

Northampton County Reporter

(USPS 395-280)

VOL. LVII

EASTON, PA March 8, 2012

NO. 10

Commonwealth of Pennsylvania v. Michael Eric Ballard, Appellant
[continued]

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INSERT: Blue: 1. Quarterly Association Meeting

2. 2012 Calendar

3. "The Ethical Considerations of Online Marketing and Advertising a Law Practice"

4. Congratulations to our winners!

Cream: 1. Reception for the Court

2. "Liquor and the Law: Dram Shop Liability, Liquor Licensing and DUI"

3. Weyerbacher Brewing Company

4. "Harvey"

NOTICE TO THE BAR...

Annual Reception for the Court

Friday, March 30, 2012

Reminder: send in your registration. See form inside.

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The Northampton County Reporter will be published every Thursday by the Northampton County Bar Association, 155 South Ninth St., Easton, PA 18042-4399. All legal notices relating to the business of the county, are required by rule of Court, to be published in this Journal. All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Law Reporter nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes to content.

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Edward P. Shaughnessy, Esquire
Editor

NOTICE TO NCBA MEMBERS – BAR NEWS

Free Law Student Research

The Pennsylvania State University Dickinson School of Law's Center for Public Interest Law and Advocacy is once again soliciting attorneys in need of free law student research to participate in the school's pro bono program.

If you are interested in accessing free law student research assistance for the pro bono program contact kmc32@dsl.psu.edu or visit Center for Public Interest Law and Advocacy to fill out a request form.

Reception for the Court – March 30, 2012

Join us for this annual event when we honor our Court and our 50-Year Members.

Registration form inside.

Quarterly Association Meeting – Thursday, March 22, 2012

Registration form inside.

Save the Dates

Thursday, May 17 – Quarterly Association Meeting and Malpractice Avoidance Seminar.

Saturday, June 9 – NYC Broadway Show “Harvey.” Registration form inside.

Tuesday, June 26 – NCBA at the Iron Pigs.

A best friend is like a four leaf clover: hard to find and lucky to have. ~ Author Unknown

ESTATE NOTICES

Notice is hereby given that in the estate of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**BIASIOTTO, LURENE C.**, dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executrix: Judith Anne McBairity c/o Karl F. Longenbach, Esquire, 425 West Broad St., P.O. Box 1920, Bethlehem, PA 18016-1920

Attorney: Karl F. Longenbach, Esquire, 425 West Broad St., P.O. Box 1920, Bethlehem, PA 18016-1920

BORTELL, RUTH J., dec'd.

Late of the Township of Upper Nazareth, Northampton County, PA

Executrix: Linda L. Bortell c/o Charles J. Peischl, Esquire, Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, One South Main Street, Nazareth, PA 18064

Attorneys: Charles J. Peischl, Esquire, Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, One South Main Street, Nazareth, PA 18064

BURDGE, OLGA A., dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executrix: Ann Marie Costenbader, 1433 Church Rd., Wind Gap, PA 18091

Attorney: Steven B. Molder, Esquire, 904 Lehigh Street, Easton, PA 18042

BURNS, IRENE S., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executor: Richard P. Burns, 6252 Dove Drive, Bethlehem, PA 18017

Attorneys: Paul J. Harak, Esquire, Boyer, Holzinger, Harak & Scornillio, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

CALANDRA, BESSIE a/k/a BENEDETTA R. CALANDRA, dec'd.

Late of Upper Nazareth, Northampton County, PA

Executors: Charles C. Calandra and Salvatore F. Calandra, 850 Colonna Lane, Nazareth, PA 18064

CAMPBELL, MARY JANE, dec'd.

Late of Nazareth, Northampton County, PA

Executrix: Fay Pacchioli, 1059 South 25th Street, Easton, PA 18045-6082

Attorney: William C. Clements, Esquire, 65 East Elizabeth Avenue, Suite 510, Bethlehem, PA 18018

DERKAC-STROUSE, MADELYN a/k/a MADELYN A. DERKAC-STROUSE a/k/a MADELYN A. DERKAC a/k/a MADELINE A. FARLEIGH a/k/a MADELYN A. FARLEIGH, dec'd.

Late of the Borough of Roseto, Northampton County, PA

Executrix: Denise Derkac Marshall c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

DYNAN, JOAN B., dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executor: David A. Behler c/o
Ellen M. Kraft, Esquire, 3400
Bath Pike, Suite 311, Bethlehem,
PA 18017-2485

Attorney: Ellen M. Kraft, Esquire,
3400 Bath Pike, Suite 311, Beth-
lehem, PA 18017-2485

ELM, DAVID J., dec'd.

Late of the Township of Bethle-
hem, Northampton County, PA
Executor: Donald W. Elm, Sr.
c/o Karl F. Longenbach, Esquire,
425 West Broad St., P.O. Box
1920, Bethlehem, PA 18016-
1920

Attorney: Karl F. Longenbach,
Esquire, 425 West Broad St.,
P.O. Box 1920, Bethlehem, PA
18016-1920

FARRIS, FRANCIS M., dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executors: Francis M. Farris, Jr.
and Nancy Jane F. Tucker c/o
Mary Ann Snell, Esquire, 3400
Bath Pike, Suite 311, Bethlehem,
PA 18017

Attorney: Mary Ann Snell, Es-
quire, 3400 Bath Pike, Suite 311,
Bethlehem, PA 18017

FEBO, ANTHONY, dec'd.

Late of the Township of Upper
Nazareth, Northampton County,
PA

Administratrix: Mary Ann Snell
Attorney: Mary Ann Snell, Es-
quire, 3400 Bath Pike, Suite 311,
Bethlehem, PA 18017

HEAVENER, CAROL A., dec'd.

Late of the Township of Palmer,
Northampton County, PA

Executor: James T. Heavener
c/o Theresa Hogan, Esquire,
Attorney-at-Law, 340 Spring
Garden Street, Easton, PA 18042
Attorney: Theresa Hogan, Es-
quire, Attorney-at-Law, 340
Spring Garden Street, Easton,
PA 18042

HEIMBROOK, WILLIAM H., dec'd.

Late of Bethlehem, Northampton
County, PA

Executrix: Kathryn E. Heim-
brook

Attorneys: John D. Lychak, Es-
quire, Law Offices of John D.
Lychak, P.C., 35 East Elizabeth
Avenue, Suite 21, Bethlehem, PA
18018

HUMPHREY, GRACE M., dec'd.

Late of the Borough of Nazareth,
Northampton County, PA

Executors: Marga B. Musci and
Richard C. Breidinger c/o
Charles J. Peischl, Esquire, Pe-
ters, Moritz, Peischl, Zulick,
Landes & Brienza, LLP, 1 South
Main Street, Nazareth, PA
18064-2083

Attorneys: Charles J. Peischl,
Esquire, Peters, Moritz, Peischl,
Zulick, Landes & Brienza, LLP,
1 South Main Street, Nazareth,
PA 18064-2083

KUNTZ, CHARLES S., dec'd.

Late of Northampton, Northamp-
ton County, PA

Executors: Bruce R. Martin,
1022 Wynnewood Dr., North-
ampton, PA 18067 and Lee R.
Martin, 4413 Bachman Dr.,
Schnecksville, PA 18078

Attorneys: Charles W. Stopp,
Esquire, Steckel and Stopp, 125
S. Walnut Street, Slatington, PA
18080

LOPRESTI, ANGELO, JR. a/k/a ANGELO J. LOPRESTI, JR. a/k/a ANGELO JOSEPH LOPRESTI, JR., dec'd.

