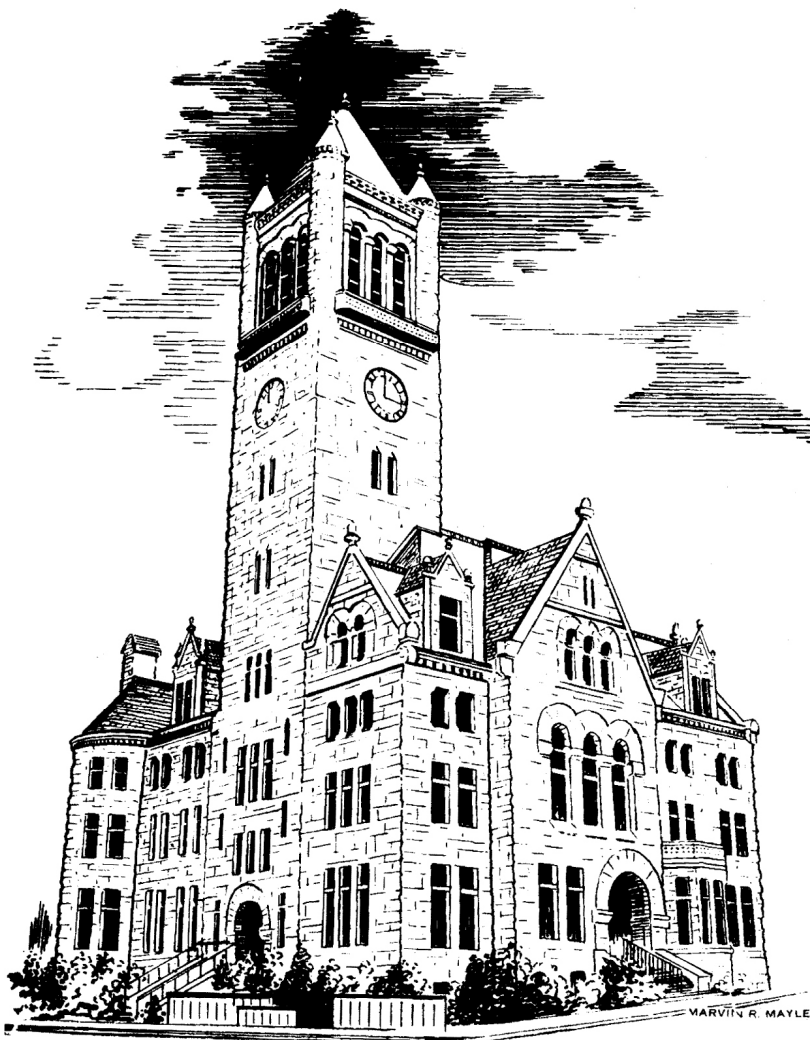


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

GIFFORD F. GRIMES, a/k/a GIFFORD GRIMES, late of North Union Township, Fayette County, PA (3)

Executrix: Pamela S. Conn
c/o John and John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

CLARENCE F. HIBBARD, a/k/a CLARENCE F. HIBBARD, late of Georges Township, Fayette County, PA (3)

Co-Administrators: Traci L. Hibbard and Clarence E. Hibbard
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: G.T. George

ROSEMARIE LAURITA, late of Menallen Township, Fayette County, PA (3)

Executor: Anthony J. Laurita
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony Dedola

FRANCES LOUISE LEON, late of Redstone Township, Fayette County, PA (3)

Personal Representative: Renee Donofrio
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

LENORA R. MEHAULIC, late of South Union Township, Fayette County, PA (3)

Executrix: Brenda Ann Lynn
c/o 4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Sheryl Heid

HARRY J. NEDLEY, SR., a/k/a HARRY J. NEDLEY, late of South Union Township, Fayette County, PA (3)

Personal Representative: Harry J. Nedley, Jr.
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

CHARLES A. YARRIS, a/k/a CHARLES A. YARRIS, SR., late of North Union Township, Fayette County, PA (3)

Executor: Charles A. Yarris, Jr.
c/o Fitzsimmons and Barclay
55 East Church Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons, Jr.

Second Publication

BARBARA J. AMBROSINI, a/k/a BARBARA JANE AMBROSINI, late of Dunbar, Fayette County, PA (2)

Personal Representative:
Bridgette D. Bishop
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

VERA ANN BILONICK, late of Uniontown, Fayette County, PA (2)

Executrix: Lisa Ann Marcello
c/o Golvash & Epstein, LLC
9 Dewalt Avenue
Pittsburgh, PA 15227
Attorney: Jeffrey Golvash

ROBERT KRAYNAK, late of Fayette County, PA (2)

Administratrix: Cheryl Kraynak
121 Morgantown Street
Martin, PA 15460
c/o Fieschko & Associates, Inc.
Suite 2230, 436 7th. Avenue

Pittsburgh, PA 15219
Attorney: Joseph Fieschko

MARY ANN MARKUSIC, late of North Union Township, Fayette County, PA (2)
Administratrix: Kimberly A. Brown
 c/o 51 East South Street
 Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

