation, multiple times Defendant Silvonek brought up to Co -Defendant Barnes the idea of killing her parents, because her mother did not approve of their being together. During a second telephone conversation, also on speakerphone, a discussion ensued between Co -Defendant Barnes and Defendant Silvonek with regard to killing her parents. Co -Defendant Caleb Barnes indicated that he "already had

the knives picked out." Defendant Silvonek stated that they could live off of the life insurance money from her father. The next day, via a text message, Defendant Silvonek told Witness Number One that the entire thing was a joke. Later in the week, at school, Defendant Silvonek reiterated to Witness Number One that it was a joke.

Ms. Michelle Mueller resides at 1522 Randi Lane, Orefield, Lehigh County, Pennsylvania, is the next-door neighbor to the Silvonek family. Her bedroom window
overlooks the Silvonek's driveway. [...] She went up to bed at about 11:00 PM to watch television. Ms. Mueller fell asleep, and was awakened at approximately 1:00 A.M. by the short, random beeping of a car horn. This random beeping occurred again at approximately 1:06 A.M. Ms. Mueller then proceeded to look outside of her bedroom window. She observed a car in the Silvonek's driveway with the headlights illuminated. Shortly thereafter, Ms. Mueller heard some commotion and clanking in the Silvonek's garage. This prompted Ms. Mueller to again look outside the bedroom window. Ms. Mueller noted that the front driver side door of the vehicle in the driveway was open and the interior light of the car was illuminated. In addition, now a middle garage bay door was open, and there was an additional vehicle in the driveway that was not there previously. Ms. Mueller noted that Defendant Jamie Silvonek, dressed in a gray
sweatshirt and black yoga pants, was casually walking into the garage.

Detective Louis Tallarico of the Lehigh County District Attorney's Office, assigned to the Lehigh County Homicide Task Force, was tasked with investigating the within homicide.

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Detective Tallarico also travelled to and obtained the video footage from the Walmart located on Millcreek Road, Trexlertown, Lehigh County, Pennsylvania. [...] The relevant video commenced at 2:08 A.M. (PH 211). While at Walmart, at approximately 2:30 A.M., a box of Clorox wipes, two bottles of rubbing alcohol, a pair of gloves, a gallon of bleach, a flashlight, an eight-inch metal file and a razor knife were purchased. On this video, Defendant Jamie Silvonek appears to have directed Co -Defendant Caleb Barnes to go in a specific direction, and to have caringly fixed the hood on his jacket.

Opinion, Dantos, J. dated 11/19/2015 (internal citations and references omitted).

Initially, Petitioner was detained at Abraxas Detention Center. On April 1, 2015, however, the Lehigh County District Attorney's Office issued a direct file of Homicide charges against Petitioner in the Criminal Division. Petitioner was transferred to Lehigh County Jail. On April 2,

2015, Attorney Waldron filed a Motion to Set Bail, which was denied on that same day. On April 6, 2015, Attorney Waldron filed "Motion to Detain Juvenile in Secure Detention Facility", which was also denied.

While Petitioner was detained in Lehigh County Jail, Attorney Waldron filed numerous motions on Petitioner's behalf, including but not limited to: a motion which allowed for her to have direct, in-person contact with her family members [*See* N.T., PCRA Hrg., Vol. I, dated 10/4/2021, p. 154, ll. 3-13]; a motion seeking that Petitioner's dietary needs as a juvenile be met [*Id.*, p. 153-154]. Attorney Waldron further made arrangements that he and/or a member of the defense team went to Lehigh County Jail *at least* once a week to see Petitioner in person. [*See* N.T., PCRA Hrg., Vol. I, dated 10/4/2021, p. 106, ll. 13-14] [emphasis added].

Petitioner's formal arraignment was scheduled on June 17, 2015. On June 5, 2015, Attorney Waldron filed a Motion to Remand Case to Juvenile Division. Following his request for an extension of time to file Omnibus Pretrial Motions, Attorney Waldron also filed Omnibus Pretrial Motions on August 17, 2015. The trial court scheduled a hearing on Attorney Waldron's Omnibus Pretrial Motions on October 28, 2015. A decertification hearing was scheduled for October 29, 2015.

At Petitioner's PCRA hearing, Attorney Waldron testified that Petitioner was not truthful with neither him nor his associates throughout his representation of her. [*See id.*, pp. 55, 105, 115]. Indeed, as Attorney Waldron discovered the actual facts of Petitioner's case through the Commonwealth's discovery, as opposed to the fantasy that Petitioner told, the prospect of various defenses became limited. [*See* N.T., PCRA Hrg., Vol. I, dated 10/4/2021, p. 114, ll. 1-25].

Based on his review and investigation, Attorney Waldron explained that his core strategy was to have the case decertified so Petitioner would be tried as a juvenile. [*See id.*]. In this

endeavor, Attorney Waldron hired a Harvard-educated, well-renowned international forensic psychologist, Doctor Frank Dattilio to evaluate the Petitioner. [*Id.*, p. 118]. Attorney Waldron worked with Dr Dattilio for decades. [*See* N.T., PCRA Hrg., Vol. III, dated 10/06/2021, pp. 48, 97]. Attorney Waldron knew Dr. Dattilio had practiced for approximately 35 years; was a preeminent expert in his field; was an unbiased evaluator, who testified for both the prosecution and defense. [*See* N.T., PCRA Hrg., Vol. I., dated 10/04/2021, p. 118-120]. Attorney Waldron secured Dr. Dattilio for an evaluation of Petitioner within two weeks of her arrest. [*Id.* at 119].

