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IN THIS ISSUE

COMMONWEALTH VS. JOHNSON

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Pennsylvania's "Fictitious Names Act," 54 Pa. C.S.A. §§ 301 et seq., of the filing of an Application for Registration of Fictitious Name under the said Act. The fictitious name is LUKE'S AMERICAN GRILLE. The address of the principal office or place of business to be carried on under or through the fictitious name is 550 Knight Road, Gettysburg, Pennsylvania 17325. The name and address of the entity who is a party to the registration is TreLar, Inc., of 550 Knight Road, Gettysburg, Pennsylvania 17325. An application for registration under the Fictitious Names Act of the said fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania on September 6, 2011.

Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325
Attorneys for Applicant

11/10

CERTIFICATE OF ORGANIZATION

NOTICE IS HEREBY GIVEN of the filing of Certificate of Organization in the Department of State of the Commonwealth of Pennsylvania on or about October 5, 2011, for the purpose of organizing a proposed domestic limited liability company to be organized under the Limited Liability Company Law of 1994, 15 Pa. C.S.A. 8901 et seq. The name of the limited liability company is ARSENAL OF THE ALLEGHENYS, LLC, and the purpose for which it is to be organized is to engage in any business permitted by law, with a focus on retail sales business specializing in antiques.

Law Offices of Peter J. Russo, P.C.
5006 E. Trindle Road, Suite 100
Mechanicsburg, PA 17050

11/10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that a business corporation known as JRS LIVESTOCK TRANSPORTATION AND DELIVERY, INC. has been incorporated under the provisions of The Pennsylvania Business Corporation Law of 1988.

By: Jeffrey L. Rehmeyer II, Esquire
CGA Law Firm

11/10

COMMONWEALTH VS. JOHNSON

1. It is well-established that the Commonwealth has no pre-trial burden of proving an aggravating factor.

2. The Supreme Court has clearly instructed that the focus of the trial court's responsibility is on whether the case is properly designated as capital, not whether each aggravating factor alleged is supported by the evidence.

3. Where the Commonwealth's notice of aggravating circumstances includes at least one aggravating factor that is supported by any evidence, the case is properly framed as a capital case.

4. Before two aggravating factors can be determined to be duplicative, and thus in violation of the Eighth Amendment, the aggravating circumstances must necessarily subsume each other.

5. Appellate court decisions requiring proof that a witness was killed for the purpose of actually preventing testimony before the victim-witness aggravating circumstance is applicable, further narrows the circumstances where both aggravating factors may be present.

6. The Pennsylvania Supreme Court, in finding that the felony of concealing a firearm without a license, was a felony which the jury may properly consider in weighing the applicability of the felony perpetration aggravating circumstance, the Court defined "felony" to mean any crime designated as such by the Pennsylvania Crimes Code.

7. The identification of murders committed while in the perpetration of a felony as a basis to seek a sentence of death is sufficient to distinguish that class of murder from other murders. Thus, the felony perpetration aggravating circumstance reasonably and sufficiently limits the class of those subject to a sentence of death to persons who commit murder in the course of committing another serious crime.

8. It is the prerogative of the legislative branch to define the aggravating circumstances sufficient to justify a sentence of death provided the circumstances adequately differentiate in an objective, even-handed, and substantially rational way those cases in which a death sentence may be imposed from the many murder cases in which the death penalty may not be applied.

In the Court of Common Pleas of Adams County, Criminal, No. CP-01-CR-1180-2010, COMMONWEALTH OF PENNSYLVANIA VS. CHRISTOPHER LYNN JOHNSON.

Shawn C. Wagner, Esq., District Attorney, for Commonwealth
Kristin L. Rice, Esq., Public Defender, for Defendant
George, J., June 10, 2011

OPINION

The Defendant, Christopher Lynn Johnson (hereinafter "Johnson"), is charged by Criminal Complaint with, inter alia, first degree murder pursuant to **18 Pa. C.S.A. Section 2502**. In compliance with Pennsylvania Rule of Criminal Procedure 802, the Commonwealth has provided notice of its intention to pursue three aggravating

circumstances in support of a sentence of death in the event Johnson is convicted of first degree murder. The aggravating circumstances noticed by the Commonwealth consist of claims that the victim was a law enforcement official killed while in the performance of his duties, **42 Pa. C.S.A. § 9711(d)(1)** (hereinafter “victim-law enforcement officer”); that the victim was a prosecution witness to a felony committed by Johnson and was killed for purposes of preventing his testimony against Johnson in future criminal proceedings, **42 Pa. C.S.A. § 9711(d)(5)** (hereinafter “victim-witness”); and that Johnson committed a killing while in perpetration of a felony, **42 Pa. C.S.A. § 9711(d)(6)** (hereinafter “felony perpetration”).

