

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JUSTIN ANTHONY GLOVER, JR.

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 285 MDA 2013

Appeal from the PCRA Order January 30, 2013
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0005101-2006

BEFORE: BENDER, P.J., PANELLA and MUSMANNO, JJ.

MEMORANDUM BY PANELLA, J.:

FILED MARCH 04, 2014

Appellant, Justin Anthony Glover, Jr., appeals from the order entered on January 30, 2013, in the Court of Common Pleas of Dauphin County that dismissed his petition for relief filed pursuant to the Post-Conviction Relief Act (PCRA), 42 PA.CON.S.STAT.ANN. §§ 9541-9546. We affirm.

Following a jury trial, Glover, along with his co-defendant, was convicted of first-degree murder, criminal conspiracy – murder and abuse of corpse in connection with the death of Wesley Person. This Court previously summarized the factual background of the case as follows:

During late 2005, [Glover], co-defendant Lawrence Murrell and the victim, Wesley (“Sonny”) Person, were involved in a loan scheme whereby they, with the participation of a Karyn Jackson and others, fraudulently applied for loans with the Pennsylvania State Employees Credit Union (“PSECU”). With no intention to repay the loans, Jackson would receive and deposit loan checks, share the proceeds, and default on the loans.

In December, 2005, having obtained a fraudulent loan with [Glover], Jackson withdrew \$20,000 in separate transactions. In initial transaction in early December, Jackson withdrew \$9,000 and gave it to the victim, Person, although she filled out the loan application with [Glover]. [Glover] was not present when she withdrew \$9,000 of the loan proceeds. Within a few days of Christmas, 2005, Jackson withdrew another \$6,000 in cash and gave the majority of it to Person. In both transaction, Jackson kept a few hundred dollars for herself. When she last saw the victim on December 23, 2005, he had over \$8,000 cash with him.

On that day, December 23, 2005, Steven Aikens, the victim's cousin, and another friend, known as Abdul McCauley, "Koppo[,]," went to Sneaker Villa in Harrisburg. Koppo drove, and dropped off the other two to shop. Person bought two pair of sneaker[s], two coats and a hat. Person became impatient when he finished shopping, and wanted to be picked up. Aikens called [Glover] to ask for a ride; [Glover] inquired as to what they were doing. Aikens replied that Person was shopping. [Glover] responded that he was not available to pick them up. Person asked Aikens to call Koppo to pick them up. While waiting for their ride, Aikens and the victim ordered pizza at a nearby pizza shop.

Within a few minutes McCauley arrived and Person put his packages in the trunk of McCauley's car. Unexpectedly, Murrell and [Glover] pulled up in an Accura [sic] Legend, and asked for Person. McCauley and Murrell spoke for a few minutes about real estate; McCauley said he had a cousin interested in real estate, but Murrell told him not to call that evening, that he "would be busy". Aikens got into the car with Murrell. Aikens attempted to engage Murrell in conversation, but Murrell gave him an "evil look." [Glover] and the victim were outside the car standing near the trunk. Although he had not planned to do so, Person told Aikens that he was going to go to Steelton, and needed to retrieve his things from McCauley's trunk. Aikens asked the victim if he could have \$20. The victim took out a "wad" of money consisting of a 2 ½ to 3 inch roll of \$50 and \$100 bills, and gave Aikens \$50. Person, then took his bags, and got into the car with Murrell and [Glover], with Murrell driving. Neither McCauley nor Aikens saw the victim again.

Later that afternoon, Aikens expected Person to be at home, but he was not. Aikens continued to call Person the rest of the day,

but Person did not answer. Nor had the victim's girlfriend heard from him. In checking Person's house, they saw that the items Person purchased that day had been dropped off, as if hurriedly thrown down. Aikens did not see or hear from the victim the [sic] for the remainder of the day.

The next evening, December 24, 2005, while out at a club, Aikens saw [Glover]. Aikens observed a small split on [Glover's] lip, which [Glover] explained as a cold sore.

Having not seen Person since December 23rd by December 25th, Aikens became very concerned, and believed that something must have happened to Person.

In the early morning hours of December 24, 2005, volunteer firefighter Ashton Chilcoat responded to a call reporting a brush fire along Route 83, between Middletown and Mount Carmel, Maryland. Approaching the area, Mr. Chilcoat saw a car sitting on the side of the road, and a couple standing nearby. Chilcoat could see small flames down a hill off a roadway which he believed to be a tree stump on fire. He told the couple they could leave, and went down the hill, intending to stomp out the small fire. When he walked closer, he realized that the burning form was a body. Police and firefighters arrived. Firefighters doused the flames with a small extinguisher so as not to disturb the scene.

Forensic Technician Kathi Michael, with the Baltimore County Police Department was called to the scene to sketch the area and collect evidence to be taken to the lab for analysis. Among the items of evidence retrieved were remnants of drywall, drywall screws, plastic and other construction debris.

The body was transported to the Medical Examiner's office where forensic examination, including fingerprinting, identified the victim as Wesley Person on December 28, 2005. The autopsy revealed that the victim sustained multiple gunshot wounds. A gunshot wound sustained to the head was sufficient to cause death within minutes. The examination revealed that the fire was started after the victim's death, in that there was no soot in the airways, and the carbon monoxide level was normal.

After identifying the victim as Person, on December 28, 2005, police contacted Person's girlfriend and friends who had responded to a sketch of Person released to the media. Several of those friends gathered as police came to Steelton to make

notification of the death. [Glover] was one of those present when police arrived. At that meeting, McCauley told police that he learned of the bank scheme involving Person. [Glover] appeared nervous and agitated and left.

Police conducted an in depth cellular telephone investigation. Records of phone numbers attributed to Murrell and [Glover] were merged to indicate the timing of phone use, and the location of towers utilized during the calls. The merged records depicted what phones made calls at certain locations at various times. During the period in question, phone calls between [Glover] and Murrell's phones began at approximately noon on December 23, 2005 in Harrisburg and continued through the afternoon into December 24th. The sequence and timing of signals received at towers demonstrated a pattern moving in a southern direction along Route 83 from Harrisburg to Maryland.

