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ERIE COUNTY LEGAL JOURNAL

Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania

Managing Editor: Megan E. Anthony

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ERIE COUNTY BAR ASSOCIATION CALENDAR OF EVENTS AND SEMINARS

MONDAY, JULY 26, 2021

ECBA Board of Directors Meeting
Noon
The Will J. Schaaf & Mary B. Schaaf
Education Center live (must RSVP)
or via Zoom

THURSDAY, JULY 29, 2021

Defense Bar Meeting
4:00 p.m.
ECBA Headquarters live (must RSVP)
or via Zoom

TUESDAY, AUGUST 3, 2021

ADR Committee Meeting
Noon
The Will J. Schaaf & Mary B. Schaaf
Education Center live (must RSVP)
or via Zoom

WEDNESDAY, AUGUST 4, 2021

Diversity & Inclusion Education
Subcommittee Meeting
Noon
The Will J. Schaaf & Mary B. Schaaf
Education Center live (must RSVP)
or via Zoom

FRIDAY, AUGUST 6, 2021

ECLF Bocce Tournament Committee Meeting
Noon
ECBA Headquarters live (must RSVP)
or via Zoom

TUESDAY, AUGUST 10, 2021

Bankruptcy Section Meeting
Noon
ECBA Headquarters live (must RSVP)
or via Zoom

WEDNESDAY, AUGUST 11, 2021

ECBA Live Lunch-n-Learn Seminar
*Ethical Considerations in Helping a
Low-Income Ex-Offender Apply for a Pardon*
The Will J. Schaaf & Mary B. Schaaf
Education Center live or via Zoom
11:45 a.m. - Registration
12:00 - 1:00 p.m. - Seminar
\$47 (ECBA members/their non-attorney staff)
\$60 (non-members)
1 hour ethics
Click link for details
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COMMONWEALTH of PENNSYLVANIA

v.

THOMAS EUGENE BEEBE, II,

CRIMINAL LAW / TRIAL PROCEDURE / POST-CONVICTION RELIEF ACT

The PCRA procedurally bars claims of trial court error, by requiring a petitioner to show the allegation of error is not previously litigated or waived.

CRIMINAL LAW / POST-CONVICTION RELIEF ACT / INEFFECTIVE ASSISTANCE OF COUNSEL

To succeed on a claim of ineffective assistance of counsel in a PCRA proceeding, an appellant must prove three elements: 1) the underlying legal claim is of arguable merit; 2) counsel's action or inaction lacked any objectively reasonable basis designed to effectuate his client's interest; and 3) prejudice, to the effect that there was a reasonable probability of a different outcome if not for counsel's error.

CRIMINAL LAW / POST-CONVICTION RELIEF ACT / INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel is presumed to be effective and the burden of demonstrating ineffectiveness rests on appellant.

CRIMINAL LAW / MERGER

Merger of offenses is appropriate where: 1) the crimes arise from a single criminal act; and 2) all of the statutory elements of one of the offenses are included in the statutory elements of the other offense.

CRIMINAL LAW / MERGER STATUTE

When determining whether merger is appropriate, examination of the elements of the crimes as charged is sometimes necessary, especially when dealing with an offense that can be proven in alternate ways.

CRIMINAL PROCEDURE / DOUBLE JEOPARDY

The imposition of multiple sentences upon a defendant whose single unlawful act injures multiple victims is legislatively authorized and, consequently, does not violate the double jeopardy clause of the Fifth Amendment, which forms the basis of Pennsylvania's merger doctrine.

CRIMINAL PROCEDURE / APPEALS

A concise statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no concise statement.

CRIMINAL LAW / VERDICT / SUFFICIENCY OF EVIDENCE

Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt.

CRIMINAL LAW / VERDICT / SUFFICIENCY OF EVIDENCE

Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law.

CRIMINAL PROCEDURE / APPEALS/WEIGHT OF THE EVIDENCE

A prosecutor's remarks do not constitute reversible error unless their unavoidable effect was

to prejudice the jury, forming in their minds a fixed bias and hostility toward the defendant, so the jury could not weigh the evidence objectively and render a true verdict.

*CRIMINAL LAW / POST-CONVICTION RELIEF ACT/
INEFFECTIVE ASSISTANCE OF COUNSEL*

When raising the failure to call a potential witness as ineffective assistance of counsel, petitioner must establish: 1) the witness existed; 2) the witness was available to testify for the defense; 3) counsel knew of, or should have known of, the existence of the witness; 4) the witness was willing to testify for the defense; and 5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial.

*CRIMINAL LAW / POST-CONVICTION RELIEF ACT/
INEFFECTIVE ASSISTANCE OF COUNSEL*

Trial counsel's failure to call a particular witness does not constitute ineffective assistance without showing that the absent witness' testimony would have been beneficial or helpful in establishing the asserted defense.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION
No. 880 of 2017
PENNSYLVANIA SUPERIOR COURT
1156 WDA 2020
1240 WDA 2020

Appearances: William J. Hathaway, Esq. for Appellant Thomas Eugene Beebe, II
Jack Daneri, District Attorney of Erie County, for Commonwealth
Grant T. Miller, Assistant District Attorney for Erie County, for Commonwealth

1925(a) OPINION

Domitrovich, J., December 29, 2020

Appellant Thomas Eugene Beebe II [hereinafter Appellant] currently has two docket numbers, 1156 WDA 2020 and 1240 WDA 2020, before the Pennsylvania Superior Court related to the October 16, 2020 PCRA Court Order denying Appellant's Motion for Post-Conviction Collateral Relief. Appellant, although represented by counsel, Attorney William Hathaway, filed a *pro se* appeal at 1156 WDA 2020.¹ On November 20, 2020, the Pennsylvania Superior Court issued a Per Curiam Order to Appellant Beebe and his counsel, Attorney Hathaway, indicating since "a review of the lower court docket reveals that William Hathaway, Esquire, remains counsel of record, the Prothonotary of this Court is DIRECTED to enter Attorney Hathaway's appearance in this Court on this matter and forward the instant application to counsel pursuant to *Commonwealth v. Jette*, 23 A.2d 1032 (Pa. 2011)." The Prothonotary of the Superior Court was "FURTHER DIRECTED to forward a blank docketing statement to Attorney Hathaway for completion." At 1240 WDA 2020, Attorney Hathaway entered a second Notice of Appeal on November 13, 2020, on

¹ At the same time Appellant filed *pro se* his Notice of Appeal, Appellant filed a Motion to appoint Attorney Hathaway as his appellate counsel. Since Attorney Hathaway was not withdrawn as Appellant's counsel, Attorney Hathaway remained Appellant's counsel, as aptly noted by the Pennsylvania Superior Court.

Appellant's behalf. The event due date for receipt of the original Lower Court record and the Trial Court's Opinion then became January 12, 2021.

On November 25, 2020, Appellant's counsel, Attorney Hathaway, was issued an Amended 1925(b) Order. On December 14, 2020, Attorney Hathaway filed Appellant's 1925(b) Concise Statement of Matters Complained of On Appeal, raising the following ten issues:

1. Whether this PCRA Court abused its discretion by admitting body camera footage during Appellant's trial and, rather than declaring a mistrial, issued a curative instruction to the jury regarding an officer's statements made on said footage.
2. Whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance of counsel claim regarding his trial counsel not challenging Appellant's consecutive sentences.
3. Whether this PCRA Court abused its discretion in not finding Appellant was afforded ineffective assistance of counsel where Appellant, after a *Grazier* hearing represented himself, and failed to preserve for appeal an abuse of discretion claim regarding admission of the body camera footage during trial.
4. Whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance claim regarding his trial counsel not challenging his sentence as against the weight of the evidence.
5. Whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance claim regarding his trial counsel not challenging his sentence as insufficiently supported by evidence.
6. Whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance claim regarding his trial counsel not objecting to or challenging Commonwealth's evidence admitted during trial, and not cross-examining Commonwealth's witnesses.
7. Whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance claim regarding his trial counsel not objecting to the admission of the magazine pieces and shell casings during trial.
8. Whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance claim regarding his trial counsel not calling a witness who allegedly called police and reported Appellant had an outstanding arrest warrant.
9. Whether this PCRA Court abused its discretion by not finding Commonwealth committed prosecutorial misconduct during Appellant's trial, and by denying Appellant's ineffective assistance claim regarding not objecting to and challenging Commonwealth's closing argument.

10. Whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance claim regarding not calling three witnesses on Appellant's behalf.

FACTUAL AND PROCEDURAL HISTORY

The factual and procedural history of the instant case is as follows: this case originates from an incident occurring on December 3, 2016 on a public street outside the Tamarack Bar in Corry, PA, wherein Appellant, after briefly entering and leaving the Tamarack Bar, discharged a firearm. Following Appellant's arrest on December 5, 2016, the Erie County District Attorney's Office filed a Criminal Information against Appellant on April 17, 2017. The Erie County District Attorney charged Appellant with the following offenses: 1) Terroristic Threats Causing Serious Public Inconvenience (18 Pa.C.S. § 2706(a)(3)); 2) Terroristic Threats with the Intent to Terrorize Another (18 Pa.C.S. § 2706(a)(3)); 3) Recklessly Endangering Another Person (18 Pa.C.S. § 2705); 4) Harassment — Follows the Other Person In or About a Public Place or Places (18 Pa.C.S. § 2709(a)(2)); 5) Discharging a Firearm Within the City Limits (L.O. § 750(1)); 6) Receiving Stolen Property (18 Pa.C.S. § 3925(A)); and 7) Carrying a Firearm Without a License (18 Pa.C.S. § 6106(a)(1)). Appellant was tried before a jury of his peers on December 18, 2017, which ended in a mistrial. A new trial was held on December 19, 2017 with a newly empaneled jury. At the conclusion of Appellant's December 19, 2017, jury trial, the jury found Appellant guilty beyond a reasonable doubt on all seven counts.