SARA O'BRIEN, late of South Union Township, Fayette County, PA (2)
Administrator: Roland J. O'Brien
 138 Earl Lane
 Hatboro, PA 19040
 c/o 206 Derrick Avenue
 Uniontown, PA 15401
Attorney: Gary N. Altman

JOSEPH RUFF, late of Connellsville, Fayette County, PA (2)
Personal Representative: Connie M. Ruff
 670 Rich Hill Road
 Connellsville, PA 15425
 c/o Snyder and Snyder, PLLC
 17 North Diamond Street
 Mt. Pleasant, PA 15666
Attorney: Marvin Snyder

SAMUEL D. SNYDER, late of North Union Township, Fayette County, PA (2)
Administratrix: Shauna R. Smith
 144 East Askren Street
 Uniontown, PA 15401

THOMAS R. STEWART, III, late of Franklin Township, Fayette County, PA (2)
Executor: Gary N. Altman
 c/o 206 Derrick Avenue
 Uniontown, PA 15401
Attorney: Gary N. Altman

JOHN ZENTKOVICH, JR., late of Georges Township, Fayette County, PA (2)
Executrix: Deborah David
 c/o 51 East South Street
 Uniontown, PA 15401
Attorney: Webster & Webster

First Publication

DEBORAH LYNN BRANT, a/k/a DEBORAH BRANT, late of Uniontown, Fayette County, PA (1)
Executor: Michael Curley
 c/o 11 Pittsburgh Street
 Uniontown, PA 15401
Attorney: Thomas W. Shaffer

FRANCIS J. DURANKO, a/k/a FRANK J. DURANKO, late of Uniontown, Fayette County, PA (1)
Administratrix: Cynthia Duranko
 c/o Proden & O'Brien
 99 East Main Street
 Uniontown, PA 15401
Attorney: Wendy L. O'Brien

JAMES V. FILIAGGI, a/k/a JAMES V. FILIAGGI, JR., late of South Union Township, Fayette County, PA (1)
Personal Representative:
 Deborah A. Krzysiak
 c/o Watson Mundorff, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Timothy J. Witt

H. WAYNE INMAN, a/k/a HOWARD W. INMAN, late of Jefferson Township, Fayette County, PA (1)
Executor: Randolph M. Inman
 121 Francis Road
 Perryopolis, PA 15473
 c/o Bassi, Vreeland & Associates, P.C.
 P.O. Box 144
 111 Fallowfield Avenue
 Charleroi, PA 15022
Attorney: Bradey M. Bassi

JOANN LABASH, late of Redstone Township, Fayette County, PA (1)
Administrator: Joseph M. Labash
 c/o Higinbotham Law Offices
 45 East Main Street, Suite 500
 Uniontown, PA 15041
Attorney: James Higinbotham

DONALD LEE LILLEY, late of Masontown, Fayette County, PA (1)
Executrix: Phyllis J. Newcomer

174 Bennington Road
Hopwood, PA 15445

WILBUR CARLUR TEETS, a/k/a WILBUR C. TEETS, late of North Union Township, Fayette County, PA (1)

Executor: Steven C. Matzus
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

PHILIP C. WHEELER, late of Uniontown, Fayette County, PA (1)

Administratrix: Rena Ann Curry
c/o Radcliffe Law, L.L.C.
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William Radcliffe

LEGAL NOTICES

Notice of Revocable Trust Pursuant to 20 Pa. C.S. § 7755(c)

The Roley Family Trust under agreement
dated 9/27/2001

Notice is hereby given of the administration of THE ROLEY FAMILY TRUST, DATED SEPTEMBER 27, 2001. JEANETTE F. ROLEY, settlor of the trust, of the City of Connellsville, County of Fayette and Commonwealth of Pennsylvania, died on December 22, 2020. All persons indebted to the said decedent are requested to make payment to the undersigned without delay, and all persons having claims or demands against said estate are requested to make known the same.

David Edward Roley, Successor Trustee

c/o WATSON MUNDORFF, LLP
720 Vanderbilt Road
Connellsville, PA 15425-6218
Phone: 724-626-8882

(3 of 3)

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Board of Supervisors of South Union Township, Fayette County Pennsylvania, will hold a public hearing in the South Union Township Municipal Building, 151 Township Drive, Uniontown, Fayette County, Pennsylvania, on March 3, 2021, at 4:00 p.m. to consider an amendment to the South Union Township Zoning Ordinance. This Amendment would require all occupied buildings connected to the Township's public sanitary sewer to have a storm water inspection prior to the sale of property and provide penalties for violations thereof.

A copy of the proposed amendment to the Zoning Ordinance of said Township may be examined in the Township Office in said Municipal Building during normal business hours.

Interested persons or their agents may appear at the aforementioned hearing to offer testimony in favor of or in opposition to the proposed rezoning.

RICK VERNON
ROBERT SCHIFFBAUER
JASON SCOTT
Board of Supervisors of South Union Township

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
No. 112 of 2021

In the matter of Petition for
Change of Name of Angelina Dani Grogan
to Angelina Dani Conti

Kindly be advised that the Petition of Rita Conti has been filed at the above referenced number and term requesting that the name of Angelina Dani Grogan be forever changed to Angelina Dani Conti. The Court has fixed the 18th day of March, 2021, at 2:00 p.m., in Courtroom Number 5 for a hearing on the matter. All interested persons may appear and show cause why the Petition should not be granted.

