IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	**No. 97-12,027**
	:	
	:	
vs.	**:**	**CRIMINAL**
	:	
HILTON MINCEY,	**:**	
Defendant	**:**	**PCRA**

OPINION AND ORDER

This matter came before the Court on the defendant's amended Post Conviction Relief Act (PCRA) petition filed on March 25, 2002. The relevant facts are as follows: On September 19, 1997, at or around 8:30 p.m., the defendant engaged in a verbal confrontation with the victim, Albert Johnson, outside the Shamrock bar in Williamsport. The defendant wanted to fight and began to take off his watch. The victim took a swing at the defendant, but he missed. The victim's female companion intervened, pushing the victim into her vehicle located nearby. As the victim left the scene, the defendant yelled to him, "this ain't over." N.T., 5/13/98, at 40-42.

At or around 9:00 or 9:30 p.m., the defendant and a companion arrived at the residence owned by Kariemma Morrison's mother located at 622 Second Street. Present in the house at the defendant's arrival were Kariemma Morrison, her friend "Howey", and an unidentified friend of Howey's. Immediately after the defendant and his companion entered the house, the companion entered the kitchen and began asking Howey's friend whether he was Albert Johnson. The

defendant's companion pulled a gun. The defendant intervened at this point and said, "don't shoot him, he ain't Albert." N.T., 5/12/98, at 23. The defendant and his companion then looked around the house for Albert Johnson and interrogated Kariemma Morrison regarding Albert Johnson's whereabouts. The defendant and his companion left shortly thereafter.[1]

At approximately 9:30 p.m., Albert Johnson was watching television and drinking beer at 750 Second Street when the defendant and his companion kicked in the front door, the companion again with his gun drawn, and told the victim not to move. The defendant demanded the whereabouts of the guns, cocaine and money. Johnson answered that he had no idea what the defendant was talking about. The defendant began a search of the house. During the search, the defendant had the victim lie on the floor and had his companion point the gun at the back of the victim's head. When the victim tried to roll over, the companion struck the victim in the head with the barrel of the gun and told the victim not to try to look at him. The defendant directed his companion to bring the Johnson on their search of the upstairs. The companion continued to point the gun at the back of the victim's head. In a bedroom upstairs, the defendant began searching the drawers and again inquired where the guns were. After pulling out all of the drawers in the room and not finding guns, drugs, or money, the defendant instructed his companion to "go ahead and bust him." N.T., 5/11/98, at 39-40. Under the impression he was about to be shot, Johnson pushed the companion away and attempted to flee down the steps. The companion opened fire and repeatedly hit

1 The defendant and his companion were at 622 Second Street for approximately 15 minutes.

the victim.

The victim was shot in three places: the chest, abdomen, and back. Despite the gunshot wounds, he made it to a neighbor's house, who refused to assist, and then wandered out towards the street. Soon thereafter, the police were called and the paramedics summoned. The victim was transported to the emergency room. The seriousness of his injuries required surgery and resulted in a colonostomy and the removal of a portion of his bowel. N.T., 5/12/98, at 6-12.

On September 20, 1997, the defendant was apprehended and charged with the following offenses: attempted homicide, possession of a firearm, possession of an instrument of crime, aggravated assault for causing serious bodily injury, aggravated assault for attempting or causing bodily injury with a deadly weapon, recklessly endangering another person, simple assault for attempting or causing bodily injury, and simple assault for negligently causing bodily injury with a deadly weapon.

A three-day jury trial commenced on May 11, 1998. The jury returned a guilty verdict on attempted homicide, aggravated assault causing serious bodily injury, aggravated assault bodily injury with a deadly weapon, conspiracy and recklessly endangering another person. The jury acquitted the defendant of possessing a firearm and possessing an instrument of crime.[2]

On September 28, 1998, the Court sentenced the defendant to a period of state incarceration with a minimum term of 17 years and a maximum term of 40 years for attempted murder. The Court determined the convictions for

aggravated assault, and recklessly endangering merged for sentencing purposes while the conspiracy count was an inchoate offense pursuant to the Pennsylvania Crimes Code, 18 Pa.C.S.A. §101 et seq., and did not justify an additional sentence. Further, the sentence was set to run concurrently with another sentence the defendant was serving in Carbon County.

