

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY CRIMINAL  
DIVISION**

---

<b>COMMONWEALTH OF PENNSYLVANIA</b>	)	
	)	
<b>Respondent,</b>	)	<b>CP-51-CR-0014092-2011</b>
	)	<b>CP-51-CR-0014093-2011</b>
<b>v.</b>	)	<b>CP-51-CR-0014094-2011</b>
	)	<b>CP-51-CR-0014095-2011</b>
	)	<b>CP-51-CR-0014096-2011</b>
<b>WAYNE JAMES</b>	)	
<b>Defendant</b>	)	
	)	

---

**Amended Post-Sentencing Motion**

---

1. Pursuant to Pa. R. Crim. P., 720, Defendant, Wayne James, by and through appointed counsel, Craig M. Cooley, files his *Amended Post-Sentencing Motion*. His motion is presented in good faith and based on the following points and authorities.

**Procedural History**

2. The Commonwealth charged James with the following offenses in connection with the June 26, 2011 shooting at the Genesis Tavern that resulted in one death (Carl Sharper’s) and four people being shot: murder (18 Pa. C.S.A. §2502); criminal attempt-murder (18 Pa. C.S.A. §901(a)); aggravated assault (18 Pa. C.S.A. §2702(a)); carrying a firearm without a license (18 Pa. C.S.A. §6108); and possession of an instrument of a crime (18 Pa. C.S.A. §907(a)).
3. James’ case was assigned to the Honorable Teresa M. Sarmina (Court).
4. The Defender’s Association initially represented James, but on June 17, 2013, the Defender’s Association withdrew as trial counsel and James A. Lammendola was appointed.
5. On September 30, 2013, jury selection began.
6. On October 1, 2013, after jury selection, James fired Lammendola and requested to represent himself.<sup>1</sup> Before granting his request, the Court asked James: “Has anyone

---

<sup>1</sup> NT, 10/01/2013, at 15-16, 25-27, 33, 41.

pressured... or threatened you or in any way made you give up your right to counsel.”<sup>2</sup>  
James answered no.<sup>3</sup>

7. The Court granted his self-representation request, but denied his request to postpone the trial so he could prepare to represent himself:

If you want to represent yourself, you do have a constitutional right to represent yourself. You can give up the right of having an attorney assist you in your defense. But we are not delaying the trial. You have had two years to put this together[.]<sup>4</sup>

8. The Court also instructed James on the pitfalls of self-representation:

If you wish to represent yourself under the United States constitution, you have the right to do so. However, you’re going to be saddled with whatever ineffectiveness you have of yourself because you’re not trained in law. But the law allows you to, if you wish to give up your right to have counsel, to represent yourself.

....  
As they say in the law... only a fool has himself as a lawyer. Okay, I’m not calling you a fool. I’m just telling you I don’t think it’s the wisest decision. You have a right to do it and I will not interfere with you exercising your rights if that’s what you wish to do.<sup>5</sup>

9. During trial, the Court repeatedly advised James of the pitfalls of self-representation when he complained about having to represent himself:

And Mr. James, you did not want backup counsel. You didn’t want any assistance. These are some of the pitfalls that happen when someone decides at the last moment to represent themselves. You have a constitutional right to do that, as I told you then.

...  
But I told you, you are held to the same standards as any attorney [199] would be. And I also told you... only a fool has himself for a lawyer. And you chose to exercise your

---

<sup>2</sup> NT, 10/01/2013, at 25.

<sup>3</sup> Id.

<sup>4</sup> NT, 10/01/2013, at 15; *see also id.* at 18 (“You’re not getting time. This is your trial. You picked the jury.”); *id.* at 20 (“And we’re not starting an investigation during the trial, Mr. James.”).

<sup>5</sup> NT, 10/01/2013, at 16.

constitutional right to represent yourself but you're still held to the same standard.<sup>6</sup>

10. Likewise, the Court advised James that rules of evidence and criminal procedure would apply to him in the same way they applied to experienced trial attorneys:

And I will also advice you and tell the jury that you are held to the same standards as any attorney would be in court. So you have to follow the rules of court. They are rules and you can't say I don't know the rules. That's why people usually do not represent themselves. But you're held to the rules. And so when I tell you to do something, you will have to do it.<sup>7</sup>

11. At trial, the Commonwealth presented seven witnesses who saw a man get ejected from the Genesis bar and who saw the shooting ten to fifteen minutes after the man got ejected. Several witnesses identified James as the man who got ejected,<sup>8</sup> while several identified him as the shooter.<sup>9</sup> The Commonwealth also played the video from the Genesis bar for the jury.<sup>10</sup> Lastly, the Commonwealth presented two forms of forensic identification evidence: fingerprints and cartridges:

- a. First, Scott Copeland, the Commonwealth's fingerprint expert, examined a Guinness beer bottle collected from the bar near where James was seen on the video drinking, and identified a fingerprint that matched James' fingerprint.<sup>11</sup>
- b. Second, Lawrence Flagger, the Commonwealth's firearms expert, said he examined the eleven cartridges collected from the bar and concluded that the same firearm discharged all eleven.<sup>12</sup> The CSI team collected no evidence at the scene to suggest another firearm was discharged during the shooting.

