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PENNSYLVANIA SUPERIOR COURT
WESTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA **Respondent-Appellee,**	)	**1020 WDA 2017**
v.	)	**CP-33-CR-0000455-2011**
	)	**PCRA Court: Foradora, J.**
JUDY SPRANKLE **Petitioner-Appellant.**	)	

Petitioner-Appellant's Opening Brief

Appeal from the June 13, 2017 Order Dismissing Judy Sprankle's PCRA Petition Entered by the Honorable John H. Foradora of the Jefferson County Common Pleas Court, Criminal Division, CP-33-CR-0000455-2011

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STATEMENT OF JURISDICTION

Jurisdiction for this appeal is provided for at 42 Pa. C.S. § 742, relating to this Court's exclusive appellate jurisdiction from a Common Pleas Court's final order.

ORDER OR OTHER DETERMINATION IN QUESTION

Under appeal is the June 13, 2017 order and opinion dismissing Judy Sprankle's PCRA petition entered by the Honorable John H. Foradora of the Jefferson County Common Pleas Court, Criminal Division, CP-33-CR-0000455-2011.[1]

On July 7, 2017, Ms. Sprankle appealed.[2]

On August 8, 2017, the PCRA court issued its 1925(a) opinion.[3]

PROCEDURAL HISTORY

On October 21, 2011, the Commonwealth filed a 13-count *Information* charging Judy Sprankle with several offenses in connection with an

[1] Rp. 1. Rp = Reproduced Record page number(s). The PCRA court's opinion can be found at Rpp. 2-10.

[2] Rp. 11. On July 7, 2017, the PCRA court entered an order directing counsel to file Ms. Sprankle's 1925(b) statement within twenty-one (21) days of entry of the PCRA court's order – or by July 28, 2017. Counsel mistakenly docketed the due date as August 4th, not July 28th. Thus, counsel did not file Ms. Sprankle's 1925(b) statement on or before July 28th. On August 4, 2017, counsel filed a motion requesting the PCRA court to reinstate Ms. Sprankle's PCRA appellate rights *nunc pro tunc*. On August 7, 2017, the PCRA court granted counsel's request. Rp. 13.

[3] Rp 12.

altercation she had with her ex-husband, Elmer Sprankle, on September 8, 2011.[4] The Commonwealth alleged Elmer and Ms. Sprankle argued outside the magistrate's office. During this argument, Ms. Sprankle attempted to hit Elmer's girlfriend, Alicia Caltagarone, who was seated in his car. When Elmer entered his car and drove off, the Commonwealth alleged Ms. Sprankle removed a handgun from her purse and fired six shots at Elmer's car. One bullet struck Elmer's car. Another bullet was recovered from inside a nearby house. The Commonwealth alleged Ms. Sprankle went to the magistrate's office that day with the specific intent to kill Elmer.

The Commonwealth charged Ms. Sprankle with two (2) counts of attempted homicide, two (2) counts of aggravated assault, three (3) counts of simple assault, three (3) counts of recklessly endangering another person ("REAP"), two (2) counts of criminal mischief-damaging property, and one (1) count of discharging a firearm into an occupied structure ("DFOS").[5]

Ms. Sprankle retained Toni Cherry as counsel.

On September 10, 2012, before the Honorable John H. Foradora, Ms. Sprankle pled guilty to one count of attempted murder, one count of REAP, and one count of DFOS.

[4] Rpp. 151-153.
[5] Rpp. 151-153.

On September 18, 2012, after a sentencing hearing, Judge Foradora sentenced Ms. Sprankle to an aggregate sentence of 9½ years to 29 years in prison and fined her $27,000.

Attempted homicide: 78 months to 20 years in prison; $15,000 fine.

REAP: 6 months to 2 years in prison, to run consecutive with the attempted homicide sentence; $2,000 fine.

DFOS: 12 months to 7 years in prison, to run consecutive to the REAP sentence; $10,000 fine.[6]

On September 28, 2012, Ms. Sprankle filed her *Post-Sentencing Motions*,[7] which Judge Foradora denied on December 21, 2012.[8]

On January 21, 2013, Ms. Sprankle appealed (165 WDA 2013), but this Court affirmed on July 2, 2014. Toni Cherry represented Ms. Sprankle on direct appeal. Ms. Sprankle filed a timely *Petition for Allowance of Appeal*, which was denied on November 26, 2014 (356 WAL 2014).[9] Ms. Sprankle did not file a certiorari petition with the U.S. Supreme Court, making her conviction final on February 24, 2015.

