EXHIBIT A

CHERYL J. STURM
ATTORNEY AT LAW
387 Ring Road
Chadds Ford, Pa. 19317
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Kindly direct all correspondence to Chadds Ford, Pennsylvania

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Member of the PA Bar

October 26, 2020

Mr. James Baldwin
DOC# HP2983
SCI Albion
10745 Route 18
Albion, PA 16475

Re: Baldwin v. Supt. Albion SCI
C.A. No. 20-1667

Dear Mr. Baldwin:

This follows your letter providing me with information that is new to me but not new to you. For example, the letter stating that you did not want the insanity defense would have been helpful to me but you did not provide it.

You gave a statement to the police stating that you stabbed the decedent in self-defense. This was credible, and it should have been the defense which could have been supported by expert testimony. This might be something you could do now provided you are willing to spend the money on the services of a credible expert like Cyril Wecht and, of course, my services. But my best guess is that you are looking at a price tag of $50,000.00 or possibly even more.

There is literally no chance the District Attorney's Office is going to make a deal based on the allegations made in your letter.

Very Truly Yours,

Cheryl J. Sturm
Attorney-At-Law

Appendix A

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT
CLERK

UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
215-597-2995

August 13, 2020

Ronald Eisenberg
Office of Attorney General of Pennsylvania
1600 Arch Street
Suite 300
Philadelphia, PA 19103

Alicia H. Searfoss
Allegheny County Office of District Attorney
436 Grant Street
Pittsburgh, PA 15219

Cheryl J. Sturm
387 Ring Road
Chadds Ford, PA 19317

RE: James Baldwin v. Superintendent Albion SCI, et al
Case Number: 20-1667
District Court Case Number: 2-17-cv-00540

ENTRY OF JUDGMENT

Today, **August 13, 2020** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

s/ Patricia S. Dodszuweit
Clerk

By: James King
Case Manager
267-299-4958

cc: Mr. Joshua Lewis

CLD-271 August 6, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **20-1667**

JAMES BALDWIN, Appellant

VS.

SUPERINTENDENT ALBION SCI;

(W.D. Pa. Civ. No. 17-cv-00540)

Present: JORDAN, KRAUSE and MATEY, Circuit Judges

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1);

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing request for a certificate of appealability is denied. The District Court denied Baldwin's claims as meritless. Jurists of reason would not debate the correctness of the District Court's decision. Baldwin's right to testify was not arguably violated because he had already made a valid waiver of that right. See Appellant's brief, Commonwealth v. Baldwin, 2009 WL 6324925 at *21 ("Appellant does not contend that such waiver was involuntary, unintelligent, or unknowing."). Counsel's strategy and presentation of an insanity defense were not arguably unreasonable. See Strickland v.

Washington, 466 U.S. 668, 687-96 (1984) (describing standard for ineffective assistance of counsel); Rolan v. Vaughn, 445 F.3d 671, 681-82 (3d Cir. 2006) ("Strickland and its progeny make clear that counsel's strategic choices will not be second-guessed by post-hoc determinations that a different trial strategy would have fared better."). Counsel's failure to object to the prosecutor's arguments on malice based on events after the killing was not arguably ineffective. See Commonwealth v. Gonzalez, 858 A.2d 1219, 1223 (Pa. Super. Ct. 2004) ("Actions of the accused that occur before, during, and after are admissible as evidence to show malice. Further, actions that attempt to conceal a crime or destroy evidence are also admissible to prove malice." (citations omitted); see also Real v. Shannon, 600 F.3d 302, 309 (3d Cir. 2010) (counsel not ineffective for failing to raise a meritless argument).

By the Court,

s/Paul B. Matey
Circuit Judge

Dated: August 13, 2020
JK/cc: All Counsel of Record

A True Copy:

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES BALDWIN,	)	
	)	
Petitioner,	)	Civil Action No. 17-540
	)	District Judge Arthur J. Schwab/
v.	)	Magistrate Judge Maureen P. Kelly
	)	
SUPERINTENDENT, SCI ALBION, THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA, and DISTRICT ATTORNEY OF ALLEGHENY COUNTY,	)	
	)	
Respondents.	)	

JUDGMENT

And now, this 6th day of March, 2020, judgment is entered in favor of Respondents, and against Petitioner, as per the Magistrate Court's Report and Recommendation (ECF 20) and this Court's Order Adopting same (ECF 23).

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES BALDWIN, Petitioner, v. SUPERINTENDENT, SCI ALBION, THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA, and DISTRICT ATTORNEY OF ALLEGHENY COUNTY, Respondents.	)	Civil Action No. 17-540 District Judge Arthur J. Schwab/ Magistrate Judge Maureen P. Kelly

ORDER

James Baldwin ("Petitioner") has filed a counseled Petition Under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody, (the "Petition"), seeking to attack his state court convictions for first degree murder and abuse of a corpse.

The case was referred to Magistrate Judge Maureen Kelly in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Civil Rules 72.C and D.

Magistrate Judge Kelly's Report and Recommendation, ECF No. 20, filed on February 6, 2020, recommended that the Petition be denied and that a certificate of appealability likewise be denied. Petitioner was informed that he could file Objections to the Report by February 20, 2020. Petitioner's counsel filed Objections. ECF No. 22.

After careful review of the Objections, we find nothing in those Objections merits rejection of the Report and Recommendation. The Objections are not at all persuasive and in fact, are legally unfounded.

For example, Petitioner's citation to McCoy v. Louisiana, 138 S. Ct. 1500 (2018) is of no

Accordingly, IT IS HEREBY ORDERED this 6th day of March 2020, after *de novo* review of the record and the Report and Recommendation, the Objections are overruled, the Petition for Writ of Habeas Corpus is DENIED. A certificate of appealability is likewise DENIED. The Report is adopted as the opinion of the Court.

SO ORDERED, this 6th day of March, 2020.

s/ Arthur J. Schwab
United States District Judge

cc: The Honorable Maureen P. Kelly
United States Magistrate Judge

All counsel of record via CM-ECF

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES BALDWIN, Petitioner, v. SUPERINTENDENT, SCI ALBION, THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA, and DISTRICT ATTORNEY OF ALLEGHENY COUNTY, Respondents.	)	Civil Action No. 17-540 District Judge Arthur J. Schwab/ Magistrate Judge Maureen P. Kelly

REPORT AND RECOMMENDATION

I. RECOMMENDATION

It is respectfully recommended that the counseled Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (the "Petition"), ECF No. 1, be denied and that a certificate of appealability likewise be denied.

II. REPORT

A. Factual History

The Pennsylvania Superior Court in a Memorandum, dated June 14, 2016, set forth the factual history of the underlying crimes as follows:

> On January 25, 2006, [Baldwin] and his roommate, Brendan Martin, had an altercation when [Baldwin] served Martin with a notice to vacate the premises due to Martin's drug use. Martin attempted to hit [Baldwin] with a hammer, and [Baldwin] attacked Martin with a large knife, fatally stabbing him in the neck and heart. [Baldwin] dismembered the body, placed the parts in five plastic bags, and buried the remains in a shallow, makeshift grave. The next day, a road department employee discovered the grave and alerted police, who found the plastic bags containing the victim's remains, along with a backpack containing a piece of paper with [Baldwin's] name on it. Police interviewed [Baldwin], who admitted he attacked the victim and killed him.

> [Baldwin] was charged with homicide and abuse of a corpse, and proceeded to a jury trial, at which he asserted an insanity defense.

Com. v. Baldwin, 1240 WDA 2015, 2016 WL 3268835, at *1 (Pa. Super. June 14, 2016); ECF No. 12-15 at 19 – 20 (quoting Com. v. Baldwin, 58 A.3d 754, 756 (Pa. 2012)).

B. Procedural History

1. State Court

The Superior Court recounted the procedural history of the conviction and direct appeal as follows:

> Baldwin's trial counsel conceded the basic facts of the case in his opening statement, and focused his case on the insanity defense.
>
> ....
>
> The Commonwealth presented fact witnesses who testified to the circumstances of the crime and a recording of Baldwin's confession to investigators. Baldwin presented the testimony of a single witness, Laszlo Petras, M.D., a psychiatrist who treated Baldwin while he was involuntarily committed after his arrest. Dr. Petras opined that Baldwin was incapable of distinguishing right from wrong when he committed the homicide. In rebuttal, the Commonwealth called Bruce Wright, M.D., a forensic psychiatrist who interviewed Baldwin prior to trial and opined that Baldwin was not legally insane at the time he committed the homicide.
>
> After deliberation, the jury returned a verdict of guilty on the charges of first degree murder and abuse of a corpse. The trial court sentenced Baldwin to life in prison without possibility of parole plus a consecutive term of one to two years' imprisonment. The trial court subsequently denied Baldwin's post-sentence motions.
>
> On appeal, this Court affirmed the judgment of sentence in a published decision. The Supreme Court of Pennsylvania granted Baldwin's petition for allowance of appeal, and affirmed this Court's decision in an opinion dated December 28, 2012.
>
> Baldwin filed a timely *pro se* PCRA petition. Counsel was appointed to represent Baldwin, and counsel filed an amended PCRA petition. The PCRA court denied the amended petition on August 3, 2015, and Baldwin filed this timely appeal.

> On appeal, Baldwin raises ten separate allegations of trial counsel ineffectiveness.

Id. at 12-15 at 20 - 22.

On June 14, 2016, the Superior Court affirmed the denial of relief by the PCRA trial court. Id. at 15.

Petitioner then filed a Petition for Allowance of Appeal in the Pennsylvania Supreme Court, raising the same claims as he had raised in the Superior Court. Id. at 46. The Pennsylvania Supreme Court denied the Petition for Allowance of Appeal on December 6, 2016. ECF No. 12-17 at 7.

2. Federal Court

On April 26, 2017, Petitioner filed this counseled Petition, seeking to attack his convictions for first-degree murder and abuse of a corpse. ECF No. 1. In the Petition, the following grounds for relief are asserted.

> **GROUND ONE:** Denial of the right to effective assistance of trial counsel in violation of the Sixth Amendment[.]
>
> **GROUND TWO:** Conviction was obtained[,] and sentence imposed in violation of the right to testify in violation of the 5th, 6th and 14th Amendments[.]

Id. at 5 and 7.

In the Petition, Petitioner lists the following supporting facts as to Ground One.

> Trial counsel's performance was deficient (IATC) for (1) making inflammatory and prejudicial remarks and arguments for no reason and which conferred no benefit on the client; (2) failing to investigate and prepare the insanity defense[;] (3) failing to present a claim of self defense even though the Medical Examiner (ME) testified that the first blows with the survival knife hit the jugular vein and one of them was the fatal wound and this wound was inflicted during the course of a struggle instigated by the decedent to stop the decedent from killing the defendant/petitioner; (4) failing to insist on compliance with Rule 569(A)(2); (5) failing to make an argument that the record should be reopened once the defendant/petitioner decided he wanted to testify; (6) failing to object to the

> prosecution's closing argument stating that the attempt to to [sic] conceal the crime was evidence of malice; (7) failing to object to the prosecution's characterization of the crime as an "execution" where the evidence showed that the first blow with the knife was lethal; (8) failing to call character witnesses; (9) failing to cross-examine a witness to show that the decedent was taller than the defendant/petitioner.

Id. at 5.

> Petitioner also lists the following supporting facts as to Ground Two.
>
> Petitioner could not make up his mind whether he wanted to testify or not. The Court asked him whether he wanted to testify or not. The defense attorney intervened and twisted Petitioner [sic] arm so Petitioner decided not to testify. The very next day, Petitioner counsel told the Court that Petitioner wanted to testify. The judge denied the request for no good reason and without making a record for appellate review. There was no reason not to allow the Petitioner to testify. Nevertheless, the Court refused on application of mechanistic rules. If Petitioner had testified, he would have been able to explain to the jury that the first knife wound was to Martin's neck and it was the lethal blow, as confirmed by the Medical Examiner's testimony. He would have been able to clarify that the first blow was in self-defense and there was no possible avenue of retreat. The later blows were non-lethal wounds. The lethal wound to the jugular vein was inflicted in self-defense, but the later wounds and the abuse of the corpse were symptomatic of panic at the outcome of the fight.

Id. at 7.

Petitioner also filed a "Memorandum of Law Supporting Petition for Habeas Corpus Under 28 U.S.C. 2254" [sic]. ECF No. 2. Respondents filed an Answer, with attached copies of much of the state court record, denying that Petitioner was entitled to any relief. ECF No. 12. Respondents also caused the original state court record to be transmitted to this Court. Petitioner then filed a "Response to State's Answer Opposing Petition for Habeas Corpus" (the "Traverse"). ECF No. 16.

C. Applicable Legal Principles

The Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, tit. I, §101 (1996) (the "AEDPA") which amended the standards for reviewing state court judgments

in federal habeas petitions filed under 28 U.S.C. § 2254 was enacted on April 24, 1996. Because Petitioner's habeas Petition was filed after its effective date, the AEDPA is applicable to this case. Werts v. Vaughn, 228 F.3d 178, 195 (3d Cir. 2000).

Where the state court has reviewed a federal issue presented to them and disposed of the issue on the merits, and that issue is also raised in a federal habeas petition, the AEDPA provides the applicable deferential standards by which the federal habeas court is to review the state court's disposition of that issue. See 28 U.S.C. § 2254(d) and (e).

In Williams v. Taylor, 529 U.S. 362 (2000), the United States Supreme Court expounded upon the standard found in 28 U.S.C. § 2254(d). In Williams, the Supreme Court explained that Congress intended that habeas relief for errors of law may only be granted in two situations: 1) where the state court decision was "contrary to . . . clearly established Federal law as determined by the Supreme Court of the United States" or 2) where that state court decision "involved an unreasonable application of[] clearly established Federal law as determined by the Supreme Court of the United States." Id. at 404-05 (emphasis deleted). A state court decision can be contrary to clearly established federal law in one of two ways. First, the state courts could apply a wrong rule of law that is different from the rule of law required by the United States Supreme Court. Second, the state courts can apply the correct rule of law but reach an outcome that is different from a case decided by the United States Supreme Court where the facts are indistinguishable between the state court case and the United States Supreme Court case.

In addition, we look to the United States Supreme Court holdings under the AEDPA analysis as "[n]o principle of constitutional law grounded solely in the holdings of the various courts of appeals or even in the dicta of the Supreme Court can provide the basis for habeas relief." Rodriguez v. Miller, 537 F.3d 102, 106–07 (2d Cir. 2008) (citing Carey v. Musladin, 549

U.S. 70 (2006)). The United States Court of Appeals for the Third Circuit has explained that "Circuit precedent cannot create or refine clearly established Supreme Court law, and lower federal courts 'may not canvass circuit decisions to determine whether a particular rule of law is so widely accepted among the Federal Circuits that it would, if presented to [the Supreme] Court, be accepted as correct.'" Dennis v. Sec., Pa. Dept. of Corrections, 834 F.3d 263, 368 (3d Cir. 2016) (en banc) (quoting, Marshall v. Rodgers, 569 U.S. 58, 64 (2013) (per curiam)). As the United States Supreme Court has further explained: "[s]ection 2254(d)(1) provides a remedy for instances in which a state court unreasonably applies this Court's precedent; it does not require state courts to extend that precedent or license federal courts to treat the failure to do so as error." White v. Woodall, 572 U.S. 415, 428 (2014).

The AEDPA also permits federal habeas relief where the state court's adjudication of the claim "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2).

Finally, it is a habeas petitioner's burden to show that the state court's decision was contrary to or an unreasonable application of United States Supreme Court precedent and/or an unreasonable determination of the facts. Moreno v. Ferguson, Civ.A. No. 17-1412, 2019 WL 4192459, at *3 (W.D. Pa. Sept. 4, 2019), appeal filed, 19-3777 (3d Cir. Dec. 6, 2019). This burden means that when Petitioner is claiming an error of law, he must point to specific caselaw decided by the United States Supreme Court and show how the state court decision was contrary to or an unreasonable application of such United States Supreme Court decisions. Owsley v. Bowersox, 234 F.3d 1055, 1057 (8th Cir. 2000) ("To obtain habeas relief, Mr. Owsley must therefore be able to point to a Supreme Court precedent that he thinks the Missouri state courts acted contrary to or unreasonably applied. We find that he has not met this burden in this appeal.

Mr. Owsley's claims must be rejected because he cannot provide us with any Supreme Court opinion justifying his position."); West v. Foster, 2:07-CV-00021, 2010 WL 3636164, at *10 (D. Nev. Sept. 9, 2010) ("petitioner's burden under the AEDPA is to demonstrate that the decision of the Supreme Court of Nevada rejecting her claim 'was contrary to, or involved an unreasonable application of, clearly established Federal law, *as determined by the Supreme Court of the United States*.' 28 U.S.C. § 2254(d)(1) (emphasis added). Petitioner has not even begun to shoulder this burden with citation to apposite United States Supreme Court authority."), aff'd, 454 F. App'x 630 (9th Cir. 2011).

This burden further means that where Petitioner is claiming an error of fact, he must point to specific factual findings by the state courts that he claims are unreasonable determinations of the facts. Davis v. Jones, 506 F.3d 1325, 1330 n. 8 (11th Cir. 2007) (declining to consider "argument that the state court made an unreasonable determination of the facts under 28 U.S.C. § 2254(d)(2)," where the petitioner did "not challeng[e] any specific factual finding"); Lane v. Posey, 213CV01255, 2016 WL 5110538, at *2 (N.D. Ala. Sept. 21, 2016); Petrick v. Thornton, 1:09CV551, 2014 WL 6626838, at *3 (M.D.N.C. Nov. 21, 2014); Oliver v. Wengler, No. 1:12CV96, 2013 WL 5707342, at *3 (D. Idaho Oct. 21, 2013).