After being sentenced, Appellant filed a Notice of Appeal to the Pennsylvania Superior Court on February 16, 2018. On February 20, 2018, this Trial Court ordered Appellant to file a Concise Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b), which was filed on March 2, 2018. Appellant's Concise Statement was filed by Attorney John M. Bonanti; however, on March 5, 2018, Appellant filed a *pro se* petition to waive his right to appellate counsel, and on March 21, 2018, Attorney Bonanti filed a Motion to Withdraw as Appellant's counsel. This Trial Court conducted a *Grazier*² hearing on April 4, 2018, wherein this Trial Court concluded, after a full colloquy with Appellant consistent with the PA Rules of Criminal Procedure, that Appellant knowingly, intelligently, and voluntarily waived his right to counsel. Both Appellant's and Attorney Bonanti's motions were granted on April 5, 2018. This Trial Court filed its 1925(a) Opinion on April 17, 2018. On May 14, 2019, the Pennsylvania Superior Court filed a Non-Precedential Decision affirming Appellant's judgment of sentence. Appellant petitioned the Pennsylvania Supreme Court for allowance of appeal, which was denied on February 3, 2020.

Appellant filed the instant PCRA Petition on February 21, 2020, which was timely, and this Trial Court appointed William J. Hathaway, Esq. as Appellant's PCRA counsel on March 9, 2020. On June 5, 2020, Attorney Hathaway filed Appellant's Supplement to Motion for Post-Conviction Collateral Relief, to which Commonwealth filed its response on July 8, 2020. After fully reviewing Appellant's PCRA Petition, Appellant's Supplement to Motion for Post-Conviction Collateral Relief, and Commonwealth's Response to Appellant's Supplement to Motion for Post-Conviction Collateral Relief, this PCRA Court issued Notice of Intent to Dismiss the instant PCRA Petition on August 13, 2020. This PCRA Court, in said Notice of Intent to Dismiss, provided Appellant twenty (20) days to file objections, and extended this

² *Commonwealth v. Grazier*, 713 A.2d 81 (Pa. 1998).

timeline on August 26, 2020, granting Appellant an additional thirty (30) days from that date to file objections. On September 25, 2020, Appellant filed objections to this PCRA Court's Notice of Intent to Dismiss. After fully reviewing the record in the instant case again, including Appellant's objections, this PCRA Court issued its Order denying Appellant's PCRA Petition on October 16, 2020.

APPELLANT'S 1925(b) ISSUES

Appellant's first issue alleges the admission of body camera footage evidence against him during trial was an abuse of discretion. Appellant also alleges this Court abused its discretion in "seeking to salvage the instant trial from a second mistrial." This is the third time Appellant has asserted this same claim. Initially, Appellant raised this issue on direct appeal before the Pennsylvania Superior Court. Appellant raised this issue for the second time in his Supplement to Motion for Post-Conviction Relief, and has now raised this same issue again on PCRA appeal. The Pennsylvania Superior Court, while dismissing this claim for Appellant's failure to properly preserve the issue on direct appeal, nevertheless determined the Court did not abuse its discretion in admitting said body camera footage along with a curative instruction to the jury. "Because the audio and video from the body camera was used solely for impeachment purposes, and because the trial court gave a curative instruction as to how this evidence was to be considered, if we were to reach this issue, we would discern no abuse of discretion in the trial court's evidentiary ruling." *Commonwealth v. Thomas Eugene Beebe, II*, 2019 WL 2121392, at *3 (May 14, 2019); 247 WDA 2018. For this reason, Appellant's abuse of discretion claim lacks merit, since even if he had raised said claim on appeal, said claim would have been denied.

Moreover, abuse of discretion claims against a trial court related to the admission of evidence are properly raised on direct appeal, and not during PCRA review. "The PCRA ... procedurally bars claims of trial court error ... by requiring a petitioner to show the allegation of error is not previously litigated or waived." *Commonwealth v. Reyes-Rodriguez*, 111 A.3d 775, 780 (Pa. Super. 2015); *see* 42 Pa.C.S. § 9543(a)(3); *Commonwealth v. Jones*, 932 A.2d 179, 182 (Pa. Super. 2007). Appellant's claim that the Court abused its discretion by admitting the body camera evidence against him at trial is procedurally barred from consideration during PCRA review, which prevented the evaluation of its merit. Therefore, Appellant's abuse of discretion claim related to the body camera footage lacks arguable merit and is procedurally barred from consideration.

Appellant's third issue³ alleges Appellant was afforded ineffective assistance of counsel for failing to preserve the admission of the body camera footage on direct appeal. In Pennsylvania, to succeed on a claim of ineffective assistance of counsel in a PCRA proceeding, an appellant must prove three elements: 1) the underlying legal claim is of arguable merit; 2) counsel's action or inaction lacked any objectively reasonable basis designed to effectuate his client's interest; and 3) prejudice, to the effect that there was a reasonable probability of a different outcome if not for counsel's error." *Commonwealth v. Ligon*, 206 A.3d 515, 519 (Pa. Super. 2019) (quoting *Commonwealth v. Grove*, 170 A.3d 1127, 1138 (Pa. Super. 2017)). "Counsel is presumed to be effective and the burden of demonstrating ineffectiveness rests on appellant." *Ligon*, 206 A.3d

³ Here, Appellant's third 1925(b) claim is addressed before his second as Appellant's first and third 1925(b) claims concern the same subject matter — admission of the body camera footage evidence.

at 516 (quoting *Commonwealth v. Ousley*, 21 A.3d 1238, 1244 (Pa. Super. 2011)).

During Appellant's direct appeal, as cited above, the Pennsylvania Superior Court found no abuse of discretion in admitting the body camera footage for impeachment purposes along with a curative instruction to the jury. *Commonwealth v. Thomas Eugene Beebe, II*, 2019 WL 2121392, at *3 (May 14, 2019); 247 WDA 2018. Appellant's claim, therefore, lacks arguable merit failing the first prong required to sustain a claim of ineffective assistance of counsel on PCRA review.

Moreover, Appellant's trial counsel objected vehemently to the admission of said evidence and moved for a mistrial, thus preserving this issue for direct appeal. Appellant, however, then moved to withdraw his trial counsel and proceed *pro se* on direct appeal. As the Pennsylvania Superior Court stated, it was Appellant's failure to raise this issue properly on direct appeal that led to its dismissal. "By failing to raise this issue in his 1925(b) statement, Appellant deprived the trial court of the opportunity to address Appellant's claim of error; it is well settled that issues not presented in a court-ordered Rule 1925(b) statement are waived on appeal. See *Commonwealth v. Castillo*, 888 A.2d 775, 780 (Pa. 2005) (citation omitted). Because Appellant failed to preserve any issue for appellate review, we affirm Appellant's judgment of sentence." *Id.* at *3-4. Appellant chose on his own to remove his trial counsel and to proceed *pro se*, yet never included this issue in a 1925(b) Statement after it was properly preserved during trial.⁴ Appellant cannot now seek relief from his own ineffectiveness in failing to preserve this issue for review by the Pennsylvania Superior Court.

Appellant's second issue alleges abuse of discretion in denying Appellant's ineffective assistance of counsel claim regarding his trial counsel not challenging the discretionary aspects of Appellant's sentence — specifically, Appellant's consecutive sentences. Under Pennsylvania law, "merger of offenses is appropriate where: 1) the crimes arise from a single criminal act; and 2) all of the statutory elements of one of the offenses are included in the statutory elements of the other offense." *Commonwealth v. Hernandez*, 2020 WL 1149640, at *4 (March 10, 2020) (quoting *Commonwealth v. Roane*, 204 A.3d 998, 1002 (Pa. Super. 2019)); see also 42 Pa.C.S. § 9765. When determining whether merger is appropriate, "[e]xamination of the elements of the crimes as charged is sometimes necessary, especially when dealing with an offense that can be proven in alternate ways. Therefore, while [the Merger statute, 42 Pa.C.S. § 9765] indeed focuses on an examination of 'statutory elements' we cannot ignore the simple legislative reality that individual criminal statutes often overlap, and proscribe in the alternative several different categories of conduct under a single banner." *Hernandez*, 2020 WL 1149640 at *5 (quoting *Commonwealth v. Baldwin*, 985 A.2d 830, 837 n. 6 (Pa. 2009)) (emphasis added).

Following Appellant's conviction at trial, this Court sentenced Appellant to serve his five separate offenses consecutively, each of which contains elements unique from the other offenses. The presence of unique elements in each of the offenses precludes merger during sentencing, as none of them are lesser-included offenses. Furthermore, merger is inappropriate where a defendant's actions harm multiple victims. "The imposition of multiple sentences upon a defendant whose single unlawful act injures multiple victims is legislatively authorized and, consequently, does not violate the double jeopardy clause of the Fifth Amendment," which forms the basis of Pennsylvania's merger doctrine.

⁴ See Pa.R.A.P. 1925(b)(2)(i).

Hernandez, 2020 WL 1149640 at *6 (quoting *Commonwealth v. Frisbie*, 485 A.2d 1098, 1101 (Pa. 1984)); see also *Commonwealth v. Sobrado-Rivera*, 2019 WL 2881486, at *8 (Pa. Super. July 3, 2019).

In the instant case, Appellant was sentenced consecutively for five offenses, all of which contained unique elements, for his actions toward multiple victims, including Kristin Ross and other patrons and employees of the Tamarack Bar. As Appellant's ineffectiveness claim regarding not challenging his consecutive sentences lacks arguable merit, Appellant is not entitled to relief.

Appellant's fourth and fifth issues allege this PCRA Court abused its discretion by denying Appellant's ineffectiveness claims regarding not challenging the weight of the evidence and the sufficiency of the evidence, respectively, used to convict Appellant. Appellant did not provide any further explanation or argument regarding either claim, nor did Appellant point to any authority in support of either claim.