The defendant appealed his convictions to the Pennsylvania Superior Court. In his appeal, the defendant raised four issues: (1) whether the lower court committed an abuse of discretion by denying appellant's request for continuance to locate a witness crucial to the defense; (2) whether the evidence was insufficient to prove beyond a reasonable doubt that appellant was guilty, as an accomplice, principal actor or co-conspirator, of criminal conspiracy, criminal attempt-homicide, aggravated assault, simple assault or recklessly endangering another person; (3) whether trial counsel was ineffective for failing to properly investigate the charges, interview the witnesses provided by appellant and cross examine the victim regarding his credibility; and (4) whether the trial court erred by failing to remove from the jury a member of the jury panel to admitted to reading the headline of an article about appellant during the course of the trial. The Pennsylvania Superior Court rejected the defendant's contentions and affirmed his sentence in a decision filed February 27, 2001. The record was returned to Lycoming County on or about May 11, 2001.

On October 22, 2001, the defendant filed a pro se Post Conviction Relief Act (PCRA) petition. A preliminary conference was scheduled for December

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2 The two counts for simple assault were not submitted to the jury.

13, 2001. The defendant's attorney Gregory Stapp, however, was unavailable because he was in trial in another case. As a result, the conference was continued until January 14, 2002. After the conference on January 14, 2002, the Court gave Attorney Stapp sixty days to review the transcripts of the trial and file an amended PCRA petition on the defendant's behalf. Attorney Stapp filed an amended PCRA petition on March 25, 2002.

The Court held an argument on the amended PCRA petition on March 26, 2002. In the amended petition, the defense sought an evidentiary hearing; however, there were no witness statements attached to the petition or submitted in support thereof. Since testimony can be excluded for a failure to provide such a statement, see 42 Pa.C.S.A. §9545(d), the Court gave defense counsel an additional forty-five days to submit an affidavit, certification or statement of any proposed witness. See Order dated April 3, 2002. On May 20, 2002, Attorney Stapp submitted an affidavit from his client and two letters dated November 9, 1997 and December 27, 1997 that were sent to his client from Juay (Kera) Brockenbaugh.

The first issue raised in the amended PCRA petition is that trial counsel was ineffective for failing to interview and investigate potential alibi witnesses provided by the defendant months before trial. The defendant is not eligible for PCRA relief on this issue. To be eligible for relief, the defendant must plead and prove that "the allegation of error has not been previously litigated or waived." 42 Pa.C.S.A. §9543(a)(3). An issue has been previously litigated if the

highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue. 42 Pa.C.S.A. §9544(a)(2). The highest appellate court in which petitioner could have had review as a matter of right was the Pennsylvania Superior Court. The Superior Court ruled on this issue. Commonwealth v. Mincey, 1595 HBG 1998, at 11-13. Assuming arguendo that the Superior Court did not rule on the merits of this issue, it would be waived as it could have been raised on appeal. 42 Pa.C.S.A. §9544(b); see also Commonwealth v. Griffin, 537 Pa. 447, 454, 664 A.2d 1167, 1170 (1994)(ineffective assistance of counsel must be raised at the first opportunity where counsel no longer represents the defendant or such claim will be waived).[3] Even if this issue was not previously litigated or waived, the Court would not hold an evidentiary hearing on this issue because the defense has failed to submit a certification from any of the alleged alibi witnesses as required by Section 9545(d)(1). This section states:

> Where a petitioner requests an evidentiary hearing, the petition shall include a signed certification as to each intended witness stating the witness's name, address, date of birth and substance of testimony and shall include any documents material to that witness's testimony. Failure to substantially comply with the requirements of this paragraph shall render the proposed witness's testimony inadmissible.

42 Pa.C.S.A. §9545(d)(1). The Court gave the defense additional time to secure affidavits or certifications of the alleged alibi witnesses and specifically requested that the affidavits address the elements set forth in Commonwealth v. Henry, 706

3 The Court notes that the Pennsylvania Supreme Court has granted allocatur to reconsider the waiver rule set forth in Griffin and numerous other cases. Commonwealth v. Grant, 556 Pa. 231, 780 A.2d 601 (2001). Until such reconsideration is granted, though, the waiver rule discussed in Griffin remains the law of Pennsylvania.

A.2d 313, 329 (Pa. 1997). To prevail on an ineffectiveness claim for failing to call a witness, the defendant must show: (1) the witness existed; (2) the witness was available to testify; (3) counsel knew 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 witness' testimony was so prejudicial as to have denied the defendant a fair trial. Id. at 329. The defendant's own affidavit only creates a factual issue with respect to counsel's knowledge; it does not establish any of the other requirements.[4] As in the defendant's direct appeal, there is no objective proof that any non-called witness was willing to testify favorably, if at all.