Police further investigated by focusing upon a house in Harrisburg being renovated by Murrell [sic]. Lawrence Murrell owned the house, located at 441 South 13th Street in Harrisburg. From that vacant house, police collected plastic from a basement wall, insulation, a piece of ductwork, drywall screws and debris from the basement. Inspection of the house revealed that the basement floors and walls had been freshly painted. A heating unit was wrapped in clear plastic with duct tape. Crime technicians at the scene "luminaled" the basement. Using this method, crime lab technicians applied a liquid spray to walls and ductwork. When illuminated in the dark, blood evidence would reflect a florescent- looking light. Using this method, the ductwork in the basement at 441 South 13th Street demonstrated a strong positive reaction of evidence of blood.

Cassandra Burke, a forensic chemist with Baltimore County Police Department conducted laboratory examination of items of evidence obtained in the investigation. Ms. Burke analyzed materials recovered from the scene where Person's body was found, and compared those with materials obtained from Murrell's house at 441 South 13th Street in Harrisburg. Paint chips found near the body and recovered from 441 South 13th Street were chemically, elementally and microscopically consistent; "consistent" meaning originating from a common source. The drywall recovered from the body scene and 441 South 13th Street had consistent single and multiple layers of paint. Ms. Burke also tested chunks of plaster present in samples from the body location and from the 13th Street location. The

plaster from both locations was a type of animal hair plaster used in construction from the 1930's and 1940's. Plaster from the scene of the body and 441 South 13th were microscopically, chemically and elementally consistent.

In addition, Baltimore County Forensic Biologist Laura Pawlowski examined evidence obtained in the homicide investigation of Wesley Person. Ms. Pawlowski conducted samplings of stains on ductwork submitted by police to determine if the stains were blood; [t]hey were. Ms. Pawlowski sent those blood samples, samples of Wesley Person's blood obtained during the autopsy, and cell samples from a lighter, to a technology group, Bode Technology, for specialized analysis.

Julia Kowalewski, from Bode Technology performed DNA analysis of the forensic evidence samples. Based upon the DNA profile, the blood sample from Wesley Person matched the sample from the ductwork.

Commonwealth v. Glover, 1033 MDA 2009 (Pa. Super., filed March 3, 2010) (unpublished memorandum) (quoting Trial Court Opinion, 11/19/09, at 2-7).

The trial court sentenced Glover to a term of life imprisonment. On direct appeal, this Court affirmed Glover's judgment of sentence. ***See id.*** The Pennsylvania Supreme Court denied his petition for allowance of appeal on August 3, 2010. ***See Commonwealth v. Glover***, 607 Pa. 690, A.3d 670 (2010) (Table). Glover then filed a timely PCRA petition. Proceeding under Pa.R.Crim.P. 907, the PCRA court issued notice of its intent to dismiss the petition. Glover filed a response to that notice. Thereafter, on January 29, 2013, the PCRA court dismissed Glover's petition without a hearing.

Glover filed this timely appeal in which he contends the court erred by dismissing his petition without holding a hearing on his various PCRA claims,

each of which involve allegations that his trial counsel was ineffective. **See**, Appellant's Brief, at 4.

Our standard of review of a PCRA court's denial of a petition for post-conviction relief is well settled. We must examine whether the record supports the PCRA court's determination, and whether the PCRA court's determination is free of legal error. **See Commonwealth v. Hall**, 867 A.2d 619, 628 (Pa. Super. 2005). The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record. **See Commonwealth v. Carr**, 768 A.2d 1164, 1166 (Pa. Super. 2001). Our scope of review is limited by the parameters of the PCRA. **See Commonwealth v. Heilman**, 867 A.2d 542, 544 (Pa. Super. 2005).

A petitioner is not entitled to a PCRA hearing as a matter of right; the PCRA court can decline to hold a hearing if there is no genuine issue concerning any material fact, the petitioner is not entitled to PCRA relief, and no purpose would be served by any further proceedings. **See Commonwealth v. Rios**, 591 Pa. 583, 618, 920 A.2d 790, 810 (2007); Pa.R.Crim.P. 907.

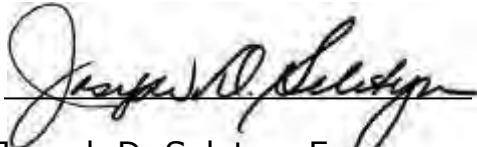
To establish ineffectiveness of counsel, "a PCRA petitioner must show the underlying claim has arguable merit, counsel's actions lacked any reasonable basis, and counsel's actions prejudiced the petitioner." **Commonwealth v. Jones**, 71 A.3d 1061, 1063 (Pa. Super. 2013) (citation omitted). "A failure to satisfy any prong of the test for ineffectiveness will

require rejection of the claim.” ***Commonwealth v. Morrison***, 878 A.2d 102, 105 (Pa. Super. 2005) (citation omitted).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Todd A. Hoover, we conclude Glover is not entitled to PCRA relief. Judge Hoover’s opinion comprehensively discusses and properly disposes of all the ineffectiveness claims raised by Glover. As we are in agreement with the PCRA court that Glover’s issues lack arguable merit, we affirm the order dismissing his PCRA petition without an evidentiary hearing on the basis of the PCRA court’s opinion. **See** Corrected Memorandum Opinion and Order, 1/3/13, at 1-22.

Order affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/4/2014

COMMONWEALTH

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

v.

: NO. 5101 CR 2006

JUSTIN GLOVER, JR.

: CHARGES: Murder; Criminal Conspiracy to
: Commit Murder; Abuse of a Corpse

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TRIAL COURT OPINION

The within appeal follows the denial of the request of Justin Glover, ("Defendant"), for relief pursuant to the Post Conviction Relief Act.

By our Memorandum Opinion and Order filed January 7, 2013, a copy of which we attach hereto for ease of reference, we set forth the bases of conclusion that no basis for relief exists, and provided Defendant of notice of intent to dismiss. Defendant filed Objections to Notice of Intent to Dismiss on January 28, 2013. We reviewed Defendant's Objections and concluded that all issues raised were fully addressed in our Memorandum Opinion. We entered a Final Order dismissing PCRA on January 29, 2013.

The docket reflects that Defendant filed a Notice of Appeal on February 11, 2013. However, Defendant provided no service of the Notice of Appeal upon the trial court. Therefore, we did not issue a 1925 (b) Order. It is anticipated that our Memorandum Opinion encompasses issues Defendant will raise on appeal.