The United States Court of Appeals for the Third Circuit has recognized the significance of the deference under AEDPA that federal habeas courts owe to state courts' decisions on the merits of federal legal claims raised by state prisoners in federal habeas proceedings and the Third Circuit emphasized how heavy is the burden that petitioners bear in federal habeas proceedings. The Third Circuit explained that: "[w]e also defer to state courts on issues of law: We must uphold their decisions of law unless they are 'contrary to, or involve[ ] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the

United States.' So on federal habeas, 'even 'clear error' will not suffice.' Instead, the state court must be wrong 'beyond any possibility for fairminded disagreement.'" Orie v. Sec. Pa. Dept. of Corrections, 940 F. 3d 845, 850 (3d Cir. 2019) (citations and some internal quotations omitted).

D. Discussion

1. Ground Two does not merit relief.

Because in Ground One, Petitioner raises a claim of ineffective assistance of counsel based on Ground Two, we will first address the alleged constitutional claims asserted in Ground Two.

In Ground Two, Petitioner argues that his "[c]onviction was obtained and sentence imposed in violation of the right to testify in violation of the 5th, 6th and 14th Amendments." ECF No. 1 at 7. However, in the Memorandum of Law, Petitioner argues that the ruling of the trial court denying him the opportunity to testify on his own behalf violated his Sixth Amendment right to take the stand and testify on his own behalf and violated his Fourteenth Amendment right to due process. Petitioner does not, however, reference the Fifth Amendment in the Memorandum of Law. ECF No. 2 at 32.

a. Petitioner does not carry his burden under AEDPA.

The state courts addressed this claim on the merits and they uniformly rejected this argument by Petitioner. In the direct appeal proceedings, the Pennsylvania Supreme Court granted the Petition for Allowance of Appeal limited to the following issue:

> Whether the test employed in United States v. Peterson, 233 F.3d 101 (1st Cir. 2000) adopted by the Superior Court in this case, to be utilized when a criminal defendant seeks to testify after the close of evidence, is an unconstitutional burden on a citizen's fundamental right to testify in his own defense.

ECF No. 12-9 at 5 – 6. The test employed by the United States Court of Appeals for the First Circuit in Peterson acknowledged that "the choice whether to reopen is left to the court's sound discretion[,]" id., at 106, and held that a trial court should consider the following factors in determining whether to reopen a case to allow a defendant to testify:

> In exercising its discretion, the court must consider the timeliness of the motion, the character of the testimony, and the effect of the granting of the motion. The party moving to reopen should provide a reasonable explanation for failure to present the evidence in its case-in-chief. The evidence proffered should be relevant, admissible, technically adequate, and helpful to the jury in ascertaining the guilt or innocence of the accused. The belated receipt of such testimony should not imbue the evidence with distorted importance, prejudice the opposing party's case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered.

Peterson, 233 F.3d at 106 (quoting United States v. Walker, 772 F.2d 1172, 1177 (5th Cir. 1985)). The Pennsylvania Supreme Court affirmed the denial of relief to Petitioner, rejecting this claim on the merits. The Pennsylvania Supreme Court's decision consisted of a majority opinion and a concurring opinion. The majority concluded that the test announced in Peterson was an appropriate test. The majority then applied that test to the facts of Petitioner's case and found that the trial court had not abused its discretion in declining Petitioner's request to reopen the case to allow Petitioner to testify.

Upon review, Petitioner has not carried his burden to show that the disposition by the Pennsylvania Supreme Court is either contrary to or an unreasonable application of United States Supreme Court precedent. While he argues that the state courts' disposition of this claim is contrary to Rock v. Arkansas, 483 U.S. 44 (1987), for reasons we explain immediately below, Petitioner is simply wrong on the law. Accordingly, Ground Two does not afford a basis for federal habeas relief.

b. Even under *de novo* review, Petitioner would not succeed.

The concurring opinion of the Pennsylvania Supreme Court, authored by Justice Saylor and joined by Justice Todd, agreed with the majority opinion that the Peterson test was a useful guide in assessing whether to reopen an evidentiary record after the close of the evidence. ECF No. 12-9 at 14. The concurring opinion concluded however that the majority opinion went "too far into an unnecessary and unwarranted factfinding venture." Id. The concurring opinion conducted the following analysis:

> In this regard, Appellant's counsel presented his client's wish to testify after the close of the evidentiary record as an informational matter only. Counsel did not move to reopen the evidentiary record—indeed, when asked by the trial court to state his position on the matter, counsel declined, as follows:
>
> > THE COURT: ... And his request to testify, did you want to put it [in the record] if you were in agreement or disagreement with that at all? I don't know if you actually indicated your position or if you want to.
> >
> > [COUNSEL]: No, Your Honor.
>
> *Id.* at 362. As there is no right to hybrid representation at trial, *see, e.g., Commonwealth v. Ellis,* 534 Pa. 176, 180, 626 A.2d 1137, 1139 (1993), the trial court was not duty-bound to explore Appellant's request, relayed without counsel's support. Moreover, in my view at least, a litigant who wishes to invoke some extraordinary procedure (such as reopening the record effectively to retract a previous waiver), should carry the burden of making an adequate, supportive proffer and, if factual matters are in controversy, to request an evidentiary determination or colloquy, as appropriate. Here, however, there was no proffer and no request for a hearing or colloquy.
>
> In the absence of a motion, proffer, and request for a hearing or colloquy, I conclude that the trial court did not err in its response upon hearing of Appellant's wishes. I also believe that any fact-finding is best left to the post-conviction stage, at which Appellant may elect to challenge the manner in which his request was presented to the court.

Com. v. Baldwin, 58 A.3d at 766–67; ECF No. 12-9 at 15 – 16.

Providing *de novo* review of Ground Two, we agree with the foregoing analysis of the concurring opinion and adopt it as our own with the following clarification.

Petitioner improperly frames the question as one of violating his right to testify in his own defense in violation of Rock v. Arkansas. Rock involved the "constitutionality of Arkansas' *per se* rule excluding a criminal defendant's hypnotically refreshed testimony." Rock, 483 U.S. at 49. In Rock, a criminal defendant who took the stand was barred from recounting any facts that were hypnotically refreshed due to a state law rule of evidence. The United States Supreme Court held that the Arkansas' per se rule of exclusion violated the criminal defendant's right to due process under the Fourteenth Amendment, compulsory process under the Sixth Amendment and the Fifth Amendment right against self-incrimination.

The facts and holding of Rock have nothing to do with Petitioner's case. Because Petitioner waived his right to testify after an extensive colloquy, Petitioner's argument regarding Rock misses the point. The proper analysis of Petitioner's case must begin with the acknowledgement that Petitioner voluntarily, knowingly and intelligently waived his constitutional right (irrespective of which Amendment(s) the right stems from) to testify at trial as was made clear in the colloquy conducted by the trial court when Petitioner was asked about his desire to take the stand and testify. See, e.g., ECF No. 12-8 at 45 – 50. The trial court specifically concluded at the end of the colloquy:

> THE COURT: I accept your waiver then. [Defense Counsel], is there anything else you wanted to add to or clarify regarding the decision not to testify or anything?
>
> DEFENSE COUNSEL: No, Your Honor. Thank you.

Id. at 50.

Hence, from the moment that Petitioner knowingly, intelligently and voluntarily waived his right to testify, he relinquished any and all rights to testify under the Constitution. As such, anything that occurred after Petitioner's waiver could not have violated his then non-existent/waived "right" to testify, including the trial court's refusal to reopen the evidentiary record in order to permit Petitioner to take the stand and testify.[1]

Thereafter, when Petitioner expressed his desire to take the stand and testify notwithstanding his prior waiver of his right to do so, the proper way to analyze such a request is to analyze the request as one seeking to withdraw his waiver of his right to testify. In this regard, we agree with the Pennsylvania Supreme Court about the utility of the test announced in Peterson, albeit for determining whether the trial court's decision regarding whether to permit a criminal defendant to withdraw his waiver of his right to testify after the close of the evidentiary record constituted an abuse of discretion as opposed to determining directly whether the right to testify was violated by not permitting the criminal defendant to testify after the close of evidence. Accordingly, we reject Petitioner's contention that the Peterson test is somehow a violation of his right to testify.

Moreover, we agree with the concurring opinion that it is entirely proper to place the burden on the moving party, i.e., the criminal defendant, Petitioner herein, who seeks to withdraw his waiver, to come forward with some reason/evidence that supports or persuades the

[1] Petitioner seemingly suggests that his waiver of the right to testify was not voluntary. ECF No. 2 at 37 ("In the case at hand, the trial court had no good reason for denying Baldwin the right to take the stand and testify. Less than a day had gone by since the colloquy where Baldwin stated that he was not sure whether he wanted to testify or not. He only agreed not to testify when his lawyer twisted his arm."). To the extent that he suggests his trial counsel twisted his arm, no such claim appears to have been made before the state courts and Petitioner points to no evidence in the state court record to support such a claim or to carry his burden to rebut the presumptively correct implicit finding of the trial court that Petitioner's waiver was intelligent, knowing and voluntary.

trial court to exercise its discretion to grant such a request to withdraw the waiver of the right to testify. ECF No. 12-9 at 16 ("in my view at least, a litigant who wishes to invoke some extraordinary procedure (such as reopening the record effectively to retract a previous waiver), should carry the burden of making an adequate, supportive proffer and, if factual matters are in controversy, to request an evidentiary determination or colloquy, as appropriate. Here, however, there was no proffer and no request for a hearing or colloquy."). Petitioner having made no such offer or having failed to provide any such reason for withdrawing the waiver, simply failed to carry his burden of proof and persuasion to withdraw his waiver of his right to testify. See, e.g., U.S. v. Hushman, 156 F. App'x 865, 866 (8th Cir. 2005) ("Even if Hushman had not waived his right to withdraw his guilty plea, he did not meet his burden of establishing a fair and just reason to withdraw."); U.S. v. Battle, 2:15-CR-524, 2016 WL 10678414, at *2 (M.D. Ala. Nov. 2, 2016) ("the undersigned determines that Defendant has not met his burden of showing a fair and just reason to withdraw his guilty plea based upon the argument that he did not knowingly and intelligently waive his right to trial"); U.S. v. Modafferi, 112 F. Supp. 2d 1192, 1201 (D. Haw. 2000) ("Modaferri has not met her burden of showing that this court should reject the Plea Agreement, allow her to withdraw from her Plea Agreement, or void her waiver of appellate rights."). Having failed to carry his burden of proof and persuasion, the trial court did not abuse its discretion in denying Petitioner's request to testify after his waiver and the close of the evidence.

In light of the foregoing, we specifically reject Petitioner's argument that "the trial court had no good reason for denying Baldwin the right to take the stand and testify." ECF No. 2 at 37. Petitioner's argument reverses the burden. It is Petitioner who failed to offer the trial court any reason, yet alone a good reason, for withdrawing the waiver of his right to testify. Having

failed to do so, Petitioner fails to carry his burden to show why or how the state courts unreasonably applied United States Supreme Court precedent in determining that Petitioner failed to show the trial court abused its discretion by, in effect, refusing Petitioner's request to withdraw his waiver of his right to testify.

Accordingly, for the foregoing reasons, Ground Two does not serve as a basis for federal habeas relief.

2. Ground One – Ineffective Assistance of Counsel

Petitioner raises nine "supporting facts" in support of his claim of ineffective assistance of trial counsel in Ground One. We will address each alleged supporting fact individually after addressing Petitioner's one overarching argument that appears to apply to all nine grounds.

a. The Pierce standard is not contrary to Strickland standard.

At the outset, we address Petitioner's argument that the Pennsylvania state law standard for ineffectiveness claims is somehow contrary to the Strickland standard and a closely related claim that Petitioner's PCRA counsel, Attorney Christy Foreman, was ineffective for asserting the ineffectiveness of prior counsel by relying on the state law standard of ineffectiveness set forth in Com. v. Pierce, 527 A.2d 973 (Pa. 1987) ("the Pierce standard"), rather than the standard set forth in Strickland. ECF No. 2 at 24 - 25. We address this argument first because Petitioner asserts that there is a difference in the Pierce standard and the Strickland standard. Petitioner asserts that the state courts' application of the Pierce standard is "contrary to ***Strickland*** which requires the reviewing court to consider the totality of the evidence, and not merely the snippets of evidence favorable to the State." Id. at 22. Petitioner makes this assertion even though he acknowledges, as he must that the United States Court of Appeals for the Third Circuit has held that the Pierce standard is not contrary to the Strickland standard. Id. at 24. Specifically,

Petitioner argues that the "Third Circuit Court has held that Pennsylvania's test for assessing ineffective assistance of counsel claims is not contrary to ***Strikland. Jacobs v. Horn***, 395 F3d 92, 107 n.9 (3d Cir. 2005), ***Werts v. Vaughn***, 228 F3d 178 204 (3d Cir. 2000). Nevertheless, ***Strickland*** requires the reviewing court to consider the totality of the evidence where ***Pierce*** does not." Id. There are at least three flaws to this argument.

First, Petitioner's argument that there is a divergence between the Pierce standard and the Strickland standard is foreclosed by the Third Circuit case law cited by Petitioner that holds the Pierce standard is not contrary to the Strickland standard. If the Pierce standard did not require an assessment of the totality of the evidence whereas Strickland does, then the Pierce standard would indeed be contrary to the Strickland standard.

Secondly, Petitioner's characterization of what the Pierce standard requires is simply inaccurate as a matter of Pennsylvania law. Contrary to Petitioner's assertion, the Pierce standard does indeed require an assessment of the totality of the evidence. Com. v. Abraham, 996 A.2d 1090, 1092 (Pa. Super. 2010) ("The *Pierce* court also noted *Strickland* eschewed the application of mechanical rules for determining ineffective assistance and used a totality of the circumstances test. *Pierce* at 157, 527 A.2d at 975. . . . Rather than apply a mechanical rule, *Padilla* harkens back to the original *Strickland* concept, adopted by our Supreme Court in *Pierce,* of examining the totality of the circumstances to determine what advice must be given to have a fully informed guilty plea."), rev'd on other grounds by, 62 A.3d 343 (Pa. 2012). Accord Com. v. Garcia, 23 A.3d 1059, 1065 (Pa. Super. 2011).

Third, to the extent that Petitioner is arguing that the Superior Court only considered the evidence favorable to the Commonwealth in its opinion disposing of the PCRA appeal, and that such constitutes error under Strickland because the Superior Court did not consider all of the

evidence, we are unpersuaded. ECF No. 2 at 22 ("the State Court's decision is contrary to ***Strickland*** which requires the reviewing court to consider the totality of the evidence, and not merely the snippets of evidence favorable to the State."). Id. at 22. The mere fact that the Superior Court did not recite every relevant piece of evidence or fact or, in Petitioner's words did not recite the "totality of the evidence," does not mean that it did not consider the totality of the evidence. Henry v. Trim, 1:11CV301, 2014 WL 763234, at *3 (N.D. Ohio Feb. 21, 2014) ("At best, petitioner is arguing that there was competing evidence not *included* in the state court's recitation of the facts. She does not argue that the state court failed to consider the additional facts, nor does she state how failing to recite (or consider) the additional facts might be significant in a *habeas* context, where constitutional violations are the issue."). In fact, federal habeas courts "presume 'that state courts know and follow the law,' and we give state-court decisions 'the benefit of the doubt.'" Ontiveros v. Pacheco, 760 F. App'x. 601, 604 (10th Cir. 2019) cert. denied, 139 S. Ct. 2032 (2019), reh'g denied, 140 S. Ct. 21 (2019) (quoting Woodford v. Visciotti, 537 U.S. 19, 24 (2002)). Accord Clark v. Arnold, 769 F.3d 711, 724 (9th Cir. 2014) ("Under this 'highly deferential standard [of AEDPA,' we 'presume that 'state courts know and follow the law.'") (quoting Lewis v. Lewis, 321 F.3d 824, 829 (9th Cir. 2003)). And this is so even if it does not affirmatively appear in the state court record that the state courts followed the law. Poland v. Stewart, 169 F.3d 573, 589–90 (9th Cir. 1999) (we "presume[ ] that state courts follow the law, even when they fail to so indicate."). Hence, we presume that the Superior Court considered the totality of the evidence and circumstances, as is required under both Pierce and Strickland, even if the Superior Court did not recount all of the evidence and facts in its opinion. Petitioner fails to rebut this presumption, and indeed, it would seemingly be quite difficult to do so.

For these reasons, Petitioner fails to show that the state courts' use of the Pierce standard was contrary to Strickland. Furthermore, because there is no difference between the Pierce standard and the Strickland standard, there can be no valid claim that Petitioner's PCRA counsel was ineffective for utilizing the Pierce standard in the course of the PCRA proceedings.

b. Alleged ineffectiveness for making inflammatory and prejudicial remarks (Nos. 1 and 3).

Petitioner claims that his trial counsel was ineffective for making allegedly inflammatory remarks about Petitioner. ECF No. 1 at 5. Petitioner complains of his trial counsel's actions in recounting Petitioner being abused as a child by his father, trial counsel's characterization of the murder as brutal, sadistic and terrible and trial counsel's referring to the victim, Martin as "this poor boy." ECF No. 2 at 26. In addition, Petitioner complains about trial counsel's comparing him to the fictional Hannibal Lector and the real life serial killer Jeffrey Dahmer. Id.

i. Petitioner fails to show an unreasonable application of law.

The Superior Court addressed this claim as follows:

> Baldwin highlights counsel's allegations of child abuse at the hands of his father, counsel's characterization of the homicide as "brutal, sadistic, and terrible," and counsel's characterization of Martin as "this poor boy," despite Baldwin's statement that Martin had instigated the fight by attacking him with a claw hammer. Furthermore, Baldwin identifies instances where trial counsel likened him to fictional murderer Hannibal Lecter and infamous serial killer Jeffrey Dahmer.
>
> While we agree that this was an unusual defense strategy, it is equally clear that this was an unusual case that included an undisputedly shocking treatment of the victim's body. The evidence linking Baldwin to the crime included Baldwin's recorded confession to the police, which painted a very complex collage of legal issues. Baldwin's confession indicated that the altercation between Baldwin and Martin was initiated by Martin attacking Baldwin with a claw hammer. During the fight, the two men fell to the floor, knocking over a nearby workbench. Baldwin grabbed a survival style knife from the floor and stabbed Martin.

