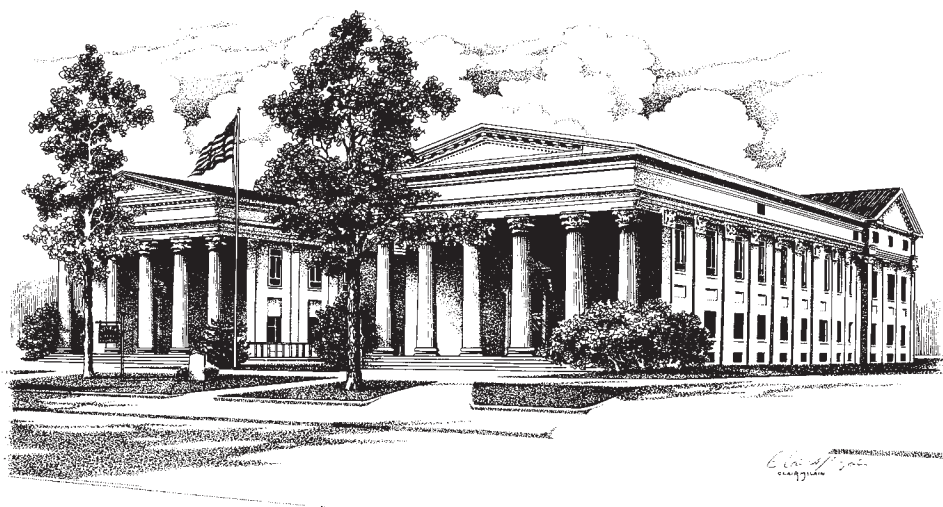


*Erie
County
Legal
Journal*

October 30, 2020

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103 ERIE 78-96
Commonwealth v. Poole

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, NOVEMBER 2, 2020

In-house Counsel Leadership Committee Meeting
Noon
via Zoom Conference

TUESDAY, NOVEMBER 3, 2020

Family Law Section Meeting
Noon
ECBA Headquarters live or via Zoom Conference

FRIDAY, NOVEMBER 6, 2020

ECBA Live Seminar
Driver Rehabilitation for Your Clients
The Will J. Schaaf & Mary B. Schaaf
Education Center live or via Zoom Conference
11:45 a.m. - Registration
Noon - 1:00 p.m. - Seminar
\$47 (ECBA members/their non-attorney staff)
\$60 (non-members)
1 hour substantive

WEDNESDAY, NOVEMBER 11, 2020

Veteran's Day Observed
Erie County and Federal Courthouses Closed

FRIDAY, NOVEMBER 20, 2020

ECBA Live Seminar
Recent Developments in Chapter 13
View Judge Keith Lundin via Zoom Conferencing at
The Will J. Schaaf & Mary B. Schaaf Education Center
11:45 a.m. - Registration
Noon - 1:00 p.m. - Seminar
\$47 (ECBA members/their non-attorney staff)
\$60 (non-members)
1 hour substantive

MONDAY, NOVEMBER 23, 2020

ECBA Board of Directors Meeting
Noon
via Zoom Conference

THURSDAY, NOVEMBER 26, 2020

FRIDAY, NOVEMBER 27, 2020
Thanksgiving Holiday
ECBA Office Closed
Erie County and Federal Courthouses Closed



Erie County Bar
Association



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To view PBI seminars visit the events calendar
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**
**MOTION COURT DATES FOR JUDGE THOMAS P. AGRESTI
ERIE AND PITTSBURGH DIVISION CASES**
NOVEMBER 2020 NOTICE

The following is a list of *November 2020, December 2020, and January 2021* motion court dates and times to be used for the scheduling of motions pursuant to *Local Rule 9013-5(a)* before **Judge Thomas P. Agresti** in the Erie and Pittsburgh Divisions of the Court. The use of these dates for scheduling motions consistent with the requirements of *Local Rule 9013-5(a)* and Judge Agresti's *Procedure B(1)-(3)* summarized below and on Judge Agresti's webpage at: www.pawb.uscourts.gov.

The motions will now be heard by the Zoom Video Conference Application. When using the below self-scheduling dates to schedule a matter please include the following Zoom Meeting link in your Notice: <https://www.zoomgov.com/j/16021303488>, or alternatively, to attend and use the following Meeting ID: 160 2130 3488. To join the Zoom hearing please initiate and use the link 15 minutes prior to your scheduled hearing time. All attorneys and Parties may only appear via the Zoom Video Conference Application and must comply with the Amended Notice of Temporary Modification of Appearance Procedures Before Judge Thomas P. Agresti, as updated on June 10, 2020.

Counsel for a moving party shall select one of the following dates and times for matters subject to the "self-scheduling" provisions of the *Local Bankruptcy Rules* and the Judge's procedures, insert same on the notice of hearing for the motion, and serve the notice on all respondents, trustee(s) and parties in interest. Where a particular type of motion is listed at a designated time, filers shall utilize that time, *only*, for the indicated motions(s) *unless*: (a) special arrangements have been approved in advance by the Court, or, (b) another motion in the same bankruptcy case has already been set for hearing at a different time and the moving party chooses to use the same date and time as the previously scheduled matter.

SCHEDULE CHAPTERS 13 & 12 MOTIONS ON:

Select the following times, EXCEPT for the specific matters to be scheduled at 11:30 a.m.:

Friday, November 13, 2020	9:30 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, December 9, 2020	10:00 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, January 6, 2021	10:30 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
	11:00 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
	11:30 a.m.:	Ch. 13 Sale, Financing and Extend/Impose Stay & Ch. 12 matters

SCHEDULE CHAPTERS 11 & 7 MOTIONS ON:

Select the following times, EXCEPT for Ch. 7 Motions to Extend/Impose Stay scheduled only at 11:00 a.m., and, all sale motions only at 11:30 a.m.:

Thursday, November 19, 2020*	9:30 a.m.:	Open for all Erie & Pittsburgh Ch. 11 matters
Thursday, December 17, 2020	10:00 a.m.:	Open for all Erie & Pittsburgh Ch. 11 matters
Thursday, January 14, 2021	10:30 a.m.:	Open for all Erie & Pittsburgh Ch. 7 matters
Thursday, January 28, 2021	11:00 a.m.:	Open for all Erie & Pittsburgh Ch. 7 matters, including all Ch. 7 Motions to Extend/Impose Stay
	11:30 a.m.:	Ch. 11 and 7 Sale Motions at this time, only

ERIE COUNTY LEGAL JOURNAL
NOTICE TO THE PROFESSION

*Matters scheduled for Thurs., November 19, 2020, should only use these times:

9:30 a.m.: Open for all Erie & Pittsburgh Ch. 11 matters
10:00 a.m.: Open for all Erie & Pittsburgh Ch. 7 matters,
including all Ch. 7 Motions to Extend/Impose Stay
1:00 p.m. Ch. 11 and 7 Sale Motions at this time, only

ALL OF THE DATES ARE SUBJECT TO REVISION. Please check each month for any changes in the dates that have been published previously. THIS SCHEDULE CAN BE VIEWED ON PACER (Public Access to Court Electronic Records) and on the Court's Web Site (www.pawb.uscourts.gov).

Michael R. Rhodes
Clerk of Court

Oct. 30

LEGAL SECRETARY

Richards & Associates, P.C. is looking for an experienced legal secretary to fill a full-time position. Successful candidate will receive an excellent benefits package, including a 401(k). Salary commensurate with experience. Please send resume to: Amber Merry, Office Manager, Richards & Associates, P.C., 230 West 6th Street, Erie, PA 16507 or email Amber.Merry@richardspc.com.

Oct. 30 and Nov. 6, 13, 20

NOMINATIONS TO THE ECBA BOARD OF DIRECTORS

Pursuant to Article V, Section 4 of the Erie County Bar Association By laws, the Nominating Committee intends to propose the following for nominations at the Annual Membership Meeting on Thursday, December 3, 2020:

Second Vice President (1 yr. term): J. Timothy George
Treasurer (1 yr. term): S. Craig Shamburg
Board Members (3 yr. terms): Catherine Moodey Doyle
Jonathan M. D'Silva
John J. Shimek III

Oct. 23, 30

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Oct. 30



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COMMONWEALTH OF PENNSYLVANIA

v.

JOHN EARL POOLE, JR.

CRIMINAL PROCEDURE / POST-CONVICTION RELIEF ACT

The purpose of the Post-Conviction Collateral Relief Act, 42 Pa.C.S.A. § 9541 et seq., is to afford persons who have been convicted of a crime they did not commit an avenue to obtain collateral relief. *See* 42 Pa.C.S.A. § 9542.

CRIMINAL PROCEDURE / POST-CONVICTION RELIEF ACT

A cognizable claim pursuant to the Post-Conviction Collateral Relief Act is “the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.” *See* 42 Pa.C.S.A. § 9543(a)(2)(vi).

CRIMINAL PROCEDURE / GUILTY PLEAS

Generally, an appellant who has pleaded guilty “waives all claims and defenses other than those sounding in the jurisdiction of the court, the validity of the plea, and what has been termed the ‘legality’ of the sentence imposed.” *Commonwealth v. Heaster*, 171 A.3d 268, 271 (Pa. Super. 2017). A post-sentence guilty plea may not be withdrawn absent “. . . a showing of prejudice on the order of manifest injustice.” *Commonwealth v. Starr*, 301 A.2d 592, 595 (Pa. 1973). “Manifest injustice may be established if the plea was not tendered knowingly, intelligently, and voluntarily.” *Commonwealth v. Broaden*, 980 A.2d 124, 129 (Pa. Super. 2009).

CRIMINAL PROCEDURE / POST- CONVICTION RELIEF ACT / DUE PROCESS

The due process requirements of *Brady v. Maryland*, 373 U.S. 83 (1963) do not extend to the context of post-conviction relief. *See District Attorney’s Office for Third Judicial District v. Osborne*, 557 U.S. 52, 68 (2009). The inquiry of a claim of after-discovered evidence after conviction and sentencing is governed by the state procedures for post-conviction relief rather than the *Brady* framework.

*CRIMINAL PROCEDURE / POST-CONVICTION RELIEF ACT /
AFTER-DISCOVERED EVIDENCE*

A claim based on after-discovered evidence must prove: (1) the evidence was discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) the evidence is not being used solely to impeach credibility; and (4) the evidence would likely compel a different verdict.

*CRIMINAL PROCEDURE / POST-CONVICTION RELIEF ACT /
AFTER-DISCOVERED EVIDENCE*

In considering whether the after-discovered evidence “would likely compel a different verdict,” the court should consider the evidence’s integrity, the motive of the offeror, and the overall strength of the evidence supporting conviction. *See Commonwealth v. Padillas*, 997 A.2d 356 (Pa. Super. 2010).

CRIMINAL PROCEDURE / POST-CONVICTION RELIEF ACT / GUILTY PLEAS

In the context of a Post-Conviction Collateral Relief proceeding, after-discovered evidence which would justify a new trial would also entitle a defendant to withdraw his guilty plea.

CRIMINAL PROCEDURE / POST-CONVICTION RELIEF ACT

It is the duty of the Post-Conviction Collateral Relief Court to make independent findings of fact and conclusions of law concerning the credibility of testimony.

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

No. 1472 - 2017

Appearances: Michael Burns, Esquire, for the Commonwealth
William R. Hathaway, Esquire on behalf of John Earl Poole, Jr.

MEMORANDUM OPINION AND ORDER

October 28, 2019. This matter is before this Court on John Earl Poole, Jr.'s (hereinafter "Petitioner") Motion for Post Conviction Collateral Relief (hereinafter "PCRA") filed on April 11, 2019, and supplemented by Attorney William Hathaway on July 19, 2019. After an independent review of the record, consideration of Petitioner's *pro se* PCRA, the Supplemental PCRA filed by PCRA counsel, the Responses filed by the Commonwealth, the evidence presented at the evidentiary hearings conducted on September 30, 2019 and October 7, 2019, and the evidence presented at the status conference held on October 15, 2019, this Court finds that Petitioner has failed to prove a meritorious claim under the Post Conviction Relief Act (PCRA). Accordingly, Petitioner's request for relief is hereby **DENIED**.