For all of the reasons set forth in our Memorandum Opinion, the Final Order dismissing PCRA should be affirmed.

BY THE COURT:


TODD A. HOOVER
PRESIDENT JUDGE

April 4, 2013

Distribution:

Jason McMurray, Esq., Office of the District Attorney

**Michael A. Trimmer, Esq.,
Jason B. Duncan, Esq.,
8 N. Baltimore Street, Dillsburg, PA 17019**

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	:	DAUPHIN COUNTY, PENNSYLVANIA
	:	
v.	:	NO. 5101 CR 2006
	:	
JUSTIN GLOVER, JR.	:	CHARGES: Murder; Criminal Conspiracy to
	:	Commit Murder; Abuse of a Corpse
	:	

(CORRECTED)¹
MEMORANDUM OPINION AND ORDER

Before the court is the Petition for Relief Pursuant to the Post Conviction Relief Act of Justin A. Glover, (hereinafter, "Petitioner"). For the reasons set forth herein, we find that the Petition lacks merit and apprise Petitioner of our INTENT TO DISMISS PCRA.

PROCEDURAL BACKGROUND

Following a trial conducted February 11, 2008 through February 15, 2008, a jury found Justin Glover ("Defendant") guilty of Murder, Criminal Conspiracy- Murder and Abuse of Corpse. On June 18, 2008, the trial court sentenced Defendant to: Count 1, Murder- life imprisonment; Count 2, Criminal Conspiracy, not less than 10 nor more than 20 years imprisonment, to run concurrent with Count 1; Count 3, Abuse of Corpse, not less than 1 nor more than 2 years imprisonment, to run consecutive with Count 2.

Trial counsel filed Post-Sentence Motions on June 27, 2008. The court directed counsel to file a brief in support thereof. Defendant filed a *pro se* Notice of Appeal on November 13, 2008. Counsel failed to comply with the directive to file a brief in support of post-trial motions. The court removed trial counsel, appointed appellate counsel, and directed that counsel file a Concise Statement of Matters Complained of on Appeal. Upon the request of appellate counsel, we granted an extension of time within which to file a Brief in Support of Post Sentence Motion.

¹ The Corrected document makes changes only to typographical errors.

Counsel filed a Brief on February 27, 2009, to which the Commonwealth filed a Brief in Opposition.

We denied Defendant's Post Sentence Motions by Order of April 8, 2009. Defendant filed a Petition for Reinstatement of Direct Appellate Rights, which we granted on June 5, 2009. Defendant filed a Notice of Appeal on June 10, 2009, and a timely Concise Statement of Errors Complained of on Appeal.

The Superior Court affirmed the judgment of sentence on March 3, 2010. The Supreme Court of Pennsylvania denied allocatur on August 3, 2010.

Petitioner filed a timely first Petition under the Post Conviction Relief Act. The court appointed PCRA counsel on April 5, 2011, who filed a counseled Supplement and Memorandum of Law in Support of Petitioner's First Petition for PCRA Relief. Pursuant to the Court's Order of October 18, 2011, the Commonwealth filed an Answer and Brief to Defendant's Petition Pursuant to the Post Conviction Relief Act. The Petitioner filed a Response Thereto on December 16, 2011.

FACTUAL BACKGROUND

During late 2005, Justin Glover, co-Defendant Lawrence Murrell and the victim, Wesley ("Sonny") Person, were involved in a loan scheme whereby they, with the participation of a Karyn Jackson and others, fraudulently applied for loans with Pennsylvania State Employees Credit Union ("PSECU"). (Notes of Testimony, Trial, February 1, 2008 through February 15, 2008, pp. 769-789; 813-815)(hereinafter, "N.T.") With no intention to repay the loans, Jackson would receive and deposit loan checks, share the proceeds, and default on the loans. (N.T. pp. 671-682; 707-708)

In December, 2005, having obtained a fraudulent loan with Glover, Jackson withdrew \$20,000 in separate transactions. (N.T. pp. 679-682) In the initial transaction in early December, Jackson withdrew \$9,000, and gave it to the victim, Person, although she filled out the loan application with Glover. (N.T. p. 688-689) Glover was not present when she withdrew \$9,000 of the loan proceeds. (N.T. p. 690; N.T. p. 708) Within a few days of Christmas, 2005, Jackson withdrew another \$6,000 in cash and gave the majority of it to Person. (N.T. p. 691) In both transactions, Jackson kept a few hundred dollars for herself. (N.T. p. 707) When Jackson last saw the victim on December 23, 2005, he had over \$8,000 cash with him. (N.T. p. 711)

On that day, December 23, 2005, Steven Aikens, the victim's cousin, and another friend, known as Abdul McCauley, "Koppo" went to Sneaker Villa in Harrisburg. (N.T. p. 826) Koppo drove, and dropped off the other two to shop. Person bought two pairs of sneaker, two coats and a hat. (N.T. p. 827) Person became impatient when he finished shopping, and wanted to be picked up. Aikens called Justin Glover to ask for a ride; Glover inquired as to what they were doing. (N.T. p. 828) Aikens replied that Person was shopping. *Id.* Glover responded that he was not available to pick them up. *Id.* Person asked Aikens to call Koppo to pick them up. (N.T. p.828). While waiting for their ride, Aikens and the victim ordered pizza at a nearby pizza shop. (N.T. p. 829).

Within a few minutes McCauley arrived and Person put his packages in the trunk of McCauley's car. Unexpectedly, Murrell and Glover pulled up in an Accura Legend, and asked for Person *Id.*, (N.T. p. 165) McCauley and Murrell spoke for a few minutes about real estate; McCauley said he had a cousin interested in real estate, but Murrell told him not to call that evening, that he "would be busy". (N.T. p. 167) Aikens got into the car with Murrell. (N.T. p. 831) Aikens attempted to engage Murrell in conversation, but Murrell gave him an "evil look".