12. James' defense was not mistaken identity, but rather that someone else fired a weapon in the bar during the shooting, and it was this (unknown) individual's firearm, that shot the fatal bullet that killed Carl Sharper.<sup>13</sup>

13. On October 7, 2013, the jury convicted James of one count of first-degree murder and four counts of aggravated assault.<sup>14</sup> Immediately thereafter the Court, having no

---

<sup>6</sup> NT, 10/01/2013, at 137, 198.

<sup>7</sup> NT, 10/01/2013, at 31.

<sup>8</sup> NT, 10/01/2013, at 88, 95, 112 (Tamatha Robinson); *id.* at 182 (Jerrell Johnson); NT, 10/01/2013, at 41 (Charoletta McKee); *id.* at 78 (Curtis Aiken); NT, 10/03/2013, at 49 (Russell Kayan); *id.* at 238-239 (Kevin Brown).

<sup>9</sup> NT, 10/01/2013, at 122-123 (Tamatha Robinson); *id.* at 182 (Jerrell Johnson); NT, 10/02/2013, at 56-57 (Charoletta McKee); *id.* at 84 (Curtis Aiken); NT, 10/03/2013, at 49 (Russell Kayan).

<sup>10</sup> NT, 10/02/2013, at 207-235 (Detective Dunlap, who's part of the DIVRT team, played the video for the jury).

<sup>11</sup> NT, 10/02/2013, at 157, 171.

<sup>12</sup> NT, 10/03/2013, at 145, 165.

<sup>13</sup> NT, 10/07/2013, at 109, 113, 115, 117, 135-136.

<sup>14</sup> NT, 10/07/2013, at 50-51.

discretion to do otherwise, sentenced James to life without the possibility of parole (LWOP) for the first-degree murder conviction and 5 to 15 years for each of the four aggravated assault convictions.<sup>15</sup> All sentences are to be served concurrently.

14. On October 8, 2013, undersigned counsel was appointed to represent James during the post-sentencing and appellate stages.
15. On October 15, 2013, undersigned counsel filed James' *Post-Sentencing Motion* (PSM). Pursuant to 720(B)(3)(b), counsel requested a 30-day extension, allowing the Court to rule on his PSM within 150 days after sentencing, rather than 120 days. Counsel requested the extension to review the case file and trial testimony with the objective of filing a more comprehensive *Amended PSM*.
16. Counsel has read and digested the 1100 plus pages of transcripts and case material and now submits James' *Amended PSM*

#### **Pa. R. Crim. P., 720**

17. Pursuant to Rule 720(A)(1), James had ten days, after imposition of his sentence, to file his PSM. The Court sentenced James on October 7, 2013 and he filed his PSM on October 15, 2013. His PSM is timely, so too is his *Amended PSM* which he filed on **January 23, 2014**. Based on counsel's 30-day extension request, the Court has until **March 6, 2014** to issue a ruling; if one is not issued by **March 6, 2014**, the *Amended PSM* "shall be deemed denied by operation of law." Pa. R. Crim. P. 720(B)(3)(b).
18. James makes the following post-sentencing motions: (1) motion for judgment of acquittal; (2) motion for new sentencing hearing; and (3) motion for a new trial.

#### **A. Motion For Judgment of Acquittal**

#### **The Commonwealth Presented Insufficient Evidence To Prove Beyond a Reasonable Doubt That James Had The Specific Intent To Kill Carl Sharper. U.S. Const. Amends. V, VI, VIII, XIV; Pa. Const. Art. 1, §9.**

19. The Commonwealth presented insufficient evidence to prove beyond a reasonable doubt that James had the specific intent to kill Carl Sharper when he returned to the Genesis bar and opened fire inside the bar randomly striking individuals he did not know. The appropriate conviction for James's random, reckless, indifferent, and cruel act is third-degree murder, not first-degree.
20. The Commonwealth charged James with murdering Carl Sharper (18 Pa. C.S.A. §2502), but did not specify the degree of murder in the *Information*. At trial, the

---

<sup>15</sup> NT, 10/07/2013, at 55-56, 60-61.

Commonwealth argued James' actions warranted first-degree murder. *See* 18 Pa. C.S.A. §2502(a).<sup>16</sup>