Factual and Procedural History

The relevant factual history was set forth in the undersigned's Opinion of October 16, 2018:

On February 5, 2017, Defendant and his friend, Robert McCarthy, (hereinafter "the victim") were drinking alcohol and smoking crack in the victim's apartment located at 539 East 9th Street in Erie, PA. At some point in the evening, Defendant stabbed the victim several times in the head and neck, causing the victim's demise. Defendant also took the victim's wallet and a bottle of his prescription medication and left the victim's apartment. Several hours later, the Defendant returned to the victim's apartment, doused the victim with an accelerant, and set his body on fire.

(1925(a) Opinion, October 16, 2018, 1.)

Additionally, relevant to the proceedings *sub judice*, the following facts were elicited during the hearing on Petitioner's Omnibus Pretrial Motion on October 9, 2017. On February 5, 2017, through the investigation conducted by the City of Erie Police Department ("EPD") subsequent to the discovery of the victim's body, Petitioner was identified as a person of interest. (Notes of Testimony, Omnibus Pre-Trial Motion, October 9, 2017, hereinafter "N.T., October 9, 2017", 6). At approximately 10:00 a.m. on February 6, 2017, Petitioner voluntarily drove himself to the EPD to speak with the investigators about a homicide. (N.T., October 9, 2017, 6-7). Petitioner was read his rights and signed a *Miranda* waiver. (N.T., October 9, 2017, 8). Petitioner also consented to a search of his vehicle, a search of his cell phone, and a search of his jacket. (N.T., October 9, 2017, 14-21). The victim's personal items were found in Petitioner's vehicle, including the victim's prescription pill bottle and wallet. (N.T., October 9, 2017, 92-93). Further, a towel with the victim's blood was also recovered from Petitioner's vehicle. (N.T., October 9, 2017, 93). Petitioner was the last person to see the victim alive. (N.T., October 9, 2017, 95). Additionally,

Petitioner's vehicle was seen outside the victim's apartment on surveillance video. (N.T., October 9, 2017,95-97).

As a result, on June 7, 2017, Petitioner was charged by Criminal Information with Criminal Homicide/First Degree Murder, Possessing Instruments of Crime, Aggravated Assault, seven counts of Recklessly Endangering Another Person, Robbery, Receiving Stolen Property, two counts of Arson, Abuse of a Corpse, Theft by Unlawful Taking, and Tampering With Physical Evidence.¹ The Commonwealth and Petitioner reached a plea agreement where Petitioner would plead guilty to Murder of the Third Degree and Robbery.² In exchange, the Commonwealth would *nolle pros* the remaining charges.

On March 15, 2018, four days before jury selection was set to commence, the Petitioner appeared before this Court and entered negotiated guilty pleas to the charges of Murder of the Third Degree (reduced from Murder of the First Degree) and Robbery. All remaining charges were thereby withdrawn. At the time of the guilty plea, an extensive guilty plea colloquy was conducted by this Court wherein this Court determined Petitioner knowingly, voluntarily, and intelligently entered his plea of guilty to the charges set forth above. (*See* Plea and Sentencing Transcript, March 15, 2018, hereinafter "Tr., March 15, 2018"). Immediately following entry of the guilty plea, Petitioner waived a presentence investigative report and elected to proceed with sentencing. *See* 42 Pa.C.S.A. § 9731. The Court sentenced Petitioner at Count One, Murder of the Third Degree, to a term of twenty (20) years to forty (40) years of incarceration, and at Count Eleven, Robbery, to a term of ten (10) years to twenty (20) years of incarceration consecutive to Count One. (*See* Sentencing Order, March 15, 2018).

On July 13, 2018, Petitioner filed a *pro se* "Notice of Appeal (*nunc pro tunc*)" [sic]. The Court directed Petitioner to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On October 3, 2018, Counsel for Petitioner filed a Statement of Intent to File *Anders* Brief as well as an Application to Withdraw as Counsel. The Court issued its 1925(a) Opinion on October 16, 2018.

On February 22, 2019, while the direct appeal was still pending with the Pennsylvania Superior Court, Petitioner filed a *pro se* PCRA in which he raised the exact issues as he has raised in the PCRA *sub judice*. By Order of March 18, 2019, the Court dismissed the February 22, 2019 PCRA as a premature filing and outside of the Court's jurisdiction. (*See* Memorandum Opinion and Order, March 18, 2019).

On March 20, 2019, the Superior Court of Pennsylvania affirmed Petitioner's judgment of sentence and granted the Application to Withdraw as Counsel. *Commonwealth v. Poole*, No. 1034 WDA 2018 (Pa. Super. 2019).

Subsequently, Petitioner filed the instant *pro se* Motion for Post Conviction Collateral Relief on April 11, 2019. Attorney William Hathaway was appointed by this Court on April 24, 2019. On May 21, 2019, Attorney Hathaway filed a Motion for Extension of Time, requesting sixty days to file a Supplement to the PCRA. This extension request was granted by Order of May 23, 2019. On July 19, 2019, Attorney Hathaway filed a Supplement to Motion for Post Conviction Collateral Relief (hereinafter "PCRA"). At the Court's direction,

¹ 118 P.S. § 2501(a)/ 18 P.S. § 2502(a); 18 Pa.C.S.A. § 907(a); 18 Pa.C.S.A. § 2702(a)(1); 18 Pa.C.S.A. § 2705; 18 Pa.C.S.A. § 3701(a)(1); 18 Pa.C.S.A. § 3295(a); 18 Pa.C.S.A. § 3301(a)(1) and (c)(2); 18 Pa.C.S.A. § 5510; 18 Pa.C.S.A. § 3291(a); 18 Pa.C.S.A. § 3301(c)(2); and 18 Pa.C.S.A. § 4910(1), respectively.

² 18 P.S. § 2501(a)/ 18 P.S. § 2502(c) and 18 Pa.C.S.A. § 3701(a)(1).

the Commonwealth filed a Response to the PCRA on August 8, 2019. After reviewing the filings, the Court directed the Commonwealth to file a Supplemental Response for further clarification of some key evidentiary issues. The Commonwealth filed the Supplemental Response on September 11, 2019.

Due to the matters raised in the PCRA, the Court concluded the claim set forth by the Petitioner in the PCRA and the Responses received from the Commonwealth “... raised material issues of fact” requiring an evidentiary hearing pursuant to Pa.R.Crim.P. 908. Thereafter, the Court conducted an evidentiary hearing commencing on September 30, 2019 and continued on October 7, 2019, to consider the merits of Petitioner’s claim. Prior to rendering a decision, the Court scheduled a final status conference on October 15, 2019, to provide counsel the opportunity to supplement the record with additional evidence or argument. At this hearing, the Commonwealth submitted Commonwealth Exhibits 4A, 4B, 4C, and 5, and rested. Petitioner offered no further evidence or testimony. Therefore, the record was closed.

Discussion

I. Relevant Legal Principles

In the PCRA, Petitioner claims, *inter alia*, he is entitled to withdraw his guilty plea pursuant to 42 Pa.C.S.A. §9543(a)(2)(vi), which provides relief where a petitioner can prove “[t]he unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.” 42 Pa.C.S.A. § 9543 (a)(2)(vi). Petitioner alleges a number of claims in his PCRA seeking the withdrawal of his guilty plea couched as after-discovered evidence. Dissecting the claims, it becomes clear the only issue of legal significance, and agreed to by the parties, is whether the confession of an inmate by the name of Regis Brown is after-discovered evidence that would justify the withdrawal of Petitioner’s guilty plea.³ The Commonwealth’s Response to the PCRA filed on August 8, 2019 posits Brown’s alleged confession had no indicia of reliability and Petitioner’s guilty plea was not unlawfully induced.

A. Alleged *Brady* Violation

As a preliminary matter, in the Supplement to PCRA Petitioner raised a claim that the Commonwealth had engaged in a *Brady* violation in failing to disclose Brown’s confession. This Court notes the United States Supreme Court has held the due process requirement of *Brady* does not extend to the postconviction context, as a convicted criminal defendant “... does not have the same liberty interests as a free man.” *District Attorney’s Office for*

³ In his *pro se* PCRA, Petitioner attached “Exhibit C”, a copy of a statement allegedly signed by an inmate named Alexander Corder, regarding verbal statements allegedly made by Brown as well as reference to a letter by Brown and intercepted by Corder. Additionally, Corder sent an *ex parte* letter to the Court which was forwarded to counsel, and sent another letter to the District Attorney’s office. However, neither “Exhibit C,” the intercepted letter, nor the letters to the Court or the District Attorney’s office were admitted into evidence.

Subsequent to the *pro se* PCRA and as discussed *infra*, at the evidentiary hearing testimony was provided directly by the Pennsylvania State Troopers who interviewed Brown. The Court was further provided with a copy of the actual recording of the interview between the Troopers and Brown, marked as Courtroom Exhibit 2, 2A. Due to the significant additional evidence submitted on behalf of Petitioner and the Commonwealth, as well as both parties’ informal confirmation that neither intended to interview or present Corder as a witness, the Court can glean no relevance to Corder’s involvement other than being the catalyst for the filing of the PCRA. Therefore, the Court will not rely on the statement by Corder submitted with the *pro se* PCRA in its analysis and instead will rely on the evidence properly of record.

Third Judicial District v. Osborne, 557 U.S. 52, 68 (2009). Rather, the inquiry of a claim of after-discovered evidence after conviction and sentencing is governed by the state procedures for postconviction relief rather than the *Brady* framework. *Id.* at 69. Consequently, Petitioner’s allegation of a *Brady* violation is not a matter for this PCRA Petition or this Court’s consideration. However, out of an abundance of caution, this Court ordered the Commonwealth to specifically address the claim by identifying what information, if any, it had in its possession regarding Regis Brown’s statements and his admission of killing Robert McCarthy. (*See Order*, August 27, 2019). The Court also sought this information for use in addressing the issue of after-discovered evidence.

By Supplemental Response filed September 11, 2019, the Commonwealth affirmed it had received notice of the alleged confession by Regis Brown on or about September 21, 2018, more than six months after Petitioner’s entry of a guilty plea on March 15, 2018. (*See Commonwealth’s Supplemental Response to PCRA*, September 11, 2019). At the evidentiary hearing on September 30, 2019, Petitioner conceded and agreed there was no basis for a *Brady* claim upon receipt of the Commonwealth’s averment. Petitioner’s claim of an alleged *Brady* violation is therefore dismissed as both moot and without legal relevance to this current PCRA.

B. PCRA Claim of After-Discovered Evidence

There are several avenues available to a petitioner to seek relief under the provisions of the PCRA. However, Petitioner asserts essentially only one basis for relief, that being his claim of “after-discovered evidence.” (*See Supplement to Motion for PCRA*, July 19, 2019). The Court, as well as PCRA counsel and the Commonwealth, agree that only assessment and analysis of the “after-discovered evidence” subsection of the PCRA is relevant to the case *sub judice*.

The Post-Conviction Relief Act, 42 Pa.C.S.A. § 9541, et seq., “[p]rovides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief.” 42 Pa.C.S.A. § 9542. Pursuant to 42 Pa.C.S.A. § 9543(a)(2) (iv), a Petitioner must “... plead and prove by a preponderance of the evidence ... (2) That the conviction or sentence resulted from ... (vi) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.” 42 Pa.C.S.A. § 9543(a)(2)(iv). Claims brought under this subsection are commonly termed “after-discovered evidence claims.” *See, e.g., Commonwealth v. Johnson*, 179 A.3d 1105, 1123 (Pa. Super. 2018). In order for Petitioner to be eligible for post-conviction collateral relief based upon after-discovered evidence, he must prove: “(1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict.” *Johnson* at 1123 (citing *Commonwealth v. Cox*, 146 A.3d 221,228 (2016)).

All parties and the Court agree that the first three prongs of what constitutes after-discovered evidence have been satisfied in this case. It is only the fourth factor — whether the after-discovered evidence would likely compel a different verdict — that is to be analyzed by the Court. In considering “whether the evidence would likely compel a different verdict,” the court should consider “... the integrity of the alleged after-discovered evidence, the motive of those offering the evidence, and the overall strength of the evidence supporting the conviction.”

Commonwealth v. Padillas, 997 A.2d 356, 365 (Pa. Super. 2010) (citations omitted).

Thereby, this is the legal framework the Court will confine its analysis to. The Court must consider whether the confession of Regis Brown is sufficient after-discovered evidence that would likely compel a different verdict. However, in this case, Petitioner entered a knowing, voluntary and intelligent guilty plea. Therefore, in the case *sub judice*, the issue is narrowed to whether application of the after-discovered evidence rule to the voluntariness of a guilty plea would compel this Court to allow Petitioner to withdraw his plea. For the reasons set forth *infra*, Petitioner's request for relief is **DENIED** and his guilty plea and sentence are again upheld.