(N.T. pp. 830-831) Glover and the victim were outside the car standing near the trunk. (N.T. p. 831) Although he had not planned to do so, Person told Aikens that he was going to go to Steelton, and needed to retrieve his things from McCauley's trunk. *Id.* Aikens asked the victim if he could have \$20. *Id.* The victim took out a "wad" of money consisting of a 2 ½ to 3 inch roll of \$50 and \$100 bills, and gave Aikens \$50. (N.T. p. 832; N.T. p. 835) Person, then took his bags, and got into the car with Murrell and Glover, with Murrell driving. (N.T. p. 836) Neither McCauley nor Aikens saw the victim again. (N.T. p. 168)

Later that afternoon, Aikens expected Person to be at home, but he was not. (N.T. p. 837) Aikens continued to call Person the rest of the day, but Person did not answer. *Id.* Nor had the victim's girlfriend heard from him. In checking Person's house, they saw that the items Person purchased that day had been dropped off, as if hurriedly thrown down. Aikens did not see or hear from the victim for the remainder of the day. (N.T. p. 840)

The next evening, December 24, 2005, while out at a club, Aikens saw Glover. (N.T. p. 841) Aikens observed a small split on Glover's lip, which Glover explained as a cold sore. (N.T. p. 842)

Having not seen Person since December 23rd, by December 25th, Aikens became very concerned, and believed that something must have happened to Person. (N.T. 842-843).

In the early morning hours of December 24, 2005, volunteer firefighter Ashton Chilcoat responded to a call reporting a brush fire along Route 83, between Middletown and Mount Carmel, Maryland. (N.T. p. 296-297) Approaching the area, Mr. Chilcoat saw a car sitting on the side of the road, and a couple standing nearby. (N.T. p. 298) Chilcoat could see small flames down a hill off the roadway, which he believed to be a tree stump on fire. (N.T. 298) He told the

couple they could leave, and went down the hill, intending to stomp out the small fire. (N.T. p. 298-299) When he walked closer, he realized that the burning form was a body. (N.T. p. 299) Police and firefighters arrived. Firefighters doused the flames with a small extinguisher so as not to disturb the scene. (N.T. p. 300)

Forensic Technician Kathi Michael, with the Baltimore County Police Department was called to the scene to sketch the area and collect evidence to be taken to the lab for analysis. (N.T. p. 305-307) Among the items of evidence retrieved were remnants of drywall, drywall screws, plastic and other construction debris. (N.T. p. 322; N.T. p. 369)

The body was transported to the Medical Examiner's office where forensic examination, including fingerprinting, identified the victim as Wesley Person on December 28, 2005. (N.T. p. 370) The autopsy revealed that the victim sustained multiple gunshot wounds. A gunshot wound sustained to the head was sufficient to cause death within minutes. (N.T. pp. 499-500) The examination revealed that the fire was started after the victim's death, in that there was no soot in the airways, and the carbon monoxide level was normal. (N.T. p. 501)

After identifying the victim as Person, on December 28, 2005, police contacted Person's girlfriend and friends who had responded to a sketch of Person released to the media. (N.T. p. 372) Several of those friends gathered as police came to Steelton to make notification of the death. *Id.* Glover was one of those present when police arrived. (N.T. p. 373) At that meeting, McCauley told police that he learned of the bank scheme involving Person. (N.T. p. 375) Glover appeared nervous and agitated and left. (N.T. p. 388; N.T. p. 392)

Police conducted an in depth cellular telephone investigation. (N.T. p. 552) Records of phone numbers attributed to Murrell and Glover were merged to indicate the timing of phone use, and the location of towers utilized during the calls. (N.T. pp. 555-556) The merged records depicted

what phones made calls at certain locations at various times. (N.T. p. 557) During the period in question, phone calls between Glover and Murrell's phones began at approximately noon on December 23, 2005 in Harrisburg and continued through the afternoon into December 24th. (N.T. p. 561-565) The sequence and timing of signals received at towers demonstrated a pattern moving in a southern direction along Route 83 from Harrisburg to Maryland. . (N.T. pp. 75-81; pp. 556-581)

Police further investigated by focusing upon a house in Harrisburg being renovated by Murrell. (N.T. p. 376) Lawrence Murrell owned the house, located at 441 South 13th Street in Harrisburg. (N.T. p. 378) From that vacant house, police collected plastic from a basement wall, insulation, a piece of ductwork, drywall screws and debris from the basement. Inspection of the house revealed that the basement floors and walls had been freshly painted. (N.T. p. 417) A heating unit was wrapped in clear plastic with duct tape. *Id.* Crime technicians at the scene "luminated" the basement. (N.T. p. 420) Using this method, crime lab technicians applied a liquid spray to walls and ductwork. When illuminated in the dark, blood evidence would reflect a florescent-looking light. (N.T. p. 427) Using this method, the ductwork in the basement at 441 South 13th Street demonstrated a strong positive reaction of evidence of blood. (N.T. p. 428)

Cassandra Burke, a forensic chemist with the Baltimore County Police Department conducted laboratory examination of items of evidence obtained in the investigation. (N.T. p. 458) Ms. Burke analyzed materials recovered from the scene where Person's body was found, and compared those with materials obtained from Murrell's house at 441 South 13th Street in Harrisburg. (N.T. p. 458-460) Paint chips found near the body and recovered from 441 South 13th Street were chemically, elementally and microscopically consistent; "consistent" meaning originating from a common source. (N.T. p. 461; N.T. p. 483) The drywall recovered from the

body scene and 441 South 13th Street had consistent single and multiple layers of paint. (N.T. p. 473) Ms. Burke also tested chunks of plaster present in samples from the body location and from the 13th Street location. (N.T. p. 470) The plaster from both locations was a type of animal hair plaster used in construction from the 1930's and 1940's. (N.T. pp. 470-471) Plaster from the scene of the body and 441 South 13th Street were microscopically, chemically and elementally consistent. (N.T. p. 471)

In addition, Baltimore County Forensic Biologist Laura Pawlowski examined evidence obtained in the homicide investigation of Wesley Person. (N.T. p. 521) Ms. Pawlowski conducted samplings of stains on ductwork submitted by police to determine if the stains were blood; They were. (N.T. pp. 522-524) Ms. Pawlowski sent those blood samples, samples of Wesley Person's blood obtained during the autopsy, and cell samples from a lighter, to a technology group, Bode Technology, for specialized analysis. (N.T. pp. 523-525)

Julie Kowalewski, from Bode Technology performed DNA analysis of the forensic evidence samples. (N.T. pp. 530) Based upon the DNA profile, the blood sample from Wesley Person matched the sample from the ductwork. (N.T. pp. 536-537)

DISCUSSION

PETITIONER HAS FAILED TO DEMONSTRATE ENTITLEMENT TO POST CONVICTION RELIEF.