Late of the Township of Plainfield, Northampton County, PA

Executrix: Cindy Marie Lopresti c/o Alfred S. Pierce, Esquire, Pierce & Dally, LLC, 124 Belvidere Street, Nazareth, PA 18064
Attorneys: Alfred S. Pierce, Esquire, Pierce & Dally, LLC, 124 Belvidere Street, Nazareth, PA 18064

MABEE, ALLEN C., JR., dec'd.

Late of the Township of Upper Mt. Bethel, Northampton County, PA

Executrix: Joanne Mabee c/o Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099
Attorneys: Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099

MELLICK, CHARLES, dec'd.

Late of the Township of Hanover, Northampton County, PA

Executrix: Mary Lou Mellick, 855 West Macada Rd., Bethlehem, PA 18017

Attorney: Steven B. Molder, Esquire, 904 Lehigh Street, Easton, PA 18042

MILUNEC, STANLEY C., dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executor: Eugene P. Milunec c/o Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

Attorney: Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

MURPHY, THOMAS J. a/k/a THOMAS MURPHY, dec'd.

Late of Hellertown, Northampton County, PA

Executrices: Melissa Robbins and Alice Rodenbaugh

Attorneys: Donald LaBarre, Jr., Esquire, Gross McGinley, LLP, P.O. Box 4060, Allentown, PA 18105-4060

PETRUSKA, JULIA T., dec'd.

Late of Easton, Northampton County, PA

Executrix: Ann Bellafatto c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

PFEIFFER, FRANK A., dec'd.

Late of Walnutport, Northampton County, PA

Executrix: Nancy Malaro, 10 Nerious Avenue, Revere, MA 02151

Attorneys: Charles W. Stopp, Esquire, Steckel and Stopp, 125 S. Walnut Street, Suite 210, Slatington, PA 18080

RIEGEL, WILLIAM P. a/k/a WILLIAM PAUL RIEGEL, dec'd.

Late of Nazareth, Northampton County, PA

Executrices: Joanne Riegel Hunt a/k/a Joanne Jackson and Barbara Jean Riegel

Attorneys: Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042

VanHORN, PATRICIA A., dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executor: Dennis M. Kingcaid, 3412 Westminster Way, Nazareth, PA 18064

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

WEAVER, DONNA MARIE a/k/a DONNA STAATS WEAVER, dec'd.

Late of Easton, Northampton County, PA

Executors: Donald C. Staats and Cleata E. Staats c/o Daniel P. Sabetti, Esquire, Sabetti Law Offices, 224 West Broad Street, Bethlehem, PA 18018

Attorneys: Daniel P. Sabetti, Esquire, Sabetti Law Offices, 224 West Broad Street, Bethlehem, PA 18018

SECOND PUBLICATION

BABIY, RUTH B., dec'd.

Late of Upper Mt. Bethel Township, Northampton County, PA
Executor: Charles Russell Hoagland, 793 Hamm Street NW, Palm Bay, FL 32907

Attorney: MaryAnn O. Garvey, Esquire, 727 Monroe Street, Stroudsburg, PA 18360

BUDGE, MARTHA E., dec'd.

Late of the Township of Washington, Northampton County, PA
Executor: Fulton Bank, N.A., Attention: Ms. Carol Fahnestock, CTFA, Sr. V.P., P.O. Box 7989, One Penn Square, Lancaster, PA 17604

Attorneys: Robert A. Nitchkey, Jr., Esquire, Hemstreet, Nitchkey & Freidl, 730 Washington Street, Easton, PA 18042

DeNARDO, DORIS M., dec'd.

Late of Northampton County, PA
Executrix: Dawn M. Blackton, 3013 Hermitage Avenue, Easton, PA 18042

Attorney: Deborah Jean DeNardo, Esquire, 1809 Washington Blvd., Easton, PA 18042-4634

NAFE, HELENA D., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executors: David K. Bond and Sharon G. Bond

Attorney: Richard J. Schaedler, Esquire, 901 W. Lehigh Street, P.O. Box 1425, Bethlehem, PA 18016-1425

ONCHECK, PRISCILLA L. a/k/a PRISCILLA ONCHECK, dec'd.

Late of Danielsville, Northampton County, PA

Executrix: Debra Lee Nelson, 205 English Walnut Drive, Richlands, NC 28574

Attorneys: Charles W. Stopp, Esquire, Steckel and Stopp, 125 S. Walnut Street, Slatington, PA 18080

SCHISLER, EVELYN M., dec'd.

Late of the Township of Upper Nazareth, Northampton County, PA

Executrix: Karen K. Hess, 205 Clarion Drive, Douglassville, PA 19518

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

STRAUCH, MARIAN P., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Mary Anne Haney c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

WHITELEATHER, JAMES C., dec'd.

Late of 1504 Englewood Street, Bethlehem, Northampton County, PA

Administratrix: Juanita Y. White-leather, 1504 Englewood St., Bethlehem, PA 18017

Attorneys: A. Joseph Antanavage, Esquire, Antanavage, Moyer & Farbiarz, 64 North Fourth Street, Hamburg, PA 19526

THIRD PUBLICATION

BELCAK, DENNIS F. a/k/a DENNIS BELCAK a/k/a DENNIS FRANCIS BELCAK, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Margaret M. Belcak

Attorney: Nicholas M. Zanakos, Esquire, 742 Main Street, Bethlehem, PA 18018

CAMPF, ELFRIEDA G., dec'd.

Late of the Township of Palmer, Northampton County, PA

Executrix: Joni Ann Campf a/k/a Joni A. Kerbaugh c/o Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

Attorneys: Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

FRYE, FRANCIS J., dec'd.

Late of Palmer Twp., Northampton County, PA

Executor: John C. Janos, 312 Lansdowne Rd., Havertown, PA 19083.

FULLER, C.T. a/k/a CHARLTON THOMAS FULLER, dec'd.

Late of Allen Twp., Northampton County, PA

Executors: Christopher F. Lloyd and Zachary Fuller c/o Mark S. Blaskey, Esquire, Pepper Hamilton LLP, 3000 Two Logan Sq., Eighteenth and Arch Streets, Philadelphia, PA 19103-2799

Attorneys: Mark S. Blaskey, Esquire, Pepper Hamilton LLP, 3000 Two Logan Sq., Eighteenth and Arch Streets, Philadelphia, PA 19103-2799

GRUND, MARGARET T., dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Anita Recchia c/o John W. Rybak, Esquire, 408 Adams Street, Bethlehem, PA 18105

Attorney: John W. Rybak, Esquire, 408 Adams Street, Bethlehem, PA 18105

MARCHAK, ROSEMARY, dec'd.

Late of the City of Easton, Northampton County, PA

Administrator: Lonnie Chamberlin, 1016 Cedar St., Laurys Station, PA 18059

Attorneys: Gary M. Miller, Esquire, Miller & Davison, 210 E. Broad Street, Bethlehem, PA 18018

NAGY, AGNES M., dec'd.

Late of Washington Township, Northampton County, PA

Executrix: Emily Rush c/o Joel H. Ziev, Esquire, 700 Washington Street, Easton, PA 18042

Attorney: Joel H. Ziev, Esquire, 700 Washington Street, Easton, PA 18042

PFEIFFER, GERALDINE B., dec'd.