21. To convict James of first-degree murder the Commonwealth had to prove: (i) Carl Sharper was unlawfully killed; (2) James was responsible for the killing; and (3) James acted with malice *and* a specific intent to kill. *See* 18 Pa.C.S. §2502(a); *Commonwealth v. Houser*, 18 A.3d 1128, 1133 (Pa. 2011). In other words, the Commonwealth had to prove James “intentionally” killed Carl Sharper. Intentional killing is defined as a “willful, deliberate and premeditated killing.” 18 Pa.C.S. §2502(b); *see also Commonwealth v. Taylor*, 876 A.2d 916 (2005). Premeditation and deliberation “exist whenever the assailant possesses the conscious purpose to bring about death.” *Commonwealth v. Drumheller*, 808 A.2d 893, 910 (Pa. 2002).
22. The Court also instructed the jury on third-degree murder,<sup>17</sup> which requires the Commonwealth to prove malice, but not specific intent. Malice requires “a unique state or frame of mind characterized by wickedness, hardness, cruelty, recklessness, and disregard of social duty.” *Commonwealth v. Ludwig*, 874 A.2d 623, 631-632 (Pa. 2005). Malice has been characterized as exhibiting an “extreme indifference to human life,” *Commonwealth v. Gardner*, 416 A.2d 1007, 1008 (Pa. 1980).
23. The Court distinguished first- and third-degree by emphasizing “first degree murder... requires the jury to unanimously find that there was in fact a specific intent to kill Carl Sharper.”<sup>18</sup>
24. Midway through jury deliberations, the jury requested additional clarification between first- and third-degree murder.<sup>19</sup> It also asked, “Is first degree the killing of Carl Sharper or could it be the killing of anyone?”<sup>20</sup>
25. The Commonwealth argued that “based upon the facts of the case, it would be the killing of anyone[.]”<sup>21</sup> Specifically, it was the Commonwealth’s belief James intended to kill Kevin Brown, the bouncer who ejected him from the bar: “I believe that the intended target... was certainly Mr. Brown.”<sup>22</sup> The Court disagreed:

The question is is first degree murder the killing of Carl Sharper or could it be the killing of anyone? I don't know that there's anything in the case that would be the killing of anyone. No one else is dead.<sup>23</sup>

---

<sup>16</sup> NT, 10/01/2013, at 77, 82 (Commonwealth’s opening statements); NT, 10/04/2013, 138, 139, 141 (Commonwealth’s closing arguments).

<sup>17</sup> NT, 10/07/2013, at 24-26.

<sup>18</sup> *Id.* at 26.

<sup>19</sup> *Id.* at 41.

<sup>20</sup> *Id.* at 41.

<sup>21</sup> *Id.* at 43.

<sup>22</sup> *Id.* at 44.

<sup>23</sup> *Id.* at 45.

26. The Commonwealth argued transferred intent, but the Court rejected that line of thinking because the Commonwealth never requested a transferred intent instruction: “It might be but it’s not a charge that you asked me to give. It’s not a charge when I was done with the charge that you said, oh, we missed transferred intent.”<sup>24</sup> The Court also emphasized the Commonwealth never argued James returned to the bar with the specific intent of killing Kevin Brown: “You didn’t argue in your closing that he came back gunning for Mr. Brown and that that was the intended victim. There was nothing in any of the testimony.”<sup>25</sup>
27. The Court re-instructed the jury that, to find James guilty of first-degree murder, it had to unanimously find that, when James returned to the bar, he had the specific intent of killing Carl Sharper.<sup>26</sup>
28. Once re-instructed, the jury returned guilty verdicts for first-degree murder and four counts of aggravated assaulted.<sup>27</sup>
29. Despite the jury’s verdict, there is insufficient evidence to prove beyond a reasonable doubt that, when James returned to the bar, he did so with the specific intent to kill Carl Sharper.<sup>28</sup> The Commonwealth presented no evidence that James specifically targeted anyone, let alone Carl Sharper, when he returned to the bar. The Commonwealth conceded as much during opening statements when the prosecutor described how the shooting played out:

Well that’s enough. He leaves the location quickly. Gets a gun. Comes back with a nine-millimeter. Steps in the front door and fires until that gun is empty. He hits the girl, the first witness in this case, Ms. Robinson, who is standing at the bar having a drink. Dancing a little bit. Shot multiple times as he puts the gun into the bar. The victim on the other side of the bar, the murder victim on the other side of the bar. Shot right through the bar.<sup>29</sup>

30. The testimony of the bar patrons bolsters this point, as each said that, once James entered the bar, he randomly shot at people.<sup>30</sup> As does the fact James had never met Carl Sharper and had no idea he would be in the food service area waiting to pick-up his

---

<sup>24</sup> *Id.* at 45-46.

<sup>25</sup> *Id.* at 46.

<sup>26</sup> *Id.* at 46.

<sup>27</sup> *Id.* at 50-51.

<sup>28</sup> James concedes the Commonwealth proved malice, but first-degree murder requires the Commonwealth to prove malice *plus* specific intent. *See Commonwealth v. Houser*, 18 A.3d at 1133. If specific intent cannot be proved beyond a reasonable doubt, the appropriate conviction is third-degree murder. *See* NT, 10/07/2013, at 25 (“As to third degree murder, the malice is not obviously a specific intent to kill. It is the intent to inflict serious bodily injury.”).

<sup>29</sup> NT, 10/01/2013, at 80.

<sup>30</sup> NT, 10/1/2013, at 91 (Tamatha Robinson), 166-168 (Jerrell Johnson); NT, 10/02/2013, at 42 (Charoletta McKee), 89 (Curtis Aiken); NT, 10/03/2013, at 48 (Russell Kayan), 115 (Albert Saboleh), 239 (Kevin Brown).

takeout order. If James did not know Sharper, and he had no clue Sharper would be at the bar, how could he have possibly formed the requisite premeditation and specific intent to kill him?