The defendant next contends trial counsel was ineffective for failing to introduce a letter written by Kariemma Morrison in which she claims she didn't see anything and admits she was high on the night in question. This issue was not raised in the defendant's direct appeal. Therefore, it is waived. 42 Pa.C.S.A. §9544(b); see also Commonwealth v. Griffin, 537 Pa. 447, 454, 664 A.2d 1167, 1170 (1994) (ineffective assistance of counsel must be raised at the first opportunity where counsel no longer represents the defendant or such claim will be waived). Moreover, it is clear from the defendant's trial testimony that his attorney did not have the letter since the defendant testified at trial that the letters were at his home in East Orange, New Jersey. N.T., 5/11/98/ at 119-120.

The defendant also asserts trial counsel was ineffective for failing to

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4 The defendant's affidavit asserts that Hikeem Grady, Jesus Flores, Juay Brokenbaugh, and Kem Rhodes told him that Johnson stated he would not testify if the defendant paid him $5,000. However, these statements are hearsay. The defense needed to provide a certification from Grady, Flores, Brockenbaugh or Rhodes to get Johnson's statement into evidence at a PCRA hearing.

impeach Albert Johnson with the police report and evidence that Johnson failed to identify the defendant's cousin in a line-up when Johnson testified that the defendant's companion was his cousin. Initially, the Court believes this issue is previously litigated or waived. In his direct appeal, the defendant asserted trial counsel was ineffective in his cross-examination of the victim and in failing to examine prior inconsistent statements of the victim. This assertion was rejected by the Superior Court. Commonwealth v. Mincey, 1595 HBG 1998 at 13. Although the defense did not specifically assert counsel was ineffective for failing to impeach the victim with evidence regarding the victim's failure to identify the defendant's cousin, this issue could have been raised in the defendant's appeal. The failure to do so amounts to a waiver of this issue. 42 Pa.C.S.A. §9544(b); see also Commonwealth v. Griffin, 537 Pa. 447, 454, 664 A.2d 1167, 1170 (1994)(ineffective assistance of counsel must be raised at the first opportunity where counsel no longer represents the defendant or such claim will be waived). Moreover, to prevail on an ineffectiveness claim, the defendant must plead and prove the following: (1) the claim is of arguable merit; (2) counsel's performance was unreasonable; and (3) but for counsel's act or omission the outcome of the proceedings would have been different. Commonwealth v. Henry, 706 A.2d 313, 323 (Pa. 1997). It is unclear from the amended petition what evidence in the police report should have been used to impeach the victim. Therefore, the Court cannot determine that the claim is of arguable merit. If the material in the police report related to the victim's failure to identify the defendant's cousin in a lineup, the failure of counsel to utilize such

information would not have resulted in a different outcome. Trial counsel impeached or attempted to impeach the victim with a taped statement he gave to the police. N.T., 5/11/98, at 67-77. During the victim's testimony he stated that he could identify Mr. Mincey, but not his cousin. N.T., 5/11/98, at 76-77. The victim also testified that he believed the companion to be the defendant's cousin because other people told him that was who was with the defendant. N.T., 5/11/98 at 38, 74. Since the victim admitted during cross-examination that he could not identify the defendant's cousin, any evidence that he failed to identify him in a lineup would not have changed the outcome of the defendant's trial.

The defendant also contends trial counsel was ineffective for failing to impeach Albert Johnson with the information in the police report that drugs were found in his clothing on the night of the incident. This contention is without merit. Although counsel did not specifically reference the police report, he repeatedly asked the victim on cross-examination whether there were drugs on in the house or on his person during or after the incident. N.T., 5/11/98, at 52, 79, 84-85. Furthermore, the way to impeach the victim on this issue was not to confront him with the police report as that would have been hearsay, but to call the witness or witnesses who found the drugs on his person or were present when drugs were found on his person.[5] Even if counsel has done this, however, the Court does not believe it would have affected the outcome of the trial. During re-direct

5 The only way the police report could have been used to impeach the victim on this issue is if the **victim** admitted to the police that drugs were found on his person. Then the victim's statement could be used to impeach him as a prior inconsistent statement. The evidence regarding the drugs found on the victim's person, however, was obtained from other individuals.

examination, the prosecutor asked him if anyone talked to him about recovering drugs from his person and the victim said, "no". The redirect examination went on to explain that while the victim was in the hospital he was in a lot of pain and he was not aware of anybody taking drugs from his person. N.T., 5/11/98, at 85-87.