Late of Walnuthport, Northampton County, PA

Executrix: Nancy Malaro, 10 Nerious Avenue, Revere, MA 02151

Attorneys: Charles W. Stopp, Esquire, Steckel and Stopp, 125 S. Walnut Street, Suite 210, Slatington, PA 18080

VIEST, BARBARA K., dec'd.

Late of Lower Saucon Township, Northampton County, PA

Administrator: Bruce E. Davis
c/o Kevin F. Danyi, JD, LL.M.,
Esquire, Danyi Law Offices, P.C.,
133 East Broad Street, Bethle-
hem, PA 18018

Attorneys: Kevin F. Danyi, JD,
LL.M., Esquire, Danyi Law Offices,
P.C., 133 East Broad Street,
Bethlehem, PA 18018

NOTICES OF INCORPORATION

NOTICE IS HEREBY GIVEN that
Articles of Incorporation have been
filed with the Department of State of
the Commonwealth of Pennsylvania,
at Harrisburg, Pennsylvania, for the
purposes of obtaining a Certificate of
Incorporation of a proposed business
corporation to be organized under the
provisions of the Pennsylvania Busi-
ness Corporation Law of 1988, ap-
proved December 21, 1988, P.L.
1444, No. 177, as amended.

The name of the corporation is:

**ALEXANDRIA MANOR EARLY
LEARNING CENTERS, INC.**

Alfred S. Pierce, Esquire
Pierce & Dally, LLC
124 Belvidere Street
Nazareth, PA 18064

Mar. 8

NOTICE IS HEREBY GIVEN that
Articles of Incorporation were filed in
the Department of State of the Com-
monwealth of Pennsylvania for:

CYNETICSOFT SYSTEMS, INC.

under the provisions of the Pennsyl-
vania Business Corporation Law of
1988, as amended.

Mar. 8

NOTICE IS HEREBY GIVEN that
Articles of Incorporation were filed
with the Department of State of the
Commonwealth of Pennsylvania at
Harrisburg, Pennsylvania, on Febru-
ary 27, 2012 for the purpose of ob-
taining a Certificate of Incorporation

of a proposed business corporation
to be organized under the provisions
of the Pennsylvania Business Corpo-
ration Law of 1988, approved Decem-
ber 21, 1988, P.L. 1444, No. 177, as
amended (15 Pa. C.S. §1306).

The name of the proposed corpora-
tion is:

PIZZA VILLAGE IV, INC.

Steven N. Goudsouzian, LLC
2925 William Penn Highway
Suite 301
Easton, PA 18045-5283
(610) 253-9171

Mar. 8

**NOTICE OF NONPROFIT
INCORPORATION**

NOTICE IS HEREBY GIVEN that
Articles of Incorporation—Nonprofit
were filed with the Department of
State, Commonwealth of Pennsylva-
nia and approved on March 1, 2012,
in accordance with the Nonprofit
Corporation Law of 1988 as amended
for the incorporation of:

**PEN ARGYL AREA ALUMNI
ASSOCIATION, INC.**

The purposes for which it is orga-
nized are: fundraising, to be accom-
plished in a manner consistent with
the provisions of Section 501(c) of the
Internal Revenue Code of 1986, as
amended.

JAMES G. MURPHY, ESQUIRE
MURPHY & MURPHY, P.C.
106 N. Franklin St.
Suite 2
P.O. Box 97
Pen Argyl, PA 18072

Mar. 8

**FICTITIOUS NAME
REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN for
registration of Fictitious Name was
filed in the Commonwealth of Penn-
sylvania on November 17, 2011, for:

**GREENBRIAR VILLAGE
HOMEOWNERS ASSOCIATION**

located at: 170 Bentwood Circle.

The name and address of the individual interested in the business is: Randall C. Schaffer, President, 170 Bentwood Circle, Bath, PA 18014, 484-287-5217.

This was filed in accordance with 54 Pa. C.S. 311.

Mar. 8

CORPORATE FICTITIOUS NAME REGISTRATION NOTICES

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of Act 1982-295, a Fictitious Name Registration was filed with the Department of State of the Commonwealth for:

MERRY MAID, INC. d/b/a TRI-STATE RECORDS MANAGEMENT, LLC

with its principal place of business at: 25 W. Messinger Street, Bangor, Pennsylvania. The name and address of the entity owning or interested in said business is: Tri-State Records Management, LLC, 25 W. Messinger Street, Bangor, PA 18013.

McFALL, LAYMAN & JORDAN, P.C.
134 Broadway
Bangor, PA 18013

Mar. 8

NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 311 of Act 1982-295, a Fictitious Name Registration was filed with the Department of State of the Commonwealth for:

SPECIAL EVENTS TENT AND PARTY RENTALS

with its principal place of business at: 25 W. Messinger Street, Bangor, Pennsylvania. The name and address of the entity owning or interested in said business is: Semm, LLC, 25 W. Messinger Street, Bangor, PA 18013.
McFALL, LAYMAN & JORDAN, P.C.
134 Broadway
Bangor, PA 18013

Mar. 8

LIMITED LIABILITY COMPANY NOTICES

NOTICE IS HEREBY GIVEN that the Certificate of Organization—Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Organization for a Domestic Limited Liability Company to be organized under the provisions of Title 15, Corporation and Unincorporated Associations at 15 Pa. C.S.A. 8901 et al., approved December 7, 1994, P.L. 703, No. 106 §4, effective in sixty (60) days.

The name of the Limited Liability Company is:

GRAFFIS PROPERTIES, LLC

The Certificate of Organization was filed on October 14, 2011.

WILLIAM W. MATZ, JR., ESQUIRE
211 W. Broad Street
Bethlehem, PA 18018-5517

Mar. 8

NOTICE IS HEREBY GIVEN that the Certificate of Organization—Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Organization for a Domestic Limited Liability Company to be organized under the provisions of Title 15, Corporation and Unincorporated Associations at 15 Pa. C.S.A. 8901 et al., approved December 7, 1994, P.L. 703, No. 106 §4, effective in sixty (60) days.

The name of the Limited Liability Company is:

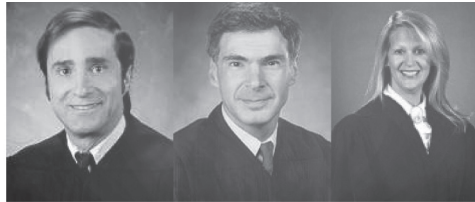
REAL MEDIA GROUP, LLC

The Certificate of Organization was filed on February 13, 2012.

WILLIAM W. MATZ, JR., ESQUIRE
211 W. Broad Street
Bethlehem, PA 18018-5517

Mar. 8

FOR RELEASE
Contact PJ Stevens
570-459-3990



Stevens

Panella

Mundy

The Pennsylvania Superior Court will hold a community session of regular argument court at the Mellow Theater, 501 Vine Street, Scranton on Tuesday, March 13th at 9:30 and Wednesday, March 14th at 10 a.m.

The Superior Court is an appellate court which hears all criminal and most civil case appeals from the trial courts in each of Pennsylvania's 67 counties.

"While our regular courtrooms are in Philadelphia, Harrisburg and Pittsburgh, our judges are committed to taking court sessions into various counties, law schools and have even held session in a high school setting," according to President Judge Correale Stevens.