Johnson has filed a Motion to Quash seeking a pre-trial determination of the propriety of the aggravating circumstances identified by the Commonwealth. While conceding the propriety of the aggravating circumstance relating to the victim’s status as a law enforcement officer, Johnson challenges the remaining two aggravating circumstances. His challenges are both legal and factual.

Johnson’s first attack focuses on the sufficiency of the evidence to support the victim-witness aggravating circumstance. Specifically, he argues that the evidence is insufficient to support this aggravating circumstance because there is no direct evidence that the killing was motivated by the victim’s status as a witness. In addressing this challenge, I note that it is well-established that the Commonwealth has no pre-trial burden of proving an aggravating factor. *Commonwealth v. Buck*, 709 A.2d 892, 896 (Pa. 1998). Nevertheless, as the guardian of due process, the trial court has a duty to ensure that the Commonwealth is not seeking the death penalty for an improper reason. *Id.*; see also *Commonwealth v. Buonopane*, 599 A.2d 681 (Pa. Super. 1991), *alloc. denied*, 608 A.2d 27 (Pa. 1992). The Supreme Court has clearly instructed, however, that the focus of the trial court’s responsibility is on whether the case is properly designated as capital, not whether each aggravating factor alleged is supported by the evidence. *Buck*, 709 A.2d at 896. Where the Commonwealth’s notice of aggravating circumstances includes at least one aggravating factor that is supported by any evidence, the case is properly framed as a capital case. *Id.* In such instance, the merit of any particular aggravating circumstance to be submitted to the jury can be determined by the court based upon evidence

presented at the sentencing hearing before the jury retires to consider a verdict. *Id.*

Instantly, there is no question that this case is properly designated as capital as Johnson concedes the existence of evidence sufficient to support the victim-law enforcement officer aggravating circumstance. **42 Pa. C.S.A. § 9711(d)(1)**. With the unchallenged existence of this aggravating circumstance, further inquiry is not necessary as there is no threshold showing of a valid claim of purposeful abuse by the Commonwealth in designating this case as a capital case. *Buonopane*, 599 A.2d at 684.

While the precedent of *Buck* and *Buonopane* preclude further discussion of the sufficiency of the Commonwealth's evidence in support of the aggravating circumstances, those cases do not speak to the pre-trial determination of the legality of the aggravating circumstances to be submitted to the jury. Thus, while factual hearing is not necessary, further discussion of the issues raised by Johnson is required.

Johnson's first legal challenge is a constitutional claim that the victim-witness aggravating circumstance is necessarily consumed within both the victim-law enforcement officer and felony perpetration aggravating circumstances. As such, Johnson claims that the Commonwealth's use of duplicative aggravating factors violates the Eighth Amendment of the United States Constitution. In support of his argument, Johnson cites the Federal Court of Appeals for the Tenth Circuit Opinion in *United States v. McCullah*, 76 F.3d 1087 (10th Cir. 1996). Johnson's reliance on *McCullah*, however, is misplaced for several reasons.

Initially, neither the United States Supreme Court, the Federal Court of Appeals for the Third Circuit, nor the Pennsylvania Supreme Court has adopted the reasoning of *McCullah*. Despite being given the opportunity to do so, the United States Supreme Court, in a plurality opinion, recognized that they have never held "that aggravating factors could be duplicative so as to render them constitutionally invalid." *Jones v. United States*, 527 U.S. 373, 398, 119 S. Ct. 2090, 144 L. Ed. 2d 370 (1999). Similarly, in *Commonwealth v. Lesko*, 15 A.3d 345, 404 (Pa. 2011), the Pennsylvania Supreme Court rejected an opportunity to embrace the "duplicative factor" theory as controlling authority in Pennsylvania.

Importantly, even considering the reasoning of *McCullah* for its limited persuasive purpose, I find it inapplicable to the current factual circumstances. *McCullah* acknowledges that before two aggravating factors can be determined to be duplicative, and thus in violation of the Eighth Amendment, the aggravating circumstances must necessarily subsume each other. I cannot reach such a conclusion currently.