NOTICE

RE: Change of Name of Brayden Lee Tustin,
a minor:

To Whom It May Concern:

Be advised that the Court of Common Pleas of Fayette County, Pennsylvania, will hear the Petition for the Change of Name of Brayden Lee Tustin, a minor, on March 25, 2021, at 1:45 p.m. in Courtroom No. 1. All interested individuals may attend at that date and time.

DAVIS & DAVIS

BY: Samuel J. Davis, Esquire
107 East Main Street
Uniontown, PA 15401

IN RE: Dolfi, Eric M. and Stacey A.
Case No. 19-21910-CMB, Chapter 13

Real Estate Located at 32 Walnut Street,
Uniontown, Fayette County, PA
Parcel No. 38-04-0277

Date of Sale: 3/15/2021 @11:00 a.m.
A Zoom Video Conference Hearing will be held on 3/15/2021 at 11:00 a.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/16143800191>,
or alternatively, you may use the following:
Meeting ID: 161 4380 0191.

Objections due by: 2/22/2021
Initial Offer \$ 22,000.00

Higher and better offers will be considered at the hearing

Hand money required: \$500.00
(Cash or Certified Funds Only)

Contact: Robert H. Slone, Esq.
223 South Maple Avenue
Greensburg, PA 15601
Ph# (724) 834-2990

For more information:
www.pawb.uscourts.gov/easi.htm

Robert H. Slone, Esquire
Attorney for Eric M. and Stacey A. Dolfi
223 South Maple Avenue
Greensburg, PA 15601
Ph# (724)834-2990

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
ACTION TO QUIET TITLE
No. 1727 of 2020 G.D.
JUDGE LINDA CORDARO

ANGELA HARDIN and JENNIFER HARDIN,
mother and daughter-in-law,
Plaintiffs,
v.

JOHN OLIVER FORD and MONICA
BEWLEY FORD, his wife, their successors,
heirs, personal representatives, and assigns,
generally.
Defendants.

**TO: JOHN OLIVER FORD and MONICA
BEWLEY FORD, his wife, their heirs,
successors and assigns, generally,**

You are hereby notified that Angela Hardin and Jennifer Hardin, have filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that they are the owners in possession of that certain lot of land situate in the City of Uniontown, Fayette County, Pennsylvania having a mailing address of 135 E. Coffey Street, Uniontown, Pennsylvania, 15401.

Title to the above described property was conveyed to John Oliver Ford and Monica Bewley Ford, his wife, by a deed from J. Searight Marshall and Nan Allen Marshall, his wife, dated September 6, 1955 and recorded at the Recorder of Deeds Office of Fayette County, Pennsylvania in Deed Book 842, Page 629.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed

without you and a judgment may entered against you by the court without further notice or any money claimed in the complaint, or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS NOTICE TO
YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT
AFFORD ONE, GOT TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET
LEGAL HELP.**

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PENNSYLVANIA LAWYER REFERRAL
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P.O. BOX 186
HARRISBURG, PA 17108
1-800-932-0311**

By Jason F. Adams, Esq.
Adams & Adams
55 E. Church Street
Uniontown, PA 15401
(724) 437-2711

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, March 1, 2021, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2618-0614	PATRICIA LUBITS GUMP	Joseph M. Standish, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, March 15, 2021, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, March 1, 2021, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2620-0435	GERALD RICHARD DOMONKOS	Courtney Roebuck, Administratrix
2619-0551	WILLIAM F. JOHNSON a/k/a WILLIAM FRANK JOHNSON a/k/a WILLIAM F. JOHNSON, JR.	William F. Johnson III, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, March 15, 2021, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
v.	:	
	:	
DANIEL STOFFA,	:	Nos. 366 & 367 of 2017
Defendant.	:	Honorable Judge Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

August 14, 2020

SUMMARY

Before this Court is Petitioner's PCRA Petition. The Petition raises ineffectiveness of counsel claims for failing to strike a juror and for failing to call character and other relevant witnesses. A Hearing on the Petition was held on March 16, 2020. For the following reasons, Petitioner's PCRA Petition is DENIED.

BACKGROUND

Petitioner, Daniel Stoffa, was convicted of 10 counts at a criminal jury trial, including two counts of rape of a child. The trial was on January 2-4, 2018. At trial, Mr. Stoffa was represented by Attorney Thomas Shaffer of Uniontown, Pennsylvania. The Commonwealth was represented by Assistant District Attorney Robert Harper.

I. Criminal Jury Trial - Voir Dire

The following occurred at trial, which is relevant to this Petition.

During voir dire, this Court asked the following question: "Is there anything about the nature of this case or the crime itself, which would [cause] you to be biased in your deliberations against the defendant?" Criminal Jury Trial Proceedings at 24. After three prospective jurors indicated that they would be biased, this Court reiterated the basic Constitutional principal that all persons who come before the court are presumed to be innocent until proven guilty beyond a reasonable doubt. Id. at 24-25. Another five prospective jurors then also indicated that they would be biased. Id at 25-26. At issue here is the last juror who indicated yes to that question, Juror Number 400. This Court followed up with that juror, "do you believe that you would be unable to serve as a fair and impartial juror?" Juror 400 answered, "Probably." Id. at 26.