As for Appellant's weight of the evidence issue, a trial court abuses its discretion "when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, or ill will." *Commonwealth v. Widmer*, 744 A.2d 745 (Pa. 2000). During Appellant's trial, Commonwealth introduced eyewitness testimony of Appellant's actions against him during trial, and produced evidence Appellant was apprehended with the firearm in question on his person, in addition to providing other physical and testimonial evidence. This PCRA Court found no indication Appellant's conviction was the result of partiality, prejudice, or ill will, nor that it was unreasonable or in error. Appellant's ineffective assistance of counsel claim regarding not challenging the weight of the evidence used to convict Appellant lacked arguable merit, resulting in this Court's denial of said claim.

As for Appellant's sufficiency of the evidence issue, Appellant did not specify which element of any of the offenses for which he was convicted was not supported by sufficient evidence. "If [an] Appellant wants to preserve a claim that the evidence was insufficient, then the 1925(b) statement needs to specify the element or elements upon which the evidence was insufficient. This Court can then analyze the element or elements on appeal. Where a 1925(b) statement does not specify the allegedly unproven elements, ... the sufficiency issue is waived on appeal." *Commonwealth v. Sipps*, 225 A.3d 1110, 1113 (Pa. Super. 2019) (quoting *Commonwealth v. Williams*, 959 A.2d 1252, 1257 (Pa. Super. 2008)). "A concise statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no concise statement." *Sipps*, 225 A.3d at 1113 (Pa. Super. 2019). This Court cannot determine from Appellant's 1925(b) Statement which offense, or element of any of the offenses, Appellant alleges is not supported by sufficient evidence.

Given Appellant's vague and broad allegation, it is difficult to evaluate whether Appellant's trial counsel was ineffective for not challenging the sufficiency of the evidence supporting Appellant's conviction. Appellant was convicted of five offenses, each of which contain multiple elements. Despite Appellant's overbroad assertion, however, this PCRA Court thoroughly reviewed the record to determine the sufficiency of the evidence offered against Appellant during trial. The Court has reviewed the evidence in total as well as the evidence related to specific allegations made by Appellant in his Supplement to Motion for

Post-Conviction Relief. “Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt.” *Id.* (citing *Commonwealth v. Kakaria*, 625 A.2d 1167 (Pa. 1993)). “Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law.” *Widmer*, 744 A.2d at 751 (citing *Commonwealth v. Santana*, 333 A.2d 876 (Pa. 1975)).

In the instant case, the evidence fully supports the jury’s guilty verdicts against Appellant. Appellant was witnessed performing the acts in question and was apprehended with the firearm in his possession. This evidence was introduced against Appellant both by testimony and through physical evidence, including a shell casing, magazine pieces, and the firearm in question. The evidence did not contradict the physical facts nor was it in contravention to human experience. Appellant’s claim for ineffective assistance of counsel regarding not challenging the sufficiency of the evidence lacked arguable merit, and Appellant’s claim was denied accordingly.

Appellant’s sixth issue alleges this PCRA Court abused its discretion by denying Appellant’s ineffective assistance claim regarding his trial counsel not cross-examining the Commonwealth’s witnesses about their alleged prior inconsistent statements. While it is unclear, this assertion does resemble Appellant’s Supplement PCRA claim that Officer Bayhurst offered inconsistent statements concerning why he reported to the scene on the night in question. Appellant, both in his Supplement and in this 1925(b) Statement, failed to specify any statements Officer Bayhurst made that his trial testimony contradicted. Furthermore, Appellant failed to specify how the outcome at trial would have been any different had his trial counsel cross-examined Officer Bayhurst about these alleged inconsistent statements, meaning Appellant failed to demonstrate prejudice. *See Commonwealth v. Davida*, 106 A.3d 611, 621 (Pa. 2011).

Officer Bayhurst stated he was called to the scene by dispatch, which was corroborated by another witness, Sandra Vantassel. *See T.T.*, 12/19/17, at 115:3 to 116:10; 89:10-23. *Assuming arguendo*, however, Officer Bayhurst was not at the scene for that reason, Appellant did not allege any reason Officer Bayhurst was present that would have called his testimony or the evidence he collected into question. Appellant’s claim provided no alternative reason for Officer Bayhurst’s presence at the scene, and no reason to believe his credibility would have been damaged had he actually been present for another reason. Appellant’s claim lacks arguable merit and did not provide evidence of prejudice, meaning Appellant’s claim failed both the first and third prongs of an ineffective assistance claim.

Appellant’s seventh issue alleges this PCRA Court abused its discretion in denying Appellant’s ineffective assistance claim regarding his trial counsel not objecting to the admission of the magazine pieces and shell casings found by Officer Bayhurst. Again, Appellant did not allege a basis for objecting to the admission of this evidence. A review of the entire record does not reveal any discrepancies that would have excluded this evidence during trial; therefore, Appellant did not allege any basis to believe his trial counsel’s decision not to object to this evidence prejudiced Appellant. Appellant’s claim seems based only on Appellant’s conclusion that his trial counsel’s decision not to object was harmful because the evidence was harmful, which is not a sufficient basis to sustain an ineffective assistance claim. *See Davida*, 106 A.3d at 621. Appellant’s trial counsel was reasonable in not objecting

to this evidence’s admission, since there was no justifiable basis to object in the first place. Because Appellant did not provide sufficient evidence of any of the three prongs regarding an ineffective assistance claim, Appellant’s claim was denied.

Appellant’s eighth issue concerns whether this PCRA Court abused its discretion by denying Appellant’s ineffective assistance claim based on his trial counsel not calling the “person who allegedly called police from the bar to report the defendant had an outstanding arrest warrant.” Appellant did not allege any basis to believe there was any such witness. During trial, no such witness was mentioned, and the Commonwealth offered testimony from Sandra Vantassel who stated she called the police after witnessing Appellant fire a gun. *See T.T.*, 12/19/17, 89:10-23. Appellant also failed to allege how any such witness’s testimony would have aided Appellant’s case in any way, or how trial counsel’s failure to call such a witness prejudiced Appellant in any way. Since Appellant’s claim of ineffective assistance regarding not offering this alleged witness lacks arguable merit and any indication of prejudice to Appellant, the Trial Court dismissed said claim.

Appellant’s ninth issue alleges this PCRA Court abused its discretion in denying Appellant’s ineffective assistance claim regarding his trial counsel not objecting to Commonwealth’s closing argument, and in not finding Commonwealth committed prosecutorial misconduct during closing argument. Appellant alleged the prosecutor made “intentional misstatements of fact and render[ed] inflammatory arguments during closing argument not ground (*sic*) to the evidence at trial.” Appellant cited specific examples in his Supplement to Motion for Post-Conviction Relief; however, the Court reviewed the entire closing argument in order to fully evaluate Appellant’s claim.

In Pennsylvania, “it is axiomatic that during closing arguments the prosecution is ‘limited to making comments based upon the evidence and fair deductions and inferences therefrom.’” *Ligon*, 206 A.3d at 519-20 (quoting *Commonwealth v. Joyner*, 365 A.2d 1233, 1236 (Pa. 1976)). “However, because trials are necessarily adversarial proceedings, prosecutors are entitled to present their arguments with reasonable latitude.” *Ligon*, 206 A.3d at 520 (quoting *Commonwealth v. Paddy*, 800 A.2d 294, 316 (Pa. 2002)). “Thus, a prosecutor’s remarks do not constitute reversible error unless their unavoidable effect ... [was] to prejudice the jury, forming in their minds a fixed bias and hostility toward the defendant so they could not weigh the evidence objectively and render a true verdict.” *Commonwealth v. Ragland*, 991 A.2d 336, 340 (Pa. Super. 2010).

As for Appellant’s ineffective assistance claim based on alleged prosecutorial misconduct, this PCRA Court, in addition to having presided over the trial as the Trial judge, re-examined said closing argument by reviewing a transcript of the trial. After a full review, this Court determined Commonwealth’s closing argument was well within the bounds allowed under Pennsylvania law. Commonwealth did not assert any false statements or make any improper inferences, and there were certainly no statements made that could have resulted in such a fixed bias or hostility toward Appellant that he could no longer have received a fair verdict. For these reasons, Appellant’s ineffective assistance claim regarding failure to object to Commonwealth’s closing argument lacks arguable merit. As for Appellant’s claim this PCRA Court should have found Commonwealth committed prosecutorial misconduct, such a claim is properly raised on direct appeal. Appellant’s prosecutorial misconduct claim is, therefore, waived for purposes of PCRA review.

Appellant's tenth issue is whether this PCRA Court abused its discretion by denying Appellant's ineffective assistance claim for trial counsel not calling three witnesses: Debra Hatley, Madison Hatley, and Laura Beebe. Appellant claims their absence deprived him of a fair trial by not allowing him to present a complete and zealous defense, and "depriving the jury of relevant and significant evidence bearing on the guilt or innocence of defendant." Appellant described the value of each witness's testimony in detail in his Supplement to Motion for Post-Conviction Relief.

In a PCRA petition, when raising the failure to call a potential witness as ineffective assistance of counsel, petitioner must establish: 1) the witness existed; 2) the witness was available to testify for the defense; 3) counsel knew of, or should have known of, the existence of the witness; 4) the witness was willing to testify for the defense; and 5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial. *See Commonwealth v. Johnson*, 966 A.2d 523, 536 (Pa. 2009); *Commonwealth v. Washington*, 927 A.2d 586, 599 (Pa. 2007). "Trial counsel's failure to call a particular witness does not constitute ineffective assistance without showing that the absent witness' testimony would have been beneficial or helpful in establishing the asserted defense." *Commonwealth v. Chmiel*, 889 A.2d 501, 546 (Pa. 2005).