> While these facts could form the basis of a claim of self-defense, the remaining portions of Baldwin's recorded confession created significant obstacles. First, self-defense does not negate criminal liability for homicide where "the accused had a duty to retreat and the retreat was possible with complete safety." *Commonwealth v. McClendon,* 874 A.2d 1223, 1230 (Pa. Super. 2005) (citation omitted). Baldwin stated that after the initial stab, he stopped stabbing Martin because Martin was saying "stop, stop [.]" Furthermore, Baldwin admitted that he "tried to kill [Martin] because he just kept coughing and gurgling on it by sticking him in the heart with the knife.... I tried to kill him because he was dying. I just wanted it to end." N.T., Trial, 2/20–25/08, at 190–191. Thus, Baldwin's recorded confession also established that 1) Baldwin had ended the altercation at the victim's insistence, 2) then resumed stabbing the victim, and 3) intended to kill the victim when he resumed stabbing him.
>
> This evidence was followed by evidence, including both Baldwin's recorded confession and forensic evidence, that Baldwin then proceeded to dismember Martin's corpse and bury it on the side of a road. Furthermore, Baldwin admitted in his recorded confession that he cleaned up the crime scene.
>
> Faced with this record, we cannot conclude that Baldwin has established that counsel's decision to pursue the defense of legal insanity to the detriment of a possible self-defense argument prejudiced Baldwin. Trial counsel's presentation of the defense of criminal insanity, while arguably inartful, was not prejudicial to Baldwin. Indeed, it appears to have been the least problematic option out of a range of bad options.

ECF No. 12-15 at 6 – 8.

Because the state courts addressed Petitioner's claims of ineffectiveness on the merits, this Court must apply the deferential standards of the AEDPA as to those claims, which results in a doubly deferential standard as explained by the United States Supreme Court:

> Establishing that a state court's application of *Strickland* was unreasonable under § 2254(d) is all the more difficult. The standards created by *Strickland* and § 2254(d) are both 'highly deferential,' *id.*, at 689 [104 S.Ct. 2052]; *Lindh v. Murphy*, 521 U.S. 320, 333, n. 7, 117 S.Ct. 2059, 138 L.Ed.2d 481 (1997), and when the two apply in tandem, review is 'doubly' so, *Knowles*, 556 U.S., at ——, 129 S.Ct., at 1420. The *Strickland* standard is a general one, so the range of reasonable applications is substantial. 556 U.S., at —— [129 S.Ct., at 1420]. Federal habeas courts must guard against the danger of equating unreasonableness under *Strickland* with unreasonableness under § 2254(d). When § 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied *Strickland's* deferential standard.

Premo v. Moore, 562 U.S. 115, 122 - 123 (2011) (quoting Harrington v. Richter, 562 U.S. 86, 105 (2011)). Accord Grant v. Lockett, 709 F.3d 224, 232 (3d Cir. 2013) ("'A state court must be granted a deference and latitude that are not in operation when the case involves [direct] review under the *Strickland* standard itself.' *Id.* Federal habeas review of ineffective assistance of counsel claims is thus 'doubly deferential.' *Pinholster*, 131 S.Ct. at 1403. Federal habeas courts must 'take a highly deferential look at counsel's performance' under *Strickland*, 'through the deferential lens of § 2254(d).'"), rejected on other grounds by, Dennis, 834 F.3d at 293.

Petitioner fails to carry his burden under AEDPA. Petitioner asserts without citation to any particular Supreme Court precedent that the Superior Court's disposition of this claim is "contrary to clearly established federal law, contrary to the trial record, and it could easily be regarded as indefensible." ECF No. 2 at 28. Having cited no particular United States Supreme Court authority, which he asserts the Superior Court's opinion is contrary to or has unreasonably applied, Petitioner fails to carry his requisite burden under AEDPA.

ii. Superior Court did not unreasonably determine facts.

As noted, Petitioner also asserts that the Superior Court's disposition is "contrary to the trial record." Id. If, by this, he means the Superior Court engaged in an unreasonable determination of the facts, we are unpersuaded. Petitioner points to the "fact" that the medical examiner allegedly testified that the fatal wound was the first stab to the neck. As we explain below, the medical examiner did not so testify as to the order of the stab wounds. From this alleged "fact", Petitioner argues that given that the fatal wound was the first wound, Petitioner had no duty to retreat thereafter, as death was assured, and, therefore, Petitioner's trial counsel was ineffective for not presenting a defense of self-defense (since he did not violate the duty to

retreat before the allegedly fatal blow) rather than one of insanity or at least presenting both defenses in the alternative. Id. at 29.

Petitioner's entire argument in this regard relies upon his view that "Superior Court's opinion totally ignored ... the M.E.'s testimony that the first stab wound hit the jugular vein and was the fatal blow struck while retreat was not an option. It also fails to state that the wounds to the vicinity of the heart were not deep enough to be fatal. Essentially the Superior Court's testimony ignores the M.E.'s testimony and all of the scientific evidence that does not fit its theory of the case." Id. at 27.

It is in fact, Petitioner's characterization of the medical examiner's testimony that is inaccurate and ignores testimony that does not agree with his theory of the case. The Court attaches hereto as an Appendix, the entire testimony, both direct and cross, of the medical examiner at Petitioner's trial. That testimony reveals that there were at least two stab wounds to the neck area. See Appendix at p. 102 (as originally paginated) lines 11 – 13 ("The main fatal wound, in fact more than one, but the main wound is a stab wound to the lower neck and upper trunk. This stab wound went through the skin and the soft tissue of the back and neck."). The medical examiner testified to at least a second wound to the neck area. Id. at p. 104, lines 13 – 22 ("There was a stab wound of the left lateral and lower neck. Another stab wound on the left lateral and lower neck, and this penetrated the soft tissues of the neck only. So in between these wounds, the main wound is the stab wound to the right side of the upper and - - of the upper part of the back and neck itself. This wound inflict [sic] injuries to vital organs, which are the neuromuscular bundle from the neck and the spinal cord itself, and it inflict [sic] partial injury or partial transection of the spinal cord.").

The medical examiner also testified to the existence of 14 defensive wounds, i.e., wounds that demonstrate the victim was attempting to shield himself from blows with the knife.[2] Id. at 106, lines 19 – p. 107, lines 5. In addition, the medical examiner testified to 12 blunt force injuries to the upper extremities of the victim. Id. at p. 107, lines 1 – 10. The medical examiner further testified to two penetrating stab wounds to the face of the victim. Id. at p. 109, lines 12 – 22.

Petitioner contends that the "Superior Court's opinion failed to account for the M.E.'s testimony that the first stab wound hit the jugular vein and was fatal." ECF No. 2 at 27. Petitioner also asserts that the "Superior Court's Opinion totally ignored ... the M.E's testimony that the first stab wound hit the jugular vein and was the fatal blow struck while retreat was not an option." Id. Petitioner's contentions are not supported by the state court record because there was absolutely no testimony from the medical examiner as to which of the two stab wounds

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[2] The medical examiner testified as follows regarding the 14 defensive wounds:

> Q. Is there a particular description for the injuries to the hands, the wounds?
>
> A. Injuries to the hand and upper extremities sometimes referred to as consistent with defensive wounds.
>
> Q. What does that mean?
>
> A. That's in assumption that's when - - if the victim is alive and conscious while he's attacked usually he will try to defend himself and also attract blows or the blows of the knife of the assailant. In doing that he will incur injuries to his hands and to his upper extremities.
>
> Q. You found 14 of them.
>
> A. Yes. There were about 14 of them.

Appendix at p. 106, line 17 – p. 107, line 5.

to the neck was the "first" stab wound or any testimony from the medical examiner as to the order of the stab wounds. Petitioner implicitly concedes this when he writes that the "testimony of the M.E. and the testimony of Baldwin [i.e., his recorded confession not subject to cross examination] woven together indicates that the 'neck wound was the main fatal wound.' This wound was the initial wound." ECF No. 16 at 13. In fact, it is only Petitioner's recorded confession that Petitioner can point to which states anything about the order of stab wounds. Trial Transcript ("T.T.") at 189, lines 14 – 23 (wherein Petitioner claims that the first blow of the knife either stuck the victim in the neck or in the face).

To the extent that Petitioner's claim is that his recorded confession, which fails to account for any of the 14 defensive wounds or the 12 blunt force injuries or the two stab wounds to the victim's face, which the medical examiner testified to, is inconsistent with the Superior Court's holding that Petitioner had a duty to retreat and that he had such an opportunity to do so and that such facts provided a sound reason for Petitioner's trial counsel to not have pursued a self-defense theory, we are unpersuaded. The conclusion to be drawn from this apparent inconsistency is not the conclusion that Petitioner would have us draw, i.e., the Superior Court's decision rests on an unreasonable determination of the facts. Rather, the conclusion to be drawn from this situation is that the state courts found Petitioner's confession as to some of the facts not credible, including Petitioner's statements regarding the order of the stab wounds.

As explained by the United States District Judge Kim R. Gibson of this Court:

> a federal habeas court's "duty is to begin with the [state] court's legal conclusion and reason backward to the factual premises that, as a matter of reason and logic, must have undergirded it." *Campbell v. Vaughn,* 209 F.3d 280, 289 (3d Cir. 2000). *See also Townsend v. Sain,* 372 U.S. 293, 314, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963) ("if no express findings of fact have been made by the state court, the District Court must initially determine whether the state court has impliedly found material facts."), *overruled on other grounds by, Keeney v. Tamayo–Reyes,* 504 U.S. 1, 112 S.Ct. 1715, 118 L.Ed.2d 318 (1963). In determining what implicit

> factual findings a state court made in reaching a conclusion, a federal court must infer that the state court applied federal law correctly. *Campbell v. Vaughn,* 209 F.3d at 289 (*citing Marshall v. Lonberger,* 459 U.S. 422, 433, 103 S.Ct. 843, 74 L.Ed.2d 646 (1982)). Implicit findings of fact are tantamount to express ones, *Parke v. Raley,* 506 U.S. 20, 35, 113 S.Ct. 517, 121 L.Ed.2d 391 (1992); *Marshall v. Lonberger,* 459 U.S. 422, 432–33, 103 S.Ct. 843, 74 L.Ed.2d 646 (1983); *LaVallee v. Delle Rose,* 410 U.S. 690, 692, 93 S.Ct. 1203, 35 L.Ed.2d 637 (1973) (per curiam), and are entitled to the presumption of correctness of 42 U.S.C. 2254(e)(1). *Lafferty v. Cook,* 949 F.2d 1546, 1558 (10th Cir. 1991) ("explicit and implicit fact findings by state trial and appellate courts [are] entitled to presumption of correctness").

Tokarcik v. Burns, CIV.A. 12-253J, 2015 WL 3480333, at *7 (W.D. Pa. May 29, 2015). Hence, confronted with a choice of finding that the Superior Court's disposition of this claim constituted an unreasonable determination of the facts because its disposition was (according to Petitioner) inconsistent with Petitioner's version of the events as stated in his recorded confession, or the choice of finding that the Superior Court implicitly rejected as incredible Petitioner's version of the events, AEDPA requires this Court to conclude that the Superior Court implicitly rejected Petitioner's version of the events as incredible. Hence, Petitioner seemingly cannot carry his burden before this Court to rebut the Superior Court's presumptively correct implicit credibility determination by pointing to evidence solely in the state court record as is required.

Furthermore, viewing the evidence in the light most favorable to the Commonwealth as the verdict winner as our standard of review requires,[3] leads this Court to conclude that

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[3] As this Court has previously explained:

> To the extent that there is any gap in the record, it must be noted that Petitioner's conviction is presumed constitutional in these federal habeas proceedings. *Meyers v. Gillis,* 93 F.3d 1147, 1151 (3d Cir. 1996) ("On collateral attack .... the state receives the presumption of regularity and all reasonable inferences.") (*quoting Higgason v. Clark,* 984 F.2d 203, 208 (7th Cir. 1993); *see also Schlette v. California,* 284 F.2d 827, 833–34 (9th Cir. 1960) ("A conviction after public trial in a state court by verdict or plea of guilty places the burden on the accused to allege and prove primary facts, not inferences, that show,

(... footnote continued)

Petitioner has failed to establish by evidence from the state court record, that the first stab attack by Petitioner was the fatal stab wound to the neck of the victim given that the medical examiner testified to at least two stab wounds occurring to the neck and neck/upper trunk in addition to testifying to the 14 defensive stab wounds and the two stab wounds to the victim's face. The medical examiner never was asked and never testified as to the order of the stab wounds. Moreover, given the medical examiner's testimony about multiple stab wounds and injuries to the victim, including the 14 defensive wounds and two stab wounds to the victim's face, such testimony would seemingly be inconsistent with Petitioner's version of the events where

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> notwithstanding the strong presumption of constitutional regularity in state judicial proceedings that in his prosecution the state so departed from constitutional requirements as to justify a federal court's intervention to protect the rights of the accused."); *Jones v. Vacco,* 126 F.3d 408, 415 (2d Cir. 1997) ("On a petition for a writ of federal habeas corpus, the petitioner bears the burden of proving by a preponderance of the evidence that his constitutional rights have been violated,") Given this presumption, these gaps in the record demonstrate that Petitioner has failed to carry his burden to affirmatively show that his federal rights have been violated. *Higgason v. Clark,* 984 F.2d 203, 208 (7th Cir. 1993) ("On collateral attack, a silent record supports the judgment; the state receives the benefit of a presumption of regularity and all reasonable inferences. *Parke,* 506 U.S. at ——, 113 S.Ct. at 520; *Henderson,* 426 U.S. at 647, 96 S.Ct. at 2258.... His [i.e., the habeas petitioner's] entire position depends on persuading us that all gaps and ambiguities in the record count against the state. Judgments are presumed valid, however, and *Parke* emphasizes that one who seeks collateral relief bears a heavy burden."); *Robinson v. Smith,* 451 F. Supp. 1278, 1284 n. 6 (W.D.N.Y. 1978) ("In my own independent review of the record, I have resolved ambiguities against petitioner"); *Patrick v. Johnson,* No. CIV.A. 3:98–CV–2291–P, 2000 WL 1400684, at *9 (N.D. Tex. Aug. 23, 2000) ("whatever ambiguity exists in the record must be resolved in favor of the trial court's finding.").

Tokarcik v. Burns, CIV.A. 12-253J, 2015 WL 3457927, at *7 (W.D. Pa. Apr. 14, 2015), report and recommendation adopted, CIV.A. 12-253J, 2015 WL 3480333 (W.D. Pa. May 29, 2015). Accord Darr v. Burford, 339 U.S. 200, 218 (1950) ("A conviction after public trial in a state court by verdict or plea of guilty places the burden on the accused to allege and prove primary facts, not inferences that show, notwithstanding the strong presumption of constitutional regularity in state judicial proceedings, that in his prosecution the state so departed from constitutional requirements as to justify a federal court's intervention to protect the rights of the accused."), overruled on other grounds in part by, Fay v. Noia, 372 U.S. 391 (1963).

"Baldwin states that after the initial stab, he stopped stabbing Martin because Martin was saying 'stop, stop[.]'" ECF No. 12-15 at 26. There is no testimony from the state court record that Petitioner points to that establishes which of the two neck stab wounds testified to by the medical examiner was, in fact, the first stab wound inflicted by Petitioner on the victim, if indeed, either stab wound was the first or even among the first, other than perhaps Petitioner's own recorded confession, which was transcribed into the trial record, and which we have already concluded that the state courts must have implicitly rejected as incredible to the extent Petitioner claims the very first stab wound was the fatal one. In this regard, we note that the trial court even gave an instruction to the jury concerning Petitioner's confession as follows: "There was evidence tending to show that the defendant made false and contradictory statements when questioned by the police and did acts to conceal the killing and destroy evidence." T.T. at 449 lines 7 – 11.

Moreover, contrary to Petitioner's claim that the Commonwealth could not sustain its burden to disprove self-defense, ECF No. 2 at 38, we find that the medical examiner's testimony, which seemingly contradicts Petitioner's version of the events, taken in a light most favorable to the Commonwealth could well have sustained its burden to disprove self-defense.

Notwithstanding all of the foregoing, it is Petitioner's burden, at this stage of the proceedings, to establish that the Superior Court's disposition was unreasonable as a matter of law or a matter of fact. Petitioner simply fails to carry that burden herein.

What the foregoing review of the medical examiner's testimony reveals is that, at the most, Petitioner establishes that the trial record is ambiguous with respect to whether Petitioner's very first blow with the knife was the fatal blow or not and, consequently, that Petitioner thereafter had no duty to retreat because he allegedly had no opportunity to retreat after the allegedly first and fatal blow. These are the alleged "facts" that support Petitioner's theory that

he engaged in self-defense and had no duty to retreat at the time he allegedly inflicted the fatal wound. As a consequence, under Petitioner's theory of the case, Petitioner contends his counsel was ineffective for not presenting a self-defense theory to the jury and, furthermore, that the Superior Court's decision, finding Petitioner failed to show ineffectiveness on the part of trial counsel was an unreasonable application of United States Supreme Court precedent on ineffectiveness. However, Petitioner's establishing that the record is, at best, ambiguous in regard to which was the very first stab wound and whether that first stab wound was the fatal one, and the timing of the other wounds, such as the 14 defensive wounds and the two wounds to the victim's face, is insufficient for Petitioner to carry his heavy burden to show under the AEDPA that the Superior Court's disposition is unreasonable as a matter of law or as a matter of fact. As this Court has previously explained:

> establishing that the record is ambiguous is insufficient for Petitioner to carry his burden in this habeas proceeding. See, e.g., Fuller v. Wenerowicz, No. CIV.A. 13-535, 2014 WL 904297, at *10 (W.D. Pa. March 7, 2014) ("While *Higgason v. Clark* and *Robinson v. Smith* were decided prior to AEDPA's enactment, AEDPA increased the amount of deference federal habeas courts must give to state court adjudications. Hence, post-AEDPA, the courts' statements with regard to a silent or ambiguous record redounding to the detriment of the habeas petitioner apply even more forcefully now. *See, e.g., Fields v. Thaler*, 588 F.3d 270, 278 (5th Cir. 2009) ('Although a lack of fair support in the record was sufficient to rebut a presumptively correct factual finding under pre-AEDPA law, the AEDPA increased the level of deference due to a state court's factual findings.'); *Dorchy v. Jones*, 398 F.3d 783, 787 (6th Cir. 2005) ('The present case is governed by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254 (AEDPA), which has increased the deference that federal courts must give to state-court decisions.')").