The defendant next argues trial counsel was ineffective for failing to impeach Chris Johnson with a statement he made to the police that the defendant had been in his home. The Court does not believe this evidence would have affected the outcome of the trial. First, this was a tangential issue. The witness consistently denied that the defendant was at his house on the night in question. The impeachment was not on this point, but on whether the defendant had **ever** been in Chris Johnson's residence. Second, trial counsel did attempt to impeach on this issue, but with a statement he made to counsel, not to the police. Defense counsel asked the witness if the defendant was ever at his house and the witness said "no." Defense counsel then attempted to impeach Chris Johnson with a statement he made when trial counsel interviewed him at the county prison. Counsel asked, "Do you recall telling me he'd been to your house one time and you guys had been playing Nintendo but that was before this incident?" Chris Johnson indicated he could not recall the defendant being at his house or making a statement to counsel about playing Nintendo. Since the witness was impeached on this issue, it is doubtful that further impeachment would have affected the outcome of the trial. N.T., 5/13/98 at 22-23.

The defense next asserts trial counsel was ineffective for failing to

object to Kariemma Morrison reading her statement to the police into the record. The defense contends the prosecutor simply had the witness read her prior statement into the record when Ms. Morrison failed to give the answers the prosecutor wanted. The defense further asserts Ms. Morrison never stated she could not recall what happened on the night of the incident. These representations do not accurately reflect the record in this case. The prosecutor asked Ms. Morrison to what was going on when the defendant and his companion were at her mother's residence looking for Albert Johnson. Ms. Morrison replied that she didn't know whether the defendant's companion had a gun or not, but he was asking Howey if he was Albert and the defendant said he wasn't Albert. N.T., 5/12/98, at 21-22. Since Morrison told the police in a prior taped statement that the defendant's companion had a gun, the prosecutor refreshed Ms. Morrison's recollection with a transcript of the taped statement. N.T., 5/12/98, at 22-23. Ms. Morrison read portions of the transcript to herself and then answered the prosecutor's questions. N.T., 5/12/98, at 23-24. Thus, the prosecutor's actions were not objectionable. Even if the record reflected the defense assertions, any alleged ineffectiveness would not have affected the outcome of the trial because the statement was recorded and the tape was played for the jury. N.T., 5/12/98, at 30-31. Moreover, the tape was admissible as substantive evidence. See Commonwealth v. Lively, 610 A.2d 7 (Pa. 1992).

The defendant asserts appellate counsel, Kyle Rude, was ineffective for failing to read the transcripts before writing his appellate brief. The defense has

offered no affidavit or certification in support of this contention. Furthermore, the defense has not pled or shown that any acts or omissions of appellate counsel would have changed the outcome of the defendant's appeal. As discussed throughout this Opinion, none of the alleged errors entitle the defendant to relief under the PCRA.

The defendant also asserts, if appellate counsel read the transcripts, he was ineffective for failing to cite portions of the record in support of the argument that the evidence was insufficient to support the defendant's convictions. He claims appellate counsel should have cited to portions of the record that showed there was no evidence other than the victim's testimony, which was not credible. The defense alleges appellate counsel should have noted the lack of damage to the door to show the victim was not credible. Additionally, appellate counsel should have pointed out the inconsistency of the jury's verdict. This issue also is without merit. Initially, the Court notes the jury's verdict was not inconsistent. Although the jury acquitted the defendant of possessing a firearm and possessing an instrument of crime, that verdict was not inconsistent with its convictions for attempted murder, aggravated assault, recklessly endangering another and conspiracy. The Commonwealth proceeded on two different theories: one was that the defendant had a weapon and shot the victim; the other was that the defendant was a co-conspirator or accomplice of his companion, who was the shooter. In acquitting the defendant of the weapons charge, the jury was not convinced beyond a reasonable doubt that the defendant was the shooter; however, they were convinced beyond a reasonable doubt that the

defendant was an accomplice or co-conspirator of his companion. Therefore, he is guilty of attempted murder, aggravated assault, and recklessly endangering the same as if he were the shooter. These verdicts were consistent with each other and the evidence presented at trial. Second, current counsel has failed to cite to the portions of the record that appellate should have cited. Finally, any alleged defect in the brief did not affect the outcome of the defendant's appeal. The Superior Court addressed the sufficiency claim on the merits and found that the evidence was sufficient to support the defendant's convictions. Commonwealth v. Mincey, 1595 HBG 1998, at 8-11. Therefore, counsel's alleged omission did not prejudice the defendant.[6]