31. Additionally, James never said a word during or after the shooting indicating he intended to kill Sharper or anyone else for that matter.<sup>31</sup> Furthermore, if James had the specific intent to kill Kevin Brown, his actions did not show it; rather than methodically seeking out Brown once inside the bar, James immediately opened fire, randomly shooting in all directions. While the bullets he fired struck several bar patrons and killed Carl Sharper, his actions do not prove beyond a reasonable doubt he had the specific intent to kill anyone, including Carl Sharper.
32. James concedes the “law does not require a lengthy period of premeditation” and that the “design to kill can be formulated in a fraction of a second.” *Commonwealth v. Jordan*, 65 A.3d 318, 323 (Pa. 2013). This may be so, but when James haphazardly fired his gun inside the bar, particularly the shot that killed Carl Sharper, he did not premeditate Sharper’s death and he did not have the specific intent to bring about his death. Walking into a crowded bar, especially one James had never been to before,<sup>32</sup> and opening fire immediately upon entering without taking inventory of who was at the bar, demonstrates extreme indifference to human life, but it does not prove beyond a reasonable doubt that James specifically intended to bring about a particular person’s death.
33. The Commonwealth, however, believed James acted with specific intent because he used a deadly weapon on a vital part of Carl Sharper’s body:

[W]hen you take a deadly weapon and use it on a vital part of the body, you can infer... that the person with that deadly weapon possessed the specific intent to kill... If you possessed a deadly weapon and use it on a vital part of someone’s body, the head, and you fire a bullet directly into someone’s head, then you can infer... that the shoot had the specific intent to kill.<sup>33</sup>

34. The “specific intent to kill and malice are properly implied when a deadly weapon is directed to a vital part of the body.” *Commonwealth v. Austin*, 575 A.2d 141, 144 (Pa. Super. 1990) (emphasis in original); accord *Commonwealth v. Roberts*, 437 A.2d 948, 951-952 (Pa. 1981); *Commonwealth v. Carter*, 393 A.2d 13, 15 (Pa. 1978); *Commonwealth v. Palmer*, 292 A.2d 921, 923 (Pa. 1972); *Commonwealth v. O’Searo*, 352 A.2d 30, 35-36 (Pa. 1976); *Commonwealth v. Bricker*, 326 A.2d 279, 281 (Pa. 1974). Likewise, “the specific intent necessary for a first degree murder conviction may be inferred from the use of a deadly weapon upon a vital part of the victim’s

---

<sup>31</sup> NT, Suppression Hrg, 06/06/2013, at 68-69, 86-88.

<sup>32</sup> NT, 10/03/2013, at 113.

<sup>33</sup> NT, 10/01/2013, at 75-76. The prosecutor made the same argument during closing arguments. See NT, 10/04/2013, at 139-140.



body.” *Commonwealth v. McAndrews*, 430 A.2d 1165, 1166 (Pa. 1981) (emphasis added); accord *Commonwealth v. Holzer*, 389 A.2d 101, 104 (Pa. 1978); *Commonwealth v. Agie*, 296 A.2d 741 (Pa. 1972).

35. James does not dispute the principle behind these holdings; what he disputes, is whether the facts in his case fall within the parameters of this principle. He believes they do not, and recent cases support his position. See *Commonwealth v. Padilla*, 2013 WL 5848693 at \*2, 5 (Pa., Oct. 31, 2013); *Commonwealth v. Bryant*, 67 A.3d 716, 722-723 (Pa. 2013); *Commonwealth v. Jordan*, 65 A.3d 318, 321, 324 (Pa. 2013); *Commonwealth v. Thomas*, 54 A.3d 332, 335, 336, 338 (Pa. 2012); *Commonwealth v. Houser*, 18 A.3d 1128, 1131-1132 (Pa. 2011); *Commonwealth v. Briggs*, 12 A.3d 291, 301, 307 (Pa. 2011); *Commonwealth v. Smith*, 985 A.2d 886, 896 (Pa. 2009); *Commonwealth v. Rega*, 933 A.2d 997, 1009-1010 (Pa. 2007); *Commonwealth v. DeJeus*, 880 A.2d 608, 611-613 (Pa. 2005); *Commonwealth v. Cruz*, 919 A.2d 279, 280, 281 (Pa. Super. 2007); *Commonwealth v. Randall*, 758 A.2d 669, 675 (Pa. Super. 2000).
- a. For instance, a specific intent to kill can be inferred when a defendant *repeatedly* shot the victim(s) at close range in a vital organ. See, e.g., *Commonwealth v. Padilla*, 2013 WL 5848693 at \*2, 5 (defendant shot three victims, killing all three; one victim was shot thrice another was shot four times); *Commonwealth v. Bryant*, 67 A.3d at 722-723 (victim shot “multiple” times at close range in back seat of car); *Commonwealth v. Thomas*, 54 A.3d at 335, 336, 338 (victim shot four times); *Commonwealth v. Houser*, 18 A.3d at 1131-1132 (victim police officer shot twice at close range); *Commonwealth v. Briggs*, 12 A.3d 291, at 307 (two police officers shot twice at close range); *Commonwealth v. Smith*, 985 A.2d at 896 (victim shot seven times); *Commonwealth v. Rega*, 933 A.2d at 1009-1010 (victim shot three times in head); *Commonwealth v. Randall*, 758 A.2d at 675 (victim shot three times).
  - b. Similarly, a specific intent to kill can be inferred when the defendant uses a firearm against law enforcement officers at close range to evade arrest. See, e.g., *Commonwealth v. Jordan*, 65 A.3d at 321, 324 (defendant shot police officer in forehead at close range to evade arrest after the officer confronted him during a robbery); *Commonwealth v. Houser*, 18 A.3d at 1131-1132 (defendant shot police officer in head and abdomen at close range as officer tried to take him into custody for failing to appear for his rape trial); *Commonwealth v. Briggs*, 12 A.3d at 301, 307 (defendant shot two police officers twice, in the head and abdomen, as they tried serving an arrest warrant on him). Likewise, a specific intent to kill can be inferred when the defendant shoots the victim multiple times at close range to evade detection. See *Commonwealth v. Rega*, 933 A.2d at 1009-1010 (defendant shot victim three times in the head after he and his co-defendants botched an attempted robbery).
  - c. A specific intent to kill can also be inferred in the murder-for-hire context, *i.e.*, where the defendant is compensated to shoot and kill a particular person or persons. See, e.g., *Commonwealth v. Bryant*, 67 A.3d at 722-723 (defendant shot