In the instant case, Appellant failed to present any evidence he informed his trial counsel of the presence of these witnesses. Appellant merely summarizes what they would have testified to and why that was valuable to Appellant's case. Appellant also overestimated the value any of these witnesses would have had in the case against Appellant. None of these witnesses were present at the bar on the night in question, and none of them witnessed the actions for which Appellant was charged. According to Appellant, their opinion testimony would have established only that Appellant and Kristin Ross were a happy couple, and that it was not within Appellant's character to discharge a firearm at Kristin Ross. Not only is their opinion as to Appellant's character inadmissible, *see* Pa.R.E. 405, but even if it were admissible, their testimony would have been directly contradicted by eyewitness testimony establishing Appellant was at the bar in question, outside the bar in question, and discharged a firearm outside the bar in question, not to mention the physical evidence tying Appellant to the firearm. Therefore, this PCRA Court found the witnesses' absence was not so prejudicial as to have denied Appellant a fair trial. Appellant's ineffectiveness claim regarding failure to call these three witnesses is meritless, as Appellant did not meet any of the relevant prongs for proving such a claim.

For all of the above reasons, this Trial Court requests the Pennsylvania Superior Court affirm this PCRA Court's October 16, 2020 Order denying Appellant's Motion for Post-Conviction Collateral Relief.

BY THE COURT

/s/ **Stephanie Domitrovich, Judge**

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

COMMONWEALTH OF PENNSYLVANIA

v.

THOMAS EUGENE BEEBE II, Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1156 WDA 2020

Appeal from the PCRA Order Entered October 16, 2020
In the Court of Common Pleas of Erie County Criminal Division at No(s):
CP-25-CR-0000880-2017

COMMONWEALTH OF PENNSYLVANIA

v.

THOMAS EUGENE BEEBE II, Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1240 WDA 2020

Appeal from the PCRA Order Entered October 16, 2020
In the Court of Common Pleas of Erie County Criminal Division at No(s):
CP-25-CR-0000880-2017

BEFORE: DUBOW, J., MURRAY, J., and PELLEGRINI, J.*

MEMORANDUM BY PELLEGRINI, J.:

FILED: JULY 13, 2021

Thomas Eugene Beebe II (Beebe) appeals from the October 16, 2020 order of the Court of Common Pleas of Erie County (PCRA court) denying his petition filed pursuant to the Post-Conviction Relief Act.¹ We affirm the order at docket number 1156 WDA 2020 and dismiss the appeal at docket number 1240 WDA 2020.

I.

The PCRA court previously set forth the facts of this case as follows:

On December 3, 2016, Kristen Ross and Amanda Hutchings were at the Tamarack Bar in Corry, Pennsylvania. Sometime during the evening, [Beebe], who has an "on and off" romantic relationship with Ms. Ross, entered the bar, spoke with Ms. Ross, and [Beebe] and Ms. Ross exited the bar. [Beebe] and Ms. Ross talked for "a while" outside "down a little ways up the road." Ms. Hutchings left the bar to check on Ms. Ross and [Beebe], who were standing three to four feet apart from each other, and observed [Beebe] remove a firearm from inside his coat and discharge[] a single round away from the bar.

* Retired Senior Judge assigned to the Superior Court.

¹ 42 Pa.C.S. §§ 9541 *et seq.*

Ms. Hutchings then entered the bar and notified the bartender, Sandra Vantassel, who locked down the bar for the safety of the patrons and called the police. Ms. Vantassel stated she heard a “pop” before Ms. Hutchings reentered the bar.

After Ms. Vantassel called the police, Officer Richard Bayhurst of the Corry City Police Department arrived at the bar in response to information regarding “shots fired outside the location of the Tamarack Bar.” Officer Bayhurst arrived at the bar and made contact with Ms. Ross and obtained a statement from Ms. Ross, which was recorded with Officer Bayhurst’s body camera. Officer Bayhurst attempted to locate [Beebe], but when unable to do so, he began searching the area for evidence and recovered pieces of a magazine for a Smith and Wesson as well as a .380 caliber shell casing. Officer Bayhurst later made contact with Steve Holton, the owner of the Smith and Wesson, who reported the same Smith and Wesson missing on November 8, 2016. Ultimately, Deputy U.S. Marshall Brent Novak apprehended [Beebe] in possession of the firearm concealed on [his] person along with a magazine in Buffalo, New York. ...

On December 18, 2017, a jury trial was held; however, this [t]rial [c]ourt declared a mistrial shortly after the trial began. Specifically, the Commonwealth called Ross as a witness to testify, but the Commonwealth’s direct examination of Ms. Ross prompted [Beebe’s counsel to object and move for a mistrial ... ^[2]

On December 19, 2017, a new jury was selected and a second jury trial was held. During the Commonwealth’s case-in-chief, Assistant District Attorney Grant T. Miller called Ms. Ross, who testified that when she provided a statement to Officer Bayhurst on December 3, 2016, she “did not tell the police the truth” and specifically testified that she “told the police that [Beebe] has a gun, but [she] ... did not see a gun.” (See Notes of Testimony, Jury Trial, Day 2, Dec. 19, 2017, pg. 32:411). In order to impeach Ms. Ross’ testimony, ADA Miller played to the jury the body camera video footage capturing Ms. Ross’ statements to Officer Bayhurst recorded on December 3, 2016. After a portion of the body camera footage was played to the jury, the [t]rial [c]ourt excused the jury. [Trial counsel] then objected to the display of the body camera footage and orally moved for a mistrial. ... ^[3]

After a lengthy discussion outside the presence of the jury on the record ... and after this [t]rial [c]ourt reviewed the remainder of the video outside of the presence of the jury, this [t]rial [c]ourt permitted ADA Miller to display the remainder of the video footage to the jury for the limited purposes of impeaching Ms. Ross with the aid of a carefully worded and helpful curative instruction.

Opinion, 4/17/18, at 2-5 (citations omitted). Beebe was subsequently convicted of two counts of terroristic threats and one count each of recklessly endangering another person, harassment,

² Ross testified that at the time of the incident, [Beebe] was on probation and not permitted to be at the bar.

³ Officer Bayhurst could be heard on the body camera footage stating that Beebe lived in an area with a drug trade and that he made money from drugs. Beebe objected on the basis that these statements were unduly prejudicial.

receiving stolen property, carrying a firearm without a license and discharging a firearm in city limits.⁴ He was sentenced to an aggregate term of 8 to 19 years of incarceration.

Beebe waived his right to counsel on direct appeal and proceeded *pro se*. He argued only that the trial court had abused its discretion in allowing the body camera footage into evidence.⁵ *Commonwealth v. Beebe*, 247 WDA 2018, at *7 (Pa. Super. May 14, 2019) (unpublished memorandum), *allocatur denied*, (Pa. Feb. 3, 2020). This Court held that he had waived this issue by failing to include it in his concise statement pursuant to Pa.R.A.P. 1925(b). *Id.* In the alternative, we concluded that the issue was meritless because the trial court issued a cautionary instruction to the jury instructing it to disregard all of Officer Bayhurst’s statements on the video. *Id.* at 7-8 n.3. The footage was properly admitted for the sole purpose of impeaching Ross’ testimony that she did not see a gun. *Id.*

Beebe filed a timely *pro se* PCRA petition on February 21, 2020. The PCRA court appointed counsel, who filed a supplement to the petition on June 5, 2020. The Commonwealth filed a response and the PCRA court subsequently filed a notice of its intent to dismiss the petition without a hearing pursuant to Pa.R.Crim.P. 907. Beebe filed a response to the notice and the PCRA court then dismissed the petition. Beebe timely appealed⁶ and he and the PCRA court have complied with Pa.R.A.P. 1925.

II.

Beebe raises ten issues on appeal, which we have reordered for ease of disposition.⁷ His claims fall into three categories: issues of trial court error, ineffective assistance during the trial court proceedings, and ineffective assistance related to his direct appeal.⁸

⁴ 18 Pa.C.S. §§ 2706(a)(1) & (3), 2705, 2709(a)(2), 3925(a), 6106(a)(1); Local Ordinance 750(1).

⁵ Beebe’s counseled Pa.R.A.P. 1925(b) statement was filed before he was granted leave to proceed *pro se*. *Beebe*, 247 WDA 2018, at *6. In that statement, the sole issue raised was whether the trial court erred in admitting testimony that Beebe was on probation at the time of the shooting and was not permitted to be at the bar. *Id.* However, the trial court granted Beebe’s motion for a mistrial after Ross made this statement and she did not offer that testimony in his second trial. Opinion, 4/17/18, at 6-7.

⁶ Beebe filed a *pro se* notice of appeal on October 30, 2020, which was docketed at 1156 WDA 2020. See *Commonwealth v. Williams*, 151 A.3d 621, 624 (Pa. Super. 2016) (holding this Court is required to docket a *pro se* notice of appeal even when the appellant is represented by counsel). Counsel then filed a notice of appeal on November 13, 2020, which was docketed at 1240 WDA 2020. This Court consolidated the appeals *sua sponte* on January 5, 2021, and Beebe filed a single brief in accordance with Pa.R.A.P. 513. Because both appeals are from the same order and involve the same issues, we dismiss the appeal docketed at 1240 WDA 2020 as duplicative. See *Neidert v. Charlie*, 143 A.3d 384, 387 n.3 (Pa. Super. 2016) (stating that this Court may summarily dismiss duplicative appeals). We note that Beebe was represented by counsel on this appeal and is not prejudiced by the dismissal at docket number 1240 WDA 2020.

⁷ “The standard of review of an order dismissing a PCRA petition is whether that determination is supported by the evidence of record and is free of legal error.” *Commonwealth v. Weimer*, 167 A.3d 78, 81 (Pa. Super. 2017). “The PCRA court’s findings will not be disturbed unless there is no support for the findings in the certified record.” *Id.* (citation omitted). This Court defers to the PCRA court’s factual findings and credibility determinations that are supported by the record and we review its legal conclusions *de novo*. *Commonwealth v. Reyes-Rodriguez*, 111 A.3d 775, 779 (Pa. Super. 2015) (citations omitted). “[A] PCRA court has discretion to dismiss a PCRA petition without a hearing if the court is satisfied that there are no genuine issues concerning any material fact; that the defendant is not entitled to post-conviction collateral relief; and that no legitimate purpose would be served by further proceedings.” *Commonwealth v. Brown*, 161 A.3d 960, 964 (Pa. Super. 2017) (citations omitted).