Johnson's argument fails as it is based upon a faulty assumption that the victim-witness aggravating circumstance must necessarily be found whenever the victim-law enforcement officer aggravating circumstance or felony perpetration aggravating circumstance are present. Contrary to Johnson's claim, unfortunate human history teaches that non-law enforcement witnesses to serious crimes have been killed for purposes of preventing their testimony. Similarly, experience unfortunately teaches that law enforcement officers who are not witnesses to felony acts have been killed in the line of duty. Appellate court decisions requiring proof that a witness was killed for the purpose of actually preventing testimony before the victim-witness aggravating circumstance is applicable, see *Commonwealth v. Crawley*, 526 A.2d 334, 345 (Pa. 1987), further narrows the circumstances where both aggravating factors may be present.

Similarly, there are a variety of circumstances where a person killed while the defendant was perpetrating a felony was killed for reasons other than their status as a witness. Likewise, one may be killed due to their status as witness at a time when the killer is not perpetrating any other felony. Itemization of specific examples is unnecessary as the scenarios are obviously unlimited.

By attempting to define the issue by the parameters of the current victim's circumstances, Johnson incorrectly suggests that because two separate aggravating circumstances may apply, they must "necessarily subsume" each other. This is a complete misinterpretation of the *McCullah* reasoning. Just because both aggravating circumstances may currently be present does not mandate a conclusion that each of the aggravating circumstances necessarily subsumes the other. As the aggravating circumstances currently at issue are not factually duplicative, it is unnecessary to determine the reach of the *McCullah* Opinion.

Johnson next challenges the felony perpetration aggravating circumstance arguing that the rules of statutory construction require

that this particular aggravating circumstance is limited to killings occurring in perpetration of the six serious felonies of robbery, rape, deviate sexual intercourse by force or threat of force, arson, burglary, and kidnapping. Johnson notes that he is not currently accused of any of those enumerated felonies. As such, he claims the felony perpetration aggravating circumstance should be quashed.

The cornerstone of Johnson's argument is found in the language of the statutory provisions related to the crime of murder, **18 Pa. C.S.A. § 2502**, and the statutory sentencing procedures for first degree murder, **42 Pa. C.S.A. § 9711**. Johnson suggests that the wording of these two sections, when read in the context of their legislative history, leads to the conclusion which he currently advocates. This argument, however, can be summarily dismissed without great discussion as the Pennsylvania Supreme Court, in *Commonwealth v. Robinson*, 877 A.2d 433, 445-46 (Pa. 2005), has considered and rejected it. In finding that the felony of concealing a firearm without a license, **18 Pa. C.S.A. § 6106**, was a felony which the jury may properly consider in weighing the applicability of the felony perpetration aggravating circumstance, the *Robinson* Court defined "felony" to mean any crime designated as such by the Pennsylvania Crimes Code, **18 Pa. C.S.A. § 101, et seq.** *Robinson*, 877 A.2d at 446. In light of the Supreme Court's clear instruction, this Court has neither the inclination nor the luxury to reach a different conclusion.¹

¹ Johnson attempts to distinguish *Robinson* by raising an argument allegedly not considered by the *Robinson* Court. Specifically, Johnson claims that if **Section 9711(d)(6)** was intended to include all felonies as identified in the Crimes Code, there would be no need for the additional aggravating circumstance identified in **Section 9711(d)(13)** (relating to a killing committed while in perpetration of a felony under provisions of the Controlled Substance, Drug, Device, and Cosmetic Act, **35 P.S. § 780-101, et seq.**) The fallacy of this argument, however, is apparent through a careful reading of the language for each of the respective aggravating circumstances. Under **Section 9711(d)(6)**, the aggravating circumstance is limited to a killing committed by the defendant. However, where a killing occurs in the commission of a drug-related offense, the aggravating circumstance under **Section 9711(d)(13)** is applicable to not only the defendant who committed the killing but also an accomplice to the killing. Johnson's argument that the inclusion of an accomplice in the latter aggravating circumstance has no legal import is contrary to prevailing Pennsylvania law. See *Commonwealth v. Lassiter*, 722 A.2d 657, 662 (Pa. 1998) (**Section 9711(d)(6)** may not be applied to an accomplice). Thus, this argument is not a basis to distinguish *Robinson* as the cornerstone of redundancy upon which it is based lacks legal support.