C. Withdrawal of a Guilty Plea

Generally, an appellant who has pleaded guilty “waives all claims and defenses other than those sounding in the jurisdiction of the court, the validity of the plea, and what has been termed the ‘legality’ of the sentence imposed.” *Commonwealth v. Heaster*, 171 A.3d 268, 271 (Pa. Super. 2017). A post-sentence guilty plea may not be withdrawn absent “... a showing of prejudice on the order of manifest injustice.” *Commonwealth v. Starr*, 301 A.2d 592, 595 (Pa. 1973). “Manifest injustice may be established if the plea was not tendered knowingly, intelligently, and voluntarily.” *Commonwealth v. Broaden*, 980 A.2d 124, 129 (Pa. Super. 2009) (citations omitted).

Pennsylvania Rule of Criminal Procedure Rule 590 mandates that pleas be taken in open court and that the court conduct a colloquy on the record to ascertain whether a defendant is aware of his rights and the consequences of the plea. *See* Pa.R.Crim.P. 590(A)(1),(3); Pa.R.Crim.P. 590(B)(2). “[W]here the record clearly demonstrates that a valid guilty plea colloquy was conducted, during which it became evident that the defendant understood the nature of the charges against him, the voluntariness of the plea is established.” *Commonwealth v. Rush*, 909 A.2d 805, 808 (Pa. Super. 2006) (citing *Commonwealth v. McCauley*, 797 A.2d 920, 922 (Pa. Super. 2001)); *see also*, Pa.R.Crim.P. 590; *Commonwealth v. Kpou*, 153 A.3d 1020, 1024 (Pa. Super. 2016). “A person who elects to plead guilty is bound by the statements he makes in open court while under oath and he may not later assert grounds for withdrawing the plea which contradict the statements he made at his plea colloquy.” *Commonwealth v. Turetsky*, 925 A.2d 876, 881 (Pa. Super. 2007) (citing *Commonwealth v. Pollard*, 832 A.2d 517, 524 (Pa. Super. 2003)). “A criminal defendant who elects to plead guilty has a duty to answer questions truthfully.” *Id.*

However, the Court is fully cognizant of the Pennsylvania Supreme Court's holding in *Commonwealth v. Peoples*, 319 A.2d 679 (Pa. 1974), wherein the high Court determined “[a]ny after-discovered evidence which would justify a new trial ... also entitle[s] a defendant to withdraw his guilty plea.” *Commonwealth v. Peoples* at 681. Despite the fact *Peoples* was decided under the Post Conviction Hearing Act (PCHA), the statutory predecessor of the PCRA, the holding continues to be applied in the context of after-discovered evidence claims. *See, e.g., Commonwealth v. Heaster, supra*, at n.6⁴; *see also, Commonwealth v. Perez*, 2019 WL 4338336 (Pa. Super. September 12, 2019) (a non-precedential memorandum cited for its “persuasive value” pursuant to 210 Pa. Code § 65.37).

⁴ Procedurally, *Heaster* involved a direct appeal and request for a post-sentence motion to withdraw a guilty plea based on after-discovered evidence pursuant to Pa.Crim.R.P. 720; however, the Pennsylvania Superior Court relied on *Commonwealth v. Peoples* in analyzing the claim.

Peoples and the more recent *Heaster* and the line of cases that follow therefore suggest that the after-discovered evidence analysis applies to guilty pleas. However, the Courts go no further in these holdings. Inevitably, in an after-discovered evidence assessment done in the context of a guilty plea, when considering whether the after-discovered evidence would compel a different result, it is fair for a reviewing court to consider the underlying plea for the “overall strength of evidence supporting conviction.” See *Commonwealth v. Padillas*, *supra* at 365. Consequently, this would warrant a review of the underlying knowledge, voluntariness, and intelligence of the guilty plea.

Instantly, Petitioner’s guilty plea was knowing, voluntary, and intelligent. (See Tr., March 15, 2018, 3-9; 21-33; see also Statement of Understanding of Rights Prior to Guilty/No Contest Plea, March 15, 2018). Petitioner was found to be mentally competent, appropriately responsive, articulate, and capable of entering his plea. (See Tr., March 15, 2018, 7-9). The plea agreement was reviewed on the record and Petitioner acknowledged he understood his rights and the rights he would be giving up by entry of the plea. (See Tr., March 15, 2018, 18-22; 26). Petitioner confirmed he did not have any questions about the plea deal and verified he had knowingly and voluntarily signed the Statement of Understanding of Rights Prior to Guilty/No Contest Plea before the Court. (See Tr., March 15, 2018, 20-22; 26). Petitioner affirmed in his colloquy that no one had forced or threatened him to enter the plea, that he was satisfied with plea counsel, and he entered the plea voluntarily. (See Tr., March 15, 2018, 21-33). The Court found Petitioner’s guilty pleas to Count One, Murder of the Third Degree, and Count Eleven, Robbery, were knowing, voluntary, and intelligent as well as supported by a legal and factual basis. (See Tr., March 15, 2018, 22-25).

The record indicates the Court underwent an extensive plea colloquy with Petitioner to ensure his understanding of his Constitutional rights and protections and the consequences of his admission. He was not forced, coerced or promised anything other than the terms of the plea agreement. His statements to the Court were knowing, voluntary, and intelligently made and supported the factual and legal basis for the plea. The Information setting forth the charges with the legal definitions and elements and the factors supporting these charges were read and explained to Petitioner. (See Tr., March 15, 2018, 23-25). He acknowledged his understanding of these elements and admitted to committing these crimes under oath on the record. *Id.*

He cannot now claim he gave false statements regarding his culpability for the murder of Mr. McCarthy because he sees a convenient opportunity. It is well-established that “... post-sentence claims of innocence do not demonstrate manifest injustice.” *Kpou*, *supra*, at 1024. In considering Petitioner’s PCRA claim, it is difficult for this Court to overcome the fact that Petitioner gave a knowing, voluntary, and intelligent guilty plea. Petitioner’s admission and plea is another important, if not the most important, factor impacting the “overall strength of the evidence supporting the conviction.” See, *Commonwealth v. Padillas*, *supra* at 365.

Under this framework and the law and facts set forth below, the Court must continue its analysis of Brown’s statement as after-discovered evidence to determine the integrity of the statement, the motive of Brown and Petitioner, and the overall strength of the Commonwealth’s evidence supporting Petitioner’s conviction. See *Commonwealth v. Padillas*, *supra* at 365.

D. Analysis of Petitioner’s After-Discovered Evidence: Regis Brown’s Confession

At the start of the evidentiary hearing, both parties agreed with the Court that the appropriate

assessment was an after-discovered evidence analysis pursuant to 42 Pa.C.S.A. § 9543(a)(2)(iv). Further, the parties stipulated prongs one, two, and three were met regarding the after-discovered evidence claim. Therefore, the only issue remaining before the Court is whether Petitioner can prove by a preponderance of the evidence that the after-discovered evidence, to-wit, Brown's alleged confession, would "likely compel a different verdict." *Commonwealth v. Johnson, supra*, at 1123; *Commonwealth v. Padillas, supra*, at 365; *see also*, 42 Pa.C.S.A. § 9543(a)(2)(iv). Further, the credibility of such evidence is fully within the purview of the PCRA Court. *See, e.g., Commonwealth v. Small*, 189 A.3d 961, 978 (Pa. 2018); *Commonwealth v. Treiber*, 121 A.3d 435, 444 (Pa. 2015); *Commonwealth v. Johnson*, 966 A.2d 523, 537 (Pa. 2009); *Commonwealth v. D'Amato*, 856 A.2d 806, 825 (Pa. 2004); *Commonwealth v. Williams*, 732 A.2d 1167 (Pa. 1999); *Commonwealth v. Lehr*, 583 A.2d 1234 (Pa. Super. 1990).

"Matters of credibility are vested in the sound discretion of ... the PCRA court." *Commonwealth v. Lehr, supra* at 1236. In fact, it is the express duty of the PCRA court to "render its own, independent findings of fact and conclusions of law concerning ... credibility and the impact, if any, upon the truth-determining process which can be discerned from such testimony." *Commonwealth v. Williams, supra*, at 1180-81; *see also, Commonwealth v. Small, supra*, 978. "Indeed, one of the primary reasons PCRA hearings are held in the first place is so that credibility determinations can be made; otherwise, issues of material fact could be decided on pleadings and affidavits alone." *Commonwealth v. Johnson, supra*, at 539.

In assessing the credibility of testimony and evidence to determine if Petitioner has met his burden of proof by a preponderance of the evidence, the Court will now undergo an intensive review of the evidentiary hearing record.

1. Testimony of the Troopers

On September 30, 2019, Petitioner presented the testimony of now-retired Trooper Joseph Vascetti and Trooper Justin Werner of the Pennsylvania State Police ("PSP"). In September 2018, both Troopers were stationed at the New Castle barracks in Lawrence County, Pennsylvania and working in the criminal investigation unit. Trooper Vascetti had been investigating the 1988 cold case homicide of Bryce Tompkins in Lawrence County, Pennsylvania. Trooper Vascetti testified that in or about March 2018, Regis Brown, previously known as Rex Knight, confessed to murdering Tompkins. As a follow-up to the Tompkins homicide investigation, Troopers Vascetti and Werner came to Erie, Pennsylvania on September 21, 2018 to conduct another interview with Brown, who was incarcerated at the Erie County Prison. During the recorded interview (admitted as Courtroom Exhibit 2, 2A), Troopers Vascetti and Werner asked Brown about the murder of Robert McCarthy.⁵ In the interview, Brown confessed to murdering Robert McCarthy and stated that he did it because McCarthy had reneged on an agreement involving drugs. It is this confession that is at the center of the PCRA set forth as after-discovered evidence.

⁵ Trooper Vascetti testified he had received a request from Trooper Susan Edelman of the PSP in Erie to specifically ask Brown about the McCarthy murder. Trooper Edelman was informed by Major Gary Seymour from the Erie County Prison that Brown had written a letter wherein Brown was taking responsibility for the murder of Robert McCarthy and Brown was concerned that "Big John" had "taken the case." All parties agree that "Big John" is a reference to Petitioner, John Poole, who is a physically large man at approximately 6'5" and 340 lbs. (*See Sent. Tr.*, March 15, 2018, 45). In other words, the reference "had taken the case" meant Petitioner had taken responsibility for the murder and was serving a sentence for it.

In the statement, Brown claimed on February 6, 2017, he had driven his green 2008 Jeep Patriot to Mr. McCarthy's apartment to physically confront Mr. McCarthy about the agreement. Brown alleged the two parties had agreed to exchange cocaine for Vicodin pills. Brown stated he gave Mr. McCarthy the pills but Mr. McCarthy had not given Brown the cocaine in return. After repeated attempts to collect, Brown stated he went to Mr. McCarthy's residence to get the cocaine or money for the pills. When Brown arrived at the apartment and Mr. McCarthy gave him another excuse, Brown stated he pulled out his 6-inch hunting knife and stabbed Mr. McCarthy three times in the neck. Brown noted Mr. McCarthy fell to the floor and Brown had stood over top of him and left without taking anything. Although evidence and reports indicate Mr. McCarthy's upper torso was burned, Brown did not make any statements that he burned the body. Trooper Vescetti testified Brown "felt bad" Petitioner was charged in the McCarthy murder and wanted to "clear things up." Immediately after the interview the Troopers forwarded the information and recording up the PSP chain of command per standard operating procedures. The following day, the PSP notified the City of Erie Police Department ("EPD") which in turn notified the Erie County District Attorney's office.

Both Trooper Vascetti and Trooper Werner testified that Brown was cooperative and answered all of their questions during the interview. Both Troopers further opined that they felt Brown's confession was credible. However, and important to this Court's assessment, both Troopers conceded they were in no way involved with the Robert McCarthy homicide investigation and did not have the benefit of personal knowledge of the details of the McCarthy murder. The Troopers had not read any reports regarding the EPD's investigation and were not armed with any knowledge of the McCarthy murder prior to the interview. Additionally, the Troopers were unaware of whether Petitioner and Brown were housed together at the Erie County Prison in March 2018 through May 2018. Therefore, Brown could not be confronted with the facts of Mr. McCarthy's murder and Brown's statement went unverified and simply accepted by the Troopers. The Troopers had no further follow-up regarding the McCarthy murder with Brown or any officials with Erie County.