⁸ Beebe’s brief on appeal is deficient in several respects. His statement of questions presented does not coincide with the issues discussed in the argument section of his brief. See Pa.R.A.P. 2116(a), 2119(a). He does not support his argument with citations to the lower court record or trial transcripts or include reference to legal authority in support of many of his arguments. See Pa.R.A.P. 2119(a)-(e). This Court could dismiss the appeal based on these deficiencies. See Pa.R.A.P. 2101. Nevertheless, because we can discern his arguments and the PCRA court addressed the merits of the claims, we will review the claims raised in the argument section of his brief.

A.

First, Beebe argues that the trial court abused its discretion by admitting Officer Bayhurst's body camera footage at trial. He claims that the trial court improperly sought to "salvage the instant trial from a second mistrial" by issuing a curative instruction regarding the prejudicial statements on the video. Beebe's Brief at 8. While Beebe includes a boilerplate citation to the standard for ineffective assistance of counsel in his argument on this point, his PCRA petition and brief on appeal raise this issue as one of trial court error.

To be eligible for relief under the PCRA, a petitioner must plead and prove that "the allegation of error has not been previously litigated or waived." 42 Pa.C.S. § 9543(a)(3). An issue is waived if the petitioner could have raised it before trial, at trial, on direct appeal or in a prior PCRA proceeding but failed to do so. *Commonwealth v. Oliver*, 128 A.3d 1275, 1281-82 (Pa. Super. 2015). Because a petitioner must show that his claim has not been previously litigated or waived, the PCRA procedurally bars claims based solely on trial court error. *Commonwealth v. Reyes-Rodriguez*, 111 A.3d 775, 780 (Pa. Super. 2015) ("At the PCRA stage, claims of trial court error are either previously litigated (if raised on direct appeal) or waived (if not)."). As the PCRA court acknowledged, this Court held in Beebe's direct appeal that he had waived his claim regarding the admission of the body camera footage at trial. *Beebe*, 247 WDA 2018, at *7. He is not entitled to relief on this claim of trial court error under the PCRA. *See* 42 Pa.C.S. § 9543(a)(3).

Similarly, Beebe argues that his convictions were "against the weight of the evidence compelling the intercession of the trial [c]ourt in entering an arrest of judgment as to all of the convictions as the underlying trial record was constituted by speculative and *de minimus* evidence establishing any criminal liability." Beebe's Brief at 13. While his question presented frames this claim as one of ineffective assistance of counsel, his argument attributes the error to the trial court. In essence, he argues that the trial court should have *sua sponte* ordered a new trial based on the weight of the evidence even though trial counsel did not request such relief. *Id.* at 12-13.

This claim is meritless. A motion for a new trial based on the weight of the evidence must be preserved orally on the record before sentencing, in a written motion before sentencing or in a timely post-sentence motion. Pa.R.Crim.P. 607(A). Our review of the record reveals that Beebe did not preserve this claim through any of these means, and he cites no authority for his position that a trial court may be compelled to grant such relief in absence of a motion by counsel. Because he previously waived this claim, he is not entitled to relief. *See* 42 Pa.C.S. § 9543(a)(3); *Reyes-Rodriguez*, *supra*.

B.

Next, we address Beebe's claims related to ineffective assistance of trial counsel. He argues that trial counsel was ineffective for failing to 1) call three witnesses he identifies for his defense, 2) move for a directed verdict or judgment of acquittal at the close of the Commonwealth's case, 3) object to the admission of physical evidence, 4) subpoena the 911 caller to testify at trial, 5) move to exclude evidence of his criminal charges in New York, and 6) object to the Commonwealth's closing argument.

"To prove counsel ineffective, the petitioner must show that: 1) his underlying claim is of arguable merit; 2) counsel had no reasonable basis for his action or inaction; and 3) the

petitioner suffered actual prejudice as a result." *Commonwealth v. Sarvey*, 199 A.3d 436, 452 (Pa. Super. 2018). "[F]ailure to prove any of these prongs is sufficient to warrant dismissal of the claim without discussion of the other two." *Commonwealth v. Robinson*, 877 A.2d 433, 439 (Pa. 2005) (citation omitted). Counsel cannot be ineffective for failing to pursue a meritless claim. *Commonwealth v. Rykard*, 55 A.3d 1177, 1190 (Pa. Super. 2012). While claims of trial court error may support the arguable merit element of an ineffectiveness claim, a petitioner must meaningfully discuss each of the three prongs of the ineffectiveness claim to prove he is entitled to relief. *Reyes-Rodriguez*, *supra*, at 780. We presume that counsel has rendered effective assistance. *See Commonwealth v. Treiber*, 121 A.3d 435, 445 (Pa. 2015).

1.

First, Beebe argues that trial counsel was ineffective for failing to call Debra Hatley, Madison Hatley and Laura Beebe as witnesses at trial. In his petition, Beebe averred that Debra Hatley would have testified that she had never seen Beebe with a firearm or acting violently toward Ross. He averred that Madison Hatley, his neighbor of five years, would testify that she had never witnessed Beebe acting in a violent manner. Finally, he stated that Laura Beebe would testify regarding Beebe's relationship with Ross, "including [Beebe's] non-violent demeanor and having emotional issues and connections to [] Ross, which Ross used to manipulate [Beebe]." Post-Conviction Relief Act Petition, 2/21/20, at 9, 9-1. He claimed that all three witnesses would testify that they were willing and available to testify at his trial.⁹

To succeed on a claim that counsel was ineffective for failing to call a witness at trial, a PCRA petitioner must establish:

- 1) the witness existed; 2) the witness was available to testify for the defense; 3) counsel knew, or should have known, of the existence of the witness; 4) the witness was willing to testify for the defense; and 5) the absence of the testimony of the witness was so prejudicial as to have denied the defendant a fair trial.

Commonwealth v. Wantz, 84 A.3d 324, 331 (Pa. Super. 2014) (citation omitted). When analyzing the prejudice prong under our standards for ineffectiveness, we must determine whether there is a reasonable probability that the outcome of the trial would have been different if the witness had testified. *Wantz*, *supra*, at 333-34.

In its opinion, the PCRA court set forth its reasoning for denying relief on this claim:

In the instant case, [Beebe] failed to present any evidence he informed his trial counsel of the presence of these witnesses. [Beebe] merely summarizes what they would have testified to and why that was valuable to [his] case. [He] also overestimated the value any of these witnesses would have had in the case against [him]. None of these witnesses were present at the bar on the night in question, and none of them witnessed the actions for which [he] was charged. According to [Beebe], their opinion testimony would have established only that [he] and Kristin Ross were a happy couple, and that it was not

⁹ Beebe's counseled supplement to his petition restates these averments and argues that the testimony would have cast doubt on Ross' statements in the body camera footage.

within [his] character to discharge a firearm at Kristin Ross. Not only is their opinion as to [Beebe's] character inadmissible, *see* Pa.R.E. 405, but even if it were admissible, their testimony would have been directly contradicted by eyewitness testimony ... not to mention the physical evidence tying [him] to the firearm.

PCRA Court Opinion, 12/29/20, at 11. We discern no abuse of discretion. Beebe did not plead or prove that trial counsel “knew, or should have known, of the existence of the witness” at the time of trial. *Wantz, supra*. He did not plead that the individuals had personal knowledge of the events in question. His description of the witnesses’ testimony indicates only that they would have testified to their opinions of his character for non-violence, which is an inadmissible form of character evidence. *See* Pa.R.E. 405(a). This claim is meritless.

2.

Next, Beebe claims that trial counsel was ineffective because he failed to move for a directed verdict or judgment of acquittal after the Commonwealth rested its case. He argues that Ross’ testimony was inconsistent and incredible because she recanted her prior statements to Officer Bayhurst and testified that the crimes did not occur as she had originally reported them.¹⁰ He contends that she fabricated the allegations out of animus toward him and that her testimony should have been insufficient to sustain the Commonwealth’s case.

Our review of the trial transcript reveals that trial counsel did move for a judgment of acquittal after the Commonwealth rested its case. Notes of Testimony, 12/19/17, at 135. The trial court denied the motion. *Id.* Because the record does not bear out Beebe’s argument that counsel was deficient in failing to pursue this relief, the PCRA court did not abuse its discretion in dismissing this claim.¹¹

3.

Beebe argues that trial counsel was ineffective for failing to object to the admission of pieces of a magazine and a shell casing that Officer Bayhurst recovered from the scene of the shooting. He argues that the Commonwealth failed to lay the proper foundation and did not establish a chain of custody for the evidence. He further argues that the items were not disclosed in discovery, and that trial counsel failed to adequately cross-examine Officer Bayhurst regarding “the integrity of his investigation and the proper preservation and documentation of the crime scene.” Beebe’s Brief at 16.

At trial, the Commonwealth presented photos of the bar and a nearby parking lot and sidewalk. Officer Bayhurst identified the area where he recovered the pieces of a firearm magazine. The Commonwealth then showed him various pieces of the magazine, which he identified as a spring, part of a base plate and a follower. He testified that he recognized these

¹⁰ At trial, Ross testified that on the night of the shooting, she briefly spoke with Beebe outside the bar and he broke up with her. She said she then went back into the bar without incident. The Commonwealth introduced into evidence footage from the body camera Officer Bayhurst wore while responding to the scene. The video showed Ross telling Officer Bayhurst that Beebe had a gun and had fired it while they were talking. After she was confronted with the video, Ross testified that she lied on the night of the incident because she was angry about the breakup.