At the request of Attorney Shaffer, this Court then asked the prospective jurors as a whole whether anyone or a member of their household is involved with any child advocacy group. Id. at 27. Juror 400 indicated that this applied to him. Id. Several other jurors also indicated that it applied to them. Id. at 27-28. This Court then asked those who answered yes to raise their hands if they would be unable to serve fairly and impartially because of their involvement with children. Id. at 28. Juror 400 raised his hand. Id. No other questions were asked.

This Court then held a sidebar discussion with Attorney Shaffer and Attorney Harper for any motions to strike jurors for cause. *Id.* at 28-33. Attorney Shaffer made a motion to strike certain jurors for cause, starting with a juror-not the one in question- who stated he would possibly be biased against Petitioner. *Id.* at 29. The Assistant District Attorney suggested that rather than striking the juror, this Court could caution the jurors instead. This Court explicitly stated to Attorneys Shaffer and Harper:

[C]ertainly you'd agree we want to seat partial (sic) and unbiased jurors and [the juror's] hesitancy in the way he answered the question and said that he would possibly be biased. I'm going to excuse him.

Id.

This Court then struck that juror who said he would be biased against Mr. Stoffa. Attorney Shaffer then made motions to strike other jurors who indicated they would be or would possibly be biased against Mr. Stoffa, which this Court granted.

At the end of the sidebar discussion, this Court specifically brought up several jurors, including Juror Number 400, for whom Attorney Shaffer did not make a motion to strike for cause. After striking eight jurors for cause, this Court stated:

Counsel would you approach once again, please. I'm just raising this with you because I had notes on other jurors and I haven't heard any motions. I'll give you the opportunity.

...

We have also, seat number 17, badge number 400. Upon inquiry he would probably be biased.

Id. at 32-33.

Attorney Shaffer stated that he thought Juror Number 400 was okay because he was a teacher and "was probably educated to understand the Constitution." *Id.* at 33. No motion was made to strike Juror 400. Juror 400 was then selected to sit on the jury.

II. Criminal Jury Trial - Testimony and Evidence

The following testimony was presented at trial:

Mr. Stoffa was in a relationship with S.H. for eight years. He lived with S.H. and her three daughters.

The oldest daughter of S.H. testified that on December 31, 2010-New Year's Eve-Mr. Stoffa raped her. Criminal Jury Trial Proceedings at 60-62. She was 16 at the time. Her testimony included details about that encounter with Mr. Stoffa. She also testified that he raped her three or four more times before she moved out of the house.

The middle daughter of S.H. testified that in 2011, Mr. Stoffa raped her. *Id.* at So. She was 11 at the time. She testified that Mr. Stoffa continued to rape her for several years.

The youngest daughter of S.H. testified that she was 6 when Mr. Stoffa first raped her, and that he continued to rape her for several years until she was 11 or 12. *Id.* at 102.

The jury heard testimony from Dr. Mary Carrasco, who performed a forensic medical exam of the younger two daughters. Dr. Carrasco testified about the results of the exams. *Id.* at 152-159. Although there was no physical evidence of sexual assault in this case, Dr. Carrasco testified that it is rare that there is ever physical evidence of sexual assault in children.

The jury also heard from one of Mr. Stoffa's coworkers, Joseph Holchin. Mr. Holchin testified about remarks made by Mr. Stoffa at work. Mr. Holchin's testimony was that Mr. Stoffa would frequently brag to his coworkers on Monday mornings that he "got young pussy all the time." *Id.* at 166. Other times, Mr. Stoffa would come to work "all battered up" with scrapes and scratches. *Id.* at 166-67.

The only witness called by Attorney Shaffer was Petitioner, Daniel Stoffa. Mr. Stoffa denied the allegations of rape made against him. However, Mr. Stoffa did admit to being alone S.H.'s three daughters on New Year's Eve in 2010. *Id.* at 176.

After the trial, the jury found Mr. Stoffa guilty of all 10 charges against him.

III. Procedural History Following Trial

On January 19, 2018, Mr. Stoffa was sentenced to two consecutive terms of 10-20 years imprisonment.

Mr. Stoffa filed a timely Notice of Appeal on January 25, 2018, which was docketed at 160 WDA 2018. On February 21, 2018, Attorney Shaffer filed a Concise Statement of Errors Complained of on Appeal on behalf of Mr. Stoffa. On February 22, 2018, Attorney Paul Gettleman entered his appearance on behalf of Mr. Stoffa. Attorney Shaffer subsequently filed a Motion to Withdraw as Counsel, which was granted on March 19, 2018. The Superior Court affirmed Mr. Stoffa's judgment of sentence by a Decision dated January 7, 2019.