At the conclusion of the Troopers' testimony, Petitioner rested.

2. Testimony of the Commonwealth

The Commonwealth presented the testimony of Erie County Assistant District Attorney Jeremy Lightner ("ADA Lightner"). ADA Lightner was the co-prosecutor for the McCarthy murder case, and as such was intimately familiar with the evidence at the crime scene, witness statements, the autopsy report, the evidence recovered from Petitioner's vehicle, the surveillance footage around Mr. McCarthy's residence and neighborhood, and all other aspects of the investigation.⁶

ADA Lightner testified that upon receipt of the information from the PSP regarding Brown's alleged confession, the Erie County District Attorney's Office ("DA") investigated further. ADA Lightner listened to the tape of Brown's statement to Troopers Vascetti and Werner. ADA Lightner testified he found Brown's statement contrary to the facts and evidence of this case.

ADA Lightner's testimony included references to discrepancies in Brown's statement to the Troopers. ADA Lightner's testimony revealed he was personally responsible for reviewing the video surveillance evidence obtained of Mr. McCarthy's neighborhood in and around the time

⁶ The other co-prosecutor in this case, former Assistant District Attorney Robert Marion, has since left the Erie County District Attorney's Office.

of the murder (February 4 and 5, 2017). ADA Lightner testified that Brown's vehicle, a green Jeep Patriot, was never seen on the surveillance footage. Conversely, Petitioner's vehicle, a Dodge Charger, was viewed several times. In fact, not only did Petitioner's vehicle appear on the video, but it was seen parked in the vicinity of Mr. McCarthy's apartment at 539 E. 9th Street at all times relevant to the murder and subsequent arson. As ADA Lightner explained, the fire had been called in by other tenants in Mr. McCarthy's building at approximately 4:00 a.m. on February 5, 2017, at which time Mr. McCarthy's charred body was discovered. ADA Lightner testified a timeline was reconstructed to determine what happened to Mr. McCarthy by utilizing the autopsy report and video surveillance. He stated the autopsy report indicated Mr. McCarthy had been deceased at the time his body was ignited, and the physical evidence regarding the cause and manner of death, including the blood loss, indicated he had died hours prior to the arson. ADA Lightner described that the primary surveillance footage near Mr. McCarthy's residence revealed Petitioner's Dodge Charger was the last vehicle parked in Mr. McCarthy's driveway on the evening of February 4, 2017. He testified Petitioner's vehicle was observed on the video driving by the victim's residence multiple times later at night on February 4, 2017 and through the early morning hours of February 5, 2017. ADA Lightner explained footage from a second surveillance camera in the neighborhood showed the Dodge Charger parked nearby Mr. McCarthy's residence around 4:00 a.m. on February 5, 2017, shortly before the report of the fire at 539 E. 9th Street was called in. He testified the fire at 539 E. 9th Street became visible on the primary surveillance video around the same time the Dodge Charger is seen leaving the area on the second surveillance video at approximately 4:00 a.m. ADA Lightner went on to conclude that based on the autopsy report and the video footage, as well as witness statements placing Petitioner with Mr. McCarthy on the evening of February 4, 2017, the Commonwealth's theory was that Petitioner murdered Mr. McCarthy at approximately 7:00 p.m. on February 4, 2017. ADA Lightner continued and stated that because of the presence of Petitioner's vehicle at the scene of the crime, and the later discovered evidence of personal items of the victim in Petitioner's vehicle, the Commonwealth believed Petitioner returned to the victim's residence at approximately 4:00 a.m. to burn the body in an attempt to conceal his involvement in the murder and robbery.

ADA Lightner testified that additional surveillance videos obtained from stores in the area indicate Petitioner changed clothes after the murder and these clothes were never recovered.

The autopsy report, which ADA Lightner reviewed with the medical examiner, Dr. Vey, indicated Mr. McCarthy had suffered nine stab wounds and the wounds were more consistent with an "unusual sharp object." ADA Lightner testified that a blue, plastic, sharp-tipped object which appeared to have been broken off a larger object was found in the pool of Mr. McCarthy's blood on the couch. ADA Lightner testified that Dr. Vey would have stated this item was consistent with the type of weapon used to murder Mr. McCarthy. This is in complete conflict with Brown's testimony that he stabbed Mr. McCarthy three times with a 6-inch knife.

ADA Lightner testified that the physical evidence, including a large amount of blood on Mr. McCarthy's couch that had soaked through the couch and the lack of blood on the floor near Mr. McCarthy's charred body (*See* Commonwealth Exhibit 5) indicated Mr. McCarthy was killed on the couch and then burned on the floor. This also refutes Brown's statement that he stabbed Mr. McCarthy three times with the victim falling to the floor, and no statement by Brown regarding Mr. McCarthy on the couch or of the burning of Mr. McCarthy's body.

In his testimony regarding the strength of the Commonwealth's case against Petitioner, ADA Lightner noted that during the police interview the day following the murder, Petitioner made statements that he had "screwed up" and "he would never see his kids again." During the interview, Petitioner signed a consent for the detectives to search his vehicle, the Dodge Charger. He told the detectives they would find Mr. McCarthy's wallet and a bottle of prescription pills that belonged to Mr. McCarthy in the center console of the vehicle. ADA Lightner testified that Petitioner was observed on video surveillance from the Wine and Spirits store at approximately 7:15 p.m. on February 4, 2017, which according to the Commonwealth's theory was shortly after Petitioner had killed Mr. McCarthy. In the trunk of the vehicle the detectives found a Wine and Spirits bag with a receipt dated February 4, 2017 at 7:15 p.m. Inside the bag, the detectives found Lysol spray, wipes, and a bloody towel. Subsequent testing confirmed the blood on the towel belonged to Mr. McCarthy.

ADA Lightner testified that the most notable detail of the McCarthy murder aside from the nine stab wounds was the fact that the body had been burned. However, Brown never mentioned burning Mr. McCarthy in his statement. ADA Lightner testified that Brown's confession did not contain any detail not made public.

ADA Lightner also testified that the statement by Brown was eerily similar to a statement relayed to the DA's office by an inmate named Faysal Muhammad. Muhammad, an acquaintance of Petitioner, contacted the DA's office to relay that another inmate named Tyree Salter had committed the murder of Robert McCarthy. ADA Lightner stated that further investigation into this claim was unsubstantiated and without merit. Based on this, ADA Lightner drew a parallel to this case and viewed Brown's confession as another contrived attempt by Petitioner to avoid the consequences of his heinous act. As this opinion unfolds and the record is reviewed, the Court agrees.

ADA Lightner testified that throughout the investigation there was no evidence linking any individual other than Petitioner to the crimes. ADA Lightner reiterated that there was "not one iota of evidence" linking Regis Brown to Mr. McCarthy's murder and he thereby felt Brown's statement was unbelievable and hardly exculpatory.

To further support their position that Brown's confession was fabricated and bore no credible or evidentiary value, the Commonwealth called Detective Matthew Berarducci of the City of Erie Police Department. Detective Berarducci was the lead investigator assigned to the McCarthy homicide along with Detective Sean Bogart. In fact, Detective Berarducci attended Mr. McCarthy's autopsy. Detective Berarducci elaborated on the extensive physical evidence connecting Petitioner to Mr. McCarthy's murder. His direct involvement with the McCarthy homicide armed him with the facts and details of the murder. As further emphasized by Detective Berarducci, all evidence pointed to Petitioner.

Detective Berarducci testified that after listening to Brown's statement, he also did not find it credible. He explained there was no physical evidence, eyewitness testimony, or surveillance footage linking Brown to the crime scene. When questioned about where the evidence indicated Mr. McCarthy had died, Detective Berarducci testified it was believed to be on the blood-soaked couch. (*See* Commonwealth Exhibit 5). This again refuted Brown's confession. Detective Berarducci referenced the plastic, sharp tip found in Mr. McCarthy's blood as being consistent with the weapon used to stab Mr. McCarthy. This was supported by Dr. Vey and his autopsy report and observations.

Throughout the entirety of the investigation, Detective Berarducci had never found any connection between Brown and Mr. McCarthy. He testified there was no evidence that Brown had murdered Mr. McCarthy. Detective Berarducci found no associations between Robert McCarthy and Brown. Brown was not known by Mr. McCarthy's family members or associates. Detective Berarducci confirmed that neither the name Regis Brown nor "Rex Knight" ever came up during the initial investigation into the McCarthy murder or any time after. Brown was never mentioned as a possible person of interest and had no known connection to Mr. McCarthy.

To further support this testimony, Detective Berarducci noted that Brown was not a known drug dealer in the area. He explained the area where Mr. McCarthy's residence is located is a high crime area with a high police presence where the police routinely and proactively run license plates. A search of police records by Detective Berarducci confirmed Brown's license plate never appeared on police scans in the area. This also reinforces ADA Lightner's testimony that his review of the video surveillance footage of Robert McCarthy's residence and neighborhood never once revealed Brown's Jeep Patriot which he claimed to have driven there the night of the murder.

Further, Detective Berarducci testified that based on Brown's claim that he called Robert McCarthy on February 4, 2017, he reviewed Mr. McCarthy's phone records. The records did not contain any numbers connected to Brown.

As follow-up to listening to Brown's taped statement, Detective Berarducci stated he and Detective Bogart made several attempts to interview Brown, but were unsuccessful because Brown had moved several times within the state prison system. Finally, on September 19, 2019, Detective Berarducci and Detective Bogart located Brown and arranged for a face-to-face interview with him. However, before questioning even commenced, Brown refused to speak with them, citing "legal" and "health issues." No further interview was attempted.

Finally, to demonstrate that Petitioner and Brown had ample opportunity to manufacture this scenario, the Commonwealth called Major Gary Seymour, Deputy Warden of Security and Safety at the Erie County Prison. Deputy Seymour is the custodian of records at the prison and authenticated the logs regarding the prison cell assignments of Petitioner and Brown between March 2018 through May 2018 (admitted as Commonwealth Exhibits 2 and 3).

Major Seymour explained the configuration of the Erie County Prison and described how the prison is divided into "pods" which can hold up to 94 inmates each. Each pod is then subdivided into four smaller groups of approximately 24 inmates ("A", "B", "C", and "D") to limit the number of inmates out of their cells at one time. When they are out of their cells, inmates have unmonitored and face-to-face access to each other in the day room and/or the gym. Major Seymour confirmed Petitioner and Brown were housed together at the Erie County Prison in pod "F-B" and sleeping only three cells apart from at least March 27, 2018 to May 15, 2018. (*See also*, Commonwealth Exhibit 2 and Commonwealth Exhibit 3). Consequently, Petitioner was provided nearly unrestricted access and opportunity to share facts of the McCarthy homicide with Brown.

At the conclusion of Major Seymour's testimony, the Commonwealth rested.

3. Independent Credibility Determination by the Court

Pursuant to the duty that a PCRA Court "render its own, independent findings of fact and conclusions of law concerning [the] credibility and the impact, if any, upon the truth-

determining process which can be discerned from such testimony,” this Court has undertaken an exhaustive and independent review of the after-discovered evidence and the entire record in making its determination that Brown’s statement is not credible and therefore Petitioner is not entitled to relief. *See, Commonwealth v. Williams, supra*, at 1180-81; *see also, Commonwealth v. Small, supra*, 978.

At the close of the hearing on October 7, 2019, the Court directed the Commonwealth to provide the Court with a copy of the audio recording of Brown’s alleged confession (Courtroom Exhibit 2, 2A), a copy of the investigative report (Courtroom Exhibit 3) and the autopsy report (Courtroom Exhibit 3A). The Court subsequently listened to Brown’s recorded statement and reviewed the investigative report and autopsy report.

The Court scheduled a status conference for October 15, 2019 to allow the parties to further supplement the record. The Commonwealth supplemented the record with pictures of the exterior of the McCarthy residence at 539 E. 9th Street (*See Commonwealth Exhibits 4A, 4B, and 4C*) and a picture of the interior of the crime scene (*See Commonwealth Exhibit 5*). Commonwealth Exhibit 5 displayed the blood-soaked couch and the victim’s body lying on the floor next to the couch. It also showed the victim’s charred upper torso.