Hagan v. Fisher, CIV.A. 13-1566, 2016 WL 3645202, at *10 (W.D. Pa. June 30, 2016). Petitioner simply has failed to persuade this Court, under the doubly deferential standard, that there does not exist "any reasonable argument that counsel satisfied *Strickland's* deferential

standard." Premo v. Moore, 562 U.S. at 123. Accordingly, for the foregoing reasons, this claim of trial counsel's alleged ineffectiveness fails to provide a ground for federal habeas relief.

Lastly, in connection with this claim, Petitioner argues that the Superior Court unreasonably determined the fact that Petitioner stabbed the victim in the heart. The Superior Court did state that Petitioner "attacked Martin with a large knife, fatally stabbing him in the neck and heart." ECF No. 12-15 at 20. In his Traverse, Petitioner asserts that this is an unreasonable determination of the facts. ECF No. 16 at 4 – 7. Petitioner, in effect, contends that there was only one fatal stab wound and that stab wound was to the neck area and not to the heart. See id. at 7. We note that Petitioner himself stated that he thinks he stabbed the victim in the heart area. T.T. at 191, lines 13 – 25. Nevertheless, even conceding that the Superior Court may have unreasonably determined the fact that Petitioner fatally stabbed the victim in the heart, Petitioner would only succeed in having this Court apply a *de novo* standard of review to this claim. Price v. Warren, 726 F. App'x. 877, 884 n.48 (3d Cir. 2018) ("If we determine, considering only the evidence before the state court, that ... the state court's decision was based on an unreasonable determination of the facts, we evaluate the claim *de novo*....") (quoting Hurles v. Ryan, 752 F.3d 768, 778 (9th Cir. 2014)).

In applying such a *de novo* standard of review, we would find, just as the Superior Court did, i.e., there were significant problems with a self-defense theory and Petitioner's trial counsel could reasonably have concluded that a self-defense theory was too problematic for the evidence to sustain, and therefore, reasonably decided to forego such a theory and engage in the tactics that he did, i.e., making the allegedly "inflammatory remarks" as part of his strategy to advance an insanity defense.

For all of the foregoing reasons, Petitioner fails to show entitlement to federal habeas relief on this claim.

c. Alleged ineffectiveness for failing to properly investigate and present insanity defense (No. 2).

Petitioner argues that his trial counsel was ineffective because the insanity defense was "'incomplete' and 'poorly researched[.]'" ECF No. 2 at 28.

The Superior Court rejected this claim on the merits as follows:

> In a related argument, Baldwin contends that trial counsel was ineffective because his criminal insanity defense was "incomplete," and "poorly researched [.]" Baldwin succinctly identifies the legal boundaries of such a defense, and argues that trial counsel did not present the defense effectively.
>
> In Pennsylvania, a defendant may be found not guilty due to legal insanity if he establishes, by the preponderance of the evidence, that while committing the criminal act, the defendant was suffering under such a defect of reason or disease of the mind, as not to know the nature of what he was doing, or that he did not know what he was doing was wrong. *See Commonwealth v. Roberts,* 437 A.2d 948, 951 (Pa. 1981); 18 Pa.C.S.A. § 315(a). While trial counsel's tactics may have been unusual, in that he compared his client to fictional and real life individuals who are universally reviled, we cannot conclude that he failed to present a legally sufficient case capable of supporting a not guilty verdict.
>
> Trial counsel highlighted the highly illogical nature of Baldwin's actions on the night of the homicide. Furthermore, he presented the opinion of psychiatrist Laszlo Petras, M.D., who opined that Baldwin, at the time of the murder, was suffering from a "mental disease that would make it impossible for him to know what he did was wrong[.]" N.T., Trial, 2/20–25/08, at 272–273. If the jury had found Dr. Laszlo's [sic] testimony credible, it could have returned a verdict of not guilty. Thus, Baldwin's second argument merits no relief.

ECF No. 12-15 at 27 – 28.

While Petitioner, in a conclusory fashion, asserts that the "Superior Court's decision is contrary to clearly established federal law, contrary to the trial record, and it could be easily regarded as indefensible," ECF No. 2 at 28, Petitioner fails to cite any specific Supreme Court case on ineffectiveness which renders the Superior Court's disposition contrary to or an

unreasonable application of, as is his burden. Petitioner does argue that "[t]he first stab wound or one of the first stab wounds [this is an example where Petitioner himself recognizes the ambiguity of the record in regards to the order of the knife blows/wounds] hit the jugular vein and was fatal. Baldwin may have struck the victim too many times but (1) one of the first blows to the neck was fatal, (2) subsequent blows to the vicinity of the heart were not fatal (3) a person attacked in his own home has no duty to retreat when attacked by an intruder." Id. at 29.

We have adequately addressed Petitioner's points one and two above concerning the alleged order of the blows and the significance of such to a self-defense theory. As to point three, Petitioner's citation of the law that a person has no duty to retreat when attacked in their home by an intruder simply has no applicability to the facts of this case given that Martin, the victim was not an intruder but a fellow occupant of the dwelling with Petitioner. See, e.g., Com. v. Walker, 288 A.2d 741, 743 (Pa. 1972) ("There is no doubt that both Lucas and appellant were permanent residents of the house and that status remained unchanged up to the time of the shooting. It is well established that a 'man . . . dangerously assaulted or feloniously attacked in his own dwelling house . . . need not retreat, but may stand his ground' only if the attacker is 'not a member of the household. . . .' Because both men were residents of the house, both had a duty to retreat and cease the fight.") (citations omitted).

Petitioner's arguments simply fail to persuade this Court that the Superior Court's disposition of this claim of ineffective assistance of counsel was contrary to or an unreasonable application of Supreme Court precedent or was an unreasonable determination of the facts. Petitioner has failed to show that "the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in

existing law beyond any possibility for fairminded disagreement." Harrington v. Richter, 562 U.S. 86, 103 (2011).

In light of the bizarre circumstances following the killing, and the fact that Petitioner was involuntarily committed to a psychiatric hospital shortly after the killing, and in light of psychiatric evidence from Dr. Petras, the defense psychiatrist, as quoted by the Superior Court opinion, trial counsel's strategy in relying upon an insanity defense cannot be deemed unreasonable performance. Nor can his decision to not present a self-defense theory be considered unreasonable given the significant problems with the presentation of such a self-defense theory as recounted above. To the extent that Petitioner's trial counsel declined to present an unreasonable self-defense theory, and Petitioner complains of this herein, ECF No. 2 at 29 (referring to "unreasonable self defense"), we find that a claim of ineffectiveness, based on failing to present an unreasonable self-defense theory was procedurally defaulted because it was never raised in state court.

d. Alleged ineffectiveness for failing to object to the prosecution's argument that dismemberment was evidence of malice and that the murder was an execution (Nos 6 and 7).

We next address two of Petitioner's closely related claims. First, in what Petitioner numbers as supporting fact No. 6, Petitioner asserts that Petitioner's trial counsel was ineffective for failing to object to the prosecution's assertion that Petitioner's actions taken after the killing, i.e., his dismemberment of the victim's body, and attempt to conceal the crime was evidence of malice so as to satisfy a necessary element of first-degree murder. ECF No. 2 at 30 – 31; ECF No. 16 at 23. Secondly, in what Petitioner numbers as supporting fact No. 7, Petitioner complains that his trial counsel was ineffective for failing to object to the prosecution's characterization of the killing as an execution. ECF No. 1 at 5.

The Superior Court rejected these related claims as follows:

In his next argument, Baldwin contends that trial counsel was ineffective for failing to object to the prosecutor's closing remarks where she described the homicide as an "execution," and argued that Baldwin's actions to conceal or destroy evidence of the homicide constituted evidence of both consciousness of guilt and evidence of malice.

We have previously recognized that

> "[n]ot every unwise remark made by an attorney amounts to misconduct or warrants the grant of a new trial." *Commonwealth v. Carson,* 913 A.2d 220, 242 (Pa. 2006). "Comments by a prosecutor do not constitute reversible error unless the unavoidable effect of such comments would be to prejudice the jury, forming in their minds fixed bias and hostility toward the defendant so they could not weigh the evidence objectively and render a true verdict." *Commonwealth v. Stokes,* 839 A.2d 226, 230 (Pa. 2003), quoting *Commonwealth v. Fisher,* 813 A.2d 761, 768 (Pa. 2002).

Furthermore, according to the Pennsylvania Supreme Court in *Commonwealth v. Chmiel* [, 889 A.2d 501, 543–44 (Pa. 2005)]:

> In determining whether the prosecutor engaged in misconduct, courts must keep in mind that comments made by a prosecutor must be examined within the context of defense counsel's conduct. It is well settled that the prosecutor may fairly respond to points made in the defense closing. A remark by a prosecutor, otherwise improper, may be appropriate if it is in [fair] response to the argument and comment of defense counsel. Moreover, prosecutorial misconduct will not be found where comments were based on the evidence or proper inferences therefrom or were only oratorical flair.

Commonwealth v. Collins, 70 A.3d 1245, 1252–53 (Pa. Super. 2013).

Pursuant to these standards, we conclude that neither of the statements identified by Baldwin were objectionable. As described above, Baldwin admitted, in his recorded confession, that he stabbed Martin because he wanted "it to end." The "it" in question being Martin's life. Thus, the prosecutor's use of "execution" was based upon evidence at trial, and did not form the basis for a valid objection. Baldwin failed to establish the arguable merit prong for this claim, and therefore no relief is due on appeal.

Turning to Baldwin's claim that trial counsel should have objected to the prosecutor's statement that Baldwin's attempt to conceal the crime after the fact

> constituted evidence of malice. Once again, Baldwin has failed to establish arguable merit to this claim, as "[a]ctions of the accused that occur before, during, and after [the crime] are admissible as evidence to show malice." *Commonwealth v. Gonzalez,* 858 A.2d 1219, 1223 (Pa. Super. 2004). The prosecutor's argument was therefore appropriate under the law, and therefore could not form the basis of a valid argument. No relief is due on this claim.

Com. v. Baldwin, 1240 WDA 2015, 2016 WL 3268835, at *5 – 6 (Pa. Super. June 14, 2016); ECF No. 12-15 at 29 - 31. Petitioner fails to show that the foregoing ruling by the Superior Court is a disposition that is contrary to or an unreasonable application of United States Supreme Court precedent or is an unreasonable determination of the facts.

i. Actions taken after the murder may be considered in establishing the mens rea.

To the extent that Petitioner argues that the Superior Court's disposition is inconsistent with the decision by the United States Court of Appeals for the Third Circuit in Kamienski v. Hendricks, 332 F. App'x 740 (3d Cir. 2009), ECF No. 2 at 30 – 32, such an argument is of no significance because AEDPA limits our inquiry as to whether the state courts applied holdings as opposed to dicta from the United States Supreme Court, that state courts refused to apply lower federal court decisions is of no legal significance to the AEDPA analysis. Gipson v. Sheldon, 659 F. App'x. 871, 886 (6th Cir. 2016) ("*Kamienski* is of course not binding because it is not clearly established Supreme Court precedent."). See also Renico v. Lett, 559 U.S. 766, 779 (2010) ("The Fulton decision [of the United States Court of Appeals for the Sixth Circuit], however, does not constitute 'clearly established Federal law, as determined by the Supreme Court,' § 2254(d)(1), so any failure to apply that decision cannot independently authorize habeas relief under AEDPA."); Parker v. Matthews, 567 U.S. 37, 48–49 (2012) ("circuit precedent does not constitute "clearly established Federal law, as determined by the Supreme Court," 28 U.S.C. § 2254(d)(1). It therefore cannot form the basis for habeas relief under AEDPA. Nor can the

Sixth Circuit's reliance on its own precedents be defended in this case on the ground that they merely reflect what has been 'clearly established' by our cases. The highly generalized standard for evaluating claims of prosecutorial misconduct set forth in *Darden* bears scant resemblance to the elaborate, multistep test employed by the Sixth Circuit here.").

Moreover, the Superior Court's decision is not contrary to the holding in Kamienski because the statement quoted from Kamienski by Petitioner is pure dicta. The Third Circuit in Kamienski stated: "the state's murder theory against Kamienski had been based on some abstract notion that the crime of murder is a continuing offense that includes attempts to dispose of the victim's body. That is a theory that is as unique as it is baseless and the state has not pursued it on appeal." Id. at 749. The very statement itself demonstrates that it is dicta since the question was not pursued on appeal.

Lastly, even if the statement quoted from Kamienski was not dicta, the statement should be understood to address the issue of the *actus reus* of the crime of murder, i.e., murder is not an ongoing act that includes the disposal of the body of the murdered victim. The Third Circuit in Kamienski did not address nor did it purport to address the question at issue herein, whether actions taken after the murder is accomplished may form the basis for an inference regarding whether the person at the time of the killing possessed the necessary *mens rea* for the murder. Because Kamienski did not address the pertinent question, it is of no relevance herein.

In fact, contrary to Petitioner's contentions, it is well settled law that acts by a criminal defendant taken after a crime has been completed may be utilized to satisfy the element of proof for inferring the necessary *mens rea* required in order to commit the crime. U.S. v. Ayers, 924 F.2d 1468, 1473 (9th Cir. 1991) ("We have previously held that 'acts both prior and subsequent to the indictment period may be probative of the defendant's state of mind.'") (citing United

States v. Voorhies, 658 F.2d 710, 715 (9th Cir. 1981)); Caldwell v. Miles, 17-CV-1971, 2018 WL 7203983, at *18 (D. Minn. Apr. 9, 2018) ("Intent can be inferred from a person's conduct as well as 'events occurring before and after the crime.' *Davis*, 595 N.W.2d at 525-26."), report and recommendation adopted, 17-CV-1971, 2019 WL 456171 (D. Minn. Feb. 5, 2019), certificate of appealability denied, 19-1544, 2019 WL 4318592 (8th Cir. Aug. 5, 2019); Govt. of the Virgin Islands v. Davis, CR 01/2002, 2002 WL 35631589, at *2 (Terr. V.I. Aug. 14, 2002) ("First, since the defendant's state of mind may not be directly observed, intent is a question of fact, to be determined after consideration of the surrounding circumstances. It is inferred from the facts and circumstances surrounding the act, the situation of the parties, the nature and extent of the violence, the acts and declarations of the parties at the time, and the objects to be accomplished.... *see also Davis v. State*, 595 N.W.2d 520, 525–26 (Minn. 1999) (noting that intent may be proved by circumstantial evidence, including drawing inferences from the defendant's conduct, the character of the assault, and the events occurring before and after the crime)").

Hence, we reject out of hand Petitioner's assertion that the prosecution's use in the closing argument of Petitioner's acts immediately after the murder to support a finding of malice for murder constituted a denial of due process as he contends, ECF No. 2 at 31, an independent claim never made in the state courts but merely raised in the state courts as an ineffective assistance of counsel claim for failing to object to the prosecution's doing so. The Superior Court found no deficient performance by counsel because the prosecution's arguments were not objectionable. Petitioner fails to carry his burden to show that there was error by the state courts, yet alone an unreasonable or contrary application of United States Supreme Court precedent under AEDPA. Accordingly, this claim does not afford Petitioner federal habeas relief.

ii. Use of the word "execution" was not objectionable.

Lastly, to the extent Petitioner complains about the prosecution's characterization of the murder as an execution, we note that his argument depends in part on accepting the "fact" that the first blow with the knife was the fatal blow, which, as we noted above was apparently rejected by the state courts. Absent establishing the fact that the first blow was the fatal blow, Petitioner cannot establish that the prosecution's comment about the murder being an execution was objectionable. Petitioner utterly fails to argue that the Superior Court's disposition of this particular claim was contrary to or an unreasonable application of Supreme Court precedent. Accordingly, neither of these claims of ineffectiveness merit the grant of habeas relief.

e. Alleged ineffectiveness for failing to call character witnesses (No. 8).

Petitioner next contends that his trial counsel was ineffective for failing to call a character witness where the evidence was sufficient to establish self-defense. ECF No. 2 at 31 – 32. Of course, this claim is based upon Petitioner first establishing that his counsel was ineffective for not raising a self-defense theory in place of, or in addition to an insanity defense. Id. As we have already held that Petitioner failed to establish deficient performance of his trial counsel in not raising a self-defense claim in addition to the insanity defense, that his trial counsel failed to call a character witness that would have no relevance to the insanity defense chosen by counsel, cannot amount to ineffectiveness as the Superior Court found. ECF No. 12-15 at 32 – 33 ("In his ninth issue on appeal, Baldwin contends that trial counsel was ineffective in failing to call character witnesses to testify to his reputation for non-violence in the community. However, since we have already held that trial counsel was not ineffective for conceding that Baldwin killed Martin and pursuing an insanity defense, Baldwin's character was not

relevant. *See Commonwealth v. Morley,* 681 A.2d 1254, 1260 (Pa.1996). This claim therefore merits no relief.").

f. Alleged ineffectiveness for failing to insist on compliance with Pa. R. Crim. P. 569 (A)(2) - (No. 4).

Petitioner also asserts that his trial counsel was ineffective for failing to insist on compliance with Pennsylvania Rule of Criminal Procedure 569(A)(2).[4] ECF No. 1 at 5.

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[4] Pa. R. Crim. P. 569(A)(2) provides as follows:

(2) *By Court Order.*

(a) Upon motion of the attorney for the Commonwealth, if the court determines the defendant has provided notice of an intent to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant pursuant to Rule 568, the court shall order that the defendant submit to an examination by one or more mental health experts specified in the motion by the Commonwealth for the purpose of determining the mental condition put in issue by the defendant.