"All our court sessions are open to the public, and the Mellow Theater is a beautiful facility. We will remain available after the cases are heard for a question and answer period about the court and its decision-making, especially if there are students who attend," Stevens added.

The Superior Court hears about 8,000 appeals a year and decides cases in panels of three judges, assigned randomly by the Court Prothonotary. Most cases are decided on the legal briefs submitted by the lawyers in the case along with a transcript of the court record. Oral argument is scheduled at various times throughout the year. The judges receive the legal briefs and court transcript several weeks before argument court and will often ask questions of the lawyers in court.

Appeals to be heard at the Tuesday session include termination of parental rights, a third degree murder conviction, landlord-tenant issues, the legality of a police search and a juvenile delinquency case.

“Most people are familiar with how trial courts operate in that the witnesses appear, jury trials occur and there is some type of verdict. The Lackawanna session will give people the opportunity to see and hear legal arguments in an appellate court setting. Case summaries will be provided to all attending so they can follow along with the legal arguments.

Superior Court judges have other responsibilities, which include making certain law enforcement have probable cause before granting permission to wiretap suspected criminals, volunteering to give legal education seminars to lawyers’ groups and speaking to civic organizations as well as various administrative duties.

President Judge Stevens is a former member of the Pa. House, Luzerne County District Attorney and Luzerne County Court of Common Pleas trial judge. He was chosen by his colleagues to be President Judge in November, 2010 and regularly volunteers for legal seminars and the Pa. Bar Mock Trial program.

Judge Jack Panella is a former Northampton County Court of Common Pleas trial judge and former President Judge of the Court of Judicial Discipline and has been instrumental in publishing articles and books to aid the judiciary. In 2002 he was selected to visit American troops stationed in Bosnia.

Judge Sallie Updyke Mundy has extensive experience in both civil and criminal law as a former trial attorney and public defender. She volunteers for legal seminars to update lawyers on appellate practice and serves on the Court Technology and Legislation Committees.

“Pennsylvania appellate court judges are chosen by the people, and we do our best to decide all cases in a fair, impartial and timely manner,” Stevens concluded.

MEMOIR WRITING CONFERENCE

APRIL 28, 2012,

STEELSTACKS, BETHLEHEM, PA

**NINE NATIONALLY KNOWN ARTISTS AND WRITERS,
KEYNOTE SPEAKER, AND PANEL DISCUSSION**

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Mar. 8, 15

During the Commonwealth's cross-examination, the Commonwealth asked Sines whether she had determined that the appellant was a low risk to reoffend and the appellant objected. [*Id.* at 28.] The appellant claimed that the question was outside the scope of his direct examination and was intending to illicit irrelevant information. [*Id.*] The Commonwealth pointed out that Sines testified that she played an active role in the parole recommendation and she also selected the appellant to work in the specialized unit in the prison. [*Id.* at 28-29.] The Commonwealth argued that this question was proper insofar as it challenged her credibility and judgment in permitting the appellant to work in the specialized unit. [*Id.* at 29.] The question also was relevant towards any potential bias on her part. [*Id.*]

We submit that the Commonwealth's question concerning Sines' assessment that the appellant was a low risk to reoffend was proper and we did not err or abuse our discretion in overruling the appellant's objection. We note that cross-examination of witnesses is limited to matters brought out on direct examination, with an exception that questions outside the scope of direct examination are permitted to show bias on the part of a witness. *Commonwealth v. Cheatham*, 429 Pa. 198, 239 A.2d 293, 296 (1968). In addition, Rule of Evidence 611(b) generally restricts the scope of cross-examination to matters discussed during direct examination and matters affecting credibility. Pa. R.E. 611(b). Here, the appellant was attempting to show that Sines judged the appellant, despite his misconduct history and criminal history, to be of such good character to be suitable to assist the elderly prisoners in a special unit in the prison. Thus, Sines' credibility, bias in favor of the appellant, and judgment were at issue, and the Commonwealth attempted to challenge Sines' testimony in those specific areas by questioning her about her assessment of the appellant. [*See* Day Three Tr., at 30.]

In addition, contrary to the appellant's arguments to us during the trial, the Commonwealth's questioning made it clear that Sines' recommendation was just part of the overall parole process, that she did not release the appellant from prison, and that she was part of the team that recommended that the appellant receive parole. [*Id.* at 31-33, 39-40.] Thus, while we recognize that the appellant contends in his supplemental concise statement that we somehow abused our discretion in allowing the Commonwealth to question Sines about the parole board's decision to parole the appellant in 2007, the Commonwealth did not ask Sines any such questions. Instead, the Commonwealth's questions were limited to only her decision (as part of the corrections unit) to determine that the appellant was a low risk to reoffend and that she recommended that he receive parole. Accordingly, the Commonwealth's cross-examination of Sines was proper.

3. *Dr. Richard Fruncillo*

The appellant contends that we abused our discretion in permitting the Commonwealth to cross-examine Dr. Richard Fruncillo about (1) con-

firming that alcohol did not prevent the appellant from forming the specific intent to kill, (2) the appellant's prison misconduct history, and (3) the appellant's 1991 homicide of Donald Richard. As discussed below, these allegations of error lack merit.

a. Dr. Fruncillo's testimony on direct examination.

The appellant called Dr. Fruncillo to testify as a forensic toxicologist. [Day Three Tr., at 56-57.] Dr. Fruncillo received his medical degree from Hahnemann Medical College (now Drexel), and he is licensed to practice medicine in the Commonwealth of Pennsylvania. [*Id.* at 57, 58.]⁴⁷

In preparing for this case, Dr. Fruncillo reviewed the criminal complaint filed against the appellant and the police report, pages 1-144, containing the St. Luke's Hospital records. [*Id.* at 62.] Dr. Fruncillo noted that members of St. Luke's Hospital took a serum alcohol level from the appellant approximately four hours after the homicides occurred. [*Id.* at 63-64.] Using his calculations for converting serum alcohol level to blood alcohol level, Dr. Fruncillo stated that the appellant had a .168 blood alcohol level at the time of the homicides. [*Id.* at 64-65, 70.] Additionally, the appellant had an elevated blood testosterone level most likely because of taking an over-the-counter supplement, DHEA. [*Id.* at 66.] Dr. Fruncillo stated that this elevated testosterone level would have contributed to increased aggressiveness. [*Id.* at 68, 69.]⁴⁸ Dr. Fruncillo opined that the "major factor was the alcohol. At that level, alcohol definitely contributes to increased aggressiveness that would have been potentiated by the elevated testosterone level." [*Id.* at 70.] Furthermore, "the elevated alcohol level, combined with the elevated testosterone, contributed to [the appellant's] aggressiveness." [*Id.* at 71.]

b. Cross-examination relating to the appellant's specific intent to kill.

The appellant initially complained that we abused our discretion in permitting the Commonwealth to ask Dr. Fruncillo about whether the appellant's level of intoxication would have affected his specific intent to kill. More specifically, during cross-examination the Commonwealth asked Dr. Fruncillo questions about the appellant's guilty plea and his admissions

⁴⁷ Without objection from the Commonwealth, Dr. Fruncillo was accepted as an expert in the area of forensic toxicology. [Day Three Tr., at 62.]

⁴⁸ On cross-examination, Dr. Fruncillo acknowledged that his report indicated that the testosterone "could have marginally increased" the appellant's aggressiveness. [Day Three Tr., at 102.]