After reviewing the testimony of record, the exhibits, the statements and arguments of counsel, and the relevant and applicable caselaw, the Court does not find the after-discovered evidence of Brown’s confession credible or of sufficient reliability to justify the withdrawal of Petitioner’s guilty plea. Quite simply, it does not bear an indicia of reliability or the ring of truth necessary to carry the day for satisfying the low threshold burden of preponderance of the evidence. Cognizant of its duty to assess the credibility of evidence and whether the Petitioner’s burden of preponderance of the evidence has been satisfied, the Court will undergo a review of the evidence of record.

First, the Court determines that ADA Lightner, Detective Berarducci, and Major Seymour provided credible evidence which was independently corroborated by other evidence and the exhibits of record.

Second, while the Court finds the testimony of Trooper Vascetti and Trooper Werner was certainly credible as to their belief about the veracity of the alleged confession, the Troopers simply did not have sufficient details about Mr. McCarthy’s murder to challenge Brown’s statements. The Troopers were from Lawrence County and had never worked in Erie County. Trooper Vascetti had been called upon to question Brown because of the rapport they had built working on the Lawrence County murder. Trooper Werner had never even met Brown before. Neither Trooper was involved in the investigation of the McCarthy murder, nor did they participate in any further investigation subsequent to Brown’s statements.

Third, after review of Courtroom Exhibit 2, 2A, the audio recording, the Court notes while Brown’s statement touched upon general details, such as the approximate location of Mr. McCarthy’s home and Mr. McCarthy’s physical description, these are details that could have easily been learned through public sources or interaction with Petitioner. Crucially, Brown failed to provide distinguishing details that he would have known if he was the actual perpetrator of the crime. Brown was unable to provide these crucial facts because he did not murder Robert McCarthy — Petitioner did.

The notable lack of credibility of Brown’s confession is set forth as follows:

1. Brown indicated he was familiar with Robert McCarthy and had “dealt with him a

couple times and he seemed solid.” (*See* Courtroom Exhibit 2, 2A). However, Brown’s name never came up during the investigation into Mr. McCarthy’s homicide. Detective Berarducci testified there was no evidence that Brown was a known drug dealer in the area or even an acquaintance of Robert McCarthy. Brown’s license plate had never appeared on scans in the area, which would have been expected if Brown was dealing drugs in the area. There were no witnesses placing Brown at the crime scene, whereas Petitioner was identified by Robert McCarthy’s neighbor, Kim Barnes, as the last person seen with Mr. McCarthy on the evening of February 4, 2017. (*See also*, Commonwealth Exhibit 1). ADA Lightner’s testimony further corroborated Detective Berarducci’s testimony regarding the lack of a connection between Mr. McCarthy and Brown, as his review of the video surveillance of Robert McCarthy’s residence and neighborhood never captured Brown’s vehicle. It did, however, consistently show Petitioner’s Dodge Charger. There is absolutely no independent evidence of any kind that Brown even knew Robert McCarthy and clearly nothing connecting Brown to Robert McCarthy’s homicide. The Court does not find Brown’s statement that he “knew” Robert McCarthy to be credible.

2. Brown stated he drove to McCarthy’s residence in his green Jeep Patriot. (*See* Courtroom Exhibit 2, 2A). This is completely belied by the surveillance footage obtained from the area the night of the murder. Not only is there no footage of Brown’s vehicle parked nearby, but every other vehicle that appeared in the footage was identified and none had a connection to Brown. As ADA Lightner testified, he personally reviewed the entire surveillance video and no vehicle matching or resembling a green Jeep Patriot appears at any point. In fact, ADA Lightner testified at no time was a Jeep of any kind observed the day or night of the murder (February 4 and 5, 2017). Conversely, Petitioner’s vehicle, a Dodge Charger, was seen multiple times throughout the evening. The Court finds ADA Lightner’s testimony reliable and corroborated by the credible testimony of Detective Berarducci that there was nothing connecting Brown to Mr. McCarthy or to the crime scene. Therefore, these factors render Brown’s statement false.

3. Brown confessed that he called Mr. McCarthy on the telephone early in the evening before the murder prior to arriving at the residence. (*See* Courtroom Exhibit 2, 2A). Detective Berarducci testified there was no phone activity from Mr. McCarthy’s number after 6:15 p.m. on the evening of February 4, 2017. Upon receiving Brown’s confession, Detective Berarducci reviewed Mr. McCarthy’s phone records and found no record of calls with the number connected to Brown. The phone records did, however, show phone calls between Mr. McCarthy and Petitioner. The Court finds Brown’s claim he called Mr. McCarthy the evening of February 4, 2017 is not credible.

4. Brown identified the address of the McCarthy residence as “592 East 9th Street” and described the residence as “a regular house” with “white siding” and “little steps.” (*See* Courtroom Exhibit 2, 2A). First, the Court takes judicial notice that there is no “592 E. 9th Street” in Erie, Pennsylvania. Further, “592” is not even an inverted derivative of the correct address of 539 E. 9th Street, Mr. McCarthy’s residence. Next, Brown’s description of the McCarthy residence is also inaccurate and lacks credibility. As depicted in the photos at Commonwealth Exhibit 4A, 4B, and 4C, Mr. McCarthy’s residence was not a “regular house” but was part of a larger house converted into apartments. As police reports and testimony reveal, Mr. McCarthy’s residence at 539 E. 9th Street was part of a four unit

apartment complex. While the portion encompassing 539 E. 9th Street does have white siding, the front of the building is mainly comprised of brown stone. There are no “little steps” to the door; instead, the property has a large wooden handicapped ramp leading up to the door. Mr. McCarthy’s apartment at 539 E. 9th Street has a bright red door, red porch, and red iron post. When asked by Trooper Vescetti to describe Mr. McCarthy’s home, Brown never mentioned a home with a handicapped ramp, or the apartment with a red door, or the house with the stone front facade and two doors in the front. None of these unique and distinguishing factors were stated by Brown. Brown’s generic description and lack of detail reveal his unfamiliarity with Mr. McCarthy’s residence and also rings untrue. The Court finds that Brown’s claim that he was ever at Mr. McCarthy’s home the night of the murder or any other night is not credible.

5. In his statement, Brown claimed he used a 6-inch hunting knife to attack Mr. McCarthy. (See Courtroom Exhibit 2, 2A). While it is true that Mr. McCarthy was stabbed and the weapon was not located, there was an evidentiary inference that the sharp plastic tip found in the puddle of blood on the couch was a remnant of the murder weapon as it was consistent with the victim’s wounds. ADA Lightner and Detective Berarducci testified that based upon the investigation and a review by the forensic examiner, Dr. Vey, the pointed piece of plastic was consistent with Mr. McCarthy’s wounds. Brown’s claim that he used a hunting knife that he later “threw into Lake Erie” also appears contrived.

6. Brown also stated he stabbed Mr. McCarthy three times. He specifically stated he stabbed Mr. McCarthy once “in the side of the neck,” “in the back of the neck,” then again “in the side of the neck.” (See Courtroom Exhibit 2, 2A). This statement is entirely inconsistent with the forensic findings. In the autopsy report (admitted as Courtroom Exhibit 3A), Dr. Vey determined Mr. McCarthy had been stabbed **nine** times. Specifically, the autopsy report indicates:

ANATOMIC DIAGNOSES:

- I. NINE SHARP FORCE INJURY WOUNDS TO THE HEAD AND NECK.
 - A. SUPERFICIAL STAB WOUND TO THE LEFT OCCIPITAL SCALP.
 - B. SUPERFICIAL SHARP FORCE INJURY WOUND TO THE POSTERIOR MEDIAN MID NECK.
 - C. FOUR PREDOMINANTLY SUPERFICIAL SHARP FORCE INJURY INCISED WOUNDS TO THE LEFT SIDE OF THE NECK.
 - D. THREE STAB WOUNDS TO THE RIGHT SIDE OF THE NECK.
 1. STAB WOUND #8 WITH PENETRATION INTO THE RIGHT INTERNAL CAROTID ARTERY AND HYPOPHARYNX.
 2. STAB WOUND #9 WITH PENETRATION INTO THE LARYNGOPHARYNX.

(Courtroom Exhibit 3A). Clearly, Brown’s claim that he stabbed Mr. McCarthy three times is in absolute conflict with the autopsy report and the fact that the victim suffered nine stab wounds. This evidence belies Brown’s confession.

7. Brown’s statement is further dismantled by his claim that after stabbing Mr. McCarthy, he left him lying on his back in the living room. However, this is inconsistent with the evidence

at the crime scene. It was determined that Mr. McCarthy had bled out on his couch and was moved to the floor before his body was burned. (*See also*, Commonwealth Exhibit 5). In fact, according to Detective Berarducci who was present at the scene of the crime, blood had “soaked through the frame of the couch.” Commonwealth Exhibit 5, the picture of the interior of the residence, shows Mr. McCarthy’s charred body lying on the floor next to a blood-soaked couch. There is no visible blood on the floor. Therefore, Brown’s claim that Mr. McCarthy was stabbed three times and fell to the floor is again in conflict with the physical evidence at the crime scene and thus not credible.

8. Furthermore, Brown never mentioned anything about burning the body. Anyone with first-hand knowledge of the crime would know Mr. McCarthy’s body was burned from the waist up. As ADA Lightner testified, that fact was so distinct that the case was locally known as “the burned body case.” Detective Berarducci responded to the scene and took photographs of the body. The image of Mr. McCarthy’s charred body is depicted in Commonwealth Exhibit 5. Though Petitioner may argue that Brown committed the murder and someone else came back later and burned the body, there is a dearth of evidence supporting this theory. There was overwhelming testimony that nothing connected Brown to this crime and the overall strength of the evidence against Petitioner was strong. The most rational conclusion this Court can draw is because Brown lacked the knowledge of burning the body, he did not commit the murder. Although perhaps not the most persuasive factor to discredit Brown’s confession, it is a factor nonetheless worthy of consideration.

Finally, in assessing the credibility of Brown’s statement, it is not lost on the Court that Brown is serving life without parole for his double homicide and therefore faces no punitive consequences for admitting to another murder. In fact, as testified to by Trooper Vascetti, Brown may be described as somewhat of a serial killer because of his suspected role in other homicides.

Based on the above, the Court does not find Brown’s alleged confession to be credible. The vague details provided by Brown wholly conflict with the reality of the autopsy findings, the evidence at the crime scene, and the other physical and circumstantial evidence linking Petitioner alone to the crime (*see* review of evidence and testimony from evidentiary hearing, *supra*). Instead of specific details of the crime, Brown provided somewhat generic descriptions which could easily be obtained from public sources or the Petitioner himself. Having presided over all stages of Petitioner’s case, this Court is intimately familiar with the extensive media coverage it generated, which included details of the homicide as well as depictions of the victim’s home. Further, it does not take an extraordinary leap of faith to think that Petitioner and Brown could not have concocted this scheme while they spent six weeks together in the same pod at the Erie County Prison.

The Court is not swayed by the general details Brown was able to provide in his statement. Petitioner may argue that Brown correctly identified the block on which the homicide occurred; that he identified the general location of the wounds; or that he gave an accurate physical description of Mr. McCarthy. However, the credibility of Brown’s statement disintegrates when the minutia and detail of the crime is considered. The overall weight of Brown’s statement crumbles under the weight of the evidence and overall strength of the Commonwealth’s case against Petitioner, including Petitioner’s own plea of guilty. Quite simply, Brown’s incredible account fails to survive as after-discovered evidence and

consequently, Petitioner cannot satisfy his burden necessary for relief.

The Court has canvassed the Pennsylvania appellate courts for precedent and guidance. However, there is limited Pennsylvania caselaw concerning cases involving a collateral appeal seeking relief based on after-discovered evidence and the withdrawal of a guilty plea. Making this case unique is that the after-discovered evidence is the confession to a murder by another inmate. However, the Court finds support for its finding in decisions by sister-states faced with strikingly similar circumstances. For instance, in *People v. Cress*, 664 N.W.2d 174 (Mich. 2003), the Supreme Court of Michigan considered a confession by an inmate, Ronning, to a murder for which another man, Cress, was convicted and concluded the confession conflicted with the established facts and that Ronning was not credible. In 1985, Cress was convicted of murdering seventeen-year-old Patty Rosansky. In 1997, Ronning, housed in a prison in Arkansas, agreed to confess to multiple murders in exchange for a transfer to a prison in Michigan closer to his family. In his alleged confession, Ronning gave details about the murder of Ms. Rosansky. Specifically, he stated she did not struggle; he removed her clothing but did not penetrate her anus; he murdered her by strangulation; and after she died he threw a rock at her head. *People v. Cress, supra*, at 177. Ronning accompanied police twice to try to identify the crime scene and described it as “a clearing” and a “flat piece of ground, a clearing next to a two-track.” *Id.* at 180.