(b) When the court orders an examination pursuant to this paragraph, the court on the record shall advise the defendant in person and in the presence of defendant's counsel:

(i) of the purpose of the examination and the contents of the court's order;
(ii) that the information obtained from the examination may be used at trial; and
(iii) the potential consequences of the defendant's refusal to cooperate with the Commonwealth's mental health expert(s).
(c) The court's order shall:
(i) specify who may be present at the examination; and
(ii) specify the time within which the mental health expert(s) must submit the written report of the examination.

(d) Upon completion of the examination of the defendant, the mental health expert(s), within the time specified by the court as provided in paragraph (A)(2)(c)(ii), shall prepare a written report stating the subject

(... footnote continued)

Petitioner complains that Pa. R. Crim. P. 569(a)(2) was not complied with and that his trial counsel was, therefore, ineffective for not assuring compliance with Rule 569(a)(2).

The Superior Court addressed this issue as follows:

> Next, Baldwin argues that trial counsel was ineffective in permitting the Commonwealth to perform an independent mental health examination without following the proper process set forth in the Rules of Criminal Procedure. Specifically, Baldwin notes that there is no indication in the record, written or transcribed, that Baldwin agreed to the examination. *See* Pa.R.Crim.P., Rule 569(A)(1)(b). Furthermore, he asserts that there is no indication in the record that the trial court ordered the examination, nor that the trial court provided the required colloquy if it did order the examination. *See* Pa.R.Crim.P., Rule 569(A)(2). The Commonwealth concedes that the record does not document compliance with Rule 569. *See* Appellee's Brief, at 35.
>
> However, once again, Baldwin has failed to establish that he suffered prejudice from this action. He does not identify any testimony or other evidence that would have been impacted if Rule 569 had been complied with. While it is an open question whether this would qualify as a harmless error on direct appeal, in a collateral action it is the petitioner's burden to establish prejudice. Since Baldwin has not met this burden, we conclude that this issue merits no relief.

ECF No. 12-15 at 28 -29.

In his Memorandum of Law, Petitioner does not specifically argue that the Superior Court's disposition of this claim was contrary to or an unreasonable application of United States Supreme Court precedent or an unreasonable determination of the facts. As such, Petitioner fails to carry his burden under AEDPA to merit federal habeas relief on this ground.

> matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

Pa. R. Crim. P. 569

g. Alleged ineffectiveness for failing to move to request to reopen the record when Petitioner indicated his desire to testify on his own behalf (No. 5).

Petitioner complains that his trial counsel was ineffective for failing to formally request the trial court to reopen the record. ECF No. 1 at 5.

The Superior Court addressed this issue on the merits as follows:

> Baldwin next argues that trial counsel was ineffective for failing to request to reopen the record when Baldwin indicated his desire to testify on his own behalf after the close of evidence. Baldwin's argument relies heavily upon the concurring opinion of Justice, now Chief Justice, Saylor, in addressing Baldwin's direct appeal. The concurrence noted that trial counsel did not explicitly request to reopen the record to allow Baldwin to testify. *See Baldwin,* 58 A.3d at 766–767. In contrast, the majority opinion concluded with the statement that it held that "there was no abuse of discretion in the trial court's denial of [Baldwin's] request to reopen the record to permit his testimony." *Id.,* at 765–766. Therefore, it is clear that the majority addressed the issue on the merits and held that the trial court had properly refused a request to reopen. Thus, even assuming that trial counsel did not request to reopen the record, it is clear that it would not have impacted the ultimate outcome. This claim merits no relief.

ECF No. 12-15 at 29.

In his Memorandum of Law, Petitioner does not specifically argue that the Superior Court's disposition of this particular claim was contrary to or an unreasonable application of United States Supreme Court precedent or an unreasonable determination of the facts. As such, Petitioner fails to carry his burden under AEDPA to merit federal habeas relief on this ground.

Even if we were to review this issue *de novo*, we would find that Petitioner fails to establish ineffectiveness of trial counsel.

Petitioner fails to establish that counsel possessed no reasonable basis for not making a formal request for reopening the evidentiary record. In fact, the only argument Petitioner makes for asserting that the evidentiary record should have been reopened is that to not do so, violated Petitioner's fundamental right to take the stand in his own defense. As we noted above, this

argument is illogical because once a defendant waives a right, that right cannot then thereafter be violated unless and until the waiver of that right is permitted to be withdrawn and the right is then restored to the defendant. Since this is the only argument offered, Petitioner fails to show that his trial counsel had no reasonable basis for acting as he did. As Petitioner offers no other argument as to why trial counsel's actions amounted to deficient performance, Petitioner fails to establish deficient performance on the part of trial counsel.

Petitioner also fails to establish prejudice stemming from counsel's actions or inactions. In fact, counsel's merely relaying to the trial court Petitioner's request to reopen was treated by the state courts as if a formal request from counsel had been made to reopen the evidentiary record and the state courts thereafter accordingly conducted the legal analysis to determine if the trial court had abused its discretion in deciding to not reopen the evidentiary record. On the record before this Court, Petitioner simply cannot prove prejudice from counsel's failure to formally move to reopen the evidentiary record where the state courts acted as if such a formal request had, in fact, been made. Nor does he point to any persuasive argument that trial counsel might have made which would have moved the trial court to reopen the evidentiary record.

h. Alleged ineffectiveness for trial counsel failing to cross examine a witness to show that the victim was taller than Petitioner (No. 9).

Petitioner contends that his trial counsel was ineffective for failing to cross examine a witness, i.e., Detective Siemianowski, who indicated in his testimony that Petitioner had told him that the victim was smaller in stature than Petitioner which is exactly the opposite of the case. T.T. at 152, lines 15- 16. ECF No. 1 at 5.

The Superior Court addressed this claim on the merits as follows:

> In his final claim of ineffective assistance of counsel on appeal, Baldwin argues that trial counsel was ineffective for failing to further cross-examine a Commonwealth witness. Specifically, Baldwin faults trial counsel for failing to clarify the height differential between Baldwin and Martin, and to question the witness about Baldwin's post-arrest statements to police. Once again, Baldwin makes only a passing reference to the standards for ineffectiveness of counsel, but no citation to authority supporting the arguable merit of his claim. Nor has he managed to establish that these alleged failures prejudiced him. As such, we conclude that no relief is due.

ECF No. 12-15 at 33.

Again, Petitioner fails to cite to any United States Supreme Court precedent which the Superior Court acted contrary to or unreasonably applied. Hence, Petitioner fails to carry his burden under AEDPA to merit federal habeas relief.

Thus, for the reasons stated herein, Ground One does not serve as a basis for federal habeas relief.

E. Certificate of Appealability

It is recommended that a certificate of appealability be denied because jurists of reason would not find the foregoing debatable.

III. CONCLUSION

For the reasons set forth herein, it is respectfully recommended that the Petition be dismissed and that a certificate of appealability should be denied.

In accordance with the Magistrate Judges Act, 28 U.S.C. ' 636(b)(1), and Local Rule 72.D.2, the parties are permitted to file written objections in accordance with the schedule established in the docket entry reflecting the filing of this Report and Recommendation. Objections are to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to timely file objections will waive the right

to appeal. Brightwell v. Lehman, 637 F.3d 187, 193 n. 7 (3d Cir. 2011). Any party opposing objections may file their response to the objections within fourteen (14) days thereafter in accordance with Local Civil Rule 72.D.2.

Respectfully submitted:

Date: February 6, 2020

MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: The Honorable Arthur J. Schwab
United States District Judge

All counsel of record via CM-ECF

APPENDIX

crime and to help you understand the testimony of the witness who will be referring to them.

These photographs are admitted in evidence for whatever value they may have in proving or disproving the facts in this case. Of course, these are not pleasant photographs to look at. But you should not let them stir up your emotions to the prejudice of the defendant. I want to caution you on that. All right? And would you call your next witness, please.

MS. NECESSARY: Thank you, Your Honor. Commonwealth calls Dr. Shakir.

ABDULREZAK SHAKIR, M.D.

a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. NECESSARY:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. Would you state your name please and spell your last name.

A. My name is Abdulrezak Shakir, S-H-A-K-I-R.

Q. How are you employed?

A. I am a forensic pathologist employed with the Allegheny County Medical Examiner's Office.

Q. How long have you been with the medical examiner's office?

A. I have been with the medical examiner, which was previously the coroner's office, for the last 19 and a half years.

MR. ELASH: Excuse me, Your Honor. Ms. Necessary, I've had the pleasure of knowing Dr. Shakir for a number years. I would stipulate to his qualifications as an expert in forensic pathology. Thank you.

THE COURT: So a stipulation is something that the attorneys agree to. And you can take that as a fact then. All right.

MS. NECESSARY: Thank you, Your Honor.

Q. Doctor, back in 2006, what was your position with the Medical Examiner's Office?

A. In 2006, I used to be the acting Medical Examiner of Allegheny County.

Q. In that capacity, did you have occasion to review the work of other forensic pathologists that were working under your supervision?

A. Yes.

Q. At that time, did you review an autopsy done by

Dr. Bennet Omalu?

A. Yes.

Q. I take it Dr. Omalu is no longer with the Medical Examiner's office?

A. Yes.

Q. Did you review his work?

A. Yes.

Q. Did you also do an independent review of the photographs and other items that are in the possession of the Medical Examiner's Office?

A. Yes.

Q. Are you able to then render an opinion on the cause of death based upon your review of these records?

A. Yes, ma'am.

Q. When was the body examined?

A. The body was examined on the 27th of January, '06, at 9:15 a.m.

Q. For the record, this was Brendan Martin?

A. Yes.

Q. And that would be case No. A06-0520?

A. Yes, ma'am.

Q. Now, what was the condition of the body at the time that it was brought to the Medical Examiner's Office?

A. The body was received in five black large plastic

garbage bags. The body was dismembered, and parts of the body, in addition to some of the elements used or believed to be used in the dismemberment, were present in these plastic bags.

Q. So I take it the members of your office delivered the plastic bags unopened to your office?

A. Yes, ma'am.

Q. So they were opened in the actual autopsy room?

A. Yes, ma'am.

Q. What was found upon examination of the bags?

A. Upon examination of the bags, it was first found that it is human remains of a male, white individual of a young age. Later on, these remains were identified as belonging to Brendan, Mr. Brendan Martin.

Q. So what was then done with the remains that were in the bags?

A. They were examined in the usual way. Examined, photographed, and Dr. Omalu did the actual examination of the parts and of the organs of the deceased, and he established at the time the cause and manner of death of the deceased.

Q. Did you also come to an opinion to a reasonable degree of medical certainty as to the cause and manner of death of Brendan Martin?

A. Yes, ma'am.

Q. And what is that?

A. Brendan Martin died as a result of stab wound of the neck and the trunk. Then his body was decapitated, dissected, dismembered, mutilated and buried in a shallow grave.

Q. The manner of death?

A. The manner of death determined to be homicide.

Q. Now, Doctor, can you describe the -- was there any particular wound that was fatal in this case?

A. The main fatal wound, in fact, more than one wound, but the main wound is a stab wound to the lower neck and upper trunk. This stab wound went through the skin and the soft tissue of the back and the neck. It was on the right side of the upper part of the trunk and the back of the neck, more towards the back than towards the front. This wound the skin, the soft tissues of the back of the neck and the neck.

It penetrated the right neural vascular bundle of the neck. This is the bundle where the major nerves and vessels of the neck pass through. And it went through the right internal jugular vein. This is one of the major blood vessels. It is a vein. That means that it transmits the blood from

the head and neck towards the heart. And this vein was lacerated or penetrated. There was extensive soft tissue hemorrhage of the neck and the posterior mediastinum. Mediastinum is the tissues around the heart in the center of the thoracic cavity. These tissues above and below the heart are intruding the heart itself. All of this right side mediastinum.

There was penetration of the vertebral column at the C6-C7 intervertebral disk level. This is between the cervical spine 6 and cervical spine 7, and there is a disk between the spine, the V internal or the vertebrae internal. It went through that disk. It reached the spinal canal and the meninges. The spinal canal is the canal near the end of the -- it's on the back of the vertebral bodies and through this canal past the spinal cord, which is the main nerve coming from the brain down, and through it comes the motor nerves and then goes to the various muscles and various limbs and at the same time through which goes back the sensory nerves, towards the brain.

So this cut went through the meninges that are the coverings of the spinal cord, and also it went and cut partially the spinal cord itself. This resulted in focal epidural and subdural spinal

hemorrhage, which means bleeding around the spinal cord. This wound was directed towards the left, towards the front and downwards. The estimated depths of the penetration is 12 centimeters. 12 centimeters is about four inches. Each inch is about 2.5 centimeters.

There was another stab wound of the left infra-clavicular chest. It's on the left side of the chest, and it is below the clavicle, which is the collarbone. This wound penetrated only the soft tissues of the chest wall. So it did not go deep enough. Only the tissues of the chest wall.

There was a stab wound of the left lateral and lower neck. Another stab wound on the left lateral and lower neck, and this penetrated the soft tissues of the neck only. So in between these wounds, the main wound is the stab wound to the right side of the upper and -- of the upper part of the back and the neck itself. This wound inflict injuries to vital organs, which are the neuromuscular bundle from the neck and the spinal cord itself, and it inflict partial injury or partial transection of the spinal cord.

Q. Doctor, could you show the jury -- just stand up and show the jury the location of that wound so that

they can -- I know you've been pointing to it.

A. Yes. This wound is mainly at the back of the upper part of the trunk, and like medial or more inward from the shoulder, and it goes to the back of the neck itself.

Q. So it's the upper part of the body, merely on the right side and the other two wounds to the trunk?

A. The other two wounds, there is a wound in the left infra-clavicular region, which is about that side, and there is another wound on the back of the neck on the other side. On the left side.

Q. Now, were there other wounds to the body that appeared to have been inflicted prior to death, as opposed to those that were inflicted during the dismemberment of the body?

A. Yes. There were numerous wounds which appeared to be inflicted prior to this. There were several of them, about 14 of them, in the face and head, and these include incised and stab wounds. These appear to be inflicted immediately prior to death or might be at the time of death, in this what we call peri-mortem period which is the period a little bit prior to death, might be a little bit after death, something like that. In this situation, we cannot really differentiate much about that.

Then there were blunt force trauma of the upper extremities, so these were about 12 instances of abrasions and contusions. Abrasion is when we get injury to the outermost layer of the skin without injury to the layers of the skin below. Contusions is when we get injury to the layers below the skin without disruption of the skin itself.

These blunt force injuries have been in the upper extremities, and these were about 12 instances of such injuries. There were instances of sharp instrument injuries, like incised, and the stab wounds of the upper extremities also, and these were about 14 of them. In fact, there are 14 such instances. These include injuries to the hands and to the some of the fingers and to the arms and other parts of the upper extremities.

Q. Is there a particular description for the injuries to the hands, the wounds?

A. Injuries to the hand and the upper extremities sometimes referred to as consistent with defensive wounds.

Q. What does that mean?

A. That's in the assumption that's when -- if the victim is alive and conscious while he's attacked, usually he will try to defend himself and also

attract blows or the blows of the knife of the assailant. In doing that, he will incur injuries to his hands and to his upper extremities.

Q. You found 14 of those?

A. Yes. There were about 14 of them.

Q. Doctor, I'm going to show you some photographs that I've marked as Commonwealth Exhibits 37, 38, 39, 40, and 41. I'm going to ask you if these are photographs that were taken by employees of the Medical Examiner's Office at the time of the autopsy, and then we're going to display them on the screen.

A. Yes. These are photographs taken during the autopsy, and it shows some of the injuries that were inflicted to the upper extremity and to the head itself.

MS. NECESSARY: Your Honor, I would offer into evidence Exhibits 37 through 41 at this time.

MR. ELASH: Your Honor, no objection, subject to your cautionary instruction.

THE COURT: All right.

MS. NECESSARY: Thank you.

Q. I'm going to show you Exhibit No. 37 and ask you what that particular photograph shows?

A. This photograph shows a laceration or an incised wound of the left hand of the web between the thumb and the rest of the hands. This wound, in fact, you see the back of it, but it extends to the front also, and this is one of these wounds that we can refer to as defensive wounds or as consistent with being defensive wounds.

Q. I'm going to show you Commonwealth Exhibit No. 38.

A. I think that picture is not really that clear.

Q. I'll show it to you. I don't know. It might be clearer if I just show it to you, and then you can maybe point out where it is to the jury.

A. This is a picture of the back of the hand. The only thing which is appearing in it is you can see this is the right hand, and you can see an incised wound on the back of the index finger of the right hand of the metacarpal, that first interphalangeal joint which is the first joint there.

Q. I'm not sure if this is going to show up too well either. I'm going to show it to you, Doctor. No. 39.

A. Here it's a picture of the hand also, and it shows contusion. This bluish mark on the thenar eminence, which is this part of the hand, and you can see it here.

Q. I'm going to show you this one as No. 40. This probably won't show up on the screen either. No. 40, Doctor.

A. This is a picture, again, of the right hand, and it shows this incised wound went through this, and we see the back of it in that previous picture. In addition to that, there is another wound barely noted here in the underhand, in the same hand which is the left hand.

Q. Doctor, I'm going to show you 41 and ask you what this --

A. This is a picture of the head, which, as you can notice, that was decapitated, and there are two wounds appearing clearly in it. These are an incised wound on the side of the face and another stab wound below that. These wounds penetrated through the skin, the tissues under the skin and penetrated through the sinus which is part of the bones of the face.

Q. So this was more than just a cut. This actually entered into the --

A. Yes. Some of them went inside.

Q. Doctor, I have four more photos. Not of body parts, but I believe of items that were found in the bags. I would just ask you to identify these as

photographs that were shown.

A. Yes. These are some of the elements brought in and were found with the body parts and brought in, and it seems -- looks like being the blades and hacksaw blades and things like that.

Q. All right. Thank you.

MS. NECESSARY: I would offer these into evidence at this time, 43, 44, 45 -- I'm sorry. 42 through 45.

MR. ELASH: No objection, Your Honor.

THE COURT: All right.