The medical reports also stated that the appellant had yohimbine in his system, which would have (if the appellant was not tolerant to it) caused, *inter alia*, emotional instability, loss of critical judgment, increased risk-taking behavior and increased aggressiveness. [*Id.* at 67.] Dr. Fruncillo did not believe that the appellant's yohimbine intake was a factor in his actions. [*Id.* at 69.]

therein that (1) his alcohol use was not a defense sufficient to negate the specific intent to kill, and (2) even though the appellant had been drinking he still knew what he was doing. [*Id.* at 76.] The Commonwealth then asked the doctor whether even though the appellant had a .16 blood alcohol level, this “did not cause him or did not prevent him from forming a mental intent to kill.” [*Id.* at 77.]

At this point, the appellant objected on the grounds that this question was impermissible because Dr. Fruncillo is not a psychologist or psychiatrist and the appellant had already pleaded guilty. [*Id.* at 77, 78.] The Commonwealth responded to the objection by arguing that the question was relevant to challenge Dr. Fruncillo’s opinions concerning the effect of the testosterone and alcohol on the appellant at the time of the homicides. [*Id.* at 78, 79.] Also, the Commonwealth sought to negate any possible inference by the doctor that the appellant’s testosterone and alcohol levels operated as some type of legal excuse or created residual doubt. [*Id.* at 79.]

We respectfully submit that we did not commit an abuse of discretion in overruling the appellant’s objection to this question. Although guilt or innocence was not at issue, the Commonwealth properly attacked the credibility and basis of Dr. Fruncillo’s opinion about how the alcohol and testosterone allegedly affected the appellant’s behavior. Moreover, the Commonwealth was attempting to negate the mitigating nature of this evidence by showing that it would not affect the appellant’s ability to carry out the killings. As such, we properly permitted the Commonwealth to cross-examine Dr. Fruncillo on this issue.

c. Cross-examination relating to the appellant’s prison misconduct history.

The appellant also contends that we should not have permitted the Commonwealth to cross-examine Dr. Fruncillo about the appellant’s prison misconduct history. [*Id.* at 88.] The appellant objected to the Commonwealth’s question, “Did you know from your review that Mr. Ballard had a history in prison of aggressive behavior involving fights and assaults?” [*Id.*] The appellant objected to this question claiming that his prison conduct was irrelevant to Dr. Fruncillo’s testimony. [*Id.* at 88-89.]

We initially informed the Commonwealth that it was potentially misconstruing the appellant’s prison history. [*Id.* at 89.] We then informed the Commonwealth that it could inquire into this issue by asking Dr. Fruncillo a hypothetical question and whether his opinion would change based on this information. [*Id.* at 91-92.]

Later in the cross-examination, the Commonwealth and Dr. Fruncillo had the following exchange:

Q. Now, if I told you that Mr. Ballard had some incidents in prison where he was found to have assaultive behavior, fighting, you would consider those to be aggressive behaviors; correct?

A. Correct.

Q. And if I told you that in prison he had no alcohol in his system at all when he engaged in assaultive behavior and fighting, you have to conclude that alcohol had no [e]ffect on his aggressiveness in prison at that time; correct?

A. Correct. But what you're saying is he has a higher level of aggression than maybe you or me. What I'm saying is when you add alcohol, that goes even higher. I—so I mean a lot of what you're saying is like junk science.

[*Id.* at 99-100.]

We submit that we properly allowed the Commonwealth to cross-examine Dr. Fruncillo about the assaultive incidents in the appellant's prison history and how this behavior would or would not affect the doctor's opinion. The Commonwealth was attempting to dispute Dr. Fruncillo's opinion concerning the effect of the appellant's alcohol consumption on his actions on June 26, 2010. This question was relevant to Dr. Fruncillo's credibility and the weight to be given to his opinion.

d. Cross-examination about the appellant's 1991 homicide.

The appellant's final contention relating to the cross-examination of Dr. Fruncillo relates to the Commonwealth asking the doctor about the appellant's 1991 homicide. The appellant objected to this question by arguing that it was irrelevant. [*Id.* at 104-105.] We submit that we properly overruled the appellant's objection on this question. The question was relevant to challenge Dr. Fruncillo's conclusion that the appellant's alcohol consumption caused increased aggressiveness and that this increased aggressiveness was a factor in the appellant murdering four people. The Commonwealth could ask the doctor if his conclusion would change if he knew that the appellant killed another person in 1991 while not under the influence of alcohol. This information would tend to show that the appellant's personality (or nature) was aggressive, rather than that the alcohol somehow led him to commit (or increased the likelihood that he would commit) these homicides. Accordingly, we did not abuse our discretion in overruling the appellant's objection on this issue.

4. *Dr. Gerald Cooke*

The appellant's final claim relating to the Commonwealth's cross-examination of his mitigation witnesses involves the testimony of Dr. Gerald Cooke. The appellant contends that we abused our discretion in permitting the Commonwealth to cross-examine Dr. Cooke about a letter written to the appellant's mitigation specialist, Louise Luck, and discuss a diagram of the crime scene drafted by the appellant. Neither of these claims have merit.

a. Dr. Cooke's testimony on direct examination.

Dr. Cooke testified that he is a forensic psychologist and he is licensed as a psychologist in the Commonwealth of Pennsylvania. [Notes of Testi-

mony—Volume Four (“Day Four Tr.”), 5-13-11, at 228, 229.]⁴⁹ Dr. Cooke performed a neuropsychological evaluation on the appellant, which consisted of a brief interview and neuropsychological testing lasting approximately five and a half hours. [*Id.* at 231, 235.]⁵⁰ As part of his evaluation, Dr. Cooke also reviewed a litany of documents relating to this case, including, *inter alia*, a letter that the appellant wrote to the mitigation specialist, Louise Luck. [*Id.* at 232-33.]

In regard to the appellant’s personal history, Dr. Cooke did not find his prior alcohol use, drug use or childhood fevers as possibly contributing to any brain damage. [*Id.* at 239-41.] Dr. Cooke did find that the appellant’s history of approximately five to twelve head injuries was significant. [*Id.* at 241-42.] Based on the information Dr. Cooke obtained relating to these head injuries, he “concluded that there was a sufficient past history of multiple traumatic brain injuries that may be mild but cumulative in their effect. If I found brain damage, that [would] probably be the cause of it.” [*Id.* at 243.] Additionally, Dr. Cooke did not find that the appellant’s vehicular accident on the date of the homicides caused any brain damage based on his review of the records from St. Luke’s Hospital. [*Id.* at 244-45.]

Dr. Cooke noted that the appellant did “his best” during the testing. [*Id.* at 245-46.] In terms of his I.Q., Dr. Cooke observed that the appellant’s test results revealed the following deficiencies: (1) the appellant had a deficit in fluid reasoning, which means that he has difficulty with applying logic in new situations; and (2) the appellant had a deficient processing speed, which is the ability to scan what he is seeing, place things in sequence, discriminate visual information, and handle certain aspects of decision-making and learning. [*Id.* at 246-48.] In addition, the appellant’s premorbid I.Q. before brain damage was on the higher end of 101 to 109, but after brain damage, it is 98. [*Id.* at 249.]