Prior to the initial meeting, Attorney Waldron provided all discovery and information as requested by Dr. Dattilio. [*Id.*, p. 121]. Based on Attorney Waldron's numerous prior dealings with Dr. Dattilio, Attorney Waldron knew Dr. Dattilio to request any follow-up information he deemed to be relevant and pertinent to his evaluation. [*Id.*, p. 120; see *also* N.T., PCRA Hrg., Vol. III, dated 10/6/2021, pp. 97-98]. According to Attorney Waldron, if there was something Dr. Dattilio wished to review that was not in Dr. Dattilio's initial request, Dr. Dattilio would inquire and request it from him or his associates. In fact, in Petitioner's case, following his initial review of the info initially provided by Attorney Waldron, Dr. Dattilio requested to review specific and additional video evidence, which Dr. Dattilio subsequently reviewed at Attorney Waldron's office. [N.T., PCRA Hrg., Vol. III, dated 10/6/2021, pp. 121]. Dr. Dattillio also conducted no less than five (5) interviews of Petitioner. [*Id.*, p. 113-114]. According to Dr. Dattilio, these interviews were fraught with Petitioner's rampant inconsistencies. Dr. Dattilio had to "pretty heavily" address these issues with her in his final meeting. [*Id.*, at 114, ll. 5-9].

Dr. Dattilio also interviewed a number of lay witnesses –including family members, friends, and teachers – all of whom shared their knowledge and impressions of Petitioner. [*Id.*, at 116-118]. Dr. Dattilio incorporated relevant summaries of these interviews into his report. [*Id.*,

at 118]. Attorney Waldron introduced these summaries at the decertification hearing. He explained that his strategy in doing so was so that this positive information about Petitioner was provided to the Court without those witnesses being subjected to cross examination that Attorney Waldron feared would not be favorable to Petitioner. [N.T., PCRA Hrg., Vol. I, dated 10/04/2021, p. 124, ll. 23-25].

In the course of his evaluations of Petitioner, Dr. Dattilio recommended that Attorney Waldron arrange for clinical social worker, Nicholas Jupina, LCSW, to engage in individual therapy with Petitioner. [N.T., PCRA Hrg., Vol. I, p. 82]. Attorney Waldron followed this recommendation. [*Id.*]. Dr. Dattilio also advised Attorney Waldron to enlist the services of Dr. Steven Berkowitz, a forensic psychiatrist, to evaluate Petitioner. [*Id.*, at p. 128]. Attorney Waldron retained the recommended expert. [*Id.*]

Dr. Steven Berkowitz is Yale-educated, nationally-renowned forensic psychiatrist with nearly 30 years of experience in his field. At the decertification hearing, Dr. Berkowitz was qualified as an expert in adolescent psychology and mental health. [N.T., PCRA Hrg., Vol. V, dated 11/10/2021, p. 4]. In the course of his career, Dr. Berkowitz has ample experience working with juveniles. [*Id.*] Moreover, identifying and understanding childhood trauma and violence is a specialty in which Dr. Berkowitz has expertise and is also a topic on which he provides training and lectures to other professionals. [*See id.*, p. 53].

Dr. Berkowitz interviewed the Petitioner in September of 2015 prior to the decertification hearing. Dr. Berkowitz utilized his expertise and knowledge of trauma in his evaluation of Petitioner. [*See id.*, p. 57, ll. 11-16]. Dr. Berkowitz testified that in his evaluation of Petitioner, he attempted to discuss her relationship with Caleb Barnes, but Petitioner provided no information to Doctor Berkowitz which would have led him to believe she was a victim of trauma or violence.

[*See id.*, p. 74]. Following his evaluation of Petitioner, Dr. Berkowitz wrote a report which included various determinations. Specifically, Dr. Berkowitz identified a nonverbal learning disability in the Petitioner which was undetected by Dr. Dattilio.

At the decertification hearing, both experts testified on behalf of Petitioner. Attorney Waldron also provided the testimony of Lisa Costello, a seasoned juvenile probation officer, who informed the Court of the various juvenile resources available to address the needs of Petitioner if her case were remanded back to the juvenile division.

On November 19, 2015, he Honorable Maria L. Dantos denied Attorney Waldron's Motion to Remand Case to Juvenile Division. Additionally, the trial court denied Attorney Waldron's Omnibus Pretrial Motions, which included a Motion to Suppress Petitioner's statements to the police, a Motion for Change of Venue/Venire (due to the vast pretrial publicity of the case), and a Motion to Compel Discovery, specifically, to compel the military documents of Petitioner's co-defendant, Caleb Barnes.

On December 1, 2015, Attorney Waldron filed a Motion for Recusal of Trial Judge and Reconsideration of Change of Venue/Venire on December 1, 2015. On December 18, 2015, those motions were denied. On that same day, the Court scheduled Petitioner's trial for March 7, 2016.