Q. That's No. 42. That's one of the items?

A. Yes.

Q. A hacksaw blade. And No. 43, another cutting instrument of some kind?

A. Yes.

Q. No. 44?

A. These are blades of hacksaw.

Q. And No. 45?

A. This is a cutting blades.

Q. These were all actually in the bags when they were opened at the Medical Examiner's Office?

A. Yes, ma'am.

Q. Do you have a total as to how many wounds you counted were inflicted on the body of Brendan

Martin?

A. Apart from the wounds which were definitely inflicted postmortem, the wounds which we believe were inflicted in the period prior to death or at the time of death were, I believe, over 40 instances of sharp instruments as well as blunt instrument injuries.

Q. Doctor, are your opinions to a reasonable degree of medical certainty?

A. Yes, ma'am.

MS. NECESSARY: Thank you.

Cross-examination.

CROSS-EXAMINATION

BY MR. ELASH:

Q. Doctor, so there were 40 wounds that occurred to this body at or prior to death? That's your testimony?

A. Yes. It's exactly -- I think it's 41 or 42.

Q. There were numerous wounds that happened to the body after death?

A. Yes.

Q. And, in fact, when you first examined, if you look on page 5 of the autopsy report, you examined an

inner bag. This is the last paragraph. Do you see that, Doctor?

A. Yes.

Q. In the inner bag had the dismembered parts. These are the parts, the head; is that right?

A. Yes.

Q. So also the right and left extremities. That means that the right arm and the left arm were cut off?

A. Yes.

Q. And can you show where they were cut ff?

A. They were cut at the shoulder.

Q. And they were together with the head?

A. Yes.

Q. And also there was, on the next page, part of the liver?

A. Yes.

Q. Part of the liver was cut out?

A. Yes.

Q. And that was together with those other parts?

A. Segment of the colon and mesentery and small loop of small intestine and mesentery.

Q. Those parts were actually cut out of the body?

A. Yes, sir.

Q. So they were not in the torso?

A. Yes. That's right.

Q. So at some point in time, not only were the arms and head served, but parts of the internal organs were taken out?

A. Yes, sir.

Q. And also the legs were severed from the body; is that correct?

A. Yes, sir.

Q. And they were severed. Could you tell me approximately where -- I know it's in the thigh area?

A. It's in the upper thigh area.

Q. Almost where the trunk was; is that correct?

A. Yes.

Q. And, however, all these parts were found in the same bag?

A. In different bags.

Q. In different bags in the same spot?

A. Yes.

Q. Was there any evidence on the body that the fingers, the hands were found; is that correct?

A. Yes.

Q. And was there any evidence that the fingers were damaged so you couldn't get fingerprints?

A. No.

Q. Was there any evidence that the teeth were damaged

so you couldn't get dental impressions?

A. No.

Q. Was there any evidence that outside of the mutilation, that there was an attempt to make it impossible to identify the body?

A. No.

MR. ELASH: That's all I have. Thank you, Doctor.

MS. NECESSARY: Thank you. That's all.

THE COURT: That's everything for this witness? All right then. Thank you, Dr. Shakir, you may step down.

THOMAS MEYERS

a witness herein, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. NECESSARY:

Q. Would you state your name please and spell your last name.

A. Thomas Meyers, M-E-Y-E-R-S.

Q. What is your occupation?

A. I'm a criminalist with the Allegheny County Forensic Lab Division.

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-1667

JAMES BALDWIN,
Appellant

v.

SUPERINTENDENT ALBION SCI, et al.

On Appeal from the Western District of Pennsylvania
(WDPA No. 2-17-cv-00540)

PETITION FOR REHEARING

BEFORE: SMITH, *Chief Judge*, and MCKEE, AMBRO, CHAGARES, JORDAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, *Circuit Judges*

The petition for rehearing filed by Appellant James Baldwin in the above-captioned matter has been submitted to the judges who participated in the decision of this Court and to all other available circuit judges of the Court in regular active service. No judge who concurred in the decision asked for rehearing, and a majority of the circuit judges of the Court in regular active service who are not disqualified did not vote for rehearing by the Court. It is now hereby **ORDERED** that the petition for rehearing is **DENIED**.

BY THE COURT,

s/ Paul B. Matey
Circuit Judge

Dated: September 14, 2020
JK/cc: All Counsel of Record

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. JAMES MONROE BALDWIN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1240 WDA 2015

Appeal from the PCRA Order August 3, 2015
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0001671-2006

BEFORE: BENDER, P.J.E., PANELLA, J., and FITZGERALD, J.*

MEMORANDUM BY PANELLA, J.: **FILED JUNE 14, 2016**

Appellant, James Monroe Baldwin, appeals from the order that dismissed his petition pursuant to the Post Conviction Relief Act ("PCRA"). Baldwin argues that the PCRA court erred by failing to find that Baldwin's trial counsel had been ineffective. We conclude that Baldwin failed to establish his right to relief under the PCRA, and therefore affirm.

The Supreme Court of Pennsylvania, in addressing Baldwin's appeal from his judgment of sentence, provided the following factual and procedural summary of Baldwin's convictions.

> On January 25, 2006, [Baldwin] and his roommate, Brendan Martin, had an altercation when [Baldwin] served Martin with a notice to vacate the premises due to Martin's drug use. Martin

---

* Former Justice specially assigned to the Superior Court.

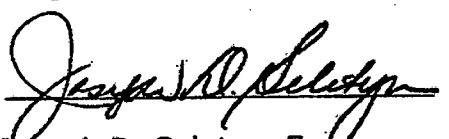
trial counsel was not ineffective for conceding that Baldwin killed Martin and pursuing an insanity defense, Baldwin's character was not relevant. ***See Commonwealth v. Morley***, 681 A.2d 1254, 1260 (Pa. 1996). This claim therefore merits no relief.

In his final claim of ineffective assistance of counsel on appeal, Baldwin argues that trial counsel was ineffective for failing to further cross-examine a Commonwealth witness. Specifically, Baldwin faults trial counsel for failing to clarify the height differential between Baldwin and Martin, and to question the witness about Baldwin's post-arrest statements to police. Once again, Baldwin makes only a passing reference to the standards for ineffectiveness of counsel, but no citation to authority supporting the arguable merit of his claim. Nor has he managed to establish that these alleged failures prejudiced him. As such, we conclude that no relief is due.

Baldwin additionally argues that the ineffectiveness of trial counsel in this case "so undermined the truth-determining process such that there could not have been a reliable adjudication of guilt ... in this case[.]" Appellant's Brief, at 56. This argument simply constitutes an attempt to re-cast Baldwin's ineffectiveness arguments from claims under the PCRA's section 9543(a)(2)(ii), into a claim under section 9543(a)(2)(i). As we have concluded that Baldwin has not established counsel's ineffectiveness, this claim also fails.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/14/2016

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

COMMONWEALTH OF PENNSYLVANIA

v.

JAMES MONROE BALDWIN,

DEFENDANT

CC 200601671

SUPERIOR COURT DOCKET #
1240 WDA 2015

OPINION

Honorable Kathleen A. Durkin
525 Courthouse
Pittsburgh, Pa 15219

COUNSEL OF RECORD

For the Commonwealth:

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401 Allegheny County Courthouse
Pittsburgh, PA 15219

For the Defendant:

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NOVEMBER 25, 2015

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

COMMONWEALTH OF PENNSYLVANIA

v.

CC200601671
Superior Court Docket:
1240 WDA 2015

JAMES MONROE BALDWIN,

Defendant.

OPINION

On January 26, 2006, a road department employee discovered a shallow makeshift grave. The police were called to the scene, and recovered from the grave a backpack containing a piece of paper, on which was the Defendant's name, James Baldwin. Also recovered from the burial site were five plastic bags that contained the dismembered remains of the Defendant's roommate, Brendan Martin. Mr. Martin had been eviscerated. The manner of death was determined to be homicide.

The Defendant was interviewed by the police and admitted he had attacked Mr. Martin. First, the Defendant hit the victim with a claw hammer. Then, he used a large knife to stab the victim in the neck and heart. Finally, the Defendant said that he dismembered his roommate, attempted to clean up the crime scene, and transported the remains to the location were the body parts were eventually found.

The Defendant was charged with one count each of Criminal Homicide,[1] and Abuse of Corpse.[2] On February 20, 2008, the Defendant proceeded to a jury trial and was convicted of First Degree Murder, and Abuse of a Corpse.

Prior to sentencing, trial counsel was granted permission to withdraw. New counsel entered his appearance. On May 14, 2008, the Defendant was sentenced to life in prison, on the

[1] **18 Pa.C.S. §2501(a), as amended**
[2] **18 Pa.C.S. §5510, as amended**

murder conviction and a consecutive one to two-year prison sentence on the abuse of corpse charge. On October 24, 2008, this Court denied post-sentence motions.

On November 13, 2008, the Defendant filed a Notice of Appeal docketed at **1897 WDA 2008**. On November 8, 2010, the Judgment of Sentence was affirmed by Superior Court. Allocatur was granted and on December 28, 2012, the Defendant's conviction was affirmed at **43 WAP 2011**.

On June 28, 2013, the Defendant filed a Post-Conviction Relief Act (PCRA). On July 12, 2013, counsel was appointed. On February 10, 2015, an amended petition was filed. On June 2, 2015, the Commonwealth filed its response. On June 4, 2015, the Court issued its notice of intent to dismiss pursuant to **Pa.R.Crim.P. 907**. On August 3, 2015, the petition was dismissed.

On August 11, 2015, a Notice of Appeal was filed and docketed at **1240 WDA 2015**. On November 5, 2015, the Defendant filed a Concise Statement of Errors Complained of on Appeal and alleged therein 10 grounds of ineffective assistance.

The "'standard of review of a PCRA court's dismissal of a PCRA petition is limited to examining whether the PCRA court's determination is supported by the evidence of record and free of legal error.'" ***Commonwealth v. Sampson*, 900 A.2d 887, 890 (Pa.Super. 2006),** ***quoting Commonwealth v. Wilson*, 824 A.2d 331, 333 (Pa.Super. 2003), appeal denied, 576 Pa. 712, 839 A.2d 352 (Pa. 2003)**.

The Defendant makes multiple assertions that his trial counsel was ineffective. The governing rule of law is well settled on the issue of ineffective assistance of counsel:

> In order for [an] Appellant to prevail on a claim of ineffective assistance of counsel, he must show, by a preponderance of the evidence, ineffective 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. Appellant must demonstrate: (1) the underlying claim is of arguable merit; (2) that counsel had no reasonable strategic basis for his or her action or inaction; and (3) but for the errors and

omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

The Defendant has the burden of proving all three prongs of the test. ***Commonwealth v. Rathfon*, 899 A.2d 365, 369 (Pa.Super. 2006)** ***quoting Commonwealth v. Johnson*, 868 A.2d 1278, 1281 (Pa.Super. 2005) (internal citations omitted).**

In the Defendant's petition he fails to demonstrate how the multiple claims of ineffective assistance resulted in an unreliable adjudication of guilt. Merely asserting that counsel's actions undermined the truth determining process does not meet the Defendant's burden. Furthermore, the Defendant fails to meet his burden showing that counsel's actions or inactions did not have a reasonable basis. Again, merely asserting that counsel did not have a reasonable basis does not fulfill the Defendant's obligation. The Defendant cannot meet that burden since he failed to file any certification as the substance of trial counsel's possible testimony, as is required under 42 **Pa.C.S. §9545 (d)(1).**

For all of the above reasons the dismissal of the Defendant's PCRA must be **AFFIRMED.**

BY THE COURT:

DATE: NOVEMBER 25, 2015

, J.
KATHLEEN A. DURKIN, JUDGE

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

COMMONWEALTH OF PENNSYLVANIA)
)
v.) CC#200601671
)
JAMES BALDWIN,)
)
Defendant)

ORDER

AND NOW, to wit, this, AUGUST 3, 2015, pursuant to Rule 907 of the Pennsylvania Rules of Criminal Procedure, it is hereby ORDERED, ADJUDGED AND DECREED that Petitioner's PCRA Petition is DISMISSED for the following reasons:

1. All claims raised are MERITLESS.

Petitioner is advised of the right to appeal the instant ORDER DISMISSING the PCRA Petition within thirty (30) days to the Superior Court. (SEPTEMBER 3, 2015)

BY THE COURT:

, J.
Kathleen A. Durkin

cc: Christy Foreman, Esq.
Ron Wabby, Esq., D.D.A.
Judge's file

J-46-2012
Supreme Court of Pennsylvania.

Commonwealth v. Baldwin

58 A.3d 754 (Pa. 2012)
Decided Dec 28, 2012

2012-12-28

COMMONWEALTH of Pennsylvania, Appellee v. James Monroe BALDWIN, Appellant.

Kevin Abramovitz, for James Monroe Baldwin. Sandra Preuhs, Michael Wayne Streily, Allegheny County District Attorney's Office, Pittsburgh, for Commonwealth of Pennsylvania.

Justice EAKIN.

755 *755

Kevin Abramovitz, for James Monroe Baldwin. Sandra Preuhs, Michael Wayne Streily, Allegheny County District Attorney's Office, Pittsburgh, for Commonwealth of Pennsylvania.
BEFORE: CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, JJ.

OPINION

Justice EAKIN.

James Baldwin appeals from the order of the Superior Court affirming his judgment of sentence for first degree
756 murder *756 and abuse of a corpse. Finding the trial court did not abuse its discretion in denying appellant's request to testify on his own behalf, after the evidentiary phase of the trial was closed, and after he waived such right the previous day, we affirm.

On January 25, 2006, appellant and his roommate, Brendan Martin, had an altercation when appellant served Martin with a notice to vacate the premises due to Martin's drug use. Martin attempted to hit appellant with a hammer, and appellant attacked Martin with a large knife, fatally stabbing him in the neck and heart. Appellant dismembered the body, placed the parts in five plastic bags, and buried the remains in a shallow, makeshift grave. The next day, a road department employee discovered the grave and alerted police, who found the plastic bags containing the victim's remains, along with a backpack containing a piece of paper with appellant's name on it. Police interviewed appellant, who admitted he attacked the victim and killed him.

Appellant was charged with homicide and abuse of a corpse, and proceeded to a jury trial, at which he asserted an insanity defense. During the Commonwealth's casein-chief, appellant indicated he wanted to speak with the court and was told he needed to address the court through his attorney. After discussion was held off the record, appellant's counsel informed the court, on the record, that appellant wanted to exert a right of allocution to the jury; counsel indicated he told appellant legal procedure did not permit him to do so, and if appellant wished to address the jury, he would have to take the stand and be subject to cross-examination. Counsel and the court

acknowledged appellant would have time to discuss with his attorney whether he wished to take the stand, and there would be a colloquy by the court concerning appellant's right to testify after the Commonwealth rested its case. *See* N.T. Trial, 2/21/08, at 224–25.

After the Commonwealth rested, appellant's counsel indicated at side-bar that he planned to call his expert as the first witness and did not intend to call appellant to testify. Counsel further inquired when the court wished to conduct the colloquy concerning appellant's waiver of his right to testify. The trial court responded it would probably conduct the colloquy immediately prior to the close of the defense's case, as appellant could change his mind regarding testifying up until the defense rested. *See id.*, at 252–53. After the defense expert testified, the trial court conducted a colloquy with appellant, outside the presence of the jury, concerning his right to testify, as follows:

THE COURT: Mr. Baldwin, I have a couple questions I want to ask you about your decision of whether or not to testify in this trial. It's my understanding that you wish to give up your right to take the stand and testify on your own behalf. I want to ask you a few questions about this decision. Please understand that I am neither encouraging nor discouraging your decision. Do you understand that?

THE DEFENDANT: (Witness nods head.)

THE COURT: I need yes or no for the court reporter.

THE DEFENDANT: Yes.

THE COURT: Do you understand that under both the Constitution of the United States of America and the Constitution of the Commonwealth of Pennsylvania, you have an absolute right to testify on your own behalf.

THE DEFENDANT: Yes.

THE COURT: And do you understand that no one can deny you the opportunity to testify on your own behalf?

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THE DEFENDANT: Yes.

THE COURT: Do you also understand that you have an absolute right not to testify on your own behalf?

THE DEFENDANT: Yes.

THE COURT: Do you understand that no one can force you to testify at your own trial?

THE DEFENDANT: Yes.

THE COURT: Have you discussed this decision of whether or not to testify with your attorney?

THE DEFENDANT: Yes.

THE COURT: Having done that, do you wish to testify in this trial?

THE DEFENDANT: I'm not sure.

THE COURT: Okay. Well, I'm going to let you speak to [defense counsel] a little longer.

[DEFENSE COUNSEL]: Can I say something on the record, Your Honor, to maybe clarify that? James, is it your

THE COURT: Sure.

[DEFENSE COUNSEL]: James, *your desire would be to get up and give a statement;* is that correct?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: *And in your mind, that was what you would consider testifying?*

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: I explained to you that the rules of procedure, trial procedure would not permit you to do that.

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: So you understand that *even though you would want to testify in the form that you want to by just giving a statement,* you're not permitted to. You have to answer questions and then would be cross-examined by [the prosecutor]. Do you understand that now?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: So it is my understanding that you do not want to testify under the Rules of Court, that you'd be subject to questions and answers and cross-examination?

THE DEFENDANT: I'm still not sure.

[DEFENSE COUNSEL]: Go on.

THE DEFENDANT: You're—not that you're doing a bad job or anything, but if I fire you, *can I make my own closing argument representing myself?*

[DEFENSE COUNSEL]: Well

THE COURT: I'm sorry. I couldn't hear everything he said.

[DEFENSE COUNSEL]: He wants to represent himself now, Your Honor.

THE COURT: Really? And how—well

[DEFENSE COUNSEL]: I mean, you have a right to represent yourself if you want to. You'd be bound by the same rules that every other lawyer is bound by as far as how to try a case. It probably would not be in your best interest to represent yourself. But you do have a right to do so. Does that help in making your decision?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: Well, you're going to have

THE COURT: Do you want to speak with your attorney privately for a while? We can arrange that.

THE DEFENDANT: No. That's okay.

[DEFENSE COUNSEL]: Whatever you want.