The court in *Cress* conducted a hearing during which it heard testimony from four expert witnesses regarding the manner of death, which was determined to be multiple blows to the victim’s head. *Id.* at 179, 182. The weapon used was described as a rod-shaped object. *Id.* The victim had been anally penetrated. *Id.* Testimony was presented regarding the presence of defensive wounds on the victim, and the lack of evidence of strangulation. *Id.* Most compelling to the court was Ronning’s inability to identify the crime scene, as the victim’s body was found not in a clearing, but in a ravine near identifiable landmarks. *Id.* at 180. The court stated: “When looking at the differences between inmate’s description and photos of crime scene, the difference in topography and terrain is dramatic. When one compares his description of the crime scene to the actual crime scene, the only reasonable conclusion one can draw is that Mr. Ronning didn’t know where the crime scene was because he did not commit the crime.” *Id.* at 181 (internal citations omitted). The court found Ronning’s confession riddled with inconsistencies and concluded that he was not credible. *Id.* at 183.

Likewise, in the case of *State ex ref. Smith v. McBride*, 681 S.E.2d 81 (W.Va. 2009), the Supreme Court of Appeals of West Virginia considered the confession by a death row inmate, Sells, to the murders of a mother and daughter for which another man, Smith, was convicted and found the confession to be incredible and not aligned with the true facts. During Smith’s trial, some of the compelling evidence introduced included Smith’s admission that he stole the victims’ car; the fact that a key was used to start the car and the car keys were kept inside the victims’ house; Smith had stolen a VCR, CB radio and a Walkman, all of which were kept inside the victims’ home; and the t-shirt Smith was wearing belonged to the daughter and the daughter’s blood was found on the shirt. *State ex ref. Smith v. McBride, supra*, at 95. Several years after Smith was convicted, Sells gave a videotaped confession to prison officials at the Texas prison where he was serving on death row. *Id.* at 87. Sells claimed he was actually the one who had killed the victims, stating he had met the daughter during a drug deal and she allowed him to live in the attic (which he described as an upstairs apartment

that had a bedroom and bathroom) without the mother's knowledge. *Id.* After several days, the mother discovered Sells was living in the attic and after an argument Sells stabbed both victims. *Id.* Sells stated there was a dog in the house but he would never harm a dog. *Id.* Sells described the crime scene as having a brown couch with a black afghan. *Id.* He stated after the murder he stole a CB radio and left the house on foot. *Id.* Sells acknowledged he and Smith were in prison together for a period of time in West Virginia but claimed they did not have contact. *Id.* at 87-89.

During the hearing on the after-discovered evidence of Sells' confession, the court heard testimony from the investigating officer that the victims had two dogs, one of which was found killed and hidden in the laundry room. *Id.* at 88. The only CB radio the victims had was the same one taken by Smith. *Id.* It was proven the victims did not have a couch with a black afghan, and more importantly, the victims' home did not have an upstairs bedroom and bathroom. *Id.* Upon review of the alleged confession and its discrepancies with the facts of the case, the court found Sells confession was implausible and not credible. *Id.* at 96.

Here, as the courts determined in *Cress and McBride*, this Court finds Brown's alleged confession inconsistent with the facts of the case and simply not credible when considered in totality of all the facts and evidence of record. Rather, this Court recognizes this after-discovered evidence claim as a desperate attempt by Petitioner to take advantage of the serendipitous circumstances of being housed together in pod F-B at the Erie County Prison with Brown, who was an inmate who was being investigated for committing several other homicides (*See* testimony of Trooper Vascetti, *supra*).⁷ It is inconceivable that Petitioner and Brown weren't aware of each other when they were housed together in pod F-B at the Erie County Prison for the better part of two months with daily access to each other. It does not require a stretch of the imagination to consider Petitioner may have convinced Brown, an easy target facing life imprisonment with no possibility of parole and already on the police radar for other murders, to take the fall for McCarthy's murder too. Brown's confession lacked the necessary detail to make it credible because he did not commit the murder of Robert McCarthy. The Petitioner did.

Petitioner has not met his burden of proof. Specifically, he has not proven by a preponderance of the evidence that exculpatory evidence has become available that would have changed the outcome if it had been introduced. *See* 42 Pa.C.S.A. § 9543(a)(2)(iv). The Court has considered the "integrity of the after-discovered evidence" of Brown's alleged confession and, as discussed in detail above, has found it lacks overall integrity. *See Commonwealth v. Padillas, supra*, at 365. This is premised on the following: Brown had no known connections to the victim; the surveillance footage did not place his vehicle at or near the victim's residence; Brown's lack of detail in describing the victim's home; the error in the number of wounds inflicted; and other inconsistencies as set forth in this Opinion, *supra*. Pursuant to *Padillas, supra*, the Court has considered the various motivations of Petitioner and Brown in offering the evidence and finds Petitioner certainly has a strong motive in being permitted to withdraw his guilty plea while Brown truly has nothing to

⁷ Regis Brown was charged with two counts of Murder/Homicide, *inter alia*, at Docket No. CP-25-CR-0001608-2018 in Erie County, Pennsylvania for killing his wife and stepdaughter. Brown was also being investigated for the 1988 Lawrence County murder of Bryce Tompkins, and was formally charged in that case in October 2018. Trooper Vascetti testified he also suspects Brown may have murdered Dawn Morgan in Erie County in 1988, but the case was ultimately cleared due to the inability to establish cause or manner of death.

lose in taking the blame. *Id.* The Court has also considered the “overall strength of the evidence” against Petitioner and finds the evidence supports the Commonwealth’s assertion that Petitioner was the individual who murdered Mr. McCarthy. *Id.* This would include the following substantial physical evidence connecting Petitioner to Mr. McCarthy’s murder: Mr. McCarthy’s personal items (wallet and pill bottle) found in Petitioner’s vehicle; the towel with the victim’s blood found in Petitioner’s vehicle; the cleaning supplies found in the trunk of Petitioner’s car; witnesses placing Petitioner with Mr. McCarthy immediately prior to the murder; Petitioner’s changing his clothes subsequent to the murder; Petitioner’s vehicle being in close proximity to Mr. McCarthy’s apartment at the approximate times of the murder and the subsequent fire; and Petitioner’s statements that he “screwed up” and “would never see his kids again.” The overall strength of the Commonwealth’s case is also bolstered by Petitioner’s own knowing, voluntary, and intelligent guilty plea to the murder and robbery of Robert McCarthy.

Therefore, on application of the after-discovered evidence analysis, this Court finds there is nothing set forth by Petitioner that is likely to have compelled a different outcome, and no manifest injustice has occurred to permit Petitioner to withdraw his guilty plea. Petitioner is not entitled to relief.

Conclusion

Upon a review of the PCRA, the Supplemental PCRA, the responses by the Commonwealth, and the entirety of the record, including the evidentiary hearing and exhibits, this Court has determined Petitioner’s after-discovered evidence claim is patently frivolous and without factual or legal support. Rather, as discussed in-depth *supra*, this Court views the claim as an opportunistic attempt by Petitioner to take advantage of a sensational local news story to attempt to re-litigate convictions for which he accepted culpability and entered a knowing, voluntary, and intelligent guilty plea. Therefore, Petitioner’s PCRA is hereby **DISMISSED** and his request for relief is **DENIED**. An Order will follow.

ORDER

AND NOW, to wit, this 28th day of October 2019, it is hereby **ORDERED** that the Petitioner’s Petition for Post Conviction Collateral Relief is **DISMISSED** for the reasons set forth in the Memorandum Opinion above.

The Petitioner shall have thirty (30) days from the date of this Order to file an appeal to the Superior Court of Pennsylvania.

BY THE COURT

/s/ **Hon. John J. Trucilla, President Judge**

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

COMMONWEALTH OF PENNSYLVANIA

v.

JOHN EARL POOLE, JR., Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1739 WDA 2019

Appeal from the PCRA Order Entered October 28, 2019

In the Court of Common Pleas of Erie County Criminal Division at No(s):

CP-25-CR-0001472-2017

BEFORE: MURRAY, J., McLAUGHLIN, J., and STEVENS, P.J.E.*

MEMORANDUM BY McLAUGHLIN, J.:

FILED OCTOBER 07, 2020

John Earl Poole, Jr. appeals the denial of his request for relief under the Post Conviction Relief Act (“PCRA”). *See* 42 Pa.C.S.A. §§ 9541-9546. We affirm on the basis of the PCRA court’s opinion.

Poole pleaded guilty in March 2018 to third-degree murder and robbery.¹ The facts giving rise to these convictions are as follows:

On February 5, 2017, [Poole] and his friend, Robert McCarthy, (hereinafter “the victim”) were drinking alcohol and smoking crack in the victim’s apartment located at 539 East 9th Street in Erie, PA. At some point in the evening, [Poole] stabbed the victim several times in the head and neck, causing the victim’s demise. [Poole] also took the victim’s wallet and a bottle of his prescription medication and left the victim’s apartment. Several hours later, [Poole] returned to the victim’s apartment, doused the victim with an accelerant, and set his body on fire.

Memorandum Opinion and Order, filed 10/28/19, at 1 (quoting Pa.R.A.P. 1925(a) Op., filed 10/16/18, at 1).

The trial court sentenced Poole to 20 to 40 years’ incarceration for the murder conviction and imposed a consecutive term of 10 to 20 years in prison for the robbery conviction. We affirmed the judgment of sentence. *Commonwealth v. Poole*, No. 1034 WDA 2018, 2019 WL 1294466 (Pa. Super. filed Mar. 20, 2019) (unpublished memorandum).

Poole filed the instant timely PCRA petition in April 2019. The PCRA court appointed counsel who filed an amended PCRA petition. Poole claimed that new evidence entitled him to withdraw his guilty plea. The evidence at issue was the alleged confession of another man, Regis Brown, that he had in fact committed the murder. The PCRA court held an evidentiary hearing and denied the petition. *See* Memorandum Op. and Order. This timely appeal followed. The PCRA court and Poole satisfied the requirement of Pa.R.A.P. 1925.

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S.A. §§ 2502(c) and 3701(a)(1)(i), respectively.

Poole raises the following issue before this Court:

Whether the lower court committed legal error and abused its discretion in failing to grant collateral relief in the nature of the provision of leave to [Poole] to withdraw his guilty pleas in that the predicate cited by the lower court for denial of relief was the rejection of the confession of Regis Brown to the subject crimes subsequent to the guilty pleas as not credible should not be given any deference or affirmed by this court as said evaluation of credibility of the Brown confession was arbitrary and capricious in contravention of relevant evidence from the series of evidentiary hearings and reasonable inferences derivable therefrom?

Poole's Br. at 2.

When reviewing the denial of PCRA relief, we determine "whether the PCRA court's determination is supported by evidence of record and whether it is free of legal error." *Commonwealth v. Hart*, 199 A.3d 475, 481 (Pa. Super. 2018) (citation omitted).

A petitioner asserting an after-discovered evidence claim under the PCRA must plead and prove that: "(1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict." *Commonwealth v. Cox*, 146 A.3d 221, 228 (Pa. 2016) (quoting *Commonwealth v. D'Amato*, 856 A.2d 806, 823 (Pa. 2004)).

Poole's claim that after-discovered evidence entitles him to withdraw his guilty plea is not clearly cognizable under the PCRA. Rather, the PCRA's after-discovered evidence provision affords relief from convictions and sentences resulting from "[t]he unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced." 42 Pa.C.S.A. § 9543(b) (2)(vi). Where a defendant had pleaded guilty it is incongruous to say that new evidence would "change the outcome of the trial if it had been introduced," as there was no trial. Under prior law, however, such claims were cognizable in post-conviction proceedings. *See Commonwealth v. Peoples*, 319 A.2d 679, 681 (Pa. 1974) (construing the Post Conviction Hearing Act).² We do not need to resolve this question, however, because even if such claims are cognizable under the PCRA, we agree with the PCRA court that Poole's after-discovered evidence claim fails on its own terms.