The defendant next contends Attorney Rude was ineffective for failing to provide the Superior Court with evidence of the trial counsel's failure to call alibi witnesses. The defendant states:

> "the Notice of Alibi Defense submitted by trial counsel has the names of the individuals that were not called at trial by trial counsel, yet Attorney Rude did not provide this evidence to the Superior Court. The failure to obtain affidavits as to what the witnesses would testify must be blamed on trial counsel or Attorney Rude. One of these counsels should have obtained affidavits prior to trial or for the appeal in the hopes of getting the Defendant a new trial."

Amended Petition, para. 20. Quite frankly, the Court is mystified how PCRA counsel can make such a claim when he too has failed to obtain such affidavits, despite the Court giving him ample opportunity to do so. Nevertheless, the Court will address the individuals listed in the alibi notice. The first individual listed is

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6 The Court also notes that the defendant's argument regarding the credibility of the victim's testimony would seem to be more appropriate for a claim that the verdict was against the weight of the evidence rather than a sufficiency claim.

Chris LNU, 673 Grace Street,[7] Williamsport. This individual turned out to be Chris Johnson, who testified at trial for the Commonwealth. N.T., 5/13/98, at 17-25. He stated the defendant was **not** at his residence on the night in question. The other two individuals listed in the notice of alibi were Alicia LNU and Erica LNU of 333 Campbell Street, Williamsport. The defense has failed to provide a last name for either of these individuals and has failed to indicate what information they could provide. Absent such information, the Court cannot conclude this issue is of arguable merit or that counsel's failure resulted in prejudice.

Although Keeva Dandridge and Keyshawn Mills were not listed in the alibi notice, the defendant has asserted his previous counsel also was ineffective for failing to interview these individuals or subpoena them for trial. Keeva Dandridge was called as a witness at trial. N.T., 5/13/98, at 61-69. She testified that she and Schequanda Short[8] arrived at Chris Johnson's house around 10:00 p.m. on the night in question. The defendant, Chris Johnson and his roommates (Shannon and Face) were present when she and her friend arrived. She did not mention anyone by the names of Alicia (or Alisha),[9] Erica, Keyshawn Mills or Keshia Mills. Moreover, Ms. Dandridge's testimony did not establish that the defendant was present at the time the incident occurred. Albert Johnson was shot at approximately 9:30 p.m. On cross-examination Ms. Dandridge testified that 750 Second Street, the location of the shooting, was only about a block and a half from Chris Johnson's

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7 The Court believes there is a typographical error on the alibi notice in that Chris Johnson testified his address was 637 Grace Street. N.T., 5/13/98, at 18.
8 The Court believes the individual's name is actually Shaquona Short. See Lycoming County No. 00-10,398.

residence on Grace Street and it would only take a minute or two to walk between those two locations. N.T., 5/13/98, at 67-68. Therefore, the defendant could have been involved in the incident with Albert Johnson around 9:30 p.m. and also have been calmly watching television at 637 Grace Street at 10:00 p.m.[10]

Next, the defendant asserts appellate counsel was ineffective for failing to cite any case law in his argument that the juror who admitted reading the newspaper should have been dismissed. Although appellate counsel did not cite any case law in this section of his brief, PCRA counsel has not cited the Court to any case law that would support his contention that the juror should have been removed. The Court believes this is a result of the lack of such case law. In Pennsylvania, the decision to disqualify a juror is within the discretion of the trial court. Commonwealth v. Koehler, 737 A.2d 225, 238-9 (Pa. 1999). The record indicates the juror did not read the newspaper article, but simply saw the headline. N.T., 5/13/98, at 2-3. Nobody on the jury that convicted the defendant read the article and therefore, the defendant suffered no prejudice. Commonwealth v. Reese, 352 A.2d 143 (Pa.Super. 1975). Thus, even if appellate counsel had cited case law, the defendant still would have lost this issue on appeal. In fact, despite the lack of case law, the Superior Court addressed this issue on the merits and found that the defendant suffered no prejudice. Commonwealth v. Mincey, 1595 HBG 1998 at 14.