THE COURT: I can't hear you.

THE DEFENDANT: I don't need to speak to him privately.

THE COURT: How did you want to proceed at this point?

THE DEFENDANT: I wanted to—

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THE COURT: What do you want to do right now?

THE DEFENDANT: I'm not really sure. I don't really know that much about court.

THE COURT: No, of course, because you didn't go to law school. You probably don't know as much as your attorney or any attorney, for that matter. You know, you will be bound by all the rules of criminal court and court procedure. You're going to be treated the same as any attorney, and you're not going to be allowed to do anything that an attorney would not be allowed to do. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: The rules will not change because you're representing yourself. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay. And also—why don't you just give me a second. That doesn't change anything about your right to testify as far as *you still can't stand up and just give a statement.* If you want to testify, you're going to have to be cross-examined. You're going to be cross-examined by the District Attorney. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions about any of this?

THE DEFENDANT: No. I guess I'll stay with my attorney.

THE COURT: Well, I think that is a smart decision, but it's your decision to make.

THE DEFENDANT: Yes.

THE COURT: So if that's what you want to do, that will be fine, too. Do you wish to testify in this trial? Again, that is, you know, the testimony, like your attorney described to you, where you would be subject to cross-examination. That's your right, and it's your decision to make. You can speak with [defense counsel] again, like I said. You can speak in private. Whatever you want to do.

(Discussion was held off the record.)

THE DEFENDANT: I decided I'm not going to testify.

THE COURT: All right. Is this decision not to testify of your own free will?

THE DEFENDANT: Yes.

THE COURT: Has anyone threatened you or forced you into making this decision?

THE DEFENDANT: No.

THE COURT: I accept your waiver then. [Defense Counsel], is there anything else you wanted to add to or clarify regarding the decision not to testify or anything?

[DEFENSE COUNSEL]: No, Your Honor. Thank you.
Id., at 318–24 (emphasis added).

After the colloquy, the jury returned to the courtroom, and the defense rested. The Commonwealth presented one rebuttal witness, an expert in psychiatry, and again rested. The trial court dismissed the jury for the day and began discussing jury instructions with the parties.

The next morning, prior to the jury being brought in for instructions, appellant's counsel told the court that appellant, after reflecting on his decision not to testify the previous day, now desired to testify. Counsel explained he told appellant the case was closed, but appellant wanted counsel to relay his wishes to the court. The court responded:

All right. Well, we did go through everything. There was plenty of time, and we, in fact, had come to work on
759 the points for charge. The case was closed yesterday afternoon, and I'm not going *759 to allow any further testimony from anyone at this time. We have the jury set to be brought in for the instructions.
Id., at 360. The jury was then charged, deliberated, and returned a verdict of guilty of first degree murder and abuse of a corpse. Appellant was sentenced to life imprisonment for murder and a consecutive sentence of one to two years imprisonment for abuse of a corpse.

On appeal to the Superior Court, appellant argued he was denied his constitutional right to testify on his own behalf under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Art. I, § 9 of the Pennsylvania Constitution. The Superior Court held the trial court did not abuse its discretion in refusing to reopen the case for appellant's additional testimony. *Commonwealth v. Baldwin,* 8 A.3d 901, 911 (Pa.Super.2010).

In reaching this conclusion, the court first noted, with regard to reopening a case, " '[i]t is within the discretion of the trial judge to permit either side to reopen its case to present additional evidence.' " *Id.*, at 903 (quoting *Commonwealth v. Mathis,* 317 Pa.Super. 226, 463 A.2d 1167, 1171 (1983), and *Commonwealth v. Tharp,* 525 Pa. 94, 575 A.2d 557, 558–59 (1990) ("[A] trial court has the discretion to reopen a case for either side, prior to the entry of final judgment, in order to prevent a failure or miscarriage of justice.")). The court noted there were no Pennsylvania cases which specifically addressed the issue presented here; however, there were several federal cases it found instructive. *Id.* at 904, 575 A.2d 557.

The first of these cases was *United States v. Peterson,* 233 F.3d 101 (1st Cir.2000), in which the defendant indicated he wished to testify, despite his previous decision not to put on any evidence. This change of mind occurred after the defense rested, the jury was told to expect closing arguments and had recessed, and a charging conference had been held.[1] Defense counsel advised the trial court that ethical reasons precluded him from examining the defendant if the defendant testified. The defendant offered no excuse for not testifying during his case-in-chief. The trial court refused to reopen the evidence to permit the defendant's testimony, and on appeal, the defendant claimed this violated his constitutional right to testify in his own defense.

[1] The First Circuit's opinion does not indicate whether there was a colloquy concerning the decision not to testify.

The First Circuit acknowledged "the choice whether to reopen is left to the court's sound discretion[,]" *id.*, at 106, and stated a trial court should consider the following factors in determining whether to reopen a case to allow a defendant to testify:

In exercising its discretion, the court must consider the timeliness of the motion, the character of the testimony, and the effect of the granting of the motion. The party moving to reopen should provide a reasonable explanation for failure to present the evidence in its case-in-chief. The evidence proffered should be relevant, admissible, technically adequate, and helpful to the jury in ascertaining the guilt or innocence of the accused. The belated receipt of such testimony should not imbue the evidence with distorted importance, prejudice the opposing party's case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered.

760 *Id.* (quoting *United States v. Walker,* 772 F.2d 1172, 1177 (5th Cir.1985) (quoting *760 *United States v. Thetford,* 676 F.2d 170, 182 (5th Cir.1982))). The First Circuit concluded, "[T]he court must consider whether the likely value of the defendant's testimony outweighs the potential for disruption or prejudice in the proceedings, and if so whether the defendant has a reasonable excuse for failing to present the testimony during his case-in-chief." *Id.*

In assessing the defendant's motion to reopen in light of these considerations, the First Circuit concluded, although the timing of the motion was of little significance, the "potential for disruption ... was not insignificant." *Id.*, at 107. The court cited potential confusion for the jury after being told to expect closing arguments, the defendant's failure to indicate the content of his proposed testimony, and the defendant's lack of an excuse for failing to offer such testimony during his case-in-chief as reasons militating against reopening the case. *Id.* In holding the trial court did not abuse its discretion in refusing to reopen the case under these circumstances, the First Circuit noted, "[w]ithout such a requirement of excuse, the rule generally limiting testimony to the evidence-taking stage of a trial would hardly be a rule at all, and it would be too easy for a defendant to postpone testifying for strategic reasons until after the close of evidence." *Id.*

The other federal decision the Superior Court found instructive was *United States v. Jones,* 880 F.2d 55 (8th Cir.1989), in which the defendant requested the evidence be reopened for him to testify after the parties had prepared jury instructions and summations, and potential rebuttal witnesses had been released and were unavailable. The defendant had previously acknowledged on the record that he knew he had the right to testify during the evidentiary phase of trial, but he chose not to do so. The trial court refused to reopen the case to permit the defendant's testimony; on appeal, the defendant claimed this decision violated his constitutional rights.

The Eighth Circuit acknowledged "[o]nce the evidence has been closed, whether to reopen for submission of additional testimony is a matter left to the trial court's discretion." *Id.*, at 59 (citation omitted). The court cited the stage at which the request to reopen was made, the unavailability of potential rebuttal witnesses, and the defendant's prior, knowing waiver of his right to testify as factors supporting the trial court's refusal to reopen the case. *Id.*, at 60 n. 5 & 6. The court explained:

Although criminal defendants have a constitutional right to testify on their own behalf, the right must sometimes bow to accommodate other legitimate interests in the criminal trial process. Unquestionably, the need for order and fairness in criminal trials is sufficient to justify firm, though not always inflexible, rules limiting the right to testify; and, of course, numerous rules of undoubted constitutionality do circumscribe the right. The constitutionality of a rule limiting a criminal defendant's right to testify depends on whether the limitations the rule places on exercise of the right are justified by countervailing interests.

The rule generally limiting testimony to the evidence-taking stage of trial does not unconstitutionally infringe upon a defendant's right to testify. While placing only a minor limitation on the right, the rule promotes both fairness and order in trials, interests which, of course, are crucial to the legitimacy of the trial process. In the

interests of fairness and order, it simply imposes a commonsense requirement that the right to testify be exercised in a timely fashion.

761 *761 *Id.*, at 59–60 (citations and internal quotations omitted). Accordingly, the Eighth Circuit concluded the trial court did not abuse its discretion in refusing to reopen the evidence for the defendant's testimony. *Id.*, at 60.

Based on the reasoning of these cases, the Superior Court summarized its standard of review:

In determining *whether the trial court abused its discretion* in disallowing the testimony, we weigh [a]ppellant's right to testify after the close of evidence against the need for order and fairness in the proceedings. Additionally, we elect to follow the First Circuit's analysis in *Peterson* and consider *whether the likely value of the [a]ppellant's testimony outweighed the potential for disruption or prejudice in the proceedings, and whether the [a]ppellant had a reasonable excuse for failing to present the testimony during his case-in-chief.* *Baldwin*, at 910 (citing *Peterson*, at 106) (emphasis added). The Superior Court then reviewed the following pertinent factors: appellant voluntarily waived his right to testify, after receiving a thorough, on-the-record colloquy; appellant clearly wished to make a statement to the jury without being subject to cross-examination, as he sought to address the court and jury directly more than once; appellant asserted his testimony would corroborate his expert's opinion that he was insane, through his demeanor and actions; appellant provided no excuse to explain his change of tack; there was significant potential for disruption or prejudice in the proceedings, given the fact the jury had already been told appellant rested his case, and the Commonwealth's rebuttal witness had been dismissed; the parties had begun preparing jury instructions; and summations were about to begin. *Id.*, at 907, 909–11.

The court concluded, based on the foregoing factors,

It appears that [a]ppellant did not want to testify to the circumstances surrounding the crime or his mental condition during the commission of the crime, but rather to dramatize his demeanor, thus perhaps attempting to induce a subjective response in the minds of the jurors as to his mental condition. This is the situation the Court in [*Commonwealth v.*] *Jermyn*[, 516 Pa. 460, 533 A.2d 74, 79 (Pa.1987)] sought to protect against.... Appellant is not entitled to an unfettered right of self-expression. Thus, the likely value of [a]ppellant's proposed testimony is questionable.

Id., at 910. The court further concluded, "Without an excuse for his change of tack, we can only presume that [a]ppellant was postponing his testimony until after the close of evidence so as to test the strength of the Commonwealth's case." *Id.* Accordingly, the court held the trial court did not abuse its discretion in denying appellant's request to reopen the case so he could testify on his own behalf. *Id.*, at 911. In summation, the Superior Court reiterated the standard of review:

Once the evidence has been closed, the matter of whether to reopen for submission of additional testimony is left to the *discretion of the trial court. In exercising that discretion,* a trial court must consider whether the likely value of the [a]ppellant's testimony outweighs the potential for disruption or prejudice in the proceedings, and whether the defendant has a reasonable excuse for failing to present the testimony during his case-in-chief.

Id. (emphasis added).

Judge Colville concurred, finding appellant "offered no reason for his belated desire to testify" and thus
762 established no "need for his testimony to prevent a failure *762 or miscarriage of justice"; accordingly, the trial court did not abuse its discretion in denying appellant's request to reopen the case. *Id.* (Colville, J., concurring). However, the concurrence deemed the majority's description of the factors a trial court must consider in

exercising its discretion regarding a request to reopen "a new test," *id.*, and offered no opinion on the new test's propriety, believing "the current state of the law [was] sufficient to dispose of [a]ppellant's issue." *Id.*, at 912. Furthermore, Judge Colville noted neither the record nor the trial court's opinion supported the conclusion that the trial court had considered the factors cited by the majority in reaching its decision. *Id.*

We granted review, limited to the following issue:

Whether the test employed in *United States v. Peterson*, 233 F.3d 101 (1st Cir.2000), adopted by the Superior Court in this case, to be utilized when a criminal defendant seeks to testify after the close of evidence, is an unconstitutional burden on a citizen's fundamental right to testify in his own defense?
Commonwealth v. Baldwin, 32 A.3d 1259, 1260 (Pa.2011) (per curiam). As this is an issue involving a constitutional right, it is a question of law; thus, our standard of review is de novo, and our scope of review is plenary. *Commonwealth v. Bullock*, 590 Pa. 480, 913 A.2d 207, 212 (2006) (citation omitted).

Appellant contends a simple abuse of discretion standard is the only test applicable when a defendant seeks to reopen a case to testify. He argues neither the Superior Court nor the First Circuit in *Peterson* offered valid justification for imposing the additional requirements of balancing the value of the proposed testimony against the potential for prejudice and considering the reasonableness of the defendant's excuse for not testifying previously. Appellant further claims these additional requirements are inequitable, as they only apply to a defendant who seeks to reopen the case, while the Commonwealth remains subject only to an abuse of discretion standard when seeking to reopen. Thus, appellant contends there is a disparity in the levels of proof required of the respective parties; he argues the defendant, as the party asserting the fundamental constitutional right to testify on his own behalf, should not be subject to a higher burden of proof.

In the alternative, appellant argues, even if this Court deems the *Peterson* test appropriate, the Superior Court erroneously analyzed its elements. Appellant points to the fact the record does not reveal exactly what the content of his testimony would have been; therefore, the Superior Court's conclusion that its value was questionable was based on conjecture. Appellant's Brief, at 29 (quoting *Baldwin*, at 910 ("Without an excuse for his change of tack, *we can only presume* that [a]ppellant was postponing his testimony until after the close of evidence so as to test the strength of the Commonwealth's case.") (emphasis added)). Appellant also avers the Commonwealth never indicated how it would be prejudiced by reopening the case, as there is no evidence of record that any witnesses were actually dismissed or unavailable to return. Accordingly, appellant claims the Superior Court's conclusion regarding prejudice was speculative. *Id.*, at 30 (quoting *Baldwin*, at 911 ("Thus, allowing [a]ppellant's testimony *could have* resulted in *potential* prejudice to the Commonwealth or significant delay in the trial proceedings.") (emphasis added)). Thus, appellant claims he should receive a new trial or be discharged.

The Commonwealth counters that the Superior Court did not materially alter the inquiry employed in all cases
763 involving *763 requests by either party to reopen a case to offer additional evidence; rather, *Peterson* simply elaborated upon the abuse of discretion standard. The Commonwealth further contends, in the event this Court concludes the Superior Court appropriately applied a new standard in this case, the record was adequate to permit the Superior Court's review and supports its conclusion that relief is not due. In the alternative, the Commonwealth argues if we conclude the record was insufficient for the Superior Court to have conducted review, the remedy is not a new trial or discharge, but rather a remand to the trial court to complete the record.

A criminal defendant's right to testify has its source in the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, see *Rock v. Arkansas*, 483 U.S. 44, 51–52, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987), as well as Art. I, § 9 of the Pennsylvania Constitution. *See Commonwealth v. Nieves*, 560 Pa. 529, 746 A.2d 1102,

1105 (2000) (citation omitted). This right is not unfettered, however, *see Jermyn*, at 78, and there are limitations on its exercise, such as the accommodation of legitimate interests in the trial process. *Rock*, at 55, 107 S.Ct. 2704. Accordingly, the reopening of a case after the parties have rested, for the taking of additional testimony, is within the trial court's discretion; this Court has couched the exercise of this discretion in terms of "prevent[ing] a failure or miscarriage of justice." *Commonwealth v. Chambers*, 546 Pa. 370, 685 A.2d 96, 109 (1996); *Tharp*, at 558–59.

We do not share appellant's view that the Superior Court's adoption of *Peterson* 's analysis in the instant matter amounts to a new standard that is more burdensome for defendants than the abuse of discretion standard. The Superior Court reiterated, throughout its decision, it was evaluating the trial court's exercise of its discretion. *See Baldwin*, at 901 ("[W]e hold that the trial court did not abuse its discretion...."); *id.*, at 903 (reopening case "is within the discretion of the trial judge ..."); *id.*, at 910 ("[W]e may disturb the determinations of the trial court only if there is an abuse of [ ] discretion."); *id.* ("In determining whether the trial court abused its discretion ..."); *id.*, at 911 (appellate court cannot condemn trial court's ruling "as an abuse of direction" simply because it might have reached different conclusion); *id.* ("[W]e cannot conclude that the trial court abused its discretion...."); *id.* ("[T]he matter of whether to reopen for submission of additional testimony is left to the discretion of the trial court."); *id.* ("Having discerned no abuse of discretion on the part of the trial court in this case, we affirm...."). It is clear the court recognized the appropriate standard of review.

In applying this standard, the court looked to other decisions for guidance, and found the factors articulated in *Peterson* provided an accurate description of the trial court's task in exercising its discretion regarding reopening a case. All of these factors, such as the timing of the request to open, the nature of the proffered testimony, and the reason for the party's failure to present such evidence during its case-in-chief, are things a trial court would automatically consider in deciding whether reopening the case is necessary to prevent a miscarriage of justice. The relative weight of the proffered testimony against the potential for disruption or prejudice, as well as the reasonableness of the party's excuse for failing to present such evidence sooner, are not new considerations for the trial court; these are common sense factors in deciding whether a case should be
764 reopened. *See United States v. Byrd*, 403 F.3d 1278, 1283 n. 1 (11th Cir.2005) (noting in past decisions *764 concerning whether to reopen evidence, "we reviewed for an abuse of discretion without providing a framework for our analysis"; concluding *Walker* factors are "helpful in assessing whether the [trial] court abused its discretion...."). Thus, the *Peterson* analysis is not a new test, but a helpful framework for the existing abuse of discretion test.

Appellant contends that application of these factors in cases where the defendant is the party seeking to reopen results in an inequitable burden on defendants. We note *Peterson* involved the same situation as here: the defendant was the party making the request. However, the same abuse of discretion standard applies to the Commonwealth when it is the requesting party—the *Peterson* analysis merely elaborates on considerations already present in the trial court's exercise of its discretion. While the factors bearing on the exercise of discretion may reflect the distinct nature of prosecution or defense, the standard itself is the same. We cannot conclude a defendant bears a more onerous burden when requesting to reopen a case. [2] The same factors apply to either party making the request, and there is not a more stringent standard for defendants.