two victims, one being Chanta Wright, multiple times at close range in the back seat of a car at the behest of defendant's friend, Hakeem Bey, to prevent Wright from testifying at Bey's murder trial); *Commonwealth v. Thomas*, 54 A.3d at 335, 336, 338 (defendant shot the victim at the behest of defendant's friend, Kareem Glass, because the victim identified Glass as the individual responsible for the shooting death of victim's cousin, Tyreek Gaymon, in 2004).

- d. Lastly, a specific intent to kill can be inferred when there is evidence the defendant/shooter sought out the victim. *See, .e.g., Commonwealth v. DeJeus*, 880 A.2d at 611-613 (defendant had an ongoing dispute with Capone, and when defendant believed he spotted Capone, he grabbed his AK-47, raced to the top of his apartment building, and repeatedly fired at the individual he believed to be Capone; the victim, unfortunately, was not Capone); *Commonwealth v. Cruz*, 919 A.2d at 280, 281 (defendant and victim agreed to a fist fight at a local 7-11, but during the fight defendant grabbed a gun, chased the victim down, and shot him at close range in the back).
36. Here, James: (1) did not shoot Carl Sharper multiple times at close range; (2) did not shoot Sharper to evade arrest; (3) did not seek out Sharper before shooting him; and (4) was not compensated for shooting Sharper. Thus, despite the fact James shot Sharper in the forehead, the circumstances leading to the shooting fail to demonstrate that James premeditated Sharper's death or that he had the specific intent to kill Sharper.<sup>34</sup>
37. James may have had the specific intent to seriously harm bar patrons, but intending to inflict serious injuries is much different than acting with premeditation and a specific intent to kill. Here, the weight of the evidence, as it relates to Carl Sharper's death, supports third-degree murder, not first-degree, because the facts support a finding of malice, but not specific intent. Here, James acted with "gross recklessness," *Commonwealth v. Malone*, 47 A.2d 445, 447 (Pa. 1946), because firing into a crowded bar plainly demonstrates "extreme indifference to the value of human life." *Commonwealth v. Taylor*, 337 A.2d 545, 548 (Pa. 1975).

---

<sup>34</sup> The transferred intent doctrine is inapplicable here because the Commonwealth failed to prove James returned to the bar with the specific intent of killing anyone, let alone Carl Sharper. Indeed, the Court explained the transferred intent doctrine to James early on during the trial:

It's when a particular individual is killed... That you killed him. *And that you did so with the specific intent to kill.* There is nothing in the law that requires that I specifically intend to kill the person who is killed. So right now I closed my eye and pulled out a gun and started shooting and I hit you directly in the forehead... and you dropped down dead... *So if you intended to kill the bouncer...* and you ended up killing Mr. Sharper, that intent followed the bullet. So it doesn't matter who you killed if it was you.

NT, 10/01/2013, at 204-205.

## B. Motion For New Sentencing Hearing

### **James LWOP Sentence Violates State and Federal Law Because, Pursuant To 18 Pa.C.S. §1102, The Court Has No Discretion To Consider Mitigating Evidence Calling For a Sentence Less Than LWOP, Despite the Fact an LWOP Sentence is Equivalent to a Death Sentence. U.S. Const. Amends. V, VI, VIII, & XIV; Pa. Const., Art. 1, §§8, 9, 13.**

38. Pursuant to 18 Pa.C.S. §1102, a person convicted of first-degree murder “shall” be sentenced to LWOP. The Court, as a result, had no discretion to sentence James to anything but LWOP.<sup>35</sup> An LWOP sentence, however, is equivalent to a death sentence because James *will* die in prison:

As for the punishment, life without parole is ‘the second most severe penalty permitted by law.’ It is true that a death sentence is ‘unique in its severity and irrevocability,’; yet life without parole sentences share some characteristics with death sentences that are shared by no other sentences. The State does not execute the offender sentenced to life without parole, but *the sentence alters the offender’s life by a forfeiture that is irrevocable*. It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence. As one court observed... this sentence ‘means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.