[6] *Amended PCRA Petition*, Ex. 4.
[7] Rpp. 149-150.
[8] *Amended PCRA Petition*, Ex. 6.
[9] *Amended PCRA Petition*, Ex. 9.

On February 22, 2016, Ms. Sprankle filed a timely PCRA petition,[10] which she amended on August 4, 2016,[11] and supplemented on February 27, 2017.[12]

On September 9, 2016, the PCRA court held an evidentiary hearing.

In early October 2016, Ms. Sprankle retained Dr. Tori Reynolds to evaluate Ms. Sprankle for the purpose of determining whether she suffered from PTSD and battered woman syndrome.

On October 8 and 9, 2016, Dr. Reynolds evaluated Ms. Sprankle for fifteen (15) hours at SCI-Cambridge Springs.

On February 24, 2017, Dr. Reynolds provided counsel an affidavit discussing her findings and conclusions.[13]

On February 27, 2017, Ms. Sprankle filed a supplemental amended PCRA petition containing the few facts in Dr. Reynolds's affidavit and new claim based on these facts.[14]

On May 15, 2017, the PCRA court held an evidentiary hearing where Dr. Reynolds testified.

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[10] Rpp. 14-23.
[11] Rpp. 24-80.
[12] Rpp. 81-93.
[13] Rpp. 94-135.
[14] Rpp. 81-93.

On May 19, 2017, Ms. Sprankle filed a post-hearing brief.[15]

On June 13, 2017, the PCRA court entered its order and opinion denying and dismissing Ms. Sprankle's petition.[16]

On July 7, 2017, Ms. Sprankle appealed. [17]

On August 8, 2017, the PCRA court issued is 1925(a) opinion.[18]

ISSUE PRESENTED

Ms. Sprankle respectfully submits the following claim for this Court's consideration and adjudication:

> The record does not support the PCRA court's findings regarding Toni Cherry's representation of Ms. Sprankle. Cherry's representation was objectively unreasonable. She failed to develop readily available evidence regarding Ms. Sprankle's severe PTSD and how it impacted her perceptions, decision-making, and brain circuitry. Cherry's deficient representation prejudiced Ms. Sprankle. There is a reasonable probability had Cherry developed the readily available PTSD facts contained in Dr. Reynolds's affidavit and testimony and properly advised Ms. Sprankle this evidence could form the foundation of legitimate self-defense and diminished capacity defenses at trial, Ms. Sprankle would have pled not guilty and proceeded to a jury trial.

[15] Rpp. 136-143.
[16] Rpp. 1-10.
[17] Rp. 11.
[18] Rp. 12.

STANDARD AND SCOPE OF REVIEW

In reviewing the grant or denial of PCRA relief, the Court examines whether the PCRA court's findings and conclusions are supported by the record and free of legal error. *Commonwealth v. Mitchell*, 141 A.3d 1277, 1283-1284 (Pa. 2016). The PCRA court's factual findings are entitled to deference, but its legal conclusions are subject to *de novo* review. *Commonwealth v. Hawkins*, 894 A.2d 716, 722 (Pa. 2006).

To prevail on an ineffectiveness claim, Ms. Sprankle must demonstrate that trial counsel performed deficiently and the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The deficiency prong "requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed [to] the defendant by the Sixth Amendment." *Id*. at 687. The prejudice prong requires showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome," *Id*. at 694, which is "not a stringent" standard because it is "less demanding than the preponderance standard." *Hall v. Kyler*, 190 F.3d 88, 110 (3d Cir. 1999).

Under state law, a petitioner must show (1) the claim has arguable merit, (2) trial counsel's action or inaction lacked a reasonable basis designed to effectuate the client's interest(s), and (3) prejudice. *Commonwealth v. Pierce*, 527 A.2d 973, 975–976 (Pa. 1987). *Pierce* is identical to *Strickland*: deficient performance and prejudice. *Commonwealth v. Spotz*, 870 A.2d 822, 829 (Pa. 2005).