Finally, Johnson attacks the perpetration of the felony aggravating circumstance claiming that the same is overly broad in light of the United States Supreme Court decision in *Zant v. Stephens*, 462 U.S. 862, 877 (1983). In *Zant*, the United States Supreme Court instructed that in order to survive constitutional scrutiny, an aggravating circumstance must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder. *Id.* The Court reasoned that this standard serves as a constitutional safeguard against the arbitrary and capricious infliction of a sentence of death. *Id.* Johnson currently asks this Court to move beyond the general test announced by *Zant* to assume a legislative role in defining what is an appropriate class of persons eligible for the death penalty. I decline that invitation.

The identification of murders committed while in the perpetration of a felony as a basis to seek a sentence of death is sufficient to distinguish that class of murder from other murders. Moreover, the designation of particular criminal conduct as a felony offense, as compared to a misdemeanor or summary offense, recognizes the heightened harm inherent in such conduct. Thus, the felony perpetration aggravating circumstance reasonably and sufficiently limits the class of those subject to a sentence of death to persons who commit murder in the course of committing another serious crime. *Zant* requires neither more nor suggests that it is the duty of the court to define the parameters of an appropriate distinguishing factor. Rather, *Zant* instructs that it is the prerogative of the legislative branch to define the aggravating circumstances sufficient to justify a sentence of death provided the circumstances adequately differentiate in an objective, even-handed, and substantially rational way those cases in which a death sentence may be imposed from the many murder cases in which the death penalty may not be applied. See generally *Zant v. Stephens*, 462 U.S. 862 (1983). As evidenced by the foregoing discussion, Pennsylvania's statute meets that standard.

For the foregoing reasons, Johnson's Motion to Quash Aggravating Circumstances is denied.

ESTATE NOTICES

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

FIRST PUBLICATION**ESTATE OF FREEMAN BIXLER, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Paul D. Bixler, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 14 N. Main Street, Suite 306, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 14 N. Main Street, Suite 306, Chambersburg, PA 17201

ESTATE OF CHARLES J. CARNAGGIO, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Personal Representative: Dominic Carnaggio, 8211 Poplar Mill Road, Nottingham, MD 21236-5581

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF WILLIAM R. COLVARD, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Dawn L. Keller, 1050 Hoffman Rd., Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WILLIAM P. L. DECKER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: ACNB Bank, Trust Department, 16 Lincoln Square, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF LOUIS ALBERT HOOVER, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Personal Representative: Harriet L. Gillan, 4813 Hillock Lane, Hampstead, MD 21074

ESTATE OF CARL LEROY RUCKER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Debra R. Hopkins, 2780 Florence Road, Woodbine, MD 21797; Charles E. Carter, Jr., 92 East Main Street, Westminster, MD 21157

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ALMA M. SMITH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Tim G. Guise, 1445 Brysonia-Wenksville Rd., Biglerville, PA 17307

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF VIRGINIA D. EPLEY, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Donald Dubbs, Jr., 835 Centennial Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF CHARLES F. MORRIS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Judith Koper Morris, 845 Hostetter Road, Hanover, PA 17331

Attorney: Judith K. Morris, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF VIOLET H. PFALTZGRAFF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: John R. Gibbel, c/o John R. Gibbel, Esq., Gibbel Kraybill & Hess LLP, P.O. Box 16, Lititz, PA 17543

Attorney: John R. Gibbel, Esq., Gibbel Kraybill & Hess LLP, P.O. Box 16, Lititz, PA 17543

ESTATE OF GEORGE E. SHEALER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Sally Ann Hertzog, c/o Robert G. Teeter, Esq., Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

Attorney: Robert G. Teeter, Esq., Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF HAZEL M. FROCK, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrices: Lona Stoops, 3480 Emmitsburg Road, Gettysburg, PA 17325; Linda Hobbs, 11614 Taneytown Pike, Emmitsburg, MD 21727

Attorney: Robert L. McQuaide, Esq., 18 Carlisle Street, Suite 204, Gettysburg, PA 17325

ESTATE OF CHARLES W. KING, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executor: Robert E. King, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF KIMBERELY A. SHIPLEY, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Dennis A. Wyatt, 2313 Stone Point Road, East Berlin, PA 17316

Attorney: Jan M. Wiley, Esq., The Wiley Group, P.C., 3 N. Baltimore Street, Dillsburg, PA 17019