We find that Petitioner has failed to demonstrate entitlement to post conviction relief based upon any of the issues presented. In order to demonstrate entitlement to post-conviction relief, the petitioner must establish that the truth determining process was so undermined by error that no reliable adjudication of guilt or innocence could have taken place. 42 Pa.C.S.A. § 9543(a)(ii).

Further, where the petitioner claims that the error occurred due to ineffectiveness of counsel, counsel is presumed effective and petitioner has the burden of proving ineffective assistance.

Commonwealth v. Speight, 544 PA. 451, 677 A.2d 317 (1996).

Under *Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973 (1987), the petitioner must demonstrate that the claim of ineffectiveness has arguable merit, that defense counsel's act was not reasonably designed to advance the interests of the defendant, and that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. Where the petitioner fails to prove prejudice, thereby failing to establish that the result of the proceedings would have been different, the court may reject the claim of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 697 (1984); *Commonwealth v. Travaglia*, 541 Pa. 108, 661 A.2d 352, 357 (1995). In applying this test for claim of ineffectiveness, the Pennsylvania Supreme Court has reminded that "the test is *not* whether other alternatives were more reasonable, employing a hindsight evaluation of the record. Although [the Court must weigh] the alternatives, the balance tips in favor of finding effective assistance as soon as it is determined that trial counsel's decisions had any reasonable basis." *Commonwealth v. Peterkin*, 511 Pa. 299, 513 A.2d 373, 383 (1986), citing, *Commonwealth ex rel. Washington, v. Maroney*, 427 Pa. 599, 604-5, 235 A.2d 349, 352-53 (1967) (Emphasis in original; footnote admitted)

Further, while Petitioner asserts various claims throughout his Memorandum, having failed to state individual bases for relief, Petitioner cannot state a claim that alleged ineffectiveness created cumulative error which warrants relief. See, *Commonwealth v. Wright*, 599 PA. 270, 961 A.2d 119 (Where a claimant has failed to prove prejudice as a result of any individual errors, he cannot prevail on a cumulative effect claim unless he demonstrates how the particular cumulation requires a different analysis.) citing, *Commonwealth v. Michael*, 562 Pa. 356, 755

A.2d 1274, 1281(2000)(“There can be no cumulative effect of prejudice when there was no harm in the first instance.”)

On the basis of these standards, our independent review of Petitioner’s claims, and the record herein, this court is convinced that the Petitioner is unable to establish entitlement to post conviction relief.

1. NO INEFFECTIVENESS OCCURRED WHERE TRIAL COUNSEL REFRAINED FROM REQUESTING A CORRUPT SOURCE CHARGE

No basis existed for the request for a jury instruction on corrupt source where such charge did not apply, and therefore no ineffectiveness occurred.

The cases cited by Petitioner fail to support Petitioner’s argument that counsel should have requested a corrupt source charge. “It is well established that, in any case in which the accomplice implicates the defendant, the trial court should instruct the jury that the accomplice is a corrupt and polluted source whose testimony should be considered with caution.” See, *Commonwealth v. Chmiel*, 536 Pa. 244, 251, 639 A.2d 9, 13 (1994) The charge is indicated in cases in which the evidence is sufficient to present a jury question with respect to whether the Commonwealth’s witness is an accomplice. *Id.*, See also, *Commonwealth v. Spence*, 534 Pa. 233, 247-48, 627 A.2d 1176, 1183 (1993) Such jury question is presented when the accused could be indicated for the crime *for which the accused is charged*. *Commonwealth v. Sisak*, 436 Pa. 262, 268 259 A.2d 428, 431 (1969) (emphasis added)

Here, even if participants in the fraudulent bank scheme, no physical or circumstantial evidence linked Jackson, McCauley and Aikens to the murder, conspiracy to commit murder and abuse of a corpse, for which Petitioner was on trial. Accordingly, no ineffectiveness occurred in refraining from requesting a corrupt source charge.

2. NO INEFFECTIVENESS OCCURRED WHERE THE COURT PROVIDED A CAUTIONARY INSTRUCTION REGARDING DEFENDANT'S POSSESSION OF A HANDGUN AND NO BASIS EXISTED FOR GRANT OF A MISTRIAL

The Commonwealth witness McCauley testified, in response to the district attorney's question, that he was aware of Justin Glover having a firearm. (N.T. p. 193) The witness further responded, "He showed me. He carried it around everywhere he went and drove around with it, got into altercations with the gun." *Id.* Glover's counsel objected to the second response, regarding altercations, which objection the court sustained. At sidebar, Glover's counsel stated to the court that he did not object to testimony that Glover was seen with a firearm, since Glover had a license to carry a concealed weapon. (N.T. p. 194) Rather, Glover's counsel objected and sought a mistrial in response to the testimony that Glover had prior altercations with the firearm. *Id.*

Petitioner's claim that he suffered prejudice because there was no "immediate curative instruction" lacks merit. After considering the arguments of counsel, the court promptly provided a curative instruction, and properly denied the request for mistrial. (N.T. pp. 197-198) The court instructed the jury to disregard the comment, and not consider it as evidence, as follows:

THE COURT: Ladies and gentlemen of the jury, you heard testimony that Mr. Glover carried a firearm. I want to state for the record, and the parties stipulate, that Mr. Glover has a license to carry a firearm as well.

You also heard some testimony about altercations with a firearm. That is of no issue or no matter here. Really, put it of your mind in terms of it. I don't want you to sit there and think he must be—he had any altercations and somehow that has anything to do with this case or he is a bad person because he had altercations. Absolutely not. It's irrelevant to this proceeding.

The issue is simply he had a firearm and a license to carry a firearm. I would ask you to put that out of your mind and keep it out of your mind for the rest of the case.