*Graham v. Florida*, 130 S.Ct. 2011, 2027 (2010); accord *Miller v. Alabama*, 132 S.Ct. 2455, 2463 (2012) (“*Graham* further likened life without parole... to the death penalty itself[.]”).

39. In other words, first-degree murder in Pennsylvania brings about an *automatic* death sentence, regardless of the circumstances of the offense and the defendant’s social history. The U.S. Supreme Court outlawed automatic death sentences in *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976), and reaffirmed *Woodson’s* holding in *Sumner v. Shuman*, 483 U.S. 66, 74–76 (1987). Subsequent decisions have elaborated on the requirement that defendants who face a potential sentence where their life will *surely* end in prison, must be afforded the opportunity to advance, and the judge or jury a chance to assess, any mitigating factors, so that the “most severe punishment,” *Miller v. Alabama*, 132 S.Ct. 2466, is reserved only for the most culpable defendants committing the most serious offenses. See, e.g., *Abdul-Kabir v. Quarterman*, 127 S.Ct.

---

<sup>35</sup> NT, 10/07/2013, at 55-56 (“There is no real benefit to be gained by ordering a presentence report since it is a mandatory sentence of life imprisonment which I am required to impose.”).

1654, 1664-1670 (2007); *Eddings v. Oklahoma*, 455 U.S. 104, 110–112 (1982); *Lockett v. Ohio*, 438 U.S., 586, 597–609 (1978).

40. That James could not present, and the Court (or jury) could not consider, mitigating circumstances regarding the offense or James' social history, renders 18 Pa.C.S. §1102 as well as James' LWOP sentence unconstitutional. *See* U.S. Const. Amends. V, VI, VIII, & XIV; Pa. Const., Art. 1, §§8, 9, 13.
41. If James' first-degree murder conviction stands,<sup>36</sup> he is entitled to a new sentencing hearing where he can present mitigating evidence calling for a sentence less than LWOP (*i.e.*, death).

### C. Motion For A New Trial

#### **The Court Erred When It Concluded The Police Had Probable Cause To Arrest James On July 28, 2011. U.S. Const. Amends. IV, XIV; Pa. Const., Art. 1, §§ 8, 9.**

42. Following the shooting, the police interviewed twelve people who witnessed the shooting, none of whom identified or named James as the shooter.<sup>37</sup>
43. On July 27, 2011, the day after the shooting, police released the bar surveillance video, which captured the shooting, to the local media.<sup>38</sup>
44. On the night of July 27, 2011, between 8 and 8:30 p.m., Leonard Waysone approached two police officers on a North Philadelphia street corner and said he saw the video on the news and thought the shooter looked like his cousin—Wayne James.<sup>39</sup> Likewise, shortly before Waysone approached police, an anonymous caller contacted the police and said the shooter's name was Wayne James and that James lived at 1114 Wagner Street.<sup>40</sup>
45. After receiving these tips, police did not re-interview the bar patrons who witnessed the shooting and have them view a photo array with James' photograph to determine if any could possibly identify him as the shooter.<sup>41</sup>
46. Based on Waysone's and the anonymous caller's tips, Detective Williams Holmes—the lead investigator—prepared a search warrant for 1114 Wagner,<sup>42</sup> but not an arrest warrant for James.<sup>43</sup> Likewise, based on this information, Detective Holmes tasked

---

<sup>36</sup> Which it should *not* because James' conduct warrants third-degree murder, not first-degree.

<sup>37</sup> NT, Suppression Hrg, 06/06/2013, at 73.

<sup>38</sup> *Id.* at 74.

<sup>39</sup> *Id.* at 13, 15.

<sup>40</sup> *Id.* at 24.

<sup>41</sup> *Id.* at 73.

<sup>42</sup> *Id.* at 63, 83.

<sup>43</sup> *Id.* at 40, 83.

Detective Derrick Jacobs with surveying 1114 Wagner Street during the early morning hours of June 28, 2011.<sup>44</sup>

47. After surveying 1114 Wagner Street for a short period, Detective Jacobs spotted James when he parked and exited a silver Suzuki near 1114 Wagner and then entered 1114 Wagner Street.<sup>45</sup> Detective Jacobs relayed this information to Detective Holmes who was still in the process of completing the search warrant application, but not an arrest warrant.<sup>46</sup>
48. A few hours later, at 8:00 a.m., Detective Holmes executed the search warrant with the Homicide Fugitive Task Force and U.S. Marshalls.<sup>47</sup> As they executed the search warrant, they arrested James,<sup>48</sup> placed him in a police cruiser, and transported him to the Homicide Division for questioning.<sup>49</sup>
49. Later in the day, the District Attorney's Office approved the charges against James.<sup>50</sup>
50. When James moved to throw out his arrest, because the police lacked probable cause, the Court held a suppression hearing on June 6, 2013. At the hearing's conclusion, the Court said the police had probable cause to arrest James.<sup>51</sup> The Court erred.
51. The probable cause standard is met when, at the moment of arrest, the facts and circumstances within the arresting officer's knowledge, and of which he or she has reasonably trustworthy information, were sufficient to warrant a prudent person in believing that the person arrested had committed an offense. *See Florida v. Harris*, 133 S. Ct. 1050, 1055 (2013) (listing cases defining "probable cause"); *Commonwealth v. Rogers*, 849 A.2d 1185, 1192 (Pa. 2004). In evaluating whether the Commonwealth has met this standard, courts examine the "totality of the circumstances." *See, e.g., Maryland v. Pringle*, 540 US 366, 371 (2003); *Illinois v. Gates*, 462 U.S. 213, 232 (1983); *Commonwealth v. Gray*, 503 A.2d 921 (Pa. 1985).<sup>52</sup> Moreover, because the Commonwealth did not obtain an arrest warrant, probable cause must have existed *prior* to James' arrest. *See Commonwealth v. Evans*, 685 A.2d 535, 537 (Pa. 1998). In other words, hindsight cannot supply probable cause that was lacking at the time of his arrest.