Prior to trial, Attorney Waldron reached out to the District Attorney's Office in late January of 2016 to discuss Petitioner's case. [N.T., Vol. I, dated 10/04/2021, p. 146, ll. 12-19]. Subsequently, Attorney Waldron met with the District Attorney James B. Martin. *In that* meeting, Attorney Waldron and District Attorney Martin discussed the different levels of homicide. District Attorney Martin indicated to Attorney Waldron that he believed this case to be a first-degree murder and would not agree to a lesser charge. [*Id.*, at 147, ll. 11-13]. Attorney Waldron successfully negotiated an agreement from District Attorney Martin for a 35-year cap on

Petitioner's minimum sentence. [*Id.*, ll. 13-14]. Before taking the negotiated offer to Petitioner, Attorney Waldron and Assistant District Attorney Jeffrey Dimmig scheduled a meeting Judge Dantos to discuss the agreement on February 8, 2016. [*Id.*, ll. 18-21]. The attorneys met with Judge Dantos who indicated that she was inclined to accept a 35-year cap on Petitioner's minimum sentence. [*Id.*].

Shortly thereafter, Attorney Waldron went to the prison to meet with Petitioner and her father, David Silvonek, and discuss prospective avenues of the case. [*Id.*, p. 155]. During this meeting, Attorney Waldron relayed the terms of the plea offer he had negotiated with the District Attorney and presented the pros and cons of the agreement. [*Id.*] Attorney Waldron explained the minimum sentence negotiated was acceptable to the Judge. [*Id.*] Attorney Waldron also discussed the option of rejecting the plea and proceeding to trial. [*Id.* at 156.] Attorney Waldron advised Petitioner that she could testify if she went to trial. [*Id.*] After much deliberation and consideration, Petitioner accepted the Commonwealth's offer.

On February 11, 2016, Petitioner pled guilty to all charges. Judge Dantos imposed the agreed-upon minimum sentence of 35 years and imposed a maximum sentence of life imprisonment.

On March 11, 2016, Petitioner filed a Notice of Appeal through Attorney Waldron. On August 9. 2017, the Superior Court affirmed the Judgment of Sentence in a strongly-worded opinion and found no error in Judge Dantos' rulings in the omnibus pretrial motions and on decertification. ***See*** Commonwealth v. Silvonek, 2017 WL 3411919, *1 (Pa. Super. 2017). On September 9. 2017, Attorney Waldron filed for an Allowance of Appeal with the Pennsylvania Supreme Court. On February 8, 2018, the Supreme Court denied *allocatur*.

On May 6, 2019, Petitioner filed the instant petition pursuant to the Post Conviction Relief Act, 42 Pa.C.S. § 9541 et seq. ("PCRA"). This Honorable Court commenced hearings on October 4, 2021- October 8, 2021[1] and November 10, 2021-November 12, 2021.[2] Following the evidentiary hearings, Petitioner filed a post-hearing brief. The Commonwealth herein responds.

ARGUMENT

To be entitled to PCRA relief based upon a claim of ineffective assistance of counsel, a petitioner must establish "[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)(ii).

To obtain relief on a claim of ineffective assistance of counsel, a PCRA petitioner must satisfy the performance and prejudice test set forth in *Strickland v. Washington*, 466 U.S.668 (1984). As adopted in Pennsylvania, "the *Strickland* test requires a petitioner establish that, (1) the underlying claim has arguable merit; (2) no reasonable basis existed for counsel's action or failure to act; and (3) the 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 (2001). "With regard to the 'reasonable basis,' the PCRA court 'does not question whether there were more logical courses of action which counsel could have pursued" Commonwealth v. Bardo, 105 A.3d 678, 684 (Pa. 2014) (internal citations omitted). Further, counsel's strategy lacks a reasonable basis only if the petitioner proves that a foregone alternative offered a potential for success *substantially greater* than the course of action actually pursued. *See id.* (*quoting* Commonwealth v. Spotz, 18 A.3d 244, 260 (Pa. 2011))[emphasis added] .

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[1] Wherein the Court took recess on October 7, 2021.
[2] Wherein the Court took recess in observance of Veterans' Day on Novermber 11, 2021.

It must be noted, however, as a general rule, trial counsel has broad discretion to determine the tactics employed. "Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Strickland v. Washington, 466 U.S. 668, 688 (1984). Moreover, "[a] defendant is not entitled to relief simply because the strategy was unsuccessful." Commonwealth v. Davis, 554 A.2d 104, 111 (Pa.Super. 1989). Indeed, counsel's strategic decisions can only be deemed ineffective if a petitioner proves that "in light of all the alternatives available to counsel, the strategy actually employed was so unreasonable that no competent lawyer would have chosen it." Commonwealth v. Dunbar, 470 A.2d 74, 77 (Pa. 1983), *quoting* Commonwealth v. Miller, 431 A.2d 233, 234 (Pa. 1981). *See also* Commonwealth v. Albrecht, 511 A.2d 764, 776 (Pa. 1986) (to prove ineffectiveness, defendant must show that counsel's conduct was so lacking in reason that "no competent lawyer would have chosen it"). Hindsight claims that counsel could have followed a different course -- even an arguably more logical course -- are insufficient to rebut the presumption of effective representation. Commonwealth v. Paolello, 665 A.2d 439, 454 (Pa. 1995); s*ee also* Commonwealth v. Rollins, 738 A.2d 435, 441 (Pa. 1999) ("we do not question whether there were other more logical courses of action which counsel could have pursued; rather, we must examine whether counsel's decisions had any reasonable basis"); *see also* Commonwealth v. Lesko, 15 A.3d 345, 380 (Pa. 2011) ("A reviewing court must make every effort to eliminate the distorting effects of hindsight.")