On May 20, 2019, Attorney Gettleman filed a timely PCRA Petition on behalf of Mr. Stoffa. The Petition raised a claim of ineffectiveness of counsel, alleging that trial counsel failed to call character witnesses, failed to call other relevant witnesses, never met with Mr. Stoffa, and told Mr. Stoffa that "he knew he was guilty the entire time." Petition at Unnumbered Page 2.

A Supplement to the PCRA Petition was filed on October 3, 2019. The Supplement raised an additional claim of ineffectiveness of counsel, reciting an exchange that occurred on the record during voir dire, wherein one of the jurors stated that he would probably be unable to serve fairly and impartially. Trial counsel elected not to strike the juror for cause. That juror then served on the jury.

A Second Supplement to the PCRA Petition was filed on November 13, 2019. The Second Supplement raised another claim of ineffectiveness of counsel, alleging that trial counsel failed to call a witness who would have challenged the credibility of one of the

victims by testifying that she had firsthand knowledge that the victim was not with Petitioner on one of the nights that the victim stated she was raped by Petitioner. {1}

On March 16, 2020, a Hearing was held on Mr. Stoffa's PCRA Petition. At the Hearing, Attorney Shaffer testified that he has been an attorney for 20 years, and was a paralegal for over 7 years before that. PCRA Proceedings at 13. Attorney Shaffer worked at the Fayette County Public Defender's Office for 9 years. Id. at 14. He testified that he has conducted approximately 250 criminal jury trials as a defense attorney. Id. Many of those cases dealt with sexual assault. Id. at 15.

With respect to Juror 400, Attorney Shaffer testified at the PCRA Hearing that Juror 400 was a teacher and "[t]here is no better person that I believe to judge a child than a teacher because every day they judge children..." Id. at 25-26. Attorney Shaffer specifically asked Mr. Stoffa during voir dire if he wanted to keep Juror 400, and Mr. Stoffa said yes. Id. at 26. Attorney Shaffer also stated that he believed Juror 400 was trying to get off of jury duty. Id.

{1} A Hearing on the PCRA Petition and Supplemental Petitions was originally scheduled for December 17, 2019.

At the December 17 Hearing, Petitioner's trial counsel, Attorney Shaffer, did not appear. The Commonwealth represented that it had subpoenaed Attorney Shaffer. This Court attempted to contact Attorney Shaffer by telephone but could not reach him. The Commonwealth also represented that, based on the PCRA Petitions and a review of the Trial Proceeding Transcript and without Attorney Shaffer present at the Hearing to provide justification, there was no reasonable basis for trial counsel to not strike the juror who indicated he would probably be biased. By consent of both the Commonwealth and the Petitioner, this Court granted the PCRA Petition and granted the Petitioner a new trial. This Court also reinstated bond and set an additional condition that Mr. Stoffa have no contact with the victims or their immediate family members.

On January 16, 2020, 30 days after this Court's December 17, 2019 Order, the Commonwealth filed a Motion for Reconsideration. The Motion alleged that the Fayette County Office of the District Attorney received a letter from Attorney Thomas Shaffer on January 13, 2020. According to the Motion, the letter from Attorney Shaffer alleged that Attorney Shaffer was not notified of the December 17, 2019 Hearing, but was prepared to testify as to why he did not strike the juror in question, as well as to why he did not call certain witnesses to testify.

The Commonwealth's Motion for Reconsideration was presented in Motions Court on January 24, 2020. This Court heard from both the Commonwealth and Attorney Paul Gettleman, PCRA Counsel for the Petitioner. Based on the fact that the Motion was filed within 30 days of this Court's December 17, 2019 Order, and the importance of resolving the PCRA Petition on its merits, this Court granted the Commonwealth's Motion for Reconsideration on January 24, 2020. (The decision was also based on the fact that the Order granting the Petition was not a final order, but an interlocutory order, as per *Commw. v. Harper*, 890 A.2d 1078 (Pa. Super. Ct. 2006)). The January 24, 2020 Order stayed the December 17, 2019 Order and directed the parties to appear for a PCRA Hearing on February 24, 2020.

By a Motion from the Commonwealth, the PCRA Hearing was rescheduled again to March 16, 2020.

With respect to character witnesses, Attorney Shaffer testified at the PCRA Hearing that he discussed the possibility of using character witnesses with Mr. Stoffa before the trial. *Id.* at 17. However, Mr. Stoffa did not present Attorney Shaffer with any names of potential character witnesses. *Id.*

Petitioner called several witnesses at the PCRA Hearing to testify that they would have testified to Mr. Stoffa's reputation in the community had they been contacted by Attorney Shaffer. Gary Jacobs, Gregory Senda, Judy Brown, and Ronald Stoffa- Petitioner's brother-testified that Mr. Stoffa has a reputation in the community for being peaceful and law-abiding. *Id.* at 68, 74, 98, and 107. Deborah Rankin and Rochelle Coddington testified that S.H.'s oldest daughter was babysitting for them on New Year's Eve in 2010, and so Mr. Stoffa could not have possibly raped her on that night because he was not with her. *Id.* at 80-82, 90-92.