---

<sup>44</sup> *Id.* at 34-35, 57.

<sup>45</sup> *Id.* at 37.

<sup>46</sup> *Id.* at 35.

<sup>47</sup> *Id.* at 41.

<sup>48</sup> The Commonwealth conceded James was not free to go when authorities executed the search warrant. *See id.* at 50.

<sup>49</sup> *Id.* at 64.

<sup>50</sup> *Id.* at 70.

<sup>51</sup> NT, Suppression Hrg., 06/06/2013, at 102.

<sup>52</sup> "The protection against unreasonable searches and seizures afforded by the Pennsylvania Constitution is broader than that under the federal Constitution." *Commonwealth v. Jackson*, 698 A.2d 571, 573 (Pa. 1997); *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991).

52. Here, based on the information the police had before arresting James, no person of reasonable caution would believe James was the shooter simply because Waysone and one anonymous caller alleged that James looked like the shooter.
53. When the source of the information is an anonymous call, that presents with no or few indicia of reliability, courts have recognized that such tips should be treated with “particular suspicion.” *Commonwealth v. Jackson*, 698 A.2d 571, 573 (Pa. 1997); *Adams v. Williams*, 407 U.S. 143, 146–147 (1972); *Cf. Commonwealth v. Anderson*, 392 A.2d 1298, 1300 (Pa. 1978); *Commonwealth v. Kue*, 692 A.2d 1076, 1078 (Pa. 1997); *Commonwealth v. Hawkins*, 692 A.2d 1068, 1070 (Pa. 1997). Indeed, the anonymous calls in *Anderson*, *Kue*, and *Hawkins*, standing alone, did not provide adequate justification for a *Terry*-stop based on the (lower) reasonable suspicion threshold.
54. The U.S. Supreme Court in *Alabama v. White*, for instance, “recognized that an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity inasmuch as ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations and given that the veracity of persons supplying anonymous tips is ‘by hypothesis largely unknown, and unknowable.’” 496 U.S. 325, 329 (1990) (quoting *Illinois v. Gates*, 462 U.S. at 237); *accord Florida v. J.L.*, 529 U.S. 266, 270 (2000) (“Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant’s basis of knowledge or veracity”) (quotations and citations omitted); *Adams v. Williams*, 407 U.S. at 147 (“Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized”).
55. Although reasonable suspicion cases, *Anderson*, *Kue*, and *Hawkins* are applicable here. In each case, the police had no “independent reason,” outside the anonymous calls, to believe the arrestee may have been involved in criminal activity. *See Commonwealth v. Kue*, 692 A.2d at 1078; *Commonwealth v. Hawkins*, 692 A.2d at 1070. In other words, before acting on an anonymous tip containing no indicia of reliability, the police must conduct their own investigation to develop evidence corroborating the caller’s statement(s)/allegation(s). *See Commonwealth v. Carlisle*, 501 A.2d 664, 666 (Pa. Super. 1985), *aff’d* 534 A.2d 469 (Pa. 1987) (“[A] ‘tip’ from an unnamed informant can properly form the basis for probable cause, provided there is adequate evidence of the informant’s credibility.”); *Commonwealth v. Miller*, 483 A.2d 498, 501 (Pa. Super. 1984). In the probable cause context, more importantly, the independent evidence must give a reasonably cautious investigator the belief that the person he or she intends to arrest committed a criminal offense. *See Florida v. Harris*, 133 S. Ct. at 1055.
56. Here, the caller provided no *verifiable* information as to how and why he knew or suspected James to be the shooter. *See Florida v. J.L.*, 529 U.S. at 271 (finding that anonymous tip did not establish reasonable suspicion because the caller “provided no predictive information and therefore left the police without means to test the informant’s

knowledge or credibility.”).<sup>53</sup> For instance, there is no evidence the caller ever saw the video on any of the local news outlets. Likewise, he (or she) did not mention they were at the bar and witnessed the shooting. Lastly, for all we know, Waysone could have been the anonymous caller; it is plausible Waysone called in the anonymous tip at 8:00 p.m. on June 28, 2011, and shortly thereafter approached Officer Switaj and his partner to voice his suspicion in person. If this is true, and it very well may be, the supposed collective and corroborative impact of Waysone’s statement *and* the anonymous call is a mirage.