As for the appellant’s memory, Dr. Cooke observed that the appellant had an issue with retaining what he registers. [*Id.* at 251.] In addition, the

⁴⁹ Without objection by the Commonwealth, Dr. Cooke was accepted as an expert in forensic psychology. [Day Four Tr., at 229.]

⁵⁰ Dr. Cooke explained the purpose of a neuropsychological evaluation as follows:

Well, it’s a specialized matter that goes beyond the acute. Because an individual can have brain damage and it may or may not affect their I.Q. because sometimes it affects more subtle aspects of functioning that are not measured just by an I.Q. test.

So they are special batteries and the idea is to see where there are strengths or weaknesses and deficits and how this might affect his behavior. [Day Four Tr., at 231.]

Dr. Cooke performed the following tests: (1) a Wechsler Adult Intelligence Scale 4 test, which gives an overall I.Q. and also breaks down an individual’s I.Q. into separate areas; (2) a Wechsler Memory Scale form, which “does for memory what [an] I.Q. test does for I.Q.[:];” (3) a Reitan Neuropsychological Background; (4) a Trails A and Trails B test; (5) a wide range achievement test, which assesses such things as reading level and arithmetic skills; and (6) a Validity Indicator Profile, which assesses the effort of the test-taker insofar as whether the person is faking or exerting maximum possible effort. [*Id.* at 235-38.]

sociopsychological battery showed that the appellant was impaired in six of thirteen areas, and all six of those areas indicated that the appellant had damage to the parietal lobe of his brain. [*Id.* at 252-53.] Also, the tests showed that the appellant had impairments with problem solving. [*Id.*]

Based on the battery of tests and Dr. Cooke's review of various documents relating to the appellant and to this case, Dr. Cooke concluded that the appellant suffers from a cognitive disorder indicating organic brain damage or dysfunction. [*Id.* at 254, 256.] In his opinion, the appellant suffers from a cognitive disorder because of the effects of numerous head injuries over the years. [*Id.*] Additionally, Dr. Cooke believes that this brain damage contributed to the appellant committing this quadruple homicide "to the extent it makes [the brain] more susceptible to alcohol, and to the extent it ma[d]e [the appellant] less able to control his emotions[.]" [*Id.* at 254-55.] Moreover, a damaged brain makes an individual "less able to deal with frustration and emotion in general." [*Id.* at 255.] Therefore, in Dr. Cooke's opinion, the appellant was acting under the influence of extreme mental or emotional disturbance at the time of the homicides. [*Id.* at 256.]

b. Cross-examination concerning the appellant's letter to the mitigation specialist, Louise Luck.

As stated above, the appellant contests two of our alleged rulings with respect to the Commonwealth's cross-examination of Dr. Cooke. In the first instance, the appellant claims that we improperly allowed the Commonwealth to cross-examine Dr. Cooke about his December 30, 2010 letter to his mitigation specialist, Louise Luck. With respect to this issue, the appellant has not asserted a basis for relief regarding this line of questioning because our review of the record of trial indicates that the appellant did not object to any questions to Dr. Cooke about this letter. [Day Four Tr., at 274-79.] In fact, the appellant specifically asked Dr. Cooke on direct examination whether he had reviewed this letter in preparing his opinion in this case. [*Id.* at 234.] Therefore, the appellant has waived any claim of error by failing to object during the trial. *See* Pa. R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.").⁵¹

c. Cross-examination about the appellant's intricate drawing of the crime scene.

The appellant's second issue concerns the Commonwealth's question to Dr. Cooke about whether he recalled viewing a drawing in which the appellant sketched himself over the victim in the kitchen. [Day Four Tr., at 279-80.] Dr. Cooke responded to the Commonwealth's question by indicat-

⁵¹ Even had the appellant objected to this line of questioning, the Commonwealth properly introduced the letter to challenge Dr. Cooke's conclusions concerning the appellant's memory deficiencies.

ing that he did recall reviewing this drawing. [*Id.* at 280.] At this point, the appellant objected to the Commonwealth's question and we held a conference with counsel at sidebar. [*Id.*] The appellant argued that the picture was unrelated to Dr. Cooke's opinions regarding the appellant's memory deficit, and the Commonwealth responded that the appellant's ability to intricately draw a sketch of the crime scene (including a clock showing the time at 4:19), was relevant to challenge Dr. Cooke's opinions. [*Id.* at 281-83.]⁵² After the conference, we informed the District Attorney that he could not cross-examine Dr. Cooke about the diagram unless Dr. Cooke stated that the appellant's brain injury would have stopped him from drawing the picture. [*Id.* at 283.]

The sidebar conference then concluded and the Commonwealth asked Dr. Cooke whether the appellant had long-term memory issues because of his alleged brain damage. [*Id.* at 284.] Dr. Cooke responded by indicating that the appellant did not have long-term memory issues and explained that the appellant's memory issues involve "short-term memory after a brief delay, 15 minutes, 30 minutes, a day, two days." [*Id.*] The Commonwealth and Dr. Cooke then had the following exchange:

Q. So you're saying then that the cognitive disorders that you have testified to, it would not surprise you then that this defendant could draw a detailed sketch down to the exact time of the homicide showing the exact positioning of the body and where he stood as he committed these murders, that would be consistent with your findings?

A. It wouldn't be consistent or inconsistent. Sometimes in our memory, more than others, obviously, that has a tremendous impact.

Q. So you're saying that his ability to recall that to detail is not a surprise to you? It's not inconsistent with your findings?

A. It's not neither consistent nor inconsistent. That's not the kind of deficit we're talking about. But also as I said, some things really impact. Something like that, of course, would be more likely to be ingrained in memory perhaps than something else is there now.

[*Id.* at 284-85.]

We respectfully submit that, to the extent that the appellant preserved any objection relating to the Commonwealth's questioning, the Commonwealth properly referenced the appellant's drawing.⁵³ At the time the Commonwealth was clarifying Dr. Cooke's testimony regarding the appellant's alleged memory deficits. Also, Dr. Cooke admitted that he had reviewed

⁵² At the time, the appellant had an outstanding motion *in limine* to prevent the admission of the photograph as part of the Commonwealth's evidence. [Day Four Tr., at 281, 283.]

⁵³ The appellant did not object to the Commonwealth's two questions about the picture after the sidebar conference.

the drawing. Therefore, this question was relevant to the jury's assessment of Dr. Cooke's credibility and understanding of Dr. Cooke's opinion and evaluation.

D. *Rebuttal Witnesses*

The appellant contends that we improperly permitted the Commonwealth to call five rebuttal witnesses that allegedly did not rebut his direct evidence and he also argues that the admission of this evidence was unfairly prejudicial. As discussed below, these allegations lack merit.

The admission of rebuttal testimony is within the sound discretion of the trial court. *Commonwealth v. Jones*, 530 Pa. 591, 617, 610 A.2d 931, 942 (1992). Additionally, concerning death penalty cases in particular, we note that

[i]mplicit in the fact that the statute assigns to the defendant the burden of proving mitigati[on] circumstances by a preponderance of evidence is the understanding that the jury is to assess the evidence for credibility. It must be left open for the Commonwealth to challenge the veracity of facts asserted and the credibility of the person asserting those facts, whether that person is a witness or the defendant.