(N.T. pp. 197-198)

Where the court provides a cautionary instruction to the jury in reference to a request for a mistrial, the law presumes that the jury will follow the trial court's instruction. *Commonwealth v. Parker*, 957 A.2d at 311, 319 (2008) citing *Commonwealth v. Brown*, 786 A.2d 961, 971 (Pa. 2001) cert denied 537 U.S. 1187(2003)

Further, no harm occurred when, at a later point in the proceedings, the jury having received the court's instruction, the district attorney asked Commonwealth witness Kari Cobb, Petitioner's girlfriend, if she recalled seeing Petitioner with a gun. When she responded that she did not recall, the district attorney refreshed Cobb's recollection with grand jury testimony. Ms. Cobb responded that she recalled that Petitioner had a gun, but did not know if he had one in December 2005, the time frame at issue. Because the court had earlier instructed the jury that Petitioner had a license to carry a firearm, and to draw therefrom no improper inferences, Petitioner suffered no prejudice and therefore no ineffectiveness occurred.

3. PETITIONER PREVIOUSLY LITIGATED THE CLAIM OF ADMISSIBILITY OF THE ALLEGED STATEMENT OF KEISHA WALKER.

The issue of inadmissibility of the statement of Keisha Walker has been fully litigated. On direct appeal, the Superior Court affirmed and adopted the trial court's reasoning that the statement was properly excluded.

At trial, Petitioner's counsel sought to elicit testimony from Commonwealth witness Stephen Aiken that he heard the victim's girlfriend, Walker, argue with the victim and state, "You burned me, that's why you're burning. You see this bump on my lip". (N.T. pp. 903-904) The trial court properly sustained the Commonwealth's objection, and precluded the statement as irrelevant to a suggestion of a motive, or as exculpatory evidence. (N.T. p. 904)

Petitioner's instant claim as to the trial court's ruling seeks to renew that argument by restyling it: namely, the testimony would have been rendered admissible had trial counsel posed the question differently. "A Petitioner cannot obtain post-conviction review of claims previously litigated on appeal by alleging ineffectiveness and presenting new theories of relief to support previously litigated claims." *Commonwealth v. Beasley*, 678 A.2d 773, 778 (PA. 1996) In whatever manner asked, the court would have properly excluded the question which sought to elicit the inadmissible statement. The Superior Court has affirmed the trial court's reasoning that the statement constituted an improper and irrelevant suggestion of a purported motive. (*See*, Memorandum Opinion of the Superior Court, March 3, 2010, pp. 8-9)

4. NO INEFFECTIVENESS OCCURRED IN TRIAL COUNSEL'S REFRAINING FROM OBJECTING TO PROPERLY AUTHENTICATED PHONE RECORDS.

No ineffectiveness occurred related to the admission of testimony as to the pattern of cell phone signals following the disappearance of the victim and discovery of his body in Maryland.

The court admitted Commonwealth Exhibit No 1, a stipulated business record maintained by Sprint Nextel with respect to cellular telephone number 717-421-0786, for the period of December 1, 2005 through December 31, 2005. (N.T. pp. 67-68) The records, presented through the testimony of Mohamed Bennani, an electrical engineer, and expert in the area of frequency engineering and cellular towers, indicated that cellular towers along Interstate Route 83 toward

northern Maryland, where victim's remains were found, registered signals from a series of three calls from the above number. (N.T. pp. 67-80) The Commonwealth offered the records not for the purpose of identifying the callers, but to demonstrate the location of signals from those numbers at particular locations. (N.T. p. 80) Through other witnesses, the Commonwealth offered evidence of the users of those phones.

The Sprint Nextel witness provided proper foundation for relevant facts and conclusions regarding the pattern of signals from specific phone numbers. The court would have properly overruled objection, where this witness did not seek to identify the identity of person making the calls.

Petitioner's assertion as to impropriety of a search warrant based upon information provided by Abdul McCauley, described as "deliberate fabrication" constitutes argument as to the credibility of McCauley, which trial counsel fully explored on cross-examination. (N.T. pp. 202-241)

5. NO INEFFECTIVENESS OCCURRED IN TRIAL COUNSEL'S REFRAINING FROM OBJECTING TO PROPERLY ADMITTED EXPERT TESTIMONY.

Petitioner fails to identify any basis upon which trial counsel should have challenged evidence of phone records under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2788, 125 L.Ed 2d 469(1993). Petitioner's arguments regarding the expert's conclusions address the weight to be afforded the testimony by the jury, rather than its admissibility.

First, the *Daubert* principle does not apply in Pennsylvania. The Supreme Court of Pennsylvania adopted *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) rather than *Daubert* as the standard governing admission of scientific evidence. See, *Commonwealth v. Topa*, 471 Pa. 223, 369 A.2d 1277 and *Grady v. Frito-Lay*, 576 PA. 546 (2003). Under *Frye*, novel

scientific evidence is admissible if the methodology that underlies the evidence has general acceptance in the scientific community.

Second, Petitioner's challenges relate not to the methodology underlying the evidence, but the conclusions reached by the expert witness. As cited above, Cassandra Burke, a forensic chemist with the Baltimore County Police Department conducted a laboratory examination of items of evidence obtained in the investigation. (N.T. p. 458). Ms. Burke analyzed materials recovered from the scene where Person's body was found, and compared those with materials obtained from Murrell's house at 441 South 13th Street in Harrisburg. (N.T. pp. 458-460). Paint chips found near the body and recovered from 441 South 13th Street were chemically, elementally and microscopically consistent with each other, ("consistent" meaning originating from a common source.) (N.T. p. 461; N.T. p. 483). The drywall recovered from the body scene and 441 South 13th Street had consistent single and multiple layers of paint. (N.T. p. 473). Ms. Burke also tested chunks of plaster present in samples from the body location and from the 13th Street location. (N.T. p. 470). The plaster from both locations was a type of animal hair plaster used in construction from the 1930's and 1940's. (N.T. pp. 470-471). Plaster from the scene of the body and 441 South 13th Street were microscopically, chemically and elementally consistent with each other. (N.T. p. 471).

Trial counsel vigorously cross examined the expert on the conclusions reached. (N.T. pp. 474-457) No ineffectiveness occurred in trial counsel's refraining from challenging the underlying scientific methodology.

6. NO INEFFECTIVENESS OCCURRED WHERE SUFFICIENT EVIDENCE SUSTAINED THE VERDICT.

The Commonwealth presented sufficient evidence to prove Petitioner guilty of each crime charged and therefore no ineffectiveness occurred in appellate counsel's assertion of a weight of evidence claim, rather than an insufficiency claim.