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9 In a letter counsel submitted from Ms. Brockenbaugh, the names are listed as Erica and Alisha.
10 The Court notes there are no allegations in the amended petition regarding Juay Brockenbaugh, Jesus Flores or Kem Rhodes. Hikeem Grady is mentioned in paragraph 12. It is clear from the submissions of defense counsel, though, that these witnesses were not alibi witnesses, but witnesses

The defendant also claims appellate counsel was ineffective for failing to argue that a juror who saw the defendant being escorted by the Sheriff should have been removed. Trial counsel did not object to the juror remaining on the jury after an investigation and conference was held on the record. N.T., 5/13/98, at 35-39. Therefore, this issue is waived. Moreover, not every instance of a juror seeing a defendant in shackles or in the company of a sheriff justifies a mistrial or the removal of the juror. See Commonwealth v. Lewis, 567 A.2d 1376 (Pa. 1989); Commonwealth v. Evans, 348 A.2d 92 (Pa. 1975). The Court would not have dismissed the juror because he indicated this incident would not affect his ability to be fair and impartial. N.T., 5/13/98, at 37. Therefore, even if counsel raised this issue during trial or on appeal, the outcome would not have been different.

The defendant next asserts appellate counsel was ineffective for stating in his brief that the defendant admitted his companion held a gun to the victim's head. This misconstrues appellate counsel's brief. Recognizing that sufficiency claims are view in the light most favorable to the verdict winner (here, the Commonwealth), appellate counsel appropriately stated the facts as testified to by the victim. He indicated the victim testified he had been hit in the face when he looked at the defendant's "cousin." He then argued that the intent of the statement "go ahead and bust him" attributed to the defendant by the victim was to commit a simple assault, i.e. to hit the victim in the head with the barrel of the gun again. Furthermore, this alleged admission by appellate counsel did not affect the outcome of the defendant's appeal. Although the "admission" was mentioned in footnote 7 of

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who allegedly could impeach Albert Johnson's credibility.

the Superior Court opinion, it was not the basis of that Court's decision. Both this court and the Superior Court found the evidence was sufficient to sustain the defendant's convictions through citation to the transcripts of the trial. Opinion and Order, 6/30/99, at 4-7; Commonwealth v. Mincey, 1595 HBG 1998, at 9-11.

The defendant's final allegation of error is appellate counsel was ineffective for failing to argue that it was improper for the court to cite to the defendant's cousin over and over again in the explanation of the elements of the crime. The record belies this contention. The Court's instructions to the jury cover 46 pages. N.T., 5/11/98, at 126-172. The Court only referred to the defendant's "cousin" twice during its instructions to the jury. In the first reference, the Court stated: "I will refer to the other individual as an unknown black male. There's been some reference whether he was a cousin or not of the defendant." N.T., 5/11/98, at 151. In the second reference, the Court stated:

> Now my final instruction on the conspiracy concept, I do want to point out to you if you do believe the Defendant's cousin or the unknown black male committed the crime or crimes, that the Defendant was in his company at the scene and knew he was committing the crime, you cannot infer from these facts alone, in other words by simple presence or knowledge, that the Defendant was guilty of conspiracy.

N.T., 5/11/98, at 155. Trial counsel did not object to these references; therefore, the allegation is waived. Additionally, there was nothing prejudicial about the references. In his testimony, the victim referred to the defendant's companion as his "cousin". Other witnesses disputed whether the individual was the defendant's cousin. In an attempt to avoid confusion, the Court generally referred to his

individual as the unknown black male. The Court never stated the other individual was, in fact, the defendant's cousin.

For the forgoing reasons, the Court intends to dismiss the defendant's amended PCRA petition without a hearing.

O R D E R

AND NOW, this ___ day of June 2002, it is the finding of this Court that Defendant's Amended Petition for Post Conviction Relief filed in the above-captioned matter raises no genuine issue of fact and Petitioner is not entitled to post conviction collateral relief. As no purpose would be served by conducting any further hearing, none will be scheduled and the parties are hereby notified of this Court's intention to deny the Petition. Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an order dismissing the petition.

By The Court,

_____
Kenneth D. Brown, J.

cc: Gregory Stapp, Esquire
Kenneth Osokow, Esquire (ADA)
Hilton Mincey, DT-6431
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Gary Weber, Esquire (Lycoming Reporter)
Work file

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