[2] Although *Peterson* used the term "defendant" in summarizing several of the factors ("whether the likely value of the *defendant's* testimony outweighs the potential for disruption or prejudice in the proceedings, and if so whether the *defendant* has a reasonable excuse for failing to present the testimony during his case-in-chief ..."), *Peterson*, at 106 (emphasis added), the First Circuit was merely referring to the defendant as the requesting party in that specific case; its

list of all of the factors the trial court must consider uses the neutral term "party." *See id.* (quoting *Walker*, at 1177). Read in context, the court's language includes either party making the request to reopen the case.

Having concluded the Superior Court's reliance on *Peterson* was appropriate, we now examine the court's review of the trial court's exercise of discretion in appellant's case. We conclude the record supports the relevant *Peterson* factors for the Superior Court to have upheld the trial court's refusal to reopen the record. As the Superior Court noted, following its review of the extensive colloquy wherein appellant waived his right to testify, "[I]t was clear that [a]ppellant wanted the opportunity to make a statement to the court and jury without being subject to cross-examination." *Baldwin*, at 909. Indeed, trial counsel confirmed this was appellant's desire. Prior to the colloquy, during the Commonwealth's case-in-chief, appellant indicated he wanted to speak with the court. After consulting with appellant, trial counsel relayed the following message:

TRIAL COUNSEL: Your Honor, just for the record, *he wanted to exert a right of allocution to the jury.* And I told him that's not in our legal procedure, that he would have to take the stand and be subject to cross-examination. He would only be allowed to answer questions.
N.T. Trial, 2/21/08, at 224 (emphasis added).

Thus, the fact the exact content of appellant's purported testimony is not in the record is of no moment; it is apparent from the record that he wanted to address the jury without being subject to cross-examination, in an attempt to corroborate his expert's testimony regarding his insanity. *See Baldwin*, at 910 (citing Appellant's Brief, at 33). Such self-serving monologues are not permitted at trial, and appellant cannot hide his desire to bend the rules behind the cloak of the right to testify. The right is not without parameters, and cannot be used as a vehicle for a defendant to obviate the rules of trial procedure and evidence. *See Jermyn*, at 78 ("We have
765 never held, however, that our *765 constitution confers upon criminal defendants an unfettered right of self-expression in the courtroom during the guilt-determination phase of trial. Rather, the right to be heard is, as always, circumscribed by the rules of evidence.") (citation omitted) [3]; *see also Baldwin*, at 910 ("Appellant's right to testify consists of the [a]ppellant, like any other witness, testifying under oath by answering questions designed to elicit relevant facts."). Accordingly, the Superior Court correctly concluded the likely value of appellant's proposed testimony was questionable.

[3] The Superior Court distinguished *Jermyn* factually, as it involved a defendant who desired to take the stand to read a prepared statement in verse form, thereby dramatizing his purported delusions and demeanor. *Baldwin*, at 904. However, the court noted the instant case involves the same situation *Jermyn* sought to protect against: a defendant's attempt to induce a subjective response in the jurors' minds regarding his mental condition. *Id.*, at 910. We agree with this characterization.

Likewise, we agree with the Superior Court's conclusion that the potential for disruption or prejudice in the proceedings outweighed any value appellant's testimony may have had. Appellant had rested his case in the presence of the jury, and the Commonwealth had called its rebuttal witness and then rested. The jury had been dismissed for the day, and the trial court had begun to discuss jury instructions with the parties. By the time appellant reneged on his decision to waive his right to testify—the next morning before the jury was brought in—the trial court had prepared its points for charge, all witnesses had been dismissed, and the court was ready for counsel to make closing arguments to the jury.[4] To disrupt the proceedings at that point to accommodate appellant's request to unilaterally express himself before the jury would have been potentially confusing to the jury. Every trial must have a conclusion, and the trial court properly exercised its discretion in deciding there

had been ample time for appellant to make his decision about whether to testify, and it was time to move forward, particularly when the proffered "testimony" did not fit within the prescribed parameters of trial procedure. There was also potential for prejudice to the Commonwealth, as appellant's request came after its rebuttal witnesses had been released. See *Byrd,* at 1287 ("[I]t would have been 'untenable' to allow [the defendant] to wait until the government's witnesses had been released and then take the stand and 'say whatever he want[ed] to without much fear of anybody being around to rebut it.' "). We can but speculate what further rebuttal may have been called for in response to the statement/testimony, in addition to the delay, expense, confusion, and disruption necessarily associated therewith.

[4] This scenario bears striking resemblance to *Peterson* 's facts: the defense rested, the court recessed, and the court held a charging conference, at which the defendant indicated he wished to testify despite having declined to do so during his case-in-chief. *See Peterson,* at 105–06.

Furthermore, appellant's argument that he did not know he needed to offer an excuse for his last-minute change of tack—a factor *Peterson* mentions—is unavailing. It is inconceivable that any proffered explanation regarding appellant's change of mind would outweigh the fact he sought to offer "testimony" insulated from examination by counsel, which is impermissible.

Accordingly, we hold the Superior Court did not err in analyzing the trial court's exercise of its discretion under
766 the factors enunciated in *Peterson.* We further hold there was no abuse of discretion in the *766 trial court's denial of appellant's request to reopen the record to permit his testimony.

Order affirmed. Jurisdiction relinquished. **Justice ORIE MELVIN did not participate in the consideration or decision of this case.**
Chief Justice CASTILLE and Justices BAER and McCAFFERY join the opinion.
Justice SAYLOR files a concurring opinion in which Justice TODD joins.

Justice SAYLOR, concurring.

I support the majority's decision to approve reference to the factors delineated in *United States v. Peterson,* 233 F.3d 101 (1st Cir.2000), as a useful, non-exclusive guide in assessing whether to reopen an evidentiary record to permit a defendant, who has previously waived his right to testify, to do so nonetheless. I agree with Appellant, however, that the Superior Court—and, by implication, the majority (which essentially adopts the Superior Court's analysis)—digressed too far into an unnecessary and unwarranted fact-finding venture.

For example, in attributing to Appellant a motivation to engage in a "self-serving monologue[ ]" and "bend the rules," Majority Opinion, at 764, the majority relies primarily on a colloquy which occurred the day before the decision in question. It is worth noting, however, that, in such colloquy and otherwise, Appellant was repeatedly admonished that he would not be permitted to engage in a self-serving monologue, avoid cross-examination, or otherwise bend the rules. *See id.* at 756–65. Since the record reveals nothing concerning how Appellant processed that information in the time between the colloquy and when he changed his mind, and the trial court made no pertinent findings, I do not support the majority's decision to supply its own inferential conclusions.

To the degree that the present case should be viewed as a totality-based, discretionary decision on the part of the trial court, I would also submit that Appellant's mental condition should also have been taken into account. The Commonwealth did not contest that Appellant suffered from serious mental-health conditions in the time

period after the killing. For example, in her closing remarks, the prosecutor explained to the jury:

I submit to you that ... there isn't a serious mental illness going on [at the time of the killing]. Now, did he deteriorate later, yeah. We don't have any quarrel with that. People who are in jail, it's not a nice place. People who are facing serious charges and in the jail, if you've got a mental—some kind of a mental problem to begin with, it might well become worse and worse and worse while you're in the jail. And from the evidence, that's what happened.

N.T., Feb. 21, 2008, at 405–06. Other than that Appellant had been deemed to have progressed sufficiently that he was competent to be tried, the record says little about his mental condition at the time of the relevant decision-making.

In any event, I do not believe the trial court's decision was a totality-based one, nor was it required to be so. In this regard, Appellant's counsel presented his client's wish to testify after the close of the evidentiary record as an informational matter only. Counsel did not move to reopen the evidentiary record—indeed, when asked by the trial court to state his position on the matter, counsel declined, as follows:

THE COURT: ... And his request to testify, did you want to put it [in the record] if you were in agreement or
767 disagreement with that at all? I don't *767 know if you actually indicated your position or if you want to.

[COUNSEL]: No, Your Honor.

Id. at 362. As there is no right to hybrid representation at trial, *see, e.g., Commonwealth v. Ellis*, 534 Pa. 176, 180, 626 A.2d 1137, 1139 (1993), the trial court was not duty-bound to explore Appellant's request, relayed without counsel's support. Moreover, in my view at least, a litigant who wishes to invoke some extraordinary procedure (such as reopening the record effectively to retract a previous waiver), should carry the burden of making an adequate, supportive proffer and, if factual matters are in controversy, to request an evidentiary determination or colloquy, as appropriate. Here, however, there was no proffer and no request for a hearing or colloquy.

In the absence of a motion, proffer, and request for a hearing or colloquy, I conclude that the trial court did not err in its response upon hearing of Appellant's wishes. I also believe that any fact-finding is best left to the post-conviction stage, at which Appellant may elect to challenge the manner in which his request was presented to the court.

Justice TODD joins this Concurring Opinion.

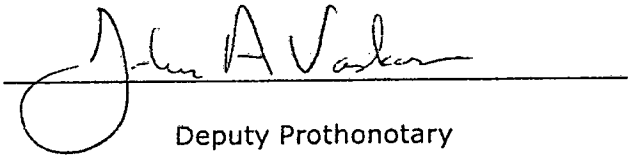
Order affirmed. Jurisdiction relinquished.

Madame Justice Orie Melvin did not participate in the consideration or decision of this case.

Mr. Chief Justice Castille and Messrs. Justice Baer and McCaffery join the opinion.

Mr. Justice Saylor files a concurring opinion in which Madame Justice Todd joins.

Judgment Entered December 28, 2012,



Deputy Prothonotary

J. A34014/09

2010 PA Super 201

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JAMES MONROE BALDWIN, Appellant	:	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1897 WDA 2008

Appeal from the Judgment of Sentence Entered May 14, 2008,
Court of Common Pleas, Allegheny County,
Criminal Division, at No. CP-02-CR-0001671-2006.

BEFORE: PANELLA, SHOGAN and COLVILLE*, JJ.

OPINION BY SHOGAN, J.: Filed: November 8, 2010

Appellant, James Monroe Baldwin, appeals from his judgment of sentence of life without parole and consecutive sentence of one to two years entered following his jury convictions of first degree murder and abuse of a corpse. On appeal, Appellant challenges the trial court's denial of his request to testify on his own behalf after he had waived his right to testify the previous day and after the evidentiary phase of the case was closed. Because we hold that the trial court did not abuse its discretion in refusing to reopen the case for submission of this additional testimony, we affirm.

The trial court stated the factual and procedural history as follows:

> On January 26, 2006, a road department employee discovered a shallow makeshift grave. The police were called to the scene, and recovered from the grave a backpack containing a piece of paper with [Appellant's] name on it. Also recovered

*Retired Senior Judge assigned to the Superior Court.

the proceedings, and whether the defendant has a reasonable excuse for failing to present the testimony during his case-in-chief. Having discerned no abuse of discretion on the part of the trial court in this case, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.

COLVILLE, J., files a Concurring Opinion.

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JAMES MONROE BALDWIN, Appellant	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1897 WDA 2008

Appeal from the Judgment of Sentence of May 14, 2008,
in the Court of Common Pleas of Allegheny County,
Criminal Division at No. CP-02-CR-0001671-2006

BEFORE: PANELLA, SHOGAN AND COLVILLE*, JJ.

CONCURRING OPINION BY COLVILLE, J. Filed: November 8, 2010

Appellant certainly had the constitutional right to testify during the presentation of his defense. He chose to waive that right. After the case was closed but before the jury received their instructions, Appellant asked that he be permitted to testify. The Majority appropriately considers this request as a request to reopen the case. The law which governs such a request is well-settled.

> Under the law of this Commonwealth a trial court has the discretion to reopen a case for either side, prior to the entry of final judgment, in order to prevent a failure or miscarriage of justice.

Commonwealth v. Tharp, 575 A.2d 557, 559 (Pa. 1990) (citations omitted).

At trial, Appellant offered no reason for his belated desire to testify. He, therefore, did not establish a need for his testimony to prevent a failure

*Retired Senior Judge assigned to the Superior Court.

or miscarriage of justice. Consequently, the trial court did not abuse its discretion when it denied Appellant's request to reopen the case. For these reasons, I, too, would affirm the judgment of sentence.

The Majority announces a new test a trial court must apply when a defendant seeks to reopen his case to offer his testimony. Majority Memorandum at 22 ("In exercising that discretion, a trial court must consider whether the likely value of the [defendant's] testimony outweighs the potential for disruption or prejudice in the proceedings, and whether the defendant has a reasonable excuse for failing to present the testimony during his case-in-chief."). After announcing this new test, the Majority discerns no abuse of discretion on the part of the trial court.

I reserve any comment on the propriety of the new test announced by the Majority because I believe the current state of the law is sufficient to dispose of Appellant's issue. I note, however, that neither the record nor the trial court's opinion support a conclusion that the court considered whether the likely value of Appellant's testimony outweighed the potential for disruption or prejudice in the proceedings, and whether Appellant had a reasonable excuse for failing to present the testimony during his case-in-chief.

Judgment Entered:

Eleanor R. Valecko
Deputy Prothonotary

DATE: November 8, 2010

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

COMMONWEALTH OF PENNSYLVANIA

v.

CC200601671
Superior Court Docket:
1897 WDA 2008

JAMES MONROE BALDWIN,

Defendant.

OPINION

On January 26, 2006, a road department employee discovered a shallow makeshift grave. The police were called to the scene, and recovered from the grave a backpack containing a piece of paper with the Defendant's name on it. Also recovered from the burial site were five plastic bags that contained the dismembered remains of the Defendant's housemate, Brendan Martin. Mr. Martin had been eviscerated. The manner of death was determined to be homicide.

The Defendant was interviewed by the police and admitted he had attacked Mr. Martin. First, the Defendant hit the victim with a claw hammer. Then, he used a large knife to stab the victim in the neck and heart. Finally, the Defendant said that he dismembered his housemate; attempted to clean up the crime scene, and transported the remains to the location were the body parts were eventually found.

The Defendant was charged with one count each of Criminal Homicide,[1] and Abuse of Corpse.[2] On February 20, 2008, following a jury trial, the Defendant was convicted of First Degree Murder, and Abuse of a Corpse.

[1] 18 Pa.C.S. §2501(a), as amended
[2] 18 Pa.C.S. §5510, as amended

Prior to sentencing, trial counsel was granted permission to withdraw. New counsel entered his appearance, and on May 14, 2008, the Defendant was sentenced to life in prison without the possibility of parole, and a consecutive one year to two-year prison sentence on the Abuse of Corpse offense. Post-sentence motions were filed on July 28, 2008, and denied by this Court on October 24, 2008.[3]

The Defendant filed a timely Notice of Appeal on November 13, 2008. A Concise Statement of Matters Complained of on Appeal was filed on December 16, 2008, asserting the following errors: the Defendant was denied his right to testify at trial, the evidence was insufficient to support a conviction of First Degree Murder, and the evidence was sufficient to prove that the Defendant was legally insane.

As to the Defendant's argument that he was denied his right to testify, this Court conducted a thorough and complete colloquy prior to the close of evidence in this case to determine whether the Defendant was knowingly, voluntarily, and intelligently waiving his right to testify. That colloquy was conducted on the record, and in open court. This Court found that the Defendant knew what he was doing in waiving his right to testify, and that the waiver was knowingly and intelligently made. **(T.T. 318-324)**[4] The following day, and after the close of evidence, the Defendant requested that he be permitted to testify. That request was denied. **(T.T. 359-360)** Based on the record in this case, the Defendant was not deprived of his right to testify.

As to the Defendant's sufficiency argument on the First Degree Murder conviction, all the evidence must be viewed in the light most favorable to the

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[3] On May 22, 2008, the Defendant, through counsel, filed a Motion for Extension of Time to file post-sentence motions. That Motion was granted on May 28, 2008, and motions were made due on or before July 28, 2008.

[4] Numerals preceded by "T.T." represent the page numbers of the jury trial transcript in this matter.

Commonwealth as the verdict winner to determine if the fact-finder could have found each element of the crime proven beyond a reasonable doubt. *See Commonwealth v. Hughes*, 555 A.2d 1264, 1267 (Pa. 1989) A court cannot substitute its judgment for that of the fact-finder. *See Commonwealth v. Zingarelli*, 839 A.2d 1064, 1069 (Pa. Super. 2003) In light of the facts in this case, the Commonwealth provided sufficient evidence to support the Defendant's conviction for First Degree Murder.

The Defendant's final argument is that the evidence was sufficient to prove that he is insane. Unfortunately for the Defendant, the jury did not think so, and convicted him of First Degree Murder. This Court finds no reason to disturb the jury's verdict in this matter.

For all of the above reasons, the Judgment of Sentence in this matter must be **AFFIRMED**.

BY THE COURT:

DATE: DECEMBER 19, 2008

KATHLEEN A. DURKIN, JUDGE J.

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

COMMONWEALTH OF PENNSYLVANIA

v.

JAMES MONROE BALDWIN,
DEFENDANT

CC 200601671

Superior Court Docket # 1897 WDA 2008

OPINION

Honorable Kathleen A. Durkin
525 Courthouse
Pittsburgh, Pa 15219

COUNSEL OF RECORD

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DECEMBER 19, 2008

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY
PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	**CC NO 200601671**
	:	**OTN: K-399811-6**
VS	:	**CHARGE: Criminal Homicide**
	:	**Murder in the First Degree**
James Monroe Baldwin		

LIFE SENTENCE
WITHOUT PAROLE

AND NOW, the 14th day of May 2008, Defendant present in open Court, the sentence of the law is That you James Monroe Baldwin pay a fine of 6 ¼ cents to the Commonwealth of Pennsylvania, pay the costs of prosecution, and undergo an imprisonment for a period of your Natural Life Without Parole and stand committed and be sent to the Correctional Diagnostic and Classification Center at Camp Hill, Pennsylvania, and to be transferred to such institution as may be deemed appropriate

DATE OF LAST COMMITMENT: January 27, 2006

BY THE COURT:

Judge