Sufficient evidence of the record supports the jury's verdicts of guilty on charges of Murder, Conspiracy (Murder) and Abuse of Corpse. It is beyond purview that, "in reviewing an insufficiency of evidence claim, the Superior Court must view all the evidence admitted at trial, together with all reasonable inferences drawn from the evidence, in a light most favorable to the Commonwealth, as the verdict winner and decide whether the trier of fact could have found, beyond a reasonable doubt, that each element of the offense was supported by those facts and inferences." *Commonwealth v. Johnson*, 556 Pa. 216, 223, 727 A.2d 1089, 1092 (1999), *cert. denied*, 528 U.S. 1163, 120 S.Ct. 1180, 145 L.Ed.1087 (2000).

Further, circumstantial evidence may prove guilt beyond a reasonable doubt. *See, Commonwealth v. Stanley*, 453 Pa. 467, 469, 309 A.2d 408 (1973) (Every essential element of a crime may be proved beyond a reasonable doubt by means of wholly circumstantial evidence"). Even where there are no eyewitnesses to a fatal injury, "circumstantial evidence can be as reliable and persuasive as eyewitness testimony." *Commonwealth v. Blevins*, 453 Pa. 481, 486, 309 A.2d 421, 424 (1973).

Applying these standards, we have no difficulty in concluding that each element of the offenses of which Petitioner was found guilty was well supported by the evidence. As to the charge of Murder, sufficient evidence linked Petitioner to the murder and supported findings of malice and a specific intent to kill. The victim was last seen with Petitioner and the co-defendant

Murrell after displaying a large amount of cash. Forensic evidence convincingly established that the murder took place in the basement of Murrell's property, which, except for ductwork, had been completely repainted with battleship gray paint.

The autopsy revealed that the victim sustained multiple gunshot wounds. The wound to the head likely caused death within minutes. In order to support a charge of murder in the first degree, the Commonwealth must prove that "the defendant acted with a specific intent to kill; that a human being was unlawfully killed; that the person accused did the killing; and that the killing was done with deliberation." *Commonwealth v. Smith*, 580 Pa. 392, 861 A.2d 892, 895 (Pa. 2004). Further, "specific intent can be inferred where a deadly weapon is used upon a vital part of the body." *Id.*

As to malice, the Pennsylvania Supreme Court has explained,

To sustain a conviction of murder in either degree, the evidence must establish that the killing was committed with malice. 'Malice consists either of an express intent to kill or inflict great bodily harm or of a wickedness of disposition, hardness of heart, cruelty, recklessness of consequences and a mind regardless of social duty' indicating an unjustified disregard for the probability of death or great bodily harm and an extreme indifference to the value of human life. The existence of malice may be inferred from the attenuating circumstances of the act resulting in the death. ... It is well settled that specific intent to kill, as well as malice, may be inferred from the use of a deadly weapon upon a vital part of the victim's body.

Commonwealth v. Gardner, 490 Pa. 421, 416 A.2d 1007, 1008 (1980) *citing Commonwealth v. Taylor*, 461 Pa. 557, 337 A.2d 545(1975)(internal citations omitted) and *Commonwealth v. Kingsley*, 480 Pa. 560, 391 A.2d 1027 (1978), *See also, Commonwealth v. Moore*, 473 Pa. 169, 373 A.2d 1101(1977)("It is this specific intent to kill which distinguishes murder of the first degree from the lesser grades of murder.").

The jury had ample evidence upon which to conclude that Petitioner, together with Murrell, committed the killing with malice. The court properly instructed the jury that the defendant could be held accountable for a crime based upon accomplice liability by promoting or facilitating the commission of the crime; even if someone else committed the crime, he could be responsible where he acted with the intent to promote the crime. The least degree of concert or collusion is sufficient to sustain a finding of criminal liability as an accomplice. *Commonwealth v. Kimbrough*, 872 A.2d 1244, 1251 (Pa.Super. 2005) *alloc. denied*, 585 Pa. 687 (2005)

Evidence of the actions of Petitioner and Murrell also supports the finding of guilty on the charge of Criminal Conspiracy. The jury reasonably concluded that the two were angered by the victim's receipt of cash to which they had an expectation, and that they picked him up with the plan to murder him at Murrell's property. Pursuant to 18 Pa.C.S.A. § 903(a):

A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

- (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime.
- (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

Petitioner's participation in the abuse of the corpse renders him culpable. The evidence supported the jury's conclusion that Petitioner and Murrell cooperated in abusing the corpse of the victim. Pursuant to 18 Pa.C.S.A. § 5510:

Except as otherwise authorized by law, a person who treats a corpse in a way that would outrage ordinary family sensibilities commits a misdemeanor in the second degree.

The autopsy revealed that after he sustained a deadly gunshot to the head, Person's body was burned.

The jury had sufficient evidence with which to conclude that Petitioner and Murrell committed these crimes. The Commonwealth convincingly established that the two were dissatisfied that Person kept loan funds obtained through fraudulent bank schemes. Although Petitioner signed on a fraudulent loan in December, Person did not share those funds with him, but went shopping on December 23rd, and displayed a large roll of cash. Petitioner and Murrell abruptly picked Person up from shopping that afternoon. After picking up Person, Petitioner and Murrell acted in concert and killed Wesley Person at Murrell's property on 13th Street. Blood in the ductwork of Murrell's 13th Street property matched Person's blood. Debris found under Person's body matched debris at Murrell's property. Records of Petitioner and Murrell's phones showed their call activity from December 23rd through early December 24th moving from Harrisburg southbound along Route 83 to Maryland.

Accordingly, the trial court would have properly denied a motion for new trial based upon an assertion of sufficiency of the evidence and therefore no ineffectiveness occurred.

7. NO INEFFECTIVENESS OCCURRED IN TRIAL COUNSEL'S REFRAINING FROM CALLING CHARACTER WITNESSES.

Petitioner fails to demonstrate ineffectiveness in trial counsel's refraining from calling alleged character witnesses.