STATEMENT OF FACTS

A. Judy Sprankle's 40-Years of Abuse and Torment

Elmer Sprankle is an ex-felon who physically, sexually, and emotionally abused and controlled his wife, Judy Sprankle, for more than forty years. Elmer's abusive and misogynistic behavior dates back to his teenage years when he allegedly raped one or two of his sisters.[19] Ms. Sprankle met Elmer when she was 17-years-old. The two married shortly thereafter in 1969, but Ms. Sprankle's love for him slowly dissipated due to his abusive behavior toward her and their children, Kim and Kevin. Elmer's physical, sexual, and psychological abuse lasted more than forty years.

[19] *Amended PCRA Petition*, Ex. 10.

Sometime between 1971 and 1972, Elmer began slapping Ms. Sprankle. This coincided with Ms. Sprankle taking a position with the local glass company. Elmer routinely believed Ms. Sprankle flirted with her co-workers and he slapped and hit her when his insecurities ran deep. Elmer also criticized her work clothing, saying they were too tight and too short. Elmer also checked the mileage on her car because he suspected infidelity on her part.[20]

During the early 1970s, Elmer also convinced Ms. Sprankle to have sex with Debbie and Ed, the couple who lived above them at the time. Ms. Sprankle reluctantly agreed to "swap" and had sex with Ed because Elmer wanted her to and because she feared what Elmer might do if she refused to have sex with Ed. Elmer also "swapped" and had sex with Debbie.[21] Once Ms. Sprankle "swapped" and had sex with Ed, however, Elmer became jealous and physically assaulted her on February 28, 1972 by repeatedly punching her in the face, resulting in Elmer's arrest. According to the police complaint, Elmer "unlawfully and willfully made an assault and beat about

[20] *Amended PCRA Petition*, Ex. 10.
[21] *Amended PCRA Petition*, Ex. 22.

the face and head of one Judy Sprankle[.]"[22] The assault hospitalized Ms. Sprankle.[23]

In 1973, Elmer punched Ms. Sprankle in the face and stomach, braking one of her ribs.[24] In 1975, Ms. Sprankle left Elmer because of the abuse, but eventually returned. During their separation, her son, Kevin, was born.[25] Kevin's father, though, is Ted Sprankle, Elmer's brother.[26]

Between 1976 and 1978 Elmer began raping Ms. Sprankle. It was during this period Ms. Sprankle turned to alcohol to cope with Elmer's abuse. The abuse continued, though, resulting in several black eyes.[27] During this period, Ms. Sprankle routinely contemplated suicide.[28] From 1975 to the early 1980s, Ms. Sprankle frequently called the police because of Elmer's abuse, but she never had Elmer arrested and charged.[29] In 1979, Ms. Sprankle became pregnant with her daughter, Kim. During the pregnancy's last trimester, Ms. Sprankle became so concerned with Elmer's abuse one

[22] *Amended PCRA Petition*, Ex. 19.
[23] *Amended PCRA Petition*, Ex. 22.
[24] *Amended PCRA Petition*, Ex. 10.
[25] *Amended PCRA Petition*, Ex. 10.
[26] *Amended PCRA Petition*, Ex. 22.
[27] *Amended PCRA Petition*, Ex. 10.
[28] *Amended PCRA Petition*, Ex. 22.
[29] *Amended PCRA Petition*, Ex. 22.

night, and how it could impact her pregnancy, she climbed out a bathroom window and hid on the roof.[30]

During the 1980s, Elmer's abuse continued as did the police routinely coming to their house.[31] Ms. Sprankle also recalled several times when she arrived home from work to find black and blue marks on Kevin's arms, legs, and face. When she confronted Elmer about the injuries, Elmer always blamed the injuries on falls of some sort.[32]

Tired of the abuse, sometime in 1990 or 1991, Ms. Sprankle told Elmer they needed marriage counseling, but Elmer rejected the idea. To escape Elmer's abuse, Ms. Sprankle worked double shifts at the glass plant and drank heavily on her days off. [33] During the 1990s, Elmer forced Ms. Sprankle to get breast implants.[34] Also, during this period, "[a] regular family ritual was the use of ice bags to limit bleeding and swelling after Judy was struck by [Elmer]."[35] Likewise, Elmer frequently threatened to shoot and kill Ms. Sprankle and the kids if they left or threatened to leave.[36] Elmer also

