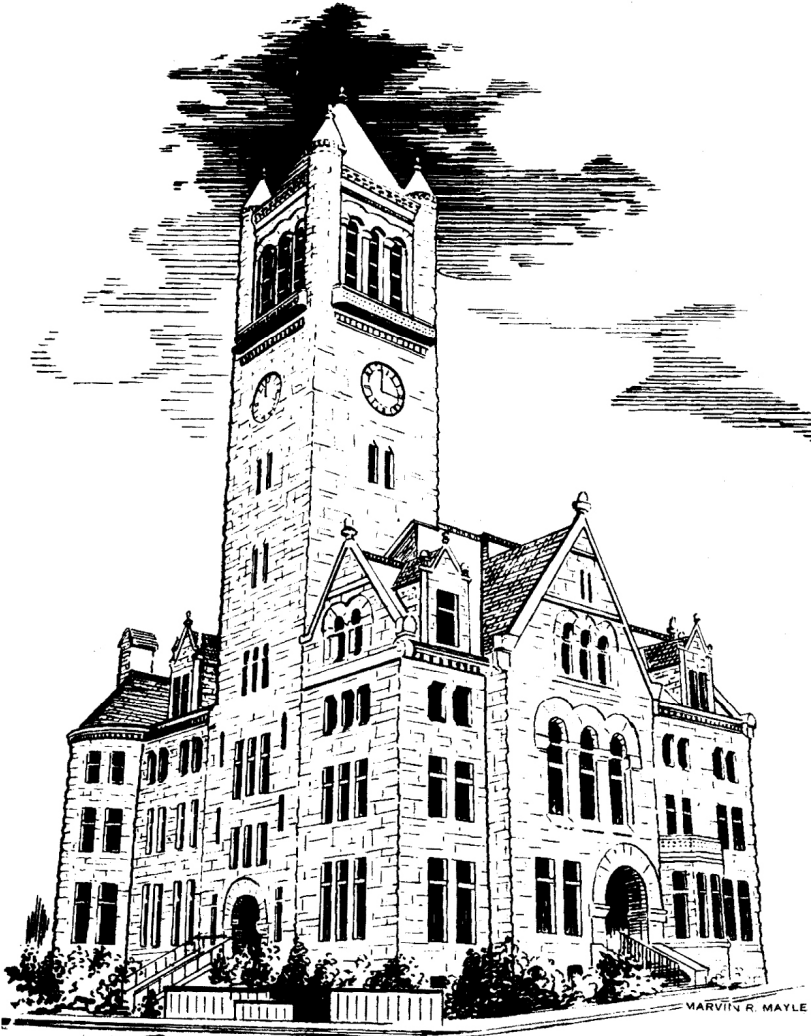


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Third Publication

JOHN A. BODNAR, JR., late of Perryopolis Borough, Fayette County, PA ⁽³⁾

Executor: Brian J. Bodnar
c/o 4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Sheryl R. Heid

LOIS ANN BOHNA, a/k/a LOIS A. BOHNA, late of Luzerne Township, Fayette County, PA

Executrix: Danielle A. Bohna ⁽³⁾
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

JOSEPH JOHN BORSODY, a/k/a JOSEPH J. BORSODY, SR., late of Luzerne Township, Fayette County, PA ⁽³⁾

Personal Representative: Bethanne Natali
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

EDNA E. DAWSON, late of Masontown Borough, Fayette County, PA ⁽³⁾

Personal Representative: Joann Peshko
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

THERESA L. DIEHL DUNSTON, a/k/a THERESA L. DIEHL, a/k/a THERESA LORAIN DIEHL DUNSTON, late of Redstone Township, Fayette County, PA ⁽³⁾

Executrix: Susan Lynn Mullen Ledford
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J Roskovensky, II

SAMANTHA S. GALLENTINE, a/k/a SAMANTHA S. STICKEL GALLENTINE, late of Connellsville, Fayette County, PA ⁽³⁾

Executor: Gary M. Gallentine
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

Second Publication

LOUISE PATRICIA KANAR, a/k/a LOUISE P. KANAR, late of Franklin Township, Fayette County, PA ⁽²⁾

Personal Representative: James P. Kanar
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