DISCUSSION

Petitioner's PCRA raises ineffective assistance of counsel for two reasons-first for trial counsel's failure to strike Juror 400, who said he would "probably" be biased against Petitioner, and second for trial counsel's failure to call character witnesses or witnesses who would testify that Mr. Stoffa could not have been with S.H.'s oldest daughter on New Year's Eve in 2010.

In order to succeed on a claim of ineffective assistance of counsel, a petitioner must show the following:

- 1) That the underlying claim is of arguable merit;
 - 2) That counsel had no reasonable strategic basis for his or her action or inaction;
- and
- 3) That, but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

Commw. v. Hull, 982 A.2d 1020, 1022-23 (Pa. Super. Ct. 2009) (citations omitted).

Petitioner's First Issue is that trial counsel was ineffective for failing to make a motion to strike Juror 400, who said he would "probably" be biased against Petitioner during voir dire. "A criminal defendant's right to an impartial jury is explicitly guaranteed by Article I, section 9 of the Pennsylvania Constitution." *Commw. v. Penn*, 132 A.3d 498, 502 (Pa. Super. Ct. 2016) (citation omitted). Further, "our system of law has always endeavored to prevent even the probability of unfairness." *Commw. v. Stewart*, 295 A.2d 303, 306 (Pa. 1972) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

Although there does not appear to be any on-point cases in Pennsylvania, {2} Petitioner cites one federal case where the facts are very similar to the instant case. In *Hughes v. United States*, 258 F.3d 453 (6th Cir. 2001) (Siler, J., dissenting), the trial court judge asked potential jurors on voir dire whether they could be fair. *Id.* at 456. One juror stated, "I don't think I could be fair." *Id.* The judge then asked, "You don't

think you could be fair?" to which the prospective juror replied, "No." *Id.* The trial counsel in that case neither questioned the prospective juror any further, nor did he attempt to remove the juror for cause. *Id.*

In determining whether trial counsel's failure to strike the juror constituted ineffective assistance of counsel, the Sixth Circuit Court of Appeals stated, "[a] juror's express doubt as to [his or] her own impartiality on voir dire does not necessarily entail a finding of actual bias." *Id.* at 458. The court also noted, "[a]bsent the showing of a strategic decision, failure to request the removal of a biased juror can constitute ineffective assistance of counsel." *Id.* at 460 (citing *Johnson v. Armantrout*, 961 F.2d 748, 755 (8th Cir. 1992)). However, the Hughes Court went on to state:

The question of whether to seat a biased juror is not a discretionary or strategic decision. The seating of a biased juror who should have been dismissed for cause requires reversal of the conviction. Failure to remove biased jurors taints the entire trial, and therefore [the resulting] conviction must be overturned. A court must excuse a prospective juror if actual bias is discovered during voir dire. Actual bias is "bias in fact" -the existence of a state of mind that leads to an inference that the person will not act with entire impartiality.

If counsel's decision not to challenge a biased venireperson could constitute sound trial strategy, then sound trial strategy would include counsel's decision to waive, in effect, a criminal defendant's right to an impartial jury. However, if counsel cannot waive a criminal defendant's basic Sixth Amendment right to trial by jury "without the fully informed and publicly acknowledged consent of the client," then counsel cannot so waive a criminal defendant's basic Sixth Amendment right to trial by an impartial jury. Indeed, given that the presence of a biased juror, like the presence of a biased judge, is a "structural defect in the constitution of the trial mechanism" that defies harmless error analysis, to argue sound trial strategy in support of creating such a structural defect seems brazen at best. We find that no sound trial strategy could support counsel's effective waiver of Petitioner's basic Sixth Amendment right to trial by impartial jury.

Id. at 463 (internal citations and quotation marks omitted). The Hughes Court determined that trial counsel was ineffective, that the conviction should be overturned, and that the petitioner was entitled to a new trial. *Id.* at 463-64.

While this Court is highly deferential to the Sixth Circuit Court of Appeals; this Court also notes the dissenting opinion in Hughes-which was decided by a three-judge panel-by Judge Siler. Relevantly, Judge Siler stated:

{2} The Pennsylvania-specific cases cited by Petitioner deal with review of a trial court's denial of a challenge to excuse jurors for cause on direct appeal. See, *Penn (supra)*, *Stewart (supra)*, and *Commw. v. Golphin*, 161 A.3d 1009 (Pa. Super. Ct. 2016). Here, there was no motion by trial counsel to excuse Juror 400 for cause. In fact, this Court specifically raised the issue regarding Juror 400 to defense counsel and the Assistant District Attorney during a conversation at sidebar. It is not the role of this Court to work as an advocate on behalf of the attorneys.

Unlike the Johnson case; there is no basis to determine whether a strategic decision was made by counsel in this case. The only issue [that] was certified for this panel to answer was whether counsel's failure to strike a juror constituted ineffective assistance. I would not find that this act alone constitutes ineffective assistance of counsel.

...