[30] *Amended PCRA Petition*, Exs. 10, 22.
[31] *Amended PCRA Petition*, Ex. 22.
[32] *Amended PCRA Petition*, Ex. 10.
[33] *Amended PCRA Petition*, Exs. 10, 22.
[34] *Amended PCRA Petition*, Ex. 10.
[35] *Amended PCRA Petition*, Ex. 10.
[36] *Amended PCRA Petition*, Ex. 10; NT, Sentencing Hrg., 9/18/2012, pp. 11-12.

repeatedly pointed his gun at Ms. Sprankle and the kids when he got angry.[37] Elmer also continued to rape Ms. Sprankle during this period.[38] Ms. Sprankle's drinking increased during the 1990s to cope with Elmer's abuse – to the point where she began attending AA meetings.[39]

Kim described what it was like growing up with Elmer: "Elmer… abused [me], [my] brother, and [my] mother our entire lives physically, emotionally, mentally, and sexually."[40] Kim added:

> Growing up I remember Elmer and my mom physically fighting and yelling at each other. I remember my mom and I climbing out our bedroom window, running to the car, and staying in a hotel room… until Elmer found us and knocked on the door and yell[ed] until we returned home. This happened frequently.[41]

Kim also said:

> I remember the police showing up at our house and taking us to my grandparents house to stay the night. I remember Elmer hitting [me], my mom, [and] my brother. He [called] use names. He [told] me that he 'wished I was never born' and he used to call me his 'little nigger' when it was just [me and] him.[42]

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[37] NT, Sentencing Hrg., 9/18/2012, p. 11; *Amended PCRA Petition*, Ex. 22.
[38] *Amended PCRA Petition*, Ex. 22.
[39] *Amended PCRA Petition*, Exs. 10, 22; NT, Sentencing Hrg., 9/18/2012, p. 49.
[40] NT, Sentencing Hrg., 9/18/2012, p. 23.
[41] *Amended PCRA Petition*, Ex. 11.
[42] *Amended PCRA Petition*, Ex. 11.

Kim added:

> Because growing up… [Elmer] was very harmful. He was very mean to us and cruel. I witnessed him punching [Judy] in the face, slapping her… when she would ball up and fall on the floor, he would kick her… when she was down on the ground, he would pull her by her hair into the bedroom, and he would slam it and lock it. I would hear crying, yelling. He was very mean…. He did mean things to me growing up… if I came home from school and my lips were chapped, I got beat with a belt for having chapped lips."[43]

Kim described seeing Elmer force himself onto her mother:

> I've seen Elmer punch my mom in the face and point a hand gun in her and my direction. I remember looking into their bedroom and saw [Elmer] on top of [my mom] having sex, and [my mom] was crying.[44]
>
> …
>
> I watched Elmer rape my mother. That's what I meant sexually. That's what I witnessed.[45]

Kim said Elmer was always the aggressor.[46] Ms. Sprankle fought back, by throwing punches of her own, but "she always ended up going down on the ground" and "bailing up in a ball."[47] Fed up with Elmer's abuse, Ms.

[43] NT, Sentencing Hrg., 9/18/2012, pp. 9-10.
[44] *Amended PCRA Petition*, Ex. 11.
[45] NT, Sentencing Hrg., 9/18/2012, p. 24.
[46] NT, Sentencing Hrg., 9/18/2012, p. 7.
[47] NT, Sentencing Hrg., 9/18/2012, p. 14.

Sprankle enrolled in self-defense classes.[48] Again, though, while she frequently fought back, she inevitably ended up on the ground curled up in a ball.

Kim also described Elmer's physical, emotional, and sexual abuse against her. She recalled Elmer slamming her head against the car window if she failed to tell him a car was coming. She recalled a time when Elmer beat her with a belt because she had chapped lips.[49] Kim said Elmer "furiously" criticized her and Kevin "for not doing enough or well enough."[50]

Kim described how, as a 7-years-old, she fell out of a tree and broke her arm and leg. Instead of taking her immediately to the hospital to treat the fractures, Elmer insisted on cutting down the tree first. He construed it as punishment for being in the tree in the first place.[51] Kim described how, as a young girl, Elmer "washed" her "private area 2 to 3 times roughly with a wash cloth saying [she] was a dirty girl." After Elmer did this multiple times, Kim began locking the bathroom door.[52]

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[48] NT, Sentencing Hrg., 9/18/2012, p. 17.
[49] *Amended PCRA Petition*, Ex. 11; NT, Sentencing Hrg., 9/18/2012, pp. 12-13.
[50] *Amended PCRA Petition*, Ex. 10.
[51] *Amended PCRA Petition*, Ex. 10.
[52] *Amended PCRA Petition*, Ex. 11; NT, Sentencing Hrg., 9/18/2012, p. 13.