"When evaluating ineffective assistance of counsel claims, judicial scrutiny must be be highly deferential." *Commonwealth v. Lesko*, 15 A.3d 345, 380 (Pa. 2011). "Few tenets are better settled than the presumption that trial counsel is effective." *Id.*, *see also* Commonwealth v. Rivers, 786 A.2d 923, 927 (Pa. 2000) (trial counsel is presumed to be effective and the petitioner bears the burden of proving otherwise); *see also* Commonwealth v. Marshall, 633 A.2d 1100, 1104 (Pa.

1993). "Presumption that trial counsel is effective arises from the recognition that it is all too easy for the defendant or the court to second-guess a strategy that has proven unsuccessful." Commonwealth v. Lesko, 15 A.3d at 380.

Further, "if a claim fails under any required element of the *Strickland* test, the court may dismiss the claim on that basis alone." Commonwealth v. Ali, 10 A.3d 282, 291 (2010).

Attorney Waldron's stretegic decision to not present testimony from lay witnesses at the decertification hearing was eminently reasonable

Petitioner claims that Attorney Waldron failed to interview and present testimony of lay witnesses at the decertification hearing who Petitioner now alleges were available to testify to the amenability factors at the decertification. Petitioner claims this decision resulted in grave prejudice to the Petitioner and the outcome would have been different because it would have combatted the evidence presented by the Commonwealth. Because Attorney Waldron's decision was well-founded and reasonable, Petitioner has failed to meet its burden and this claim must be rejected.

In order to prevail on a claim that counsel was ineffective for not investigating, interviewing or calling a witness, a petitioner must demonstrate: (1) that the witness existed; (2) that the witness was available; (3) that counsel knew or should have known that the witness existed; (4) that the witness was willing to testify on defendant's behalf; and (5) that the absence of the testimony prejudiced defendant. Commonwealth v. Brown, 767 A.2d 576, 581-582 (Pa.Super. 2001). Counsel's failure to interview a witness is not *per se* ineffective assistance because such a decision generally involves a matter of trial strategy. Commonwealth v. Days, 718 A.2d 797, 803 (Pa.Super. 1998). Thus, counsel will not be deemed ineffective for failing to call a witness unless there is some showing that the witness's testimony would have been helpful to the defense.

Commonwealth v. Khalil, 806 A.2d 415, 423 n.3 (Pa.Super. 2002); *see also* Commonwealth v. Brown, 767 A.2d at 582.

According to Petitioner, the anecdotal impressions of *any* lay witnesses, whether favorable or unfavorable, would have carried great weight with Judge Dantos such that the Judge would have ignored all of the overwhelming evidence that supported her ruling to not decertify Petitioner. Indeed, Petitioner appears to have forgotten this evidence and hopes that this Court will reevaluate and find it less relevant.

Attorney Waldron made a strategic decision to not call these witnesses. Attorney Waldron's explained his approach was a "battle of the experts." [N.T., PCRA Hrg., dated 10/04/2021, p. 137]. To that end, Attorney Waldron deliberately selected experts which he believed would be most beneficial to combat the Commonwealth's expert, Dr. John O'brien. [*Id.*]. Attorney Waldron chose Dr. Dattilio due to his track record for working with both the defense and prosecution. [*See* N.T., PCRA Hrg., Vol. III, dated 10/06/2021, pp. 118]. Attorney Waldron felt that would combat the Commonwealth expert, who he knew to testify only for the Commonwealth. [*Id.*]. Further, Attorney Waldron hired Dr. Berkowitz because he was a psychiatrist that matched Dr. O'Brien's credentials. [*Id.*, at 62]. These decisions demonstrate concerted effort to follow the aforementioned strategy. This strategy is reflected in his decision-making and, in light of the heinous facts and Petitioner's own statements and information she relayed to Attorney Waldron. This strategy was eminently reasonable. *See* Commonwealth v. Dunbar, 470 A.2d at 77.

Moreover, Attorney Waldron's decision not to present additional witnesses was based on his investigation on this case and vast experience in general. Attorney Waldron contracted his private detective, Joseph Brown, who is a former FBI agent, to interview various lay witnesses.