WALTER P. NOVINSKY, late of Redstone Township, Fayette County, PA ⁽²⁾

Executrix: Geraldine Helisek
1101 First Street
Hiller, PA 15444
c/o 304 Chamber Plaza
Charleroi, PA 15022
Attorney: Kathleen A. Gustine

HELYN LUCILLE OSHNACK, a/k/a HELYN OSHNACK, late of South Union Township, Fayette County, PA ⁽²⁾

Personal Representative:
William W. Oshnack, Jr.
c/o 2 West Main Street, Suite 110
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

HANNABELLE PHARES, late of Washington Township, Fayette County, PA (2)

Administratrix: Carole A. Phares
215 Mikula Road
Belle Vernon, PA 15012
c/o Shire Law Firm
1711 Grand Boulevard
Park Centre
Monessen, PA 15062
Attorney: Mark J. Shire

JOHN HOWARD RIFFLE, JR., late of Uniontown, Fayette County, PA (2)

Administrator: Blaine Homistek
c/o Monaghan and Monaghan
57 East Main Street
Uniontown, PA 15401
Attorney: Gary D. Monaghan

DOROTHY S. SLATER, a/k/a DOROTHY E. SLATER, a/k/a DOROTHY SLATER, late of North Union Township, Fayette County, PA

Co-Executors: (2)
Jarred E. Slater and Janet E. Kettering
c/o John & John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

NELLIE M. SARVER, late of Markleysburg, Fayette County, PA (1)

Administrator: Ricky S. Butler
c/o 2944 National Pike Road
P.O. Box 245
Chalk Hill, PA 15421
Attorney: Charles C. Gentile

KATHRYN V. SEIGHMAN, a/k/a KATHERINE SEIGHMAN, a/k/a KATHRYN SEIGHMAN, late of North Union Township, Fayette County, PA (1)

Executor: Thomas A. Novak
c/o Zebley Mehalov & White, P.C.
18 Mill Street Square
P.O. Box 2123
Uniontown, PA 15401
Attorney: Daniel R. White

RONALD SOTTA, a/k/a RONALD C. SOTTA, late of Washington Township, Fayette County, PA (1)

Executor: P. Joseph Grata
228 Second Avenue
Belle Vernon, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

First Publication

SARA M. HENRY, a/k/a SARAH M. HENRY, a/k/a SARA HENRY, late of Saltlick Township, Fayette County, PA (1)

Executrix: Thelma L. McClain
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

HELEN OHLER, a/k/a HELEN K. OHLER, late of Bullskin Township, Fayette County, PA

Executor: Scott J. Ohler (1)
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

WAYNE RAYMOND THISTLETHWAITE, a/k/a WAYNE R. THISTLETHWAITE, late of Luzerne Township, Fayette County, PA (1)

Executor: Raymond D. Popp
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

PAMELA K. WILLIAMS, late of Washington Township, Fayette County, PA (1)

Administrator: Preston D. Williams
125 Dinsmore Street
Belle Vernon, PA 15012
c/o P.O. Box 1
401 Sixth Street at Washington Avenue
Charleroi, PA 15022
Attorney: Alan Benyak

LEGAL NOTICES

NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization was filed with the Corporation Bureau of the Department of State of the Commonwealth of Pennsylvania, on August 18, 2017, for the purpose of obtaining a Certificate of Organization for a limited liability company organized under the Limited Liability Law of 1994 (15 PA. S. C. A. Section 8901 et seq.) The name of the limited liability company is Pine Slopes Properties LLC, with its principal office at 242 Pine Slopes Road, Acme, PA 15610. The purpose for which the limited liability company is organized is to conduct any and all business permitted under the said Limited Liability Law of the Commonwealth of Pennsylvania.

Robert Boose, Esq.
203 West Union Street
Suite 100
Somerset, Pennsylvania 15501

Fictitious Name Registration

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania February 01, 2018 for Second Opinion Insurance at 870 McClellandtown Road McClellandtown, PA 15458. The name and address of each individual interested in the business is Wendell Keith Charles at 870 McClellandtown Road McClellandtown, PA 15458. This was filed in accordance with 54 Pa.C.S. 311.