Despite the long-term abuse, Kim said Ms. Sprankle always returned to Elmer:

> Yes [she tried to leave often]. When they would fight, she would holler or the police would come to our house, give us a ride to my grandparents' house in DuBoise. But she always went back. I remember him saying, "I'll kill you. I'll kill them. Then I'll kill myself."[53]

So fearful of Elmer was Kim, she refused to allow her son, John Paul, to be in a room alone with Elmer.

William Carulli, Kim's husband, said they "always had to… watch[]" Elmer to ensure he did not physically abuse or hit John Paul,[54] because they once caught Elmer pulling John Paul's hair even though he was still a toddler.[55] They also instructed their day care provider to never allow Elmer to pick up John Paul from day care after Elmer removed him from daycare one day without his or Kim's knowledge and permission.[56] Kim and William eventually moved out of Pennsylvania to "get away from… Elmer. To get away from his craziness[.]"[57]

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[53] NT, Sentencing Hrg., 9/18/2012, p. 27.
[54] NT, Sentencing Hrg., 9/18/2012, p. 15.
[55] NT, Sentencing Hrg., 9/18/2012, p. 32.
[56] NT, Sentencing Hrg., 9/18/2012, p. 37.
[57] NT, Sentencing Hrg., 9/18/2012, p. 7.

William described Elmer's behavior and conduct over the course of his marriage to Kim. William described Elmer as a "very abusive and dangerous person"[58] and a "master manipulator"[59] who "always had evil intentions[.]"[60] William was not physically afraid of Elmer, but he was "afraid of his mental capability[.]"[61] William described Elmer as "a control freak" who "made it adamantly clear, 'When I talk, you jump,' to everyone around him."[62] As William put it: "[A]nytime you had a dealing with [Elmer], he… let you know… he was in control."[63] William was "one hundred and ten percent" certain Ms. Sprankle and Kim feared Elmer.[64]

After Ms. Sprankle and Elmer separated in 2009, Elmer engaged in numerous behaviors aimed at tormenting, aggravating, and angering Ms. Sprankle. William described an incident where Elmer drove back and forth in front of Ms. Sprankle's residence honking his horn. [65] Jim Schwartz, Ms. Sprankle's then boyfriend and now husband, also described multiple instances of Elmer incessantly driving by Ms. Sprankle's residence and

[58] NT, Sentencing Hrg., 9/18/2012, p. 30.
[59] NT, Sentencing Hrg., 9/18/2012, p. 45.
[60] NT, Sentencing Hrg., 9/18/2012, p. 38.
[61] NT, Sentencing Hrg., 9/18/2012, p. 39.
[62] NT, Sentencing Hrg., 9/18/2012, p. 33.
[63] NT, Sentencing Hrg., 9/18/2012, p. 38.
[64] NT, Sentencing Hrg., 9/18/2012, p. 34.
[65] NT, Sentencing Hrg., 9/18/2012, pp. 35-36.

honking his horn as well as honking his horn at her whenever he saw her out in town.[66] Kim also described this behavior.[67]

William also saw Elmer frequently opening Ms. Sprankle's mail box and going through her mail.[68] In another post-separation incident, Elmer chased Ms. Sprankle and Kim in Ms. Sprankle's car causing her car to flip.[69]

When Ms. Sprankle began dating Jim Schwartz in 2009, the interpersonal conflict with Elmer intensified.[70] When Jim moved in with Ms. Sprankle "[i]t went from bad to worse."[71] Elmer not only made harassing phone calls to Ms. Sprankle's work, he also called her boss and friends, as well as Jim's ex-wife. Likewise, the tires on their cars were mysteriously slashed. Ms. Sprankle and Jim called the police at least once a week to report Elmer's illegal and harassing behaviors. Elmer's craziness and proclivity for violence eventually forced Kim and William to move out of Pennsylvania.[72]

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[66] NT, Sentencing Hrg., 9/18/2012, pp. 74-80.
[67] *Amended PCRA Petition*, Ex. 10.
[68] NT, Sentencing Hrg., 9/18/2012, pp. 37-38.
[69] *Amended PCRA Petition*, Ex. 10.
[70] *Amended PCRA Petition*, Ex. 10.
[71] *Amended PCRA Petition*, Ex. 10.
[72] *Amended PCRA Petition*, Ex. 10.