[*Id.*, p. 69]. Mr. Brown did, in fact, render those interviews and provided notes to Attorney Waldron. [*Id.*, p. 121]. Additionally, Dr. Dattilio interviewed and provided relevant summaries of lay witnesses in his report. [*Id.*, p. 128]. Attorney Waldron's strategy of introducing those summarized statements through Dr. Dattilio allowed for the favorable information they would provide to come in without opening any doors to cross-examination that would result in unfavorable information through these witnesses. [*Id.*, pp. 124-125]. Thus, presenting the most relevant portions of substance to the Court while preventing cross-examination of those witnesses was a reasonable strategy.

Attorney Waldron's decision to not present testimony from an Intimate Partner Abuse expert does not amount to ineffective assistance of counsel

Petitioner alleges that Attorney Waldron was ineffective for failing to hire an Intimate Partner Violence expert, namely, Dr. Marty Beyer, to collaborate with the already-existing experts at the decertification hearing. This claim should also be rejected.

The failure of trial counsel to conduct a more intensive investigation into an area of defense does not constitute ineffectiveness without a showing that such investigation would have been helpful in establishing an asserted defense. Commonwealth v. Pursell, 724 A.2d 293, 306 (Pa. 1999), (*citing* Commonwealth v. Peterkin, 513 A.2d 373, 382 (Pa. 1986)); *see also* Commonwealth v. Auker, 681 A.2d 1305, 1320 (Pa. 1996). Moreover, the reasonableness of counsel's investigation and preparation depends critically on the information supplied by the petitioner. Commonwealth v. Fears, 836 A.2d 52, 72 (Pa. 2003); Commonwealth v. Bond, 819 A.2d 33, 45 (Pa. 2002); Commonwealth v. Basemore, 744 A.2d 717, 735 (Pa. 2000); Commonwealth v. Peterkin, 513 A.2d 373, 383 (Pa. 1986). A petitioner certainly cannot "fault trial counsel for his own failure to provide his advocate with the facts necessary to mount a timely defense" Commonwealth v. Lott, 581 A.2d 612, 617 (Pa.Super. 1990); *see also* Commonwealth

v. Uderra, 706 A.2d 334, 340 (Pa. 1998) ("Appellant's own failure to cooperate with counsel in order to apprise him of allegedly relevant information cannot now provide a basis for his ineffectiveness claims").

Here, Petitioner presented testimony from Jill Spector, Esquire of the National Clearinghouse for Defense of Battered Women. Attorney Spector testified that she heard about the case through media outlets and reached out via telephone to Attorney Waldron. [N.T., PCRA Hrg., dated 10/05/2021, p. 51, ll. 21-24]. According to Attorney Spector, Attorney Waldron and she engaged in *numerous* phone calls with Attorney Spector. Without reviewing any discovery, Attorney Spector suggested to Attorney Waldron that he should hire an intimate partner violence expert. Attorney Waldron rejected Attorney Spector's shaky and unsupported theory or proposted strategy. Based on his investigation, his review of the discovery, his meetings with Petitioner, and conference with hired defense experts who actually evaluated Petitioner, instead Attorney Waldron aligned his strategy with the evidence. [N.T., PCRA Hrg., Vol. I, pp. 54-55]. Rather than baldly rely on Attorney Spector, Attorney Waldron relied on his well-respected experts with whom he had a strong working relationship as well as his own vast experience as a criminal attorney. This demonstrates reasonable decision-making and strategy.

At the PCRA hearing, Dr. Dattilio testified that he was "profoundly troubled" by the effect "that an adult male's relationship with a young child had on her emotionally, psychologically, cognitively, and how much influence was there." [N.T., Vol III, dated 10/06/21, p. 36, ll 20-25]. Dr Dattilio treats and assesses many victims of sexual abuse in his practice. [*Id.*, at 37, ll. 1-2]. Thus, Dr. Dattilio was astutely aware of the potential role these dynamics may have played between the co-defendants and yet he still never recommended an intimate partner violence expert. Indeed, he still does not. At the PCRA hearing, Dr. Dattilio

maintains that he "didn't see any physical or sexual abuse." [*Id.*, p. 159, ll. 9]. Moreover, any concerns Dr. Dattilio may have about "some controlling behaviors" on the part of Caleb Barnes were so inconsequential that he "did not remember" if he even addressed them with Attorney Waldron. [*Id.*, p. 159, ll. 9-13]. Dr. Berkowitz was similarly qualified to detect any issues of abuse yet he did not. Dr. Berkowitz testified that Petitioner's story seemed to keep changing and it was hard to know what the truth was. [N.T. PCRA Hrg., dated 11/10/2021, p. 76, ll. 4-11].