JUDICIAL OPINION

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

COMMONWEALTH OF :
PENNSYLVANIA, :
vs. :
ROBERT GENE MILLER, : No. 398 of 2014
Defendant. : Judge Nancy D. Vernon

OPINION AND ORDER

VERNON, J.

May 2, 2018

Before the Court is the Amended Post Conviction Relief Act Petition, filed by Petitioner, Robert Gene Miller, alleging ineffective assistance of trial counsel for failing to object to the witnesses’ identification of Petitioner for failing to testify as to Petitioner’s correct eye color, failing to object to the Commonwealth’s impeachment of Petitioner’s alibi witness, failing to object to the crimen falsi jury instruction, and failing to request an alibi jury instruction.

A claim for ineffective assistance of counsel requires Petitioner to demonstrate that (1) his underlying claim is of arguable merit; (2) the particular course of conduct pursued by counsel did not have some reasonable basis designed to effectuate his interests; and (3) but for counsel’s ineffectiveness, there is a reasonable probability that the outcome of the challenged proceedings would have been different. *Commonwealth v. Miller*, 868 A.2d 578, 581-582 (Pa.Super. 2005).

As to the first allegation of ineffective assistance regarding Petitioner’s eye color, the Commonwealth presented four eye witnesses who each identified Petitioner as the perpetrator of the crime who entered the Footedale Market on January 13, 2014, with a bandana on his face and pointing a gun. *N.T., Criminal Jury Trial, 12/8-9/2014*, at 18-21. The eyewitness testimony as to identification of Petitioner as the perpetrator was presented to the jury as follows:

1. Stephanie Kendall identified Petitioner by a physical description that included his eyes, height, weight, gender, and voice. *Id.* at 25-26. Kendall testified that his eyebrows and eyes are very distinctive. *Id.* at 27.
2. Samantha Guseman recognized the identity of Petitioner by his voice when she confirmed that they grew up on the same street, had the same circle of friends, and stated, “you don’t forget somebody you’ve known your whole life.” *Id.* at 34-35. Guseman testified that only Petitioner’s eyes are recognizable from the “piercing like bluish color.” *Id.* at 45. She also told the jury, “you don’t forget somebody’s eyes that you’ve known your entire life.” *Id.*
3. Janet Shaffer stated that she has known Petitioner throughout his entire life and that she recognized his voice and eyes. *Id.* at 49.

4. James Fisher, Jr. immediately recognized the identity of Petitioner when the bandana on Appellant's face drooped down; stating that he knew Petitioner "since he was born." *Id.* at 58-59. Fisher testified, "I seen his whole face [...] from his bottom lip up to his brow." *Id.* at 67.

At the time set for hearing on the PCRA Petition, Petitioner testified that his eyes are green, and not blue or gray as identified at trial. N.T., PCRA Proceedings, 3/15/2017, at 13. The distinction of green, blue, or gray is meritless upon the whole of the testimony of the eyewitnesses whereupon the jury learned that the witnesses knew Petitioner throughout his life, that his face was displayed in its entirety, and he was recognizable on a multitude of characteristics including his family ties, height, weight, gender, voice, eyes, and eyebrows. Further, the testimony that Petitioner's eyes were "bluish" is not inconsistent with his self-described "green" color. Any inconsistency in testimony for a description of the perpetrator would be for the jury to weigh the testimony. Upon the four eyewitness identification of Petitioner as the perpetrator, he is unable to establish an ineffective assistance of counsel claim as his claim does not have arguable merit.

As to his next issue, Petitioner alleges trial counsel was ineffective for failing to object to the Commonwealth's impeachment of his alibi witness, Natalie Sykes, for her prior conviction of 18 Pa.C.S. §5105(a)(1) - Hindering Apprehension. Petitioner contends that not all conviction for Hindering Apprehension are *crimen falsi* for impeachment purposes and relies on *Commonwealth v. Harris*, 658 A.2d 811 (Pa.Super. 1995).