Because there is no sworn testimony in the record concerning this issue of juror bias and why the juror was not stricken, I think that a remand and order of a new trial in this case is more relief than is justified under the law. I would remand this case to the district court, but for purposes of hearing evidence on the question of why counsel decided not to strike [the juror at issue]. Counsel has never explained why he took this action. I can think of several scenarios in which counsel might decide to keep [the juror at issue] on the panel, even with her answers to the voir dire questions. For instance, [the petitioner may have requested that the juror remain on the jury]. In addition, there may have been something in the background of [the juror] that either [the petitioner] or counsel knew, that is not obvious on the record. If counsel did not strike the juror because [the petitioner] requested it, I would not find ineffective assistance of counsel, unless the defendant was insane, which is not alleged. I do not find that counsel's failure to ask further questions on voir dire or to strike the juror, without counsel's explanation, was objectively unreasonable under the criteria found in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Otherwise, a defendant could "sandbag" the court by insisting that his counsel leave a juror on the panel and then later claim that he told counsel to strike the juror. Therefore, I would remand only for a factual determination of the strategy by counsel in refusing to pursue voir dire or strike [the juror] and then for the court to determine whether that conduct was objectively reasonable under *Strickland*. A new trial is not yet justified under the current status of the record.

Id. at 464-65 (emphasis added).

Additionally, with all due respect to the Sixth Circuit, the logic of its decision in *Hughes* is unclear. The court begins by acknowledging that "[a] juror's express doubt as to her own impartiality on voir dire does not necessarily entail a finding of actual bias," but then goes on to hold that the seating of an impartial juror necessitates a finding of bias, regardless of whether there was any strategic decision by trial counsel to seat such a juror. This Court finds the reasoning by Judge Siler in his dissent to be more persuasive and applicable to the instant case.

Here, trial counsel testified at the PCRA Hearing to two things that are entirely appropriate to consider as to whether he was ineffective for failing to make a motion to strike Juror 400 for cause. First, Attorney Shaffer testified that he had a strategic reason for seating Juror 400. Attorney Shaffer argued that Juror 400 was a teacher, and that there would be no better person to judge a child than a teacher. Arguably, teachers have more experience with children, and so they would be better at determining whether children are lying. This case depended almost entirely on the credibility of children. If the child victims here were making up such stories, a teacher might have a better ability to determine this than a person of a different profession or background.

It is also relevant to this point that Attorney Shaffer has conducted around 250 criminal jury trials. Attorney Shaffer is, by any measure, an experienced criminal trial

attorney, and his professional insight would have given him an ability to determine which prospective jurors might be most favorable to his client and should therefore be seated on the jury. And while this Court certainly questioned such a decision by Attorney Shaffer when it specifically asked him about Juror 400, it is not for this Court to substitute its own judgment with that of trial counsel.

Second, Attorney Shaffer testified at the PCRA Hearing that Mr. Stoffa consented to Juror 400 being seated on the jury. If such were the case, this Court finds the admonition in Judge Siler's dissent to be particularly relevant: a defendant would be able to "sandbag"-or sabotage- a court by insisting that his counsel leave a biased juror on the panel and then later claim that he told his counsel to strike the juror. Although this seems counter-intuitive, a defendant might do this when the evidence against him is so strong that he believes his best chance is to be found guilty, only to be awarded a new trial several years after the incidences occurred when the victims would have to be brought back to testify again about their abuse.

This leads to the next point. As noted earlier, in order to find ineffective assistance of counsel, a petitioner must prove:

- 1) That the underlying claim is of arguable merit;
- 2) That counsel had no reasonable strategic basis for his or her action or inaction; and
- 3) That, but for the errors and omissions of counsel, there is a reasonable probability that the outcome of the proceedings would have been different.

Commw. v. Hull, supra. Here, Petitioner has proven that the underlying claim is of arguable merit-the seating of a juror who said he would "probably" be biased against Petitioner. This could have cost Mr. Stoffa a fair trial, which he is entitled to under the United States and Pennsylvania Constitutions. For the sake of argument, even if it is assumed that Petitioner has proven that Attorney Shaffer had no reasonable strategic basis for his inaction in not making a motion to strike Juror 400, Petitioner must still prove that, but for counsel's error, there is a reasonable probability that the outcome of the proceedings would have been different. This Court finds that Petitioner has failed to meet this third prong of the test.

The evidence against Mr. Stoffa at trial overwhelmingly supported his conviction. There was not just one or two, but there were three separate children who testified that Mr. Stoffa had raped them multiple times. Although these girls were sisters, the oldest one did not really have a relationship with the younger sisters. See, *Criminal Jury Trial Proceedings* at 67. Further, one of Mr. Stoffa's coworkers testified that Mr. Stoffa would frequently come into work on Monday mornings boasting that he "got young pussy" over the weekend. *Id.* at 166. This statement by Mr. Stoffa was referred to as "tantamount to a confession" by Petitioner himself in his direct appeal. See, *Commw. v. Stoffa*,:160 WDA 2018 at 5-6 (Pa. Super. Ct. January 7, 2019) (non-precedential decision) ("The fact that [Mr. Stoffa] virtually admitted his criminal conduct to a coworker is certainly prejudicial to his claim of innocence, but it is not unfairly prejudicial"). Further, Mr. Stoffa would come into work with scratches all over himself, which was additional corroborating evidence that the "young pussy" he was getting was fighting back against him because he was forcing himself on them.