57. Regardless of whether Waysone is the anonymous caller or not, the lack of verifiable information regarding the caller and the basis for his or her belief that James was the shooter, renders the caller and the information he or she provided unreliable, unless, of course, the police conducted their own investigation and developed independent evidence implicating James in the Genesis bar. *See, e.g., Florida v. J.L.*, 529 U.S. at 271; *Alabama v. White*, 496 U.S. at 330 (“Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable.”).
58. That Waysone and the anonymous caller provided the correct address and description of the Black Volvo proves nothing; it merely shows Waysone and the caller are familiar with James’ address and vehicle, but these facts are irrelevant as to whether James actually committed the shooting. In other words, while these facts may have been accurate, they failed to create a *nexus* between James and the shooting.
59. Likewise, that Waysone said he was James’ cousin does not change the analysis.
  - a. First, there is no evidence the police attempted to verify the familial relationship between James and Waysone. For all we know, Waysone could have been enemies and Waysone wanted to falsely implicate James in the shooting. The police took Waysone’s word hook, line, and sinker without conducting any sort of investigation as to his alleged familial connection to James.
  - b. Second, Waysone’s statement—that the shooter *looked like* James—was nothing other than mere speculation and conjecture, *see Commonwealth v. Torres*, 764 A.2d 532, 540 (Pa. 2001), that required additional investigation to transform it into a reliable piece of information that could form the foundation of a probable cause.
60. The police, however, conducted no investigation whatsoever, and as a result, did not develop independent evidence implicating James in the shooting. The police, for instance, could have easily presented photo arrays to the twelve bar patrons and employees who witnessed the shooting to see if any could identify James as the shooter. Likewise, they could have wired Waysone and had him strike up a conversation with James to see if he (James) would implicate himself in the shooting. The police did neither.

---

<sup>53</sup> *Id.* at 30-32.



61. Instead, within hours of learning of James' name and address, the police went to 1114 Wagner Street with a search warrant and arrested him. Notably, when James exited the silver Suzuki and walked into the 1114 Wagner Street residence, he was not engaged in any sort of criminal activity. *See Commonwealth v. Anderson*, 392 A.2d at 1301 ("Moreover, there was nothing observable in his conduct in the officers' presence to suggest that he was in anyway involved in criminal activity or that he was the person they were seeking. In fact the only basis for the officers' belief that a crime had occurred rested upon unverified information supplied by the unidentified informer."). Observing someone exit a vehicle and enter a residence, that is presumably his, can hardly be considered the type of investigation needed to develop independent evidence implicating that person in a crime, particularly a homicide. Thus, once James entered his residence, the *quantity* and *quality* of information the police had on him remained the same: all they knew was Waysone and an anonymous caller thought James looked like the shooter. *See United States v. Cortez*, 449 U.S. 411, 417, (1981) (holding that both factors—quantity and quality—are considered in the totality of the circumstances analysis). These facts, standing alone, were insufficient to establish probable cause, especially when acknowledges the unreliability of eyewitness identification.
62. In short, the police lacked probable cause to arrest James.

### **Prayer For Relief**

63. WHEREFORE, James respectfully prays for the following relief:
- a. His first-degree murder conviction be vacated due to insufficient evidence proving beyond a reasonable doubt that he acted with specific intent when he fired the bullet that killed Carl Sharper.
  - b. If his first-degree murder conviction is not vacated, he requests a new sentencing hearing so he may develop and introduce mitigation evidence calling for a sentence less than LWOP (*i.e.*, death).
  - c. That his conviction be quashed because the police lacked probable cause when they arrested him on June 28, 2011.
  - d. Any other relief the Court deems fit in the interest of justice.<sup>54</sup>

---

<sup>54</sup> The Court should note counsel withdrew three claims raised in James' initial *PSM*: (1) there was insufficient evidence warranting James' aggravated assault convictions; (2) James did not knowingly and voluntarily waive his right to counsel; and (3) the Court's LWOP and aggravated assault sentences were excessive. After reviewing the record and transcripts, counsel concluded these issues were meritless prompting him to drop them from the *Amended PSM*.



Respectfully submitted this the 23<sup>rd</sup> day of January, 2014

Cooley Law Office  
1528 Walnut Street, Ste. 1902  
Philadelphia, PA 19102  
Pa. Bar. No. 315673  
773-620-7610  
[craig.m.cooley@gmail.com](mailto:craig.m.cooley@gmail.com)  
[www.pa-criminal-appeals.com](http://www.pa-criminal-appeals.com)

**Date Mailed: January 21, 2014**

**Certificate of Service**

On January 21, 2014, undersigned counsel served (via U.S. mail) a copy of the  
aforementioned motion to:

**Philadelphia County District Attorney's Office  
Attn: ADA Brendan O'Malley  
3 South Penn Square  
Philadelphia, PA 19107**

*/s/Craig M. Cooley*  
Craig M. Cooley  
Cooley Law Office  
1528 Walnut Street, Ste. 1902  
Philadelphia, PA 19102  
Pa. Bar. No. 315673  
773-620-7610  
[craig.m.cooley@gmail.com](mailto:craig.m.cooley@gmail.com)