Here, the PCRA court stated that the parties agreed that Poole had satisfied the first three factors of his after-discovered evidence claim. Therefore the grant or denial of his petition depended upon the last factor: whether the evidence would likely compel a different verdict. The court concluded that Poole had failed to prove this factor because Brown's statement lacked credibility "due to significant inconsistencies and discrepancies between Brown's statement and the facts of the crime." 1925(a) Op., filed 1/22/20, at 1, 7. The PCRA court summarized a portion of these discrepancies as follows:

² At least one panel of this Court has determined that such relief continues to be available under the PCRA. *See Commonwealth v. Perez*, No. 1704 EDA 2018, 2019 WL 4338336, at *3 (Pa. Super. Sept. 12, 2019) (unpublished memorandum).

[S]urveillance footage in which Brown's vehicle was never seen at or near the crime scene (yet [Poole's] vehicle was present at all times relevant to the murder and subsequent arson); Brown's vague and incorrect descriptions of the victim's home; Brown's report of the suspected murder weapon and number of stab wounds which was wholly inconsistent with the autopsy report; the fact that Brown reported that the victim fell to the floor upon being stabbed yet the evidence indicated the victim had bled out on the couch; Brown's failure to mention the body was burned; and the utter lack of physical evidence linking Brown to the murder. Brown's information seemed contrived and conveniently obtained from published news reports, media coverage and, of course, his nearly three (3) months spent with [Poole] in the Erie County Prison.

Id. at 8.

The court then referenced the overwhelming evidence against Poole, and pointed out that Poole had voluntarily pleaded guilty to the murder.

[T]he victim's wallet and pill bottle found in [Poole's] vehicle the morning after the murder, along with a towel containing the victim's blood found in [Poole's] trunk; eyewitness reports that [Poole] was the last person seen with the victim the night of the murder; video surveillance depicting [Poole] wearing one pair of clothes prior to the murder and a different outfit subsequent; video surveillance of [Poole's] vehicle in close proximity to the victim's home at the approximate times of the murder and also the subsequent arson; the absence of any identification of Brown in the vicinity of [the victim's] apartment and no presence of Brown's vehicle in the area; and [Poole's] own statements and behavior at the police station the morning following the murder. Finally, and perhaps most importantly, the Court considered [Poole's] own knowing, voluntary, and intelligent guilty plea to the murder and robbery of [the victim].

Id. at 8-9.

After a review of the parties' briefs, the certified record, and the relevant law, we find no error or abuse of discretion in the PCRA court's analysis. We thus affirm on the basis of the well-reasoned Memorandum Opinion and Order of the Honorable John J. Trucilla. *See* Memorandum Op. and Order at 1-32.

Order affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn, Esq.

Prothonotary

Date: 10/7/2020

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BANKRUPTCY NOTICE

In re: Joseph Martin Thomas
 Chapter 11 Bankruptcy
 Case No. 20-10334 TPA

NOTICE OF A NON-EVIDENTIARY HEARING ON MOTION FOR PRIVATE SALE OF REAL PROPERTY FREE AND DIVESTED OF LIENS:

NOTICE IS HEREBY GIVEN THAT the Debtor in the above-referenced Bankruptcy has filed a **Motion for Private Sale of Real Property Free and Divested of Liens** seeking approval to sell the property located at **9830 Wattsburg Road, Erie, Pennsylvania** for the sum of **\$299,900.00** according to the terms set forth in the Motion. A Zoom Video Conference hearing shall take place on **November 19, 2020** at **1:00 p.m.** via the Zoom Video Conference Application. To participate in and join a Zoom Hearing, please initiate and use the following link at least 15 minutes prior to the scheduled Zoom Hearing time: <https://www.zoomgov.com/j/16021303488>, or alternatively, you may use the following: Meeting ID: 160 2130 3488. **All attorneys and Parties may only appear by Zoom** and must comply with Judge Agresti's **Amended Notice of Temporary Modification of Appearance Procedures**, dated and effective June 10, 2020, which can be found on the Court's Website at <https://www.pawb.uscourts.gov/sites/default/files/pdfs/tpa-proc-appearances.pdf>. Under the current COVID-19 circumstances, the general public may appear telephonically if unable to do so via the Internet. When the need to appear telephonically arises, members of the general public should immediately contact Michael P. Kruszewski, Esquire to learn how to make telephonic arrangements. The Court will entertain higher offers at the hearing. A successful bidder must deposit hand money of **\$5,000.00** at the time of the approval of the sale by the Court, with the balance due to be paid at closing of this sale. Examination of the property can be obtained by contacting the attorney for the Debtor, listed below. Further

information regarding this sale may be found on the Court's EASI Website: <http://www.pawb.uscourts.gov/easi.htm>.

In addition to the complying with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of Court, this advertisement is intended to provide notice to the **HEIRS, SUCCESSORS, AND ASSIGNS OF CHARLES R. BURGER AND MARGARET J. BURGER** of the anticipated sale of the within described real estate. Any encumbrance that the **HEIRS, SUCCESSORS, AND ASSIGNS OF CHARLES R. BURGER AND MARGARET J. BURGER** may have on the real estate located at 9830 Wattsburg Road, Erie, Pennsylvania 16509 will be divested upon Order of the Bankruptcy Court.

Attorney for Movant/Applicant
 Michael P. Kruszewski, Esquire
 Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc.
 2222 West Grandview Blvd.
 Erie, Pennsylvania 16506
 (814) 833-2222
 PA ID#91239

Oct. 30

CHANGE OF NAME NOTICE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA
CIVIL ACTION - LAW
NO. 12033-20

IN RE: CHANGE OF NAME OF
EVELYN ANN PETRICK

NOTICE OF NAME CHANGE
NOTICE IS HEREBY GIVEN that
on the 6th day of October, 2020, the
Petition for Change of Name, filed
by Petitioner, Evelyn Ann Petrick,
was filed in the above-named Court,
praying for a decree to change her
name to Eve A. Petrick.

The Court has fixed December 2, 2020
at 9:45 a.m. o'clock, in Courtroom G
room 222, located on the 2nd Floor,
at 140 W. 6th St., Erie, Pa. 16501,
as the time and place for the hearing
of said Petition, when and where all
persons interested may appear and
show cause, if any they have, why
the prayer of the said petition should
not be granted.

Oct. 30

ORGANIZATION NOTICE

Notice is hereby given that Sacred
Piercing LLC has been organized
under the provisions of the Limited
Liability Company Law of 1994, as
amended.

Oct. 30

LEGAL NOTICE

ATTENTION: DAVID ALLEN
ORTEGA

INVOLUNTARY TERMINATION
OF PARENTAL RIGHTS IN THE
MATTER OF THE ADOPTION
OF MINOR MALE CHILD X.R.O.
DOB: 12/09/2009

BORN TO: BRITTANY NICHOLE
BEISH A/K/A BRITTANY
NICHOLE CASTILE
75 IN ADOPTION, 2020

If you could be the parent of the
above-mentioned child, at the
instance of Erie County Office of
Children and Youth you, laying aside
all business and excuses whatsoever,
are hereby cited to be and appear
before the Orphan's Court of Erie
County, Pennsylvania, at the Erie
County Court House, Judge Joseph
M. Walsh, III, Courtroom I-217, City
of Erie on December 4, 2020 at 9:30

a.m. and there show cause, if any you
have, why your parental rights to the
above child should not be terminated,
in accordance with a Petition and
Order of Court filed by the Erie
County Office of Children and
Youth. A copy of these documents
can be obtained by contacting the
Erie County Office of Children and
Youth at (814) 451-7740.

Your presence is required at the
Hearing. If you do not appear at this
Hearing, the Court may decide that
you are not interested in retaining
your rights to your children and
your failure to appear may affect
the Court's decision on whether to
end your rights to your child. You
are warned that even if you fail to
appear at the scheduled Hearing,
the Hearing will go on without you
and your rights to your child may
be ended by the Court without your
being present.

You have a right to be represented at
the Hearing by a lawyer. You should
take this paper to your lawyer at
once. If you do not have a lawyer,
or cannot afford one, go to or telephone
the office set forth below to find out
where you can get legal help.

Family/Orphan's Court Administrator
Room 204 - 205

Erie County Court House
Erie, Pennsylvania 16501
(814) 451-6251

NOTICE REQUIRED BY ACT 101
OF 2010: 23 Pa. C.S §§2731-2742.

This is to inform you of an important
option that may be available to you
under Pennsylvania law. Act 101
of 2010 allows for an enforceable
voluntary agreement for continuing
contact or communication following
an adoption between an adoptive
parent, a child, a birth parent and/
or a birth relative of the child, if
all parties agree and the voluntary
agreement is approved by the court.
The agreement must be signed and
approved by the court to be legally
binding. If you are interested in
learning more about this option for
a voluntary agreement, contact the
Office of Children and Youth at (814)
451-7726, or contact your adoption
attorney, if you have one.

Oct. 30

SHERIFF SALES

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**NOVEMBER 20, 2020
AT 10 A.M.**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

John T. Loomis

Sheriff of Erie County

Oct. 30 and Nov. 6, 13

SALE NO. 1

**Ex. #12401 of 2019
NORTHWEST BANK f/k/a
NORTHWEST SAVINGS
BANK, Plaintiff**

v.

**ROBERT M. OSIECKI and
MARY JUDE OSIECKI,
Defendants**

DESCRIPTION

By virtue of an Amended Writ of Execution filed at No. 2019-12401, Northwest Bank vs. Robert M. Osiecki and Mary Jude Osiecki, owners of property situated in the Township of Washington, Erie County, Pennsylvania being: 11201 Fry Road, Edinboro, Pennsylvania. Approx. 10.015 acres

Assessment Map Number:
(45) 7-11-17
Assessed Value Figure: \$156,900.00
Improvement Thereon: Residence
Kurt L. Sundberg, Esq.
Marsh Schaaf, LLP
300 State Street, Suite 300
Erie, Pennsylvania 16507
Oct. 30 and Nov. 6, 13

SALE NO. 2

**Ex. #10209 of 2020
FIRST NATIONAL BANK
OF PENNSYLVANIA, Plaintiff**

v.

**LISA M. LIST AND
BRIAN LIST, Defendants
DESCRIPTION**

By virtue of a Writ of Execution filed to No. 10209-20, First National Bank of Pennsylvania vs. Lisa M. List and Brian List, owners of property situated in (Tract 279) Township of Millcreek, Erie County, Pennsylvania being known as 1214 Hartt Road, Erie, PA 16505. Acreage: 0.7655
Square Footage: 4,668
Assessment Map No. (33) 26-154-5
Assessed Value figure: \$145,000.00 (Land & Building)
Improvement thereon: Two-story frame dwelling and one-car frame garage
FIRST NATIONAL BANK
OF PENNSYLVANIA
David W. Raphael, Esquire
Attorney for First National Bank of Pennsylvania
100 Federal Street - 4th Floor
Pittsburgh, PA 15212
Oct. 30 and Nov. 6, 13

SALE NO. 3

**Ex. #10742 of 2020
20 CAP FUND I, LLC, Plaintiff**

v.

**Richard W. Keppler,
Deborah L. Keppler, Defendants
DESCRIPTION**

ALL THAT CERTAIN piece or parcel of land situated in the Township of Summit, County of Erie and State of Pennsylvania. BEING KNOWN AS: 2205 New Road, Erie, PA 16509
PARCEL #40-020-103-0-006-00
Improvements: Residential Dwelling.

Jennie C. Shnyder, Esquire
Id. No. 315213
Attorney for Plaintiff
4900 Carlisle Pike #182
Mechanicsburg, PA 17050
Southampton, PA 18966
Oct. 30 and Nov. 6, 13

SALE NO. 4

**Ex. #12154 of 2018
WILMINGTON SAVINGS
FUND SOCIETY, FSB, AS
TRUSTEE OF STANWICH
MORTGAGE LOAN TRUST
A c/o Carrington Mortgage
Services, LLC, Plaintiff**

v.

**GARY PORSCH, Defendant
DESCRIPTION**

By virtue of a Writ of Execution filed to No. 12154-18, Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A vs. Gary Porsch, owner of property situated in the City of Erie, Erie County, Pennsylvania being 2506 Loveland Avenue, Erie, PA 16506
1,276 square feet, 0.2634 acres
Assessment Map number:
33053224001200
Assessed Value figure: \$87,140.00
Improvement thereon: Residential
Jill M. Fein, Esquire
Attorney I.D. 318491
Hill Wallack LLP
777 Township Line Rd., Suite 250
Yardley, PA 19067
Oct. 30 and Nov. 6, 13

SALE NO. 5

**Ex. #11822 of 2019
Specialized Loan Servicing LLC,
Plaintiff**

v.