In *Harris*, the Pennsylvania Superior Court held,

It is evident from a reading of Subparagraphs (1)–(3) and (5) of Section 5105(a), had the appellant engaged in some form of "concealment," "disguise," or providing the authorities with "false" information, he was guilty of *crimen falsi* behavior triggering the prosecution's entitlement under *Randall*, *supra*, 515 Pa. 410, 528 A.2d 1326, to impeach the witness guilty of such misconduct. Instantly, however, we are not advised of any false statements attributable to the appellant regarding the whereabouts of the at-large friend, nor do we equate dishonesty with his failure to volunteer the location of the wanted man. The trial court's reference to such (in)action as indicative of *crimen falsi* behavior rings hollow.

Harris, 658 A.2d 811, 813-814.

Evidence of prior convictions can be introduced for the purpose of impeaching the credibility of a witness if the conviction was for an offense involving dishonesty or false statements. *Commonwealth v. Randall*, 528 A.2d 1326, 1329 (Pa. 1987). Here, Natalie Sykes testified at the PCRA hearing regarding her Hindering Apprehension conviction, by telling the Court that the "parole office came looking for [her] husband at [her] house [...] and I said he wasn't there." N.T., PCRA Proceedings, 3/15/2017, at 5. This false statement to the parole officer constituted behavior sufficient for this Court to have concluded that the underlying Hindering Apprehension conviction was *crimen falsi* in nature and sufficient "concealment," "disguise," or "false" information to implicate the ability of the Commonwealth to use the prior conviction for impeachment purposes.

Since this claim also lacks arguable merit, Petitioner is warranted no relief under the PCRA.

The final two issues raised in Petitioner's Amended PCRA Petition relate to jury instructions and allege that his trial counsel was ineffective for failing to object to the Court's *crimen falsi* instruction and for failing to request an alibi instruction. Since Petitioner's allegation of ineffectiveness with regards to the impeachment of his alibi witness was meritless, counsel, likewise, will not be found ineffective for failing to object to the corresponding *crimen falsi* instruction.

As to his failure to request an alibi instruction, Trial Counsel Joshua Camson, Esquire, was questioned at the PCRA hearing and testified that his trial strategy concluded the instruction would not have been beneficial to Petitioner's defense because the alibi testimony of Natalie Sykes "didn't go as well" as he anticipated. N.T., PCRA Proceedings, 3/15/2017, at 28. Attorney Camson told the Court, and as is supported by the trial transcript, that Natalie Sykes "wasn't an ironclad alibi by any stretch of the imagination" and that at trial Sykes testified that Petitioner "left at some point." *Id.*

Where matters of strategy and tactics are concerned, counsel's assistance is deemed constitutionally effective if he chose a particular course that had some reasonable basis designed to effectuate his client's interests. *Commonwealth v. Koehler*, 36 A.3d 121 (Pa. 2012). Trial Counsel testified credibly that it was his strategy not to highlight the alibi testimony as the alibi was not "ironclad." His strategy will not be questioned by this Court as he had a reasonable basis for not requesting the alibi instruction. Petitioner has failed to meet his burden of proving his Trial Counsel's ineffective assistance, and accordingly, the Petitioner is DENIED.

Wherefore, we will enter the following Order.

ORDER

AND NOW, this 2nd day of May, 2018, upon consideration of the Amended Post Conviction Relief Act Petition, filed by Petitioner, Robert Gene Miller, it is hereby ORDERED and DECREED that the Petition is DENIED in accordance with the foregoing Opinion.

NOTICE

YOU HAVE THE RIGHT TO FILE A NOTICE OF APPEAL, IN WRITING, TO THE SUPERIOR COURT OF PENNSYLVANIA WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER. YOU SHOULD CONTACT AN ATTORNEY IMMEDIATELY IF YOU WANT AN ATTORNEY TO FILE AN APPEAL ON YOUR BEHALF, OR YOU MAY FILE THE APPEAL YOURSELF.

FURTHER, the Clerk of Courts is directed to serve this Order upon the Defendant by certified mail, return receipt requested and upon Attorney James Natale, Esquire by regular mail.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Clerk of Courts

LUNCH AND LEARN**THE IMPAIRED LAWYER – A Call for Action**

Presented by

Brian S. Quinn, Esquire

Education and Outreach Coordinator

Lawyers Concerned for Lawyers of PA

Wednesday, June 13, 2018

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