Commonwealth v. Abu-Jamal, 521 Pa. 188, 213, 555 A.2d 846, 858 (1989). Moreover, "[t]he appropriate scope of rebuttal has always been defined according to the evidence that it is offered to rebut." *Commonwealth v. Hughes*, 581 Pa. 274, 865 A.2d 761, 797 n.40 (2004) (citing *Commonwealth v. Hickman*, 453 Pa. 427, 432, 309 A.2d 564, 567 (1973) ("It is not proper to submit on rebuttal, evidence which does not in fact rebut the opponent's evidence.")). Furthermore, "it is entirely proper for a rebuttal witness to testify about facts which discredit an opponent's witness's opinions." *Mitchell v. Gravely International, Inc.*, 698 A.2d 618, 621 (Pa. Super. 1997) (citation omitted).

Here, the Commonwealth introduced five witnesses as part of its rebuttal evidence, Todd Buskirk ("Buskirk"), Conrad A. Lamont ("Lamont"), Danielle Kaufman ("Kaufman"), Trooper Judge and Veronique Valliere, Ph.D. With the exception of Trooper Judge, the Commonwealth called the other four rebuttal witnesses to rebut the testimony of Robert Johnson, Ph.D., who testified that the appellant was amenable to a nonviolent existence as a life prisoner. The Commonwealth called Trooper Judge to rebut inferences relating to the appellant's relationship with his father. We will address each rebuttal witness in turn.

1. *Witnesses Rebutting Testimony of Dr. Robert Johnson*

a. Dr. Johnson's testimony.

Before proceeding with the discussion concerning our rationale for permitting the Commonwealth to introduce Buskirk, Lamont, Kaufman

and Dr. Valliere, we note that Dr. Johnson testified that he is a professor of Justice, Law and Society at American University. [Day Four Tr., at 173.] Dr. Johnson obtained his Ph.D. in criminal justice from the State University of New York at Albany, with a focus on the social psychology of crime and punishment and prison life, prison work, life sentence inmates and inmates sentenced to die. [*Id.* at 173-74.] Dr. Johnson is a penologist, meaning he studies the nature of punishment and, in particular, prison as a setting in which punishments of life imprisonment and death sentences are carried out. [*Id.* at 176.]⁵⁴

Dr. Johnson conducted two approximately ninety-minute interviews with the appellant. [*Id.* at 181.] Dr. Johnson also reviewed the appellant's entire correctional file, with particular emphasis on any of the appellant's infractions while in prison. [*Id.* at 181-82, 194.] Dr. Johnson pointed out that the appellant committed eleven infractions during the fifteen years of his first prison sentence. [*Id.* at 195.] When the appellant was re-committed for the parole violation for a two-year period, the appellant did not commit any infractions. [*Id.* at 195-96.] In addition, Dr. Johnson noted that the appellant appears to have "settled into" long-term prison adjustment because he had not committed any infractions over the last six years of his incarceration and had not committed any violent infractions over the last eleven years of his sentence. [*Id.* at 196, 197.] Moreover, most of the appellant's bouts of misbehavior were not considered serious infractions by the prison. [*Id.* at 197-98.]

Dr. Johnson also pointed out that the appellant was approximately eighteen years old when he was incarcerated and many of the appellant's infractions occurred in the 1990s, while he was still very young. [*Id.* at 196.] Dr. Johnson explained that younger inmates tend to get into trouble early on when they first get into prison. [*Id.* at 196-97.]

Concerning the appellant's conduct while in Northampton County prison awaiting resolution of the charges in this case, Dr. Johnson described one incident in the appellant's records in which he had barricaded himself in his cell. [*Id.* at 198.] Since the appellant refused to exit his cell, the prison's extraction team entered and extracted him from his cell. [*Id.*] Although Dr. Johnson could not tell from the report if anyone was hurt during the incident, the report did show that there was a "great struggle to get him under control and then put him ... into suicide watch." [*Id.*] This incident implied to Dr. Johnson that "it was both a misbehavior but also a misbehavior with mental health connotations." [*Id.* at 199.]

Based on Dr. Johnson's review of the appellant's correctional history and his interview with the appellant, Dr. Johnson opined to a reasonable degree of socio-scientific certainty that the appellant would adjust in a nonviolent manner to a life sentence without the possibility of parole. [*Id.* at

⁵⁴ The court accepted Dr. Johnson as an expert in penology. [Day Four Tr., at 181.]

199-200.] Dr. Johnson also pointed out that the appellant's incident in the Northampton County Prison was not indicative of his potential behavior while serving a life sentence because "[t]here's no research that would say that pretrial behavior, even violent pretrial behavior, predicts lifer behavior." [*Id.* at 199-200.] In this regard, Dr. Johnson explained that pretrial circumstances are much more unsettled and unstructured, and the appellant's behavior over the previous fifteen or sixteen years that he was incarcerated better indicates his potential behavior as a life sentence inmate. [*Id.* at 200.]

b. Todd Buskirk.

As indicated above, the Commonwealth sought to call Buskirk, warden of the Northampton County Prison, to discuss the appellant's misconduct during a prison incident on March 6, 2011. [Notes of Testimony—Volume Six ("Day Six Tr."), 5-17-11, at 3-5.] The Commonwealth indicated that Buskirk would testify about this March 2011 incident in which the appellant barricaded himself in his cell. [*Id.* at 3-4.] The Commonwealth argued that this testimony would "rebut testimony [from Dr. Johnson] that [the appellant] can be a non-violent individual in the prison, [and] shows [the appellant] is a danger to other guards by acting out like this and continues to represent a risk to people both inside guards and other prisoners." [*Id.* at 4.]

The appellant objected to Buskirk's proposed testimony claiming that this evidence did not rebut his evidence. [*Id.*] More specifically, the appellant argued that he had already introduced the incident at the Northampton County Prison through Dr. Johnson's testimony. [*Id.*] Additionally, the appellant pointed out that Dr. Johnson had testified that he reviewed the incident and it did not change his opinion that the appellant would be a nonviolent life prisoner. [*Id.*]

We permitted the Commonwealth to introduce Buskirk's testimony because the testimony was probative as to whether the appellant could be a nonviolent prisoner who is not a danger to others. [*Id.*]⁵⁵ Also, we indicated that the probative value of this testimony exceeded any possible prejudice from the testimony. [*Id.*] We respectfully submit that we did not err in allowing Buskirk to testify because even though his testimony did

⁵⁵ Buskirk testified that the appellant barricaded himself into his cell on March 6, 2011. [Day Six Tr., at 6-7.] The appellant refused multiple verbal commands to exit his cell. [*Id.* at 7-8.] In the meantime, the appellant had also flooded his cell. [*Id.* at 8.] The shift supervisor at the time decided to assemble the emergency response team, also known as the "cert" team. [*Id.*] On that day, five individuals and the supervisor constituted the cert team. [*Id.*] The cert team asked the appellant to remove a mattress, which he had placed against the door and step back from the cell door. [*Id.*] After the appellant refused to comply, the cert team entered and extricated the appellant from his cell. [*Id.* at 9.] The appellant received an internal misconduct and several charges for his behavior. [*Id.*] During the extrication, the appellant and some of the corrections officers received scrapes and bruises, but no one was seriously hurt. [*Id.* at 10.]

not actually conflict with Dr. Johnson's summary of the appellant's misconduct at the Northampton County Prison, it did provide more particular information about the incident so that the jury could more appropriately weigh Dr. Johnson's opinion that this incident would not affect the appellant's ability to be a non violent life prisoner. The Commonwealth should not have been limited in its introduction of the facts surrounding this incident merely because Dr. Johnson summarized it as part of his direct examination.