Between December 2010 and April 2011, Ms. Sprankle sought treatment and counseling from the Punxsutawney Area Hospital Counseling Center for "anxiety/panic symptoms" and "traumatic experience from her abusive husband of forty years."[73] Dr. Satish Amirneni, evaluated Ms. Sprankle on December 22, 2010. In his report, under the *History of Present Illness* section, Dr. Amirneni wrote the following comprehensive synopsis of Ms. Sprankle's mental health issues:

> This is a 59-year-old female who has been married to her present husband for almost 40 years where she has left him about a year ago. It has been a messy separation process as he was making threats that he is going to kill the children, her, and himself. She ended up moving away from him to another city, but he is still stalking [her] as he retired as a construction worker. He also has been calling her work leaving messages. She also found out from her own children that he was also emotionally abusive to both the children, and they have very poor relationship[s] with her ex-husband at this time. This led to her decision to leave [her] husband… There were also incidents in the past where he was… physically aggressive towards her where she had some broken bones, but she has not pressed any charges at this point… She was taken to the emergency room a few weeks ago where she thought she was having a heart attack and losing her mind. She was having sweaty palms, getting dizzy, and very fearful… [doctors diagnosed her symptoms as a] panic attack… She presently denies depression, but

[73] *Amended PCRA Petition*, Ex. 12.

> does become very fearful unconsciously looking behind her back, and she already had a gun, has an ax in her car, and also has mace… in her pocketbook…. She did attend a trauma group once and is asking if she can attend an individual session. She is having some nightmares and having insomnia about the chronic abuse she has suffered over the years.[74]

Dr. Amirneni diagnosed Ms. Sprankle with panic disorder and PTSD.[75]

B. The Incident: Before, During, and After

In June 2011, only a few months before the shooting, Kim divulged to her mother the true extent of Elmer's physical and sexual abuse. Kim never divulged the true details of the abuse as a child because Elmer always threatened her. She did so in June 2011, however, because she obtained a *Protection from Abuse* ("PFA") order against Elmer on May 17, 2011.[76] Kim obtained the PFA after Elmer ran Kim off the road. Elmer thought Ms. Sprankle was driving the car, but Kim was driving.[77] During the June 2011 PFA hearing, Kim discussed the physical abuse, as well as the two to three times Elmer roughly washed her private area and called her a "dirty little

[74] *Amended PCRA Petition*, Ex. 12.
[75] *Amended PCRA Petition*, Ex. 12.
[76] NT, Sentencing Hrg., 9/18/2012, p. 27.
[77] NT, Sentencing Hrg., 9/18/2012, pp. 8, 22; *Amended PCRA Petition*, Ex. 10.

girl"[78] She also said Elmer threatened her to "[k]eep [her] mouth shut or it will get worse."[79] As Kim stated, "I would have never told [my mother] anything if it wasn't for the PFA… I started remembering things, and that's when I started to tell [my mother] things."[80]

After Kim divulged this information, Ms. Sprankle's demeanor changed. She felt extremely guilty for failing to protect her children. She did not want to fail at protecting her grandson, John Paul.[81] Only days before the shooting, Elmer called Ms. Sprankle at work and taunted her by making crude comments and telling her he had "fucked" Kim.[82] Concerned, angered, and confused by Elmer's comments, Ms. Sprankle spoke with William. According to William,

> And this was after the PFA hearing… and that bothered Judy immensely… I knew at that point she was overridden with guilt. Now she's starting to think what happened. She worked a lot while they were growing up… I could see at that time, the slipping, the thinking about the incident. That's when she had a conversation with me, and I could see it on her face that she was going to say something weird or out of the ordinary. She's like, "Elmer called me at work and said that I [fucked]

[78] NT, Sentencing Hrg., 9/18/2012, pp. 20, 22.
[79] NT, Sentencing Hrg., 9/18/2012, p. 27.
[80] NT, Sentencing Hrg., 9/18/2012, p. 13.
[81] NT, Sentencing Hrg., 9/18/2012, p. 53; *Amended PCRA Petition*, Ex 10.
[82] *Amended PCRA Petition*, Ex. 10; NT, Sentencing Hrg. 9/18/2012, p. 25.