Petitioner faults Attorney Waldron for failing to yield to the advice of a random correspondent who was not intimately involved with the underlying facts of this case rather than rely on his own wealth of experience and knowledge and that of his highly qualified experts who had no cause to believe intimate partner violence was a viable defense[3]. Attorney Waldron's reliance was not misplaced. Indeed. Dr. Dattilio and Berkowitz are well credentialed and experienced professionals who *actually evaluated* the Petitioner. Dr. Berkowitz, in particular, wields impressive skills of identifying trauma and violence among juveniles. Dr. Dattilio is renowned for his work with sex offenders and sex abuse victims. More importantly, both experts shared the struggles that Attorney Waldron faced with Petitioner's untruthfulness. [N.T., PCRA Hrg., Vol. III, dated 10/6/2021, pp. 114, ll. 5-9]; [N.T., PCRA Hrg., dated 11/10/2021, p. 76, ll. 4-11]. Based on the information provided by Petitioner either directly to him or to the experts, Attorney Waldron cannot be faulted for not pursuing Petitioner's newly developed "defense." *See* Commonwealth v. Fears, 836 A.2d at 72 (the reasonableness of counsel's investigation and preparation depends critically on the information supplied by the petitioner); see *also* Commonwealth v. Lott, *supra* (a petitioner cannot "fault trial counsel for his own failure to provide

[3] While Petitioner argues that the failure to provide various documentation precluded such a finding, there is an acknowledgement, at a minimum, of the plain facts of this case. The notion that Dr. Dattilio's clear acknowledgement of the facts and subsequent disregard of them would have been changed had he seen Petitioner's CY-104 sex assault report is absurd and lacks credibility.

his advocate with the facts necessary to mount a timely defense"). Thus, Attorney Waldron's reliance on Petitioner's own information, the advice of his trusted experts, and the evidence is vastly more reasonable strategy than blindly following the advice of a woman whose knowledge of the case primarily stemmed from media sources.

Petitioner also assails Attorney Waldron for not presenting the testimony of Dr. Marty Beyer to support her new theory and defense to the case, this claim is similarly meritless. The likelihood that the outcome of the decertification hearing would have been different had Attorney Waldron presented the testimony of Dr. Marty Beyer is dismal. Dr. Beyer's opinions and testimony were merely cumulative. Moreover, given Petitioner's track record with family, friends, her attorneys, and the experts involved in this case, the assumption that Petitioner would have suddenly become truthful and forthcoming with Dr. Beyer is pure folly.

Should this notion that 'just one more expert' with the same or lesser qualifications somehow makes an attorney more effective has been rejected. *See* Commonwealth v. Lesko, p 15 A.3d 345, 380 (Pa. 2011) (*stating* "the presumption [that counsel is effective] arises from the recognition that it is all too easy for a defendant or the court to second-guess a strategy that has proven unsuccessful.")

Furthermore, it is apparent from Dr. Beyer's testimony that she simply relied upon Petitioner's version of events and viewed the evidence in a light most favorable to the Petitioner in making her assessment. [N.T., PCRA Hrg., dated 10/08/2021, p.46-47]. It is highly unlikely that such an opinion would have been persuasive as evidenced by Judge Dantos' rejection of Dr. Dattilio's testimony on the basis that he relied too heavily on the statements made by Petitioner in his evaluation. *See* Opinion, Dantos, J. dated 11/19/2015, pp. 27-28 (stating "[t]his Court notes that the primary foundation on which Dr. Dattilio's report is based is the [Petitioner's] own

unreliable recounting and version of events. Indeed, this Court recognizes that the [Petitioner] has presented many different versions of the events, as they are constantly changing.... [b]ased on the [Petitioner's] self -reporting, Dr. Dattilio found the [Petitioner] to be emotionally immature, unsophisticated, not savvy, and vulnerable. However, this is in direct contrast to the picture that she painted to others.").

What Petitioner fails to take into account is the impact that the evidence of her abhorrent behavior surrounding her mother's murder as well as her credibility issues from the inception of the investigation had on the court. These circumstances framed the entirety of the case. The hurdles which Attorney Waldron had to jump to overcome those damning pieces of hard evidence were monumental, as evidenced by Judge Dantos' opinion. Thus, the strength and believability of any defense was absolutely crucial.

Petitioner further failed to present testimony as to how major incidences in the case fit into the theory that intimate partner abuse played a role here. Most glaringly, Dr. Beyer's opinion that Petitioner was a victim of intimate partner control and abuse is antithetical to the fact that Petitioner was throwing her co-Defendant under the bus at any chance she had from the police interviews to her surreptitious attempts from prison to manipulate her co-Defendant into taking full accountability for their joint behavior.

With this question unanswered, it is unlikely that Dr. Beyer's testimony would have made a substantial impact, if any at all, on the proceedings and Petitioner has failed to meet its burden on this ground.

Attorney Waldron provided sufficient information to prepare his experts to testify at the decertification hearing

Attorney Waldron provided all discovery and information that was requested by Dr. Dattilio. [*Id.*, p. 121]. Based on Attorney Waldron's prior dealings with Dr. Dattilio, Dr. Dattilio will request any follow up information that he needs as he conducts the initial review of the information provided. [*Id.*, p. 120; see *also* N.T., PCRA Hrg., Vol. III, dated 10/6/2021, pp. 97-98]. In fact, Dr. Dattilio did follow up from his original discovery request to review specific video evidence, which he did view at Attorney Waldron's office. [N.T., PCRA Hrg., Vol. III, dated 10/6/2021, pp. 121]. Dr. Dattillio conducted five (5) interviews with Petitioner. [*Id.*, p. 113-114]. Due to Petitioner's inconsistencies with him, Dr. Dattilio had to "pretty heavily" address these issues with Petitioner in his final meeting with her. [*Id.*, at 114, ll. 5-9].