We also note that in his supplemental concise statement, the appellant claims that we erred in permitting Buskirk to testify because the March 2011 incident dealt with pre-sentence behavior and Dr. Johnson's testimony related to the appellant's potentially prospective conduct as a life prisoner. While we recognize that Dr. Johnson described how, in his opinion, an individual's incidents of misconduct in pretrial incarceration are not indicative of post-sentence behavior, the jury was free to disbelieve this part of Dr. Johnson's opinion. Therefore, the specific information surrounding the appellant's incident at the Northampton County Prison in March 2011 was probative and relevant to the jury's assessment of Dr. Johnson's opinion.

Despite the foregoing, we also submit that even if we erred in allowing the Commonwealth to introduce Buskirk's testimony, any error in this regard would be harmless. As the appellant points out, Dr. Johnson discussed the essence of the appellant's conduct in the prison on March 6, 2011 during his direct testimony. Therefore, the appellant could not have suffered any prejudice by the Commonwealth introducing Buskirk's testimony about the same incident.

c. Conrad Lamont.

Lamont was the Commonwealth's second rebuttal witness. Although the appellant has broadly claimed in his concise statement that we erred in permitting the Commonwealth to introduce each of the five rebuttal witnesses, including Lamont, we respectfully submit that the appellant has waived any issues relating to his testimony by failing to object at trial. Pa. R.A.P. 302(a). In this regard, although the appellant asked for an offer of proof from the Commonwealth before Lamont testified, the record does not disclose any specific objection to his testimony. [Day Six Tr., at 11-13.]

Nonetheless, should the Court determine that the appellant preserved any issues relating to Lamont's testimony, we submit that the appellant's issue lacks merit. The appellant contends that we erred in allowing Lamont's testimony because the appellant's statement to Danielle Kaufman about Lamont did not rebut Dr. Johnson's testimony because it related to pre-conviction behavior. As discussed above, simply because Dr. Johnson opined regarding the appellant's anticipated behavior if a life sentence was imposed, does not mean that his credibility regarding that opinion and his opinion

about the irrelevance of pretrial misconduct were not subject to scrutiny or challenge by the Commonwealth.

Here, Lamont testified that he is a lieutenant in the Northampton County Prison and his main responsibility is to take custody of the inmates and supervise the other correction officers in their daily activities. [*Id.* at 14.] At some point during his employment, he had contact with the appellant on a daily basis. [*Id.*] Lamont observed Danielle Kaufman visit the appellant in the prison. [*Id.* at 16-17.] On some of these occasions, Kaufman would talk to Lamont. [*Id.* at 17.] On one occasion, after they spoke on the phone, Kaufman met with Lamont and showed him a letter in which the appellant threatened Lamont's safety. [*Id.* at 15-16.] The appellant was not able to follow through on any threats because the prison "never gave him the chance." [*Id.* at 17-18.]

We submit that Lamont's testimony rebutted Dr. Johnson's testimony and opinions about the appellant's ability to be a nonviolent life prisoner. Even though Dr. Johnson explained his ultimate opinion was not based on incidents of pretrial confinement, the jury had to assess the credibility of Dr. Johnson and the weight of his opinions, and Lamont's testimony was relevant on these issues.

d. Danielle Kaufman.

Kaufman was the Commonwealth's third rebuttal witness. Similar to Lamont, to the extent that the appellant has raised an issue with respect to her testimony in his original concise statement, we have not located a specific objection to her testimony in the record and, thus, any issues appear to be waived.⁵⁶ Pa. R.A.P. 302(a). Nonetheless, if the appellant preserved any objection to Kaufman's testimony, his claim lacks merit.

Kaufman testified that she and the appellant started to exchange correspondence after the appellant was incarcerated on the homicide charges in this case. [Day Six Tr., at 22-23.]⁵⁷ They often wrote each other, they occasionally spoke on the telephone and she even visited him in the Northampton County Prison. [*Id.* at 23.] At one point, Kaufman wrote the appellant and told him that Lamont told her that she should not be wasting her time and should stop visiting the appellant. [*Id.* at 26.] In response to

⁵⁶ Prior to Kaufman's testimony, the appellant had asked for an offer of proof. [Day Six Tr., at 19.] At the time, the Commonwealth indicated that Kaufman would testify as to two things: (1) the appellant's letter to her dated December 13, 2010 in which he threatened Lamont, and (2) the appellant's request to Kaufman to conduct Internet research on the family of another inmate, John McMullen. [*Id.* at 19-20.] After a discussion with counsel, during which the appellant did not object to any proposed testimony, we nevertheless refused to permit the Commonwealth to ask Kaufman about the appellant's alleged request relating to Mr. McMullen and his family. [*Id.* at 20-21.]

⁵⁷ Kaufman admitted to writing to other killers, such as David Berkowitz, the Son of Sam. [Day Six Tr., at 26.]

Kaufman's letter, the appellant sent her a letter dated December 13, 2010. [*Id.* at 23-24.] In this letter, the appellant stated that

I'll deal with Lieutenant Lamont when he and I meet up again[.] I figure I can either head butt him with all the force I can generate, break his nose, maybe knock a couple teeth out, or I can kick him so hard between his legs that one or maybe both of his nuts pop like grapes squeezed between your thumb and forefinger.

[*Id.* at 25.]

After receiving this letter, Kaufman copied it and provided it to the appellant's counsel. [*Id.* at 24.] Kaufman stated that the appellant's counsel told her that "Michael was probably just talking so [she] should just let it go." [*Id.*] Because that did not seem "right," Kaufman contacted Lamont because she did not want Lamont to get hurt or the appellant to get in trouble. [*Id.* at 24, 25.]

Similar to Lamont, Kaufman's testimony was proper rebuttal testimony to attack the credibility of Dr. Johnson and for the jury to assess the weight of his opinions. Therefore, we did not abuse our discretion in permitting the Commonwealth to introduce Kaufman's testimony as rebuttal evidence.

e. Veronique Valliere, Ph.D.

The appellant has also claimed that we erred in permitting the Commonwealth to introduce the testimony of Dr. Valliere to rebut Dr. Johnson's testimony. In particular, the appellant asserts that Dr. Valliere could not rebut Dr. Johnson's testimony because she is not a penologist and did not discuss the appellant's behavior in prison. We submit that we properly permitted Dr. Valliere's testimony in this case.

Dr. Valliere testified that she has a doctorate in clinical psychology, has been licensed to practice since 1995, and has worked in the Lehigh Valley since 1993 directing outpatient rehabilitation and a violent offender program. [*Id.* at 41.]⁵⁸ Dr. Valliere became familiar with the appellant in April 2007 after he was referred by the Pennsylvania Parole Department to her business, Forensic Treatment Services, which works with, among others, violent offenders. [*Id.* at 42-43.] In particular, the appellant needed violent offender treatment because of the homicide and his preparation for re-entry into the community. [*Id.* at 43.]

The appellant spent over 150 hours in the treatment program. [*Id.* at 44.] The appellant participated in an initial intake with one of the forensic counselors and then he entered into group therapy for violence intervention. [*Id.* at 45.] Dr. Valliere participated in approximately half of the group therapy sessions in which the appellant participated. [*Id.*]

⁵⁸ Dr. Valliere was accepted as an expert in psychology. [Day Six Tr., at 42.]

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