This Court finds that Petitioner has not met his burden of proving ineffective assistance of trial counsel for failing to make a motion to strike Juror 400 for cause. This Court finds that trial counsel had a reasonable basis for keeping such a juror, even if it was not the course that this Court would have chosen. Further, even if trial counsel had made a motion to strike Juror 400, there is not a reasonable probability that the outcome of the trial would have been different.

Petitioner's Second Issue in his PCRA Petition is that trial counsel was ineffective for failing to call character witnesses who would testify as to Petitioner's reputation in the community. "It has long been the law in Pennsylvania that [individuals] on trial for an offense against the criminal law [are] permitted to introduce evidence of [their] good reputation in any respect [that] has 'proper relation to the subject matter' of the charge at issue." *Commw. v. Luther*, 463 A.3d 1073, 1077 (Pa. Super. Ct. 1983). In a case "where intent and credibility are decisive factors leading to either acquittal or conviction, the accused's reputation is of paramount importance." *Id.* at 1078. "[I]nsituations where proving credibility may be critical in persuading a jury of a defendant's guilt or innocence, such as where there are only two direct witnesses to an occurrence, presenting character evidence becomes essential." *Commw. v. Dupert*, 725 A.2d 750, 753 (Pa. 1999).

In establishing whether defense counsel was ineffective for failing to call character witnesses, a petitioner must prove:

- (1) The witnesses existed;
- (2) The witnesses were available to testify for the defense;
- (3) Counsel knew of, or should have known of, the existence of the witnesses;
- (4) The witnesses were willing to testify for the defense; and
- (5) The absence of the testimony of the witnesses was so prejudicial as to have denied the [petitioner] a fair trial.

Commw. v. Medina, 209 A.3d 992, 998 (Pa. Super. Ct. 2019) (citations omitted; singulars changed to plurals).

Here, Mr. Stoffa proved at the PCRA Hearing the first, second, and fourth prongs. The witnesses clearly existed, and they testified they were available and would have been willing to testify for the defense at his trial. With respect to the third prong, Attorney Shaffer testified at the PCRA Hearing that Mr. Stoffa had not provided him with names of potential character witnesses prior to trial. However, based on the decision in *Commw. v. Luther*, *supra*, at 1078-80, this alone is not a reason to not call character witnesses. As such, Attorney Shaffer should have known of the existence of such witnesses, and Mr. Stoffa has satisfied the third prong.

However, Mr. Stoffa has not proven to this Court that the absence of such testimony was so prejudicial as to have denied him a fair trial. First, the witnesses would have testified that Mr. Stoffa had a reputation in the community for being peaceful and law-abiding. However, Mr. Stoffa was accused of raping children—an act that is done under the cover of secrecy. Whether Mr. Stoffa had a reputation for being law-abiding during

the day does not detract from his actions at night.

Second, unlike the cases cited by Petitioner, this is not a case where there was only one or two witnesses and one occurrence. Here, there were three witnesses—all girls, all children—who testified that Mr. Stoffa raped them repeatedly over the course of a period of time. Further, one of Mr. Stoffa's coworkers testified about remarks made by Mr. Stoffa at work that corroborated his actions. Based on the overwhelming evidence against Mr. Stoffa that was presented by the Commonwealth at trial, this Court cannot find that Mr. Stoffa satisfied the fifth prong. This Court does not find Attorney Shaffer's failure to call character witnesses to have been ineffective, because there is no reasonable possibility that their testimony would have changed the outcome of the trial.

Finally, Petitioner claims that trial counsel was ineffective for failing to call witnesses who would have testified that S.H.'s oldest daughter was babysitting for them on New Year's Eve in 2010, and that therefore Mr. Stoffa could not have raped her. This argument fails for three reasons.

First, S.H.'s oldest daughter testified that Mr. Stoffa raped her multiple times, so even if she got one of the dates wrong, there was still testimony that Mr. Stoffa raped her.

Second, S.H.'s two other daughters testified that Mr. Stoffa raped them, so even if Mr. Stoffa was not with the oldest daughter on New Year's Eve in 2010, he still could have been found guilty of raping the other daughters.

Third, and perhaps most importantly, the witnesses now being offered by Petitioner to bolster his alibi would have directly contradicted his own trial testimony. Indeed, Mr. Stoffa admitted at trial that he was with the oldest daughter on New Year's Eve in 2010. See, Criminal Jury Trial Proceedings at 176. Therefore, the testimony of these two witnesses would not have helped Mr. Stoffa, and this claim is without merit.

CONCLUSION

For the foregoing reasons, Petitioner's PCRA Petition is DENIED.

ORDER

AND NOW, this 14th day of August, 2020, in consideration of the PCRA Petition filed by Petitioner, and after a Hearing on the Petition, it is hereby ORDERED and DIRECTED that the Petition is DENIED. Pursuant to Pa.R.Crim.P. 908(E), Petitioner is hereby advised that he has the right to appeal this Order, and that, pursuant to Pa.R.A.P. 903(a), a notice of appeal must be filed within 30 days from today.

Further, pursuant to Pa.R.Crim.P. 908(F), a copy of this Order shall be sent to Petitioner by certified mail, return receipt requested.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

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