As to whether counsel acted reasonably in not calling witnesses, a defendant must show, (1) the identity of the witnesses, (2) that counsel knew of the existence of the witnesses, (3) the material evidence that the witness would have provided, and (4) the manner in which the witness would have been helpful to his cause. *Commonwealth v. Torres*, 329 Pa. Super. 58, 68, 447 A.2d 1350, 1355 (1984). "Failure to call certain witnesses does not constitute *per se* ineffectiveness. *Commonwealth v. Cox*, 603 Pa. 223, 983 A.2d 666, 693 (2009) citing *Commonwealth v.*

Washington, 592 Pa. 698, 927 A.2d 586, 599 (Pa. 2007). Further, “[t]he reasonableness of counsel’s investigative decisions depend critically on the information supplied by the defendant.” *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 2066, 80 L.Ed.2d 674 (1984).

Petitioner’s Supplement and Memorandum of Law in Support of Petitioner’s First Petition for PCRA Relief fails to provide the necessary affidavits of purported character witnesses, but merely asserts that “witnesses have offered affidavits to testify, which are available upon further notice.” (Petitioner’s Supplement and Memorandum of Law in Support of Petitioner’s First Petition for PCRA Relief, Arg. 7) Even after the Commonwealth raised the issue of the facial deficiency in its Answer and Brief, Petitioner failed to supplement his filing with appropriate affidavits. (See, Petitioner’s Response in Opposition to Commonwealth’s Answer and Brief to Defendant’s First Petition for PCRA Relief, Arg. 7)

In addition to these deficiencies, we find that trial counsel reasonably refrained from calling character witnesses in that the Commonwealth could have properly questioned those witnesses as to the foundation of their testimony regarding Petitioner’s good moral character. “Although evidence of good character may not be rebutted by evidence of specific acts of misconduct, a character witness may be cross-examined regarding his knowledge of particular acts of misconduct by the defendant to test the accuracy of his testimony and the standard by which he measures reputation. *Commonwealth v. Peterkin*, 511 Pa. 299, 513 A.2d 373, 383 (1986) citing *Commonwealth v. Jones*, 341 Pa. 541, 19A.2d 389 (1941) and *Commonwealth v. Becker*, 326Pa. 105, 191 A. 351 (1937). The record in the instant case included extensive testimony of Petitioner’s involvement in the fraudulent loan scheme, the knowledge of which character witnesses could have been questioned.

Finally, no prejudice resulted to Petitioner by the lack of character evidence where substantial compelling physical evidence existed of Petitioner's participation in the murder and abuse of corpse, such that the lack of testimony of character witnesses had no effect on the outcome of the proceedings.

8. PETITIONER FAILS TO RAISE A GENUINE ISSUE AS TO THE EXISTENCE OF ALIBI TESTIMONY.

Petitioner has failed to prove ineffectiveness based upon the existence of alleged alibi witnesses.

“When raising a failure to call a potential witness claim, the PCRA petitioner satisfies the performance and prejudice requirements of the *Strickland* test by establishing that:

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

Commonwealth v. Washington, 592 Pa. 698, 927 A.2d 586, 599 (Pa. 2007)

The documents attached to Petitioner's Response in Opposition to Commonwealth's Answer and Brief to Defendant's First Petition for PCRA Relief fail to raise alibi evidence inconsistent with the Commonwealth's evidence of Petitioner's location at the time of the victim's disappearance on December 23rd, and the transportation and disposal of his body in Maryland into the early morning hours of December 24th. “An alibi is a defense which places the defendant at the relevant time in a different place than the scene involved and so removed therefrom to render it impossible for him to be the guilty party...At the core of the alibi defense is of course consistency between the date and time of the crime and that of the defendant's alibi.”

Commonwealth v. Johnson, 600 Pa. 329, 966 A.2d 523, 538 &n. 5 (2009)

On their face, documents produced by Petitioner fail to raise a genuine factual issue as to alibi testimony which trial counsel should have presented. At the outset, we note that the selected portions of transcripts attached to the Petitioner's Response fail to include a cover page or other indicia of authenticity. Assuming the transcripts are as represented, the testimony provided under oath does not establish an alibi.

The written statement of Christine Hughes dated August 15, 2010, offered as an alibi statement, lacks any evidentiary value in that it is facially inconsistent with Ms. Hughes' sworn grand jury testimony. The written statement provides, "On December 23, 2005 and December 24, 2005 we watched episodes of the Sopranos from Blockbusters" *See*, Attachment to Petitioner's Response in Opposition to Commonwealth's Answer and Brief to Defendant's First Petition for PCRA Relief.

However, under oath before the grand jury, Ms. Hughes did not state that she was with Glover on December 23 and December 24, but rather, that she was working, and he was at home babysitting:

Q. On the night of December 23rd, 2005, do you know where Justin was?

A. Yeah, at home babysitting, once again, while *I was at work*.

Q. How about Christmas eve?

A. Well *I was at work* and he was babysitting.

(Emphasis added)

In addition, the documents purporting to support Ms. Hughes' statement provide no dates which evidence Petitioner renting a movie on the date or time in question.

Petitioner offers no affidavit of his brother that he was available and willing to testify. The portion of a transcript submitted as the brother's grand jury testimony fails to substantiate the

existence of an alibi. As to Petitioner's whereabouts on December 23rd, Petitioner's brother testified equivocally that he "thought" Petitioner was at home, and that he saw him between three and five that afternoon. The witness testified that he did not see Petitioner on the night of December 23rd or on December 24th. Such testimony is not inconsistent with the Commonwealth's evidence of Petitioner's participation in the disappearance during the afternoon and evening of December 23rd, and disposal of his body on into the early hours of December 24th.

We find no ineffectiveness in trial counsel's refraining from offering the above witnesses as purported alibi witnesses. No genuine issues of material fact which warrant an evidentiary hearing on the issue of a purported alibi.

CONCLUSION


For all of the foregoing reasons, we enter the following:

ORDER

AND NOW, this 3rd day of January, 2013, we find that no genuine issues of fact exist and that no purpose could be served by further proceedings.

Accordingly, we apprise Petitioner of the **INTENT TO DISMISS PCRA PETITION** within *twenty days* of receipt of this ORDER.

If no objections are filed, the court will enter a FINAL ORDER dismissing PCRA.

BY THE COURT:


TODD A. HOOVER
PRESIDENT JUDGE

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