**Shelly A. Smith, as
Administratrix of the Estate
of Kathleen Lyle, AKA
Kathleen M. Lyle, Defendant
DESCRIPTION**

By virtue of a Writ of Execution filed to No. 2019-11822, Specialized Loan Servicing LLC vs. Shelly A. Smith, as Administratrix of the Estate of Kathleen Lyle, AKA Kathleen M. Lyle, owner(s) of property situated in the Township of Springfield, Erie County, Pennsylvania being 7852 Griffey

Road, West Springfield, PA 16443
 2,276 sq. ft.
 Assessment Map Number:
 39025080000600
 Assessed Value figure: \$112,800.00
 Improvement thereon: Single
 Family Dwelling
 Michael E. Carleton, Esquire
 Kimberly J. Hong, Esquire
 Manley Deas Kochalski LLC
 P.O. Box 165028
 Columbus, OH 43216-5028
 Oct. 30 and Nov. 6, 13

29' x 80', 1,344 square feet,
 0.0533 acres
 Assessment Map number:
 14-010-023.0-110.00
 Assessed Value figure: \$28,800.00
 Improvement thereon: Residential
 Dwelling
 Michael Boland, Esq.
 PA I.D. No. 319999
 777 S. Broad Street #438
 Philadelphia, PA 19147
 Oct. 30 and Nov. 6, 13

SALE NO. 6

Ex. #13279 of 2018

U.S. Bank, Plaintiff
v.

Michelle D. Williams, Defendant

DESCRIPTION

By virtue of a Writ of Execution filed to No. 13279-2018, U.S. Bank vs. Michelle D. Williams, owner of property situated in the First Ward of the City of Erie, Erie County, Pennsylvania being 749 EAST 5TH ST., Erie, PA 16507



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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**BARNETT, DOROTHY L., a/k/a DOROTHY IRENE BARNETT, deceased**

Late of Harborcreek Township, Erie County, Harborcreek, PA
Executrix: Cynthia L. Adams, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

BENT, MARIE B., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Nathaniel E. Bent, 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

DONOHUE, MARJORIE A., deceased

Late of Fairview Township, County of Erie and Commonwealth of Pennsylvania
Executor: Jean M. Decker, c/o Eugene C. Sundberg, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Eugene C. Sundberg, Jr., Esq., MARSH, SCHAFF, LLP., Suite 300, 300 State Street, Erie, PA 16507

GUNKEL, ALFRED OTTO, a/k/a ALFRED O. GUNKEL, a/k/a ALFRED GUNKEL, deceased

Late of the Borough of Waterford, County of Erie and Commonwealth of Pennsylvania
Executor: Harrison C. Stackpole, c/o James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509
Attorney: James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509

JASINSKI, JOSEPH H., deceased

Late of the Township of Greene, County of Erie, Commonwealth of Pennsylvania
Executrix: Cheryl L. Mills, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Matthew W. Lasher, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

LINTSEN, ELISABETH, deceased

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Michael Anthony Diaco, 4420 Briggs Avenue, Erie, PA 16504
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

LITTLE, MARILYN G., deceased

Late of the City of Erie, Erie County, PA
Executor: Jeffrey B. Little, P.O. Box 526, Saegertown, PA 16433
Attorney: Jeffrey C. Youngs, Esq., Pepicelli, Youngs and Youngs PC, 363 Chestnut Street, Meadville, PA 16335

MILLER, SHIRLEY I., deceased

Late of Venango Township, Erie County, Wattsburg, PA
Executrix: Shirley A. Smith, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

PIERSON, STANLEY D., a/k/a STANLEY DAVID PIERSON, a/k/a STANLEY PIERSON, a/k/a STAN PIERSON, deceased

Late of Springfield Township, County of Erie and Commonwealth of Pennsylvania
Administrator: David Pierson, c/o 504 State Street, 3rd Floor, Erie, PA 16501
Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

REICHART, TIMOTHY D., a/k/a TIMOTHY REICHART, a/k/a TIM REICHART, deceased

Late of the City of Edinboro, Washington Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Kaitlin D. Reichart, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

SLIKER, LORRAINE R., deceased

Late of Venango Township, Erie County, Wattsburg, PA
Co-Executors: Douglas W. Sliker and Ronda Sliker-Oaks, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**STAGE, GLADYS E.,
deceased**

Late of the Township of North East, County of Erie, Commonwealth of Pennsylvania

Executrix: Marjorie Stage, c/o Leigh Ann Orton, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428

Attorney: Leigh Ann Orton, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428

SECOND PUBLICATION**ACKERMAN, JOSEPH J.,
deceased**

Late of Erie County

Executrix: Carol L. Chapman, c/o Andrew F. Gornall, Esq., 246 West 10th Street, Erie, PA 16501

Attorney: Andrew F. Gornall, Esq., 246 West 10th Street, Erie, PA 16501

**CHASE, DANIEL P., a/k/a
DANIEL CHASE, a/k/a
DANIEL PETER CHASE, SR.,
deceased**

Late of the Township of Fairview, County of Erie and Commonwealth of Pennsylvania

Administrator: Daniel P. Chase, Jr. *Attorney:* Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**COUSE, DORA C.,
deceased**

Late of Lawrence Park Township, County of Erie and Commonwealth of Pennsylvania

Executrix: Lisa C. Yager, c/o Eugene C. Sundberg, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorney: Eugene C. Sundberg, Jr., Esq., MARSH SCHAFF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**GALLAGHER, ROSE MARIE,
a/k/a ROSE M. GALLAGHER,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania

Executrix: Lori Vitale, c/o Thomas C. Hoffman II, Esq., 120 West Tenth Street, Erie, PA 16501

Attorney: Thomas C. Hoffman II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**GRIMSHAW, BETTY M., a/k/a
BETTY GRIMSHAW,
deceased**

Late of Fairview Township

Executrix: Sarah E. Grimshaw, 7 Votek Drive, Apt. 9A, Oil City, PA 16301

Attorney: Grant M. Yochim, Esq., 24 Main Street East, P.O. Box 87, Girard, PA 16417

**HINCKLEY, JOSEPH E.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania

Executrix: James E. Hinckley, c/o Robert J. Felton, Esquire, 212 West Central Avenue, Titusville, PA 16354

Attorney: Robert J. Felton, Esquire, 212 West Central Avenue, Titusville, PA 16354

**HUHTA, RICHARD E.,
deceased**

Late of the City of Erie, PA

Executrix: Christine Huhta, c/o Malcolm L. Pollard, Esquire, 6331 Lake Shore Dr., Erie, PA 16505

Attorney: Malcolm L. Pollard, Esquire, 6331 Lake Shore Dr., Erie, PA 16505

**HURTA, SUSAN M.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executrix: Heather N. Pastuha, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**LASLOW, JOHN,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executrix: Timothy P. Sullivan, c/o James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509

Attorney: James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509

**LEWIS, JAMES L., a/k/a
JAMES LEWIS,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Executrix: Paula Bryan, 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

**MAZZA, KATHLEEN R., a/k/a
KATHLEEN MAZZA, a/k/a
KATHLEEN RUTH MAZZA,
deceased**

Late of the Township of North East, County of Erie, Commonwealth of Pennsylvania

Executrix: Louis A. Mazza, c/o 337 West 10th Street, Erie, PA 16502

Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

**McCAFFERTY, PATRICK M.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

Administrator: Michael J. McCafferty

Attorney: Craig A. Zonna, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**NEWCOMB, ANTHONY G.,
deceased**

Late of the Township of Lake City, Erie County, State of Pennsylvania
Executrix: Lisa A. Newcomb-Mullen, 160 E. Station Square Drive, Apt. 414, Pittsburgh, PA 15219
Attorney: None

**PARKER, ANN RUTH, a/k/a
ANN R. PARKER,
deceased**

Late of North East Township, Erie County, North East, PA
Executor: Christopher R. Dana, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**PHILLIPS, PAUL DAVID, a/k/a
PAUL D. PHILLIPS,
deceased**

Late of Millcreek Township, Erie County, PA
Administrator: Gregory A. Phillips, c/o Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507
Attorney: Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507

**RILEY, ELLEN S.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Administratrix: Denise M. Riley
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**SCOTT, CELESTINE M.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Administratrix: Sandra K. Scott, 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

**WALK, BARBARA LOUISE,
deceased**

Late of the Township of Fairview, PA
Executrix: Evelyn Radziszewski, c/o Malcolm L. Pollard, Esquire, 6331 Lake Shore Dr., Erie, PA 16505
Attorney: Malcolm L. Pollard, Esquire, 6331 Lake Shore Dr., Erie, PA 16505

THIRD PUBLICATION

**ANTHONY, BENJAMIN F., JR.,
a/k/a BENJAMIN F. ANTHONY,
deceased**

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania
Executor: David I. Anthony, c/o Zanita Zacks-Gabriel, Esq., 402 West 6th Street, Erie, PA 16507
Attorney: Zanita Zacks-Gabriel, Esq., 402 West 6th Street, Erie, PA 16507

**BAKER, MARGARET L.,
deceased**

Late of the Township of Fairview, County of Erie and Commonwealth of Pennsylvania
Executor: Mark R. Baker, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**BARGIELSKI, RICHARD J.,
a/k/a RICHARD BARGIELSKI,
deceased**

Late of the City of Erie
Executor: Jeffrey Fromknecht, 228 SW 8th Avenue, Boynton Beach, Florida 33435
Attorney: Grant M. Yochim, Esq., 24 Main Street East, P.O. Box 87, Girard, PA 16417

**BECK, RONALD W.,
deceased**

Late of Lawrence Park Township, Erie County, Erie, PA
Executor: Raymond O. Beck, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**BENSINK, CHARLENE M., a/k/a
CHARLENE BENSINK, a/k/a
CHAR BENSINK,
deceased**

Late of Wattsburg, County of Erie
Administratrix: Barbara J. Welton, Esquire, 2530 Village Common Drive, Suite B, Erie, PA 16506
Attorney: Barbara J. Welton, Esquire, 2530 Village Common Drive, Suite B, Erie, PA 16506

**DAVIS, TED E., JR.,
deceased**

Late of Millcreek Township, County of Erie, and Commonwealth of Pennsylvania
Executrix: Deborah D. DeCoursey, c/o Gary D. Bax, Esquire, 2525 West 26th Street, Erie, PA 16506
Attorney: Gary D. Bax, Esquire, 2525 West 26th Street, Erie, PA 16506

**GARCZYNSKI, FRANCIS
BERNARD, a/k/a
FRANCIS B. GARCZYNSKI,
deceased**

Late of the Township of Millcreek, Erie County, PA
Executor: Michael F. Garczyński, Sr., CPA, 165 Woodbine Drive, Cranberry Twp., PA 16066
Attorney: None

**KWITOWSKI, AGNES,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Casimir Kwitowski, 4015 Stanley Avenue, Erie, Pennsylvania 16504
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**LYONS, CLAIR P., a/k/a
CLAIR LYONS, a/k/a
CLAIR PERRY LYONS,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Kathy Bushyeager Lyons, 735 Butternut Lane, Girard, PA 16417
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**MARTIN, DONNA RUTH, a/k/a
DONNA R. MARTIN,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Jon Paul Martin, 4340 Alison Avenue, Erie, PA 16506
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**NEFSTEAD, HARLAN M.,
deceased**

Late of the City of Corry, County of Erie, Commonwealth of Pennsylvania
Administratrix: Dawn M. Nefstead
Attorney: Betsy A. Zimmerman, Esquire, Sinko Zimmerman, LLC, Suite 200, 310 Seven Fields Blvd., Seven Fields, PA 16046

**PERKINS, BETTYLOU,
deceased**

Late of City of Erie, Erie County, Pennsylvania
Executor: Marvin L. Perkins, Jr., 115 Euclid Ave., Jamestown, NY 14701
Attorney: Keith A. Button, Esquire, Shafer Law Firm, 890 Market Street, Meadville, PA 16335-3284

**RUTKOWSKI, CAROL A., a/k/a
CAROL ANN RUTKOWSKI,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executrix: Mary C. Cook, c/o Adam E. Barnett, Esq., 234 West Sixth Street, Erie, PA 16507
Attorney: Adam E. Barnett, Esq., Bernard Stuczynski Barnett & Lager, PLLC, 234 West Sixth Street, Erie, PA 16507

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

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