> your daughter." And then she was just in tears. She said, "What do you think he meant? Do you think he meant finically?" She was just distraught. "Do you think he would do that?" I said, "Yes, I do."[83]

William added,

> I don't know how she held it together. Especially, given the events… leading up to that day, that week. With the way I saw her as bothered as she looked… She just wanted out of this. She really did. She didn't want the money, the property. Just out. Out. She would have given him anything he wanted as long as… he would have just gone away…[.][84]

On the day of the shooting, Ms. Sprankle drove to the magistrate's office and Elmer followed her. Although only 8:30 a.m., Ms. Sprankle was intoxicated. Fearful of Elmer, she began carrying a gun in her purse. She had the gun that day. When she parked, Elmer pulled alongside her and yelled, "I'm going to get it all!" Elmer was with his girlfriend, Alicia Caltagarone. Ms. Sprankle ignored Elmer's taunt and ran up the steps of the magistrate's office. Elmer then yelled, "I'm going to get Jon," referring to her grandson John Paul. At this point, something triggered Ms. Sprankle. She

[83] NT, Sentencing Hrg., 9/18/2012, p. 34.
[84] NT, Sentencing Hrg., 9/18/2012, p. 42.

felt tremendous guilt for not protecting her own children. She was not going to allow this to happen to John Paul.[85]

Ms. Sprankle walked to the passenger side of Elmer's car and told Alicia, "Move aside – I'm going after Elmer." Elmer pulled out of the parking lot yelling, "I fucked your daughter," before turning down the nearby alley. Ms. Sprankle followed on foot. Elmer, though, stopped, placed his car in reverse, and began backing up toward Ms. Sprankle. When Ms. Sprankle saw Elmer's reverse lights, she quickly thought, "It's either him or me," so she removed the gun from her purse, walked toward his car, and fired multiple shots at his car.[86]

When police arrived, Ms. Sprankle surrendered without incident. Based on her demeanor and statements, arresting officers believed Ms. Sprankle was intoxicated.[87] For instance, when officers handcuffed Ms. Sprankle, she said, "Take it easy it's not you I'm going to hurt it's my husband I'm going to kill."[88] Likewise, while being transported to the PSP-

[85] *Amended PCRA Petition*, Ex. 10.
[86] *Amended PCRA Petition*, Ex. 10.
[87] NT, Sentencing Hrg., 9/18/2012, p. 64.
[88] *Amended PCRA Petition*, Ex. 13.

Punxsutawney barracks, Ms. Sprankle said, "Don't let me out of jail because I'll kill him."[89]

C. Information, Pre-Trial Proceedings, and Trial Counsel's Pre-Trial Investigation

On October 11, 2011, Toni Cherry filed a motion requesting public funds to hire a battered woman expert.[90] Cherry alleged Ms. Sprankle was a "battered wife" and the "appointment" of a qualified battered woman expert was "essential to the preparation of the defense in this case."[91] Cherry said an "independent psychiatrist" was "necessary" to "determine if" Ms. Sprankle "suffer[ed] from battered wife syndrome or other mental illness that would bear upon her mental capacity to understand the nature" of the charges pending against her.[92] On March 19, 2012, the trial court denied Cherry's funding request.[93]

Cherry never revisited the funding issue, nor did she consult with a qualified PTSD/battered woman expert. Instead, Cherry consulted with Dr. Joseph Silverman–a general practitioner psychiatrist with little to no

[89] *Amended PCRA Petition*, Ex. 13.
[90] Rpp. 156-158.
[91] Rpp. 156-158.
[92] Rpp. 156-158.
[93] *Amended PCRA Petition*, Ex. 15.

experience counseling and treating battered woman who have moderate to severe PTSD.[94] To retain Dr. Silverman, Ms. Sprankle paid Cherry $5,000.