¹¹ Moreover, Beebe’s attack on the sufficiency of the Commonwealth’s case focuses entirely on perceived deficiencies of Ross’ trial testimony and prior statements. He fails to acknowledge that Hutchings, a third party, also testified that she saw Beebe discharge his weapon while speaking with Ross.

items as components of a magazine based on his training.¹² He also testified that he recovered a shell casing within a few feet of the magazine parts and identified the shell casing for the jury. Finally, he testified that he received a shell casing from Holton, the owner of the stolen firearm used in the shooting, to compare to the shell casing he recovered from the scene. In addition, the Commonwealth and Beebe stipulated to the admission of the firearm that was recovered from Beebe when he was arrested in New York, which was the same firearm Holton had reported as stolen. Beebe’s trial counsel did not cross-examine Officer Bayhurst.

On appeal, Beebe restates the arguments he made in his petition. Beebe has not established how he was prejudiced by trial counsel’s failure to object to the admission of this physical evidence or cross-examine the officer. He does not claim that the evidence was improperly collected or identify any deficiencies in the investigation that counsel failed to raise at trial. He merely speculates that some form of objection or cross-examination could have impeached Officer Bayhurst’s credibility or prevented the physical evidence from being admitted at trial. In dismissing this claim, the PCRA court concluded that there was “no objectively reasonable basis to question Officer Bayhurst’s credibility, the genesis of the evidence located by him, or its comparison to the firearm found in [Beebe’s] possession.” Opinion and Order, 10/16/20, at 12. Because Beebe has not shown that trial counsel neglected to pursue an avenue with arguable merit, he cannot establish that he was prejudiced by counsel’s failure to cross-examine Officer Bayhurst or object to the admission of the physical evidence. This argument is meritless.

4.

Next, Beebe argues that trial counsel was ineffective for failing to subpoena an unknown 911 caller to testify at trial. He argues that a woman allegedly called the police on the night of the shooting to report that he was at the bar and that there was an outstanding warrant for his arrest. He contends that he was deprived of the opportunity to confront this woman when trial counsel failed to investigate the call and procure her testimony for trial. He argues that Officer Bayhurst offered conflicting testimony regarding how he was called to the scene, and that the caller’s testimony could have been used to highlight inconsistencies in Officer Bayhurst’s testimony.

Beebe did not attempt to establish any of the factors cited in Section II.B.1, *supra*, to plead and prove a claim that trial counsel was ineffective for failing to call a witness. *See Wantz, supra*. He does not cite in his petition or his brief to any part of the record that tends to support that such a caller existed, let alone that he or she was available to testify at trial. *Id.* As the PCRA court points out, Vantassel testified that she called the police after she heard a “slight pop” and Hutchings told her that Beebe had fired a gun outside. Notes of Testimony, 12/19/17, at 89. Officer Bayhurst testified only that he received information regarding shots fired outside of the bar but did not testify regarding the source of that information. *Id.* at 115. Contrary to Beebe’s argument in his brief, Officer Bayhurst did not offer any conflicting or contradictory testimony regarding his reason for reporting to the bar. Finally, neither Vantassel nor Officer Bayhurst testified that there were any outstanding warrants for Beebe’s arrest. The PCRA court did not abuse its discretion in finding no merit to this claim.

¹² Officer Bayhurst had testified that he received firearm training and was certified to qualify other individuals in safely handling firearms. Beebe stipulated to Officer Bayhurst’s “qualifications as a policeman.” Notes of Testimony, 12/19/17, at 114.

5.

Next, Beebe claims that trial counsel was ineffective for failing to move to exclude any reference to the criminal charges that were filed against him in New York after he was apprehended in connection with this incident. However, Beebe did not include this issue in his concise statement pursuant to Pa.R.A.P. 1925(b). *See* Concise Statement of Matters Complained of on Appeal, 12/14/20. It is well-settled that “[i]ssues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.” Pa.R.A.P. 1925(b)(4)(vii). Accordingly, this issue is waived.¹³

6.

Next, Beebe argues that trial counsel was ineffective for failing to object to alleged misconduct in the Commonwealth’s closing argument.¹⁴ He claims that the Commonwealth intentionally misstated aspects of Hutchings’ testimony and that the “Commonwealth further violated the [c]ourt’s stipulated order and sought to influence and inflame the jury by intentional falsehoods not supported by the trial record.”¹⁵ Beebe’s Brief at 18.

In reviewing a prosecutor’s closing argument for misconduct, “comments cannot be viewed in isolation but, rather, must be considered in the context in which they were made.” *Commonwealth v. Judy*, 978 A.2d 1015, 1019 (Pa. Super. 2009) (citation omitted). Moreover,

[i]t is well settled that a prosecutor has considerable latitude during closing arguments and his arguments are fair if they are supported by the evidence or use inferences that can reasonably be derived from the evidence. Further, prosecutorial misconduct does not take place unless the unavoidable effect of the comments at issue was to prejudice the jurors by forming in their minds a fixed bias and hostility toward the defendant, thus impeding their ability to weigh the evidence objectively and render a true verdict.

Id. at 1020. In closing arguments, prosecutors are permitted to make fair inferences from the evidence presented at trial and to respond to arguments made by defense counsel. *Id.* at 1019-20.

In addressing this claim, the PCRA court explained:

After a full review, this [c]ourt determined Commonwealth’s closing argument was well within the bounds allowed under Pennsylvania law. Commonwealth did not assert any false statements or make any improper inferences, and there were certainly no statements

¹³ Even if we were to reach the merits of this claim, Beebe would not be entitled to relief. The PCRA court found that trial counsel had a reasonable basis for allowing the jury to hear that Beebe was charged in New York and that the charges were subsequently dismissed. *See* Notice, 8/13/20, at 13- 14 (citing Notes of Testimony, 12/19/17, at 3-5). Before trial, the Commonwealth sought to exclude from evidence the fact that Beebe was criminally charged in New York when he was apprehended and that the charges were dismissed. Notes of Testimony, 12/19/17, at 3. Trial counsel argued that the jury might infer from the testimony that Beebe was charged and convicted in New York, and that he wanted to mitigate any prejudice by introducing the fact that those charges had been dismissed. *Id.* at 4-5. The PCRA court concluded that rebutting an inference that Beebe had already been criminally convicted was a reasonable basis for trial counsel’s decision not to object to the admission of the charges entirely. *See* Notice, 8/13/20, at 14. This was not an abuse of discretion.

¹⁴ Beebe also argues that the trial court should have intervened *sua sponte* to cure the allegedly false statements in the Commonwealth’s closing even in absence of an objection by the defense. He cites no authority in support of this proposition and we conclude it is meritless.

¹⁵ Beebe does not identify the “stipulated order” that he claims the Commonwealth violated in its closing argument.

made that could have resulted in such a fixed bias or hostility toward [Beebe] that he could no longer have received a fair verdict. For these reasons, [Beebe’s] ineffective assistance claim regarding failure to object to Commonwealth’s closing argument lacks arguable merit.

PCRA Court Opinion, 12/23/20 at 11-12. After review, we agree. The Commonwealth’s closing argument fairly describes Hutchings’ testimony in which she stated that she saw Beebe pull out a firearm from where it had been concealed in his coat and fire it into the air. Beebe argues that the Commonwealth improperly stated that Hutchings saw him flee the scene of the shooting when she, in fact, testified that she reentered the bar immediately after he fired the weapon. This argument is meritless. It was undisputed at trial that Beebe left the scene of the shooting and was not apprehended until days later in New York. The Commonwealth’s argument was a fair summation of the evidence presented and trial counsel cannot be found ineffective for failing to raise a meritless claim. *Rykard, supra*. Accordingly, the PCRA court did not abuse its discretion in denying relief on this claim.

C.

Finally, Beebe argues that counsel was ineffective for failing to preserve a claim for direct appeal that his convictions merged for sentencing purposes. He does not set forth the elements of each of the crimes for which he was convicted or apply the merger statute to explain how the offenses merge. *See* 42 Pa.C.S. § 9765. He baldly asserts that the “respective criminal counts all emanated from the identical set of facts and all shared concurrent elements thereby supporting the aggregate merger of all the respective convictions for sentencing purposes.” Beebe’s Brief at 12. This claim is meritless.¹⁶

While Beebe contends that this issue concerns the discretionary aspects of his sentence, *see* Beebe’s Brief at 12, it is well-settled that the doctrine of merger implicates the legality of a sentence and is non-waivable, *Commonwealth v. Hill*, 238 A.3d 399, 409 (Pa. 2020). Thus, even though Beebe’s counsel did not raise this argument at sentencing, in a post-sentence motion or in the concise statement pursuant to Pa.R.A.P. 1925(b) for Beebe’s direct appeal, Beebe was not foreclosed from raising the argument for the first time on appeal when he elected to proceed *pro se*. *See Beebe*, 247 WDA 2018, at *7; *Hill, supra*. As a result, he cannot establish that he was prejudiced by counsel’s failure to preserve this claim and he is entitled to no relief.

Order affirmed at docket number 1156 WDA 2020. Appeal dismissed at docket number 1240 WDA 2020.

Judgment Entered.

/s/ Joseph D. Seletyn, Esq.

Prothonotary

Date: 07/13/2021

¹⁶ We note that Beebe pled this claim of relief only under the PCRA’s subsection related to ineffective assistance of counsel, 42 Pa.C.S. § 9543(a)(2)(ii), and not under the subsection related to relief from illegal sentences, 42 Pa.C.S. § 9543(a)(2)(vii). Post-Conviction Relief Act Petition, 2/21/20, at 3 & Memorandum of Law at 3-6; Supplement to Motion for Post Conviction Collateral Relief, 6/5/20, at unnumbered 5-6.

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County Pennsylvania 11529-21 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Tiffany Sherrell Lavette Johnson to Tiffany Sherrell Lavette Johnson-Hemphill.

The Court has fixed the 27th day of August, 2021 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West Sixth Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

July 23

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania:

In The Matter Of The Change Of Name Of: Jason Lloyd White

Notice is hereby given that on July 13, 2021, the Petition of Jason Lloyd White was filed in the Court of Common Pleas of Erie County, Pennsylvania for a decree to change Jason Lloyd White's name to Jason Lloyd Keyes. The Court has fixed September 8, 2021 at 3:00 p.m. in Courtroom G, Room 222 on the 2nd floor at the Erie County Courthouse

as the time and place for the hearing on said Petition, when and where all persons interested may appear and show cause, if any, why the prayer of relief of the said Petition should not be granted.