At the PCRA hearing, Dr. Dattilio surprisingly stated that he had no idea of a Walmart video's existence until he was on the witness stand in the decertification hearing. [N.T. Vol. III, dated 10/6/2021, p. 44]. Dr. Dattilio was concerned upon viewing that video. [*Id.*] If I had to go back a sixth time [to interview Jamie and discuss her behavior in the video], I would have done that," he said. [*Id.* at p. 46 ll. 410-11]. Dr. Dattilio testified the video demonstrated some sort of dissociation or shock. [*Id.* at 44]. Dr. Dattilio said he was unaware that a letter that Petitioner surreptitiously wrote to her co-Defendant in which Petitioner was asking for co-Defendant to take the fall for them existed. [Id. at 48]. Dr. Dattilio states that his opinion that she should have been decertified would have been strengthened because such letter demonstrated how childlike she was. [*Id.*] In regards to the CY-104 report of Sexual Abuse, Dr. Dattilio testified that he did not know of its existence. [*Id.*, at 50]. Had Dr. Dattilio known of it, he would have liked to discuss it with Petitioner. [*Id.*, at 51, ll. 4-6].

As set forth, above, Dr. Dattilio states that he did not know of the existence of the aforementioned evidence and would have otherwise asked for it. The Walmart video, at least,

was not only referenced in the Affidavit of Probable Cause that Attorney Waldron provided to Dr. Dattilio, but the substance of the video was detailed. [*Id.*, p. 183-185]. Dr. Dattilio had no cause to not know of the video's existence. Attorney Waldron knows Dr. Dattilio to be thorough in his review. It is reasonable for Attorney Waldron to trust that Dr. Dattilio is reading the most core document to know of the existence of a Walmart video. Dr. Dattilio's failure to review the discovery cannot now be imputed on Attorney Waldron's performance.

Similarly, Dr. Dattilio was alerted to and aware of the age difference between the co-Defendants and the fact that they were having sex. Dr. Dattilio has extensive experience in dealing with both sex offenders and sexual abuse victims. Dr. Dattilio interviewed Petitioner five times. Dr. Dattilio probed into the nature of the relationship between the co-defendants. Yet, this information did not come from the source herself, the Petitioner. Similarly, Petitioner was not forthcoming about the existence of the letter that she wrote to her co-defendant.

Now, Petitioner faults Attorney Waldron for not providing information. Based on their course of conduct over a 30-40 year relationship, it was not unreasonable for Attorney Waldron to believe that Dr. Dattilio would have thoroughly read the discovery provided, evaluated the facts before him for what they were, elicited the proper information from the Petitioner and follow up with any requests for information. Similarly, given the credentials and abilities of Dr. Berkowitz, it would also be expected that, should he require any additional information, he would have followed up.

Furthermore, the Petitioner has failed to establish that the absence of this information would have substantially altered the opinion of the Decertification Court. Neither expert has substantially changed the opinions that they held at the time of the decertification hearing. While Dr. Dattilio states at the PCRA hearing that he would have liked to explore the additional

evidence with Petitioner, that argument fails to provide a reasonable probability that the outcome would be different. Petitioner and Dr. Dattilio neglect to recognize one crucial component: Petitioner's consistent pattern of deceitfulness. Accordingly, for all these reasons, this Court should reject Petitioner's claim.

Attorney Waldron's alleged failure to provide for further neuropsychological testing and request more time does not amount to ineffective assistance of counsel.

Petitioner alleges that Attorney Waldron was ineffective for not providing neuropsychological testing. According to Attorney Waldron, Dr. Berkowitz never addressed such a request with him. [N.T., PCRA Hrg., dated 10/04/2021, p. 132, ll. 2-4]. Dr. Berkowitz testified that he discussed it with Dr. Dattilio, who responded that it was not feasible. Attorney Waldron certainly cannot be faulted for not pursuing testing Dr Berkowitz sought but for which he never asked Attorney Waldron.

Dr. Berkowitz further testified that he wished for more time to conduct his evaluations. Attorney Waldron indicated that if he had known Dr. Berkowitz required additional time, he would have requested it of the Court. [*Id.*, ll. 13-17]. Indeed, Attorney Waldron made numerous requests to the Court on behalf of Petitioner. More time would certainly been requested if Attorney Waldron thought it was needed. Counsel cannot be deemed ineffective where he was not aware that his expert wanted additional time. Critically, Petitioner has failed to establish what Dr. Berkowitz would have done with more time had he received it, thereby failing to meet the burden in overcoming the presumption that Attorney Waldron was effective and, more specifically, proving that it would have affected the outcome of the case.

Attorney Waldron rigorously defended Petitioner

Petitioner's argument is contradicted by Attorney Waldron's testimony under oath and evidence that corroborates this testimony. Attorney Waldron negotiated a plea deal with the

District Attorney's Office prior to requesting a meeting with Judge Dantos. Further, the parties' desire to meet with Judge Dantos prior to any recorded proceedings was not unreasonable. As evidenced by Attorney Waldron's multiple motions for change of venue, he was mindful that the case had a great deal of pre-trial publicity surrounding it. Further, Attorney Waldron was advising a juvenile client on an interfamilial crime. Thus, it is reasonable to be as sureas he could be in the outcome prior to advising the juvenile and her family.