Michael J. Nies, Esquire
504 State Street, 3rd Floor
Erie, Pa. 16501

July 23

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania:

In The Matter Of The Change Of Name Of: Reeah Ann White

Notice is hereby given that on July 13, 2021, the Petition of Reeah Ann White was filed in the Court of Common Pleas of Erie County, Pennsylvania for a decree to change Reeah Ann White's name to Reeah Ann Keyes. The Court has fixed September 8, 2021 at 3:00 p.m. in Courtroom G, Room 222 on the 2nd floor at the Erie County Courthouse as the time and place for the hearing on said Petition, when and where all persons interested may appear and show cause, if any, why the prayer of relief of the said Petition should not be granted.

Michael J. Nies, Esquire
504 State Street, 3rd Floor
Erie, Pa. 16501

July 23

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

Notice is hereby given pursuant to the provisions of the Fictitious Name Act of Pennsylvania that an application for registration of a fictitious name was filed with the Department of State of the Commonwealth of Pennsylvania for the conduct of business under the fictitious name of Jessie Simmons Ceramics with its principal place of business at 2812 Auburn St., Erie, PA 16508. The names and addresses of all persons who are parties to the registration are: Jessie Simmons
2812 Auburn Street
Erie, PA 16508

July 23

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AUDIT LIST NOTICE BY KENNETH J. GAMBLE

**Clerk of Records
Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the
Court of Common Pleas of Erie County, Pennsylvania**

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, July 7, 2021** and confirmed Nisi.

August 18, 2021 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2021 ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
182 Joseph R. Soder.....	Mark Krysiak, Executor.....	Darlene M. Vlahos, Esq.

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

July 16, 23

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ESTATE NOTICES

Notice is hereby given that in the estates 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 their attorneys named below.

FIRST PUBLICATION

**ANDERSON, EVELYN, a/k/a
EVELYN K. ANDERSON,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Susan Murawski
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**BERARDUCCI, JULIO CAESAR,
a/k/a JULIO C. BERARDUCCI,
a/k/a JULIO BERARDUCCI,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administratrix: Janet Agresti-Norman, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**JOHANNES, RUTH M.,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administrator: Robert R. Johannes, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan J. Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**KRAMER, JOHN RICHARD,
a/k/a JOHN R. KRAMER, a/k/a
JOHN KRAMER,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executrix: Jennifer Sibilia, 7110 Harvest Moon Drive, Erie, PA 16509
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**LACHOWSKI, ROBERT J., a/k/a
ROBERT LACHOWSKI,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Administratrix: Lily Ohmer, 7501 Bargain Road, Erie, PA 16509
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**LANDI, OLLIE T., a/k/a
OLLIE LANDI,
deceased**

Late of the City of Erie
Co-executrices: Lorrie Henderson, 607 Lawler Street, Philadelphia, PA 19116 and Cindy Oleck, 32 Sunset Drive, Paoli, PA 19301
Attorney: David J. Mack, Esquire, 510 Parade Street, Erie, PA 16507

**LEE, GREGG G.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Susan D. Margosian Lee
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**LOCKET, MONIQUE, a/k/a
MONIQUE MARIE LOCKETT,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executrix: Sylvia Lockett Cooley, 3614 Roma Drive, Erie, PA 16510
Attorney: Gregory P. Sesler, Esquire, Sesler and Sesler, 107 East Tenth Street, Erie, PA 16501

**SCHAUERMAN, HENRY J.,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executrix: Reva Revak, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

**STELMACK, ROSE IRENE,
a/k/a ROSE I. STELMACK, a/k/a
ROSE STELMACK,
deceased**

Late of Millcreek Township, County of Erie and State of Pennsylvania
Executor: Christopher Szymanski, 4202 Stein Drive, Cranberry, PA 16066
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

TRUST NOTICES

Notice is hereby given of the administration of the Trust set forth below. All persons having claims or demands against the decedent are requested to make known the same and all persons indebted to said decedent are required to make payment without delay to the trustees or attorneys named below:

JOSEPHINE S. JASINSKI TRUST
Late of the Township of Greene, County of Erie, Commonwealth of Pennsylvania

Trustee: Cherly L. Mills, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

SECOND PUBLICATION**ANDERSON, THOMAS F., deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Leslie Drumm, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

BIDWELL, DONALD E., a/k/a DONALD EUGENE BIDWELL, deceased

Late of the Borough of Waterford, County of Erie, Commonwealth of Pennsylvania
Executor: Carter J. Bidwell, c/o Herman & Herman, PO Box 455, 114 High Street, Waterford, PA 16411
Attorney: Rebecca A. Herman, Esq., Herman & Herman, PO Box 455, 114 High Street, Waterford, PA 16411

GIESE, CHARLENE C., a/k/a CHARLENE GIESE, deceased

Late of Millcreek Township, Erie County
Executor: Mark A. Giese
Attorney: Michael G. Nelson, Esq., Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

McINTYRE, VICTOR L., deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Karen L. McIntyre, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

NOWAK, ETHEL L., a/k/a ETHEL NOWAK, deceased

Late of the Township of Harborcreek, Erie County, Commonwealth of Pennsylvania
Executor: Mark L. Nowak, 651 W. 7th St., Erie, PA 16502
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

PASSEROTTI, ROBERT L., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Joan M. Passerotti, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

SITTER, NORBERT ANTHONY, JR., a/k/a NORB SITTER, a/k/a NORBERT A. SITTER, a/k/a NORBERT A. SITTER, JR., deceased

Late of Millcreek Township, County of Erie, Commonwealth of Pennsylvania
Executor: Michael R. Gerlach, 3211 Hampshire Rd., Erie, PA 16506
Attorney: None

SLATER, WILLARD E., JR., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Judith A. Stewart, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

WATSON, ANNETTE P., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-executrices: Diane M. Tatalone, 2308 Rudolph Avenue, Erie, Pennsylvania 16502-1953 and Mary M. Good, 11236 Backus Road, Wattsburg, Pennsylvania 16442-9748
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

WENSEL, THOMAS D., a/k/a DOUGLAS WENSEL, deceased

Late of the Borough of North East, Erie County, Commonwealth of Pennsylvania
Administrator: Kathryn I. Durst, 1160 Southview Dr., Erie, PA 16509
Attorney: None

TRUST NOTICES

Notice is hereby given of the administration of the Trust set forth below. All persons having claims or demands against the decedent are requested to make known the same and all persons indebted to said decedent are required to make payment without delay to the trustees or attorneys named below:

BERCHTOLD, DAVID, trustee of the BERCHTOLD FAMILY TRUST dated DECEMBER 21, 2018, deceased

Late of Erie, Erie County, Pennsylvania
Successor Trustee: Brian Berchtold, Berchtold Family Trust, 2831 Highland Road, Erie, PA 16506
Attorney: Michael S. Butler, Esq., Heritage Elder Law & Estate Planning, LLC, 318 South Main Street, Butler, PA 16001

THIRD PUBLICATION**ANDREWS, JANE L., a/k/a JANE LINDA ANDREWS, deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Susan L. Moyer, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

BANKS, ROBERT LOUIS, a/k/a ROBERT L. BANKS, deceased

Late of the Township of North East, County of Erie and Commonwealth of Pennsylvania
Executrix: Donna Banks, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Michael A. Agresti, Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

BRADSHAW, DORIS R., a/k/a DORIS BRADSHAW, deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Mark E. Bradshaw
Attorney: James H. Richardson, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

COWGER, MICHAEL L., deceased

Late of the Borough of Cranesville, County of Erie, Commonwealth of Pennsylvania
Administrator: Keith Cowger, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

HARRISON, THELMA E., deceased

Late of the Township of McKean, County of Erie and Commonwealth of Pennsylvania
Executor: Michael Harrison, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Michael A. Agresti, Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

HAYES, PATRICIA H., a/k/a PATRICIA HAYES, deceased

Late of the Borough of Girard, County of Erie, Commonwealth of Pennsylvania
Executor: Roger R. Hayes, III, 12946 Lemur Lane, Cypress, TX 77429
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

KIEHLMEIER, WILLIAM C., a/k/a WILLIAM JOSEPH KIEHLMEIER, a/k/a WILLIAM J. KIEHLMEIER, a/k/a WILLIAM KIEHLMEIER, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: William J. Kiehlmeier, c/o James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509
Attorney: James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509

MERSKI, WILLIAM F., deceased

Late of Millcreek Township, Erie County, Pennsylvania
Executrix: Robin Hites, c/o Elizabeth Brew Walbridge, Esq., 4258 W. Lake Road, Erie, PA 16505
Attorney: Elizabeth Brew Walbridge, Esq., 4258 W. Lake Road, Erie, PA 16505

SCHMITT, JAMES J., a/k/a SCHMITT, JAMES J., SR., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Patricia A. Slaughter, 5325 Washington Ave., Erie, PA 16509
Attorney: None

SHENK, MILDRED S., deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Barbara S. McGill, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

STEWART, MARY E., a/k/a MARY ELIZABETH STEWART, a/k/a BETH STEWART, deceased

Late of Girard Borough
Executor: John H. Stewart, c/o Brenc Law, 9630 Moses Road, Springboro, Pennsylvania 16435
Attorney: Andrew S. Brenc, Esquire, 9630 Moses Road, Springboro, Pennsylvania 16435

WHITE, JANET L., a/k/a JANET LOUISE WHITE, a/k/a JANET WHITE, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-executors: Christopher L. White and Brent R. White, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

COURTNEY M. HELBLING814-333-7455
Crawford County District Attorney's Office
359 East Center Street
Meadville, PA 16335 chelbling@co.crawford.pa.us

JOHN M. BARTLETT814-774-2628
Steadman Law Office, P.C.(f) 814-774-3278
24 Main Street East
Girard, PA 16417 John@steadmanlaw.com

DENISE C. PEKELNICKY814-873-0046
Rust Belt Business Law
425 W. 10th St.
Erie, PA 16502 denise@rustbeltlegal.com

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A to Z Law Erie.....(f) 814-453-2589
402 W. 6th St.
Erie, PA 16507 a@atozlawerie.com

ZANITA A. ZACKS-GABRIEL814-452-4451
A to Z Law Erie.....(f) 814-453-2589
402 W. 6th St.
Erie, PA 16507 z@atozlawerie.com

New email addresses

MICHELLE M. ALASKEY malaskey@quinnfirm.com
MICHAEL J. NIES mike@michaelnies.com

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M-F, 8:30 a.m. - 5:00 p.m.

ECBA Members:
\$100/hour (minimum 1 hour)
M-F, 8:30 a.m. - 5:00 p.m.



July 23, 2021

Spoiler alert - The camera doesn't lie — unless, of course, you destroy key portions of the surveillance footage. Spoliation rulings in state and federal courts across the country over the past year demonstrate the harsh consequences for defendants who fail to preserve video evidence in slip-and-fall cases — and for plaintiffs who fail to properly raise the issue of spoliation prior to trial. State and federal courts in Pennsylvania and Texas have come down hard in recent months on defendants who were deemed to have spoliated surveillance video in injury cases, issuing sanctions that would allow juries to draw an adverse inference based on the missing evidence. But at least one appellate court has demonstrated that serious ramifications also await plaintiffs who break with procedure in lodging spoliation allegations.

An Emoji is Worth 1,000 Words - In modern communication emojis have become ubiquitous. Emojis, first introduced in 1999, are a way to communicate tone in written communication. The “smile” emoji can take what might be interpreted as harsh criticism and change it to sarcasm or a joke. Often single emoji in a message or email can communicate an idea more effectively than a paragraph of text. Because they are an integral part of today's communications, they are also an important part of the discovery process. There is more and more caselaw, civil and criminal, that involves emojis — from 2018 to 2019 the number of cases nearly doubled and there are no signs of that trend slowing. Despite the increase in litigation related to emojis the technology to interpret them in discovery is lagging. Anyone who's ever collected text messages is familiar with the dreaded “💎” indicating an emoji was used but, was not rendered in the discovery production process. Read more ... <https://www.natlawreview.com/article/emoji-worth-1000-words>

C-minus - What's this world coming to when you can't rely on your hard seltzer to provide your daily dose of vitamin C? Gutride Safier filed a consumer class action Thursday in California Northern District Court against Molson Coors Beverage over its Vizzy Hard Seltzers. The complaint accuses the defendant of false advertising by marketing their hard seltzers as containing vitamin C when they contain fewer than 20% of the FDA recommended intake value. Counsel have not yet appeared for the defendant. The case is 3:21-cv-05461, *Wagner v. Molson Coors Beverage Company*.

Illinois Is The 1st State To Tell Police They Can't Lie To Minors In Interrogations - Illinois Gov. JB Pritzker signed a new bill into law Thursday barring police from lying to underage kids during interrogations. Commonly used interrogation tactics, such as promising leniency or insinuating that incriminating evidence exists, are banned when questioning suspects younger than 18 under the new law, which goes into effect Jan. 1. According to the Innocence Project, an organization focused on exonerating wrongly convicted people, those types of interrogation methods have been shown to lead to false confessions. They've also played a role in about 30% of all wrongful convictions later overturned by DNA. Read more ... <https://www.npr.org/2021/07/16/1016710927/illinois-is-the-first-state-to-tell-police-they-cant-lie-to-minors-in-interrogat>

Ethical Considerations in Helping a Low-Income Ex-Offender Apply for a Pardon

Wednesday, August 11, 2021

The Will J. Schaaf & Mary B. Schaaf
Education Center at the ECBA,
429 West 6th Street, Erie, PA 16507

Registration: 11:45 a.m.

Seminar: 12:00 - 1:00 p.m.

Cost: \$47 - ECBA Members (Judges & Attorneys) and their Non-attorney Staff
\$60 - Non-members

If attending in-person,
a boxed lunch will be provided.



1 Hour Ethics CLE Credit

Speaker:

Carl (Tobey) Oxholm III, Esquire,
Director, The Pardon Project,
Philadelphia Lawyers for Social Equity

After receiving his JD cum laude from Harvard Law School, his forty-year career in the law includes 22 years in private practice as a commercial litigator, Chief Deputy City Solicitor for the City of Philadelphia, and General Counsel of Drexel University. In 2008 he began a decade of leadership and innovation in higher education, including service as the President or Executive Vice President of three universities (Arcadia, Drexel and Rowan). He began with PLSE as a volunteer Staff Attorney in 2017, and has served as its Executive Director since January 2018. He has received many national, state and local awards for exemplary pro bono service, including the Pennsylvania Bar Foundation's Lifetime Achievement Award and the American Bar Association's Pro Bono Publico Award. He lives in Wayne County, PA.

Seminar:

The procedure for pardons in Pennsylvania has been streamlined and all costs eliminated. Additionally, the wait has been cut in half and the Governor is granting pardons to over 80% of the applicants after their hearings. A recent study shows that simply signing pardons brought over \$16 million into local economies across the state, because qualified people can get better jobs. Pardons are available only to people who have completed their sentences and "repaid their debt to society." The Erie County Bar Association is working with a host of community members to create a Pro Bono Pardon Project in Erie. Attorneys can volunteer to help low-income clients fill out the application form and get the best chance possible for a hearing. Learning how to be a "Pardon Coach" can be helpful to many private clients as well, since so many people may benefit from the pardon process. Learn how attorneys can help our community by helping someone with a criminal record greatly increase their chances of success in just 3 hours of pro bono service, or less!

Register at:

<https://www.eriebar.com/events/public-registration/1730>

Summer CLE & Social

Take less than a half day and receive 3 CLE credits before the end of the August PACLE compliance period along with mixing and mingling with colleagues afterwards! Don't have time for all three? Register for what fits within your schedule and know you can attend the Social/Happy Hour regardless.

Thursday, August 12, 2021

The Will J. Schaaf & Mary B. Schaaf Education Center at the ECBA, 429 West 6th Street, Erie, PA 16507

Attend one CLE: \$47 - ECBA Members (Judges & Attorneys) and their non-attorney staff, \$60 - Non-members
Attend two CLEs: \$85 - ECBA Members (Judges & Attorneys) and their non-attorney staff, \$110 - Non-members
Attend three CLEs: \$125 - ECBA Members (Judges & Attorneys) and their non-attorney staff, \$160 - Non-members

1:30 - 2:30 p.m.
**Ethics Do's and Don'ts
for Lawyer Marketing/
Advertising**
1 ethics credit

This seminar will address the issues of lawyer marketing, advertising and solicitation as it relates a rapidly shifting, ultra-competitive marketplace. From the "traditional" (billboards, radio and TV) to the "modern" (websites, blogs and social media, ratings and rankings, reviews, referral services, and other "content"). Whether you are a solo practitioner marketing to consumers or a mega-firm focused on defense of corporate clients, the issues addressed will be relevant to your law practice.

2:40 - 3:40 p.m.
Paint Your Profit by the Numbers
1 substantive credit

Do you seem to have more questions about your practice than answers? Is there information you'd like to know, but you have no idea how to find it? Law firms are businesses, but they are not like any other business. So the metrics which you should track; which drive your firm toward profit or loss, will be different than for other businesses. Most CPAs — unless they focus on law firms — don't understand the meaningful numbers to examine in order to forecast and improve profitability. They can't provide you with the guidance you need. This course is not about overwhelming you with new numbers. It's about looking at just the numbers which will enable you to clearly understand how your practice is doing, in order to make better business decisions. This course will provide you with the metrics, formulas, and other procedural information you need, and explain which questions each piece of information will answer. It will enable you to focus on just what you need to get the answers you seek. It will enable you to be proactive in addressing key areas to improve your financial health, and even improve your marketing efforts.

3:45 - 4:45 p.m.
**Ethical Considerations &
Best Practices for Billing &
Collections**
1 ethics credit

Rules of Professional Conduct and related Opinions dictate what an attorney must do, as well as what an attorney cannot do, when it comes to billing clients and collecting what has been billed. This course will provide much-needed guidance to keep the attorney from straying off the path. How do you ensure you will get paid for the work you do? Unfortunately, there is no single magic secret to share as to why some firms get paid and others don't. Rather, there is a proven methodology of best practices you can and should follow. This course will spotlight the essential steps which are guaranteed to reduce your receivables and improve your cash flow, without making ethical blunders.

4:45 - 6:00 p.m.
Complimentary Social/Happy Hour outside on the ECBA parking lot!



Jennifer Ellis, Esq. is a legal ethics attorney in Pennsylvania assisting attorneys with issues such as ethical marketing for lawyers, electronic discovery, practice management and online presence. Previously, Attorney Ellis worked with a Philadelphia area personal injury firm, where she practiced legal ethics, managed the firm's online presence, and oversaw its IT and security consultants. She also served as the Associate Director of Media Technology with the Pennsylvania Bar Institute, where she organized and presented courses on numerous issues, including law practice management, technology and ethics.



Ellen Freedman, CLM, is the Law Practice Management Coordinator for the PBA. She assists PBA's members with management issues and decisions on the business side of their practice, including areas such as technology, financial management and profitability, human resources, marketing, risk management, starting a practice and so forth. She is founder and President of Freedman Consulting, which assists PA law firms with a full range of issues and projects on the business side of the practice. Ms. Freedman also publishes the Law Practice Management blog at www.PA-LawPracticeManagement.com. Ms. Freedman holds the designation of Certified Legal Manager through the Association of Legal Administrators (ALA). She holds a Certification in Computer Programming from Maxwell Institute, and a Certification in Web Site Design and a B.A. from Temple University.

Register at:

<https://www.eriebar.com/events/public-registration/1731>

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