Attorney Waldron first reasonably sought to ensure the most favorable possible plea agreement with the District Attorney. Only then did Attorney Waldron and the District Attorney's Office seek to meet with the Judge to ascertain her willingness to accept the parties' agreement. Petitioner however, now questions the validity of such negotiations despite the clear evidence that Judge Dantos was not involved in the negotiations and that Attorney Waldron acted in his client's best interest.

Petitioner has failed to establish that Attorney Waldron's course of action did not have a reasonable basis and that Petitioner's entry of the plea would have been different had Attorney Waldron taken a different course of action.

Further, Petitioner argues that Attorney Waldron misrepresented the prospect that her sentence would be reduced if she cooperated with the Commonwealth and, as a result, she would not have entered a plea had she not been given the hope of a reduced sentence. However, Petitioner has failed to show actual prejudice in this respect.

That is, Petitioner has neglected to demonstrate what separate course of action would have secured a better deal for her. That is, the only other option was an adult criminal trial which could have subjected the Petitioner to up to 50 years to life in prison on the top charge with all other charges running consecutively to that if she was found guilty. Petitioner concedes

that the text messages were admissible evidence. Petitioner had provided such an array of damning evidence to the Commonwealth with her numerous stories and antics pre-trial. Most importantly, Petitioner had planned and executed her mother's murder in cold blood while her mother begged for her life. Thus, Petitioner has failed to establish the prejudice, but for Attorney Waldron's "misrepresentation" which would warrant a successful ineffective assistance of counsel claim.

Attorney Waldron effectively represented Petitioner on appeal.

Petitioner alleges that Attorney Waldron failed to properly appeal Judge Dantos' finding that Petitioner lacked a recognized mental health diagnosis rendered her not amenable treatment. Specifically, Petitioner assails Atttorney Waldron for not citing to *Commonwealth v. Kocher* in his appeal and, further, there was a reasonable probability that if he had apprised the appellate court of that authority, there is a substantially greater chance that the ruling would have been different. This contention is absurd.

First, Petitioner's reliance on *Kocher* is misplaced. In *Kocher*, the Superior Court held that, "a juvenile murder defendant is not required to prove that mental disease or defect caused the killing in order to demonstrate that he was amenable to treatment ...but [the] Court of Common Pleas in its discretion may find that behavioral disorder is factor to be considered in determining whether child is amenable to treatment and may also find that sound mind, devoid of any disease or defect at time of murder, is a factor to be weighed against transfer." Thus, there is no prohibition from a judge taking it into consideration for amenability purposes and, therefore, Judge Dantos did not err in her decision.

Additionally, the Petitioner presumes that our appellate courts are ill-equipped to apply the law without persuasive provisions contained in an attorney's appellate briefs. Further,

Petitioner presumes that our appellate courts do not conduct independent research on issues raised. Petitioner cannot rely upon such a bold and baseless presumption to meet its burden.

Thus, Petitioner failed to establish that the outcome would have been different but for the lack of a citation to establish prejudice an ineffective assistance of counsel claim.

CONCLUSION

For the reasons set forth above, Petitioner has failed to meet its burden to overcome the well-settled presumption that Attorney Waldron provided effective assistance of counsel to her. As the Pennsylvania Superior Court recognized, the facts of this case are of particular importance. In light of the facts and circumstances, including Petitioner's own mistruths and manipulations, Attorney Waldron acted strategically and with sound professional judgment. Furthermore, the proffered course of action lacks the credibility that was necessary to overcome Petitioner's crimes. As such, Petitioner has further failed to establish that the forgone strategy would have affected the outcome of the case. Accordingly, Petitioner's claims should be dismissed.

WHEREFORE, the Commonwealth requests that this Court dismiss Petitioner's PCRA petition.

Respectfully submitted,

EDRIANA SYMIA
Assistant District Attorney

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
	:	
v.	:	**CASE NUMBER 2015/2141**
	:	
JAMIE SILVONEK	:	
Def	:	

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by,

Signature: /s/ Edriana Symia, ADA

Name: EDRIANA SYMIA, ADA

Office/Dept.: District Attorney's Office

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA, CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CASE NUMBER 2015/2141**
v.	:	
	:	
JAMIE SILVONEK,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the attached foregoing document upon the persons and in the manner indicated below, which service satisfies the requirements of Pa.R.Crim.P.575:

Service by Hand-Delivery addressed as follows:

To: The Honorable Anna Kristie Marks, *Judge*
Lehigh County Court of Common Pleas
455 West Hamilton Street
Allentown, PA 18101

To: Court Administration
Lehigh County Courthouse
455 West Hamilton Street
Allentown, PA 18101

To: Clerk of Courts
Lehigh County Courthouse
455 West Hamilton Street
Allentown, PA 18101

Service by First Class Mail addressed as follows:

To: Tracy Zurzolo Quinn | Holland & Knight
Holland & Knight LLP
2929 Arch Street, Suite 800
Philadelphia, Pennsylvania 19104

Date: December 22, 2021

By: /s/ EDRIANA SYMIA, ADA
Office of the District Attorney