Dr. Silverman evaluated Ms. Sprankle on July 27, 2012 at the Jefferson County jail. Dr. Silverman also interviewed Kim Carulli, William Carulli, and Jim Schwartz.[95] Dr. Silverman drafted an initial report on July 30, 2012.[96] He issued another report on August 9, 2012.[97]

Dr. Silverman's reports do not mention a single word about (1) PTSD, (2) the origins of PTSD, and (3) how prolonged abuse and PTSD impacted the brain's neuropathways and ultimately the victim's perception of the world and reactions to potentially threatening stimuli. Dr. Silverman also "did not perform anything approaching a responsible or adequate assessment of either domestic violence or PTSD."[98] Dr. Silverman, for instance, did not administer any of the generally accepted standardized PTSD assessment tools when he evaluated Ms. Sprankle, *e.g.*, Clinician Administered PTSD Scale–5 (CAPS-5) (Weathers et. al, 2013), Abusive Behavior Checklist (ABOC) (Dutton, Mary Ann, 1992), Response to Violence

[94] *Amended PCRA Petition*, Ex. 21.
[95] NT, Sentencing Hrg., 9/18/2012, p. 51.
[96] Rpp. 159-161.
[97] Rpp. 162-166.
[98] Rp. 111, ¶ 40.

Inventory: Strategies to Escape, Avoid and Survive Abuse (Dutton, Mary Ann, 1992). Rather, the extent of his evaluation consisted of him interviewing Ms. Sprankle for a few hours on July 27, 2012.

In his July 30, 2012 report, he opined Ms. Sprankle was "experiencing heightened stress" on September 8, 2011 and that "chronic stress can alter one's nervous system" and the person's "capacity for self-restraint and sensible behavior." Here is what Dr. Silverman wrote:

> **2. As best the examiner can determine, on the morning in question the defendant .... had been experiencing heightened stress (which implies correlative changes in chemical messenger systems). The September 8 hearing was initiated by Elmer, who claimed that Judy was harassing him. For years she had endured harassment , threats, physical and mental harm, and even potential death, all of this directed not only toward herself but also, though to a much smaller degree, toward her daughter and grandchild. Chronic stress can alter one's nervous system and therefore, in this case, the defendant's capacity for self-restraint and sensible behavior.**

In his August 9, 2012 report, Dr. Silverman gave this quasi-Freudian opinion regarding Ms. Sprankle's actions and decisions on September 8, 2011.

> **INTERPRETATION:** The way serenity suddenly swept over the defendant suggests that, on the day of the shooting, she fell into an atypical state. She had resolved to take some kind of action to liberate herself and the whole family from the persecution they had all suffered as a result of Elmer's malignant, unrelenting intrusiveness, unrelenting even after he found himself a new partner.
>
> Anxiety, on occasion, can spawn an irresistible commitment to action that, as in this case, can be automatically succeeded by a state of exceptional calm.

Dr. Silverman also opined Ms. Sprankle's actions the day of the shooting were the result of "cumulative psychic pressure" that had building for "decades" based on Elmer's "oppression." The psychic pressure, according to Dr. Silverman, "became [too] unbearable" on the day of the shooting and Ms. Sprankle had to do something about it. Although Ms. Sprankle acted to "liberate" herself from Elmer's oppression, Dr. Silverman opined her actions were "hare-brained" and "absurd":

> It has become more and more apparent to the examiner that the defendant suffered from unrelenting oppression by her former husband, whose behavior had endangered her and others for 40 years. This persecution escalated after Judy became involved with a new lover, escalated in frequency, intensity, and lethality. Furthermore, threats to kidnap or harm her young grandson Jon Paul were particularly horrifying to the defendant. She had long realized, with attendant guilt, that she had failed to protect her two children against their father. She determined to protect this new vulnerable target, her grandson. Decades of oppression exerted a cumulative psychic pressure. This pressure, on the day of the shooting, had become unbearable. At that moment she committed herself to a desperate but hare-brained and absurdly-executed act of violence.

After interviewing Ms. Sprankle, Dr. Silverman wrote the National Clearinghouse for the Defense of Battered Woman ("NCDBW") in Philadelphia. In his August 13, 2012 letter to Ms. Sprankle, Dr. Silverman mentioned the NCDBW:

> With Attorney Cherry's permission, I have contacted the National Clearinghouse for the Defense of Battered Women, located in Philadelphia. The staff there is pondering your case, looking for something that would justify a plea bargain with a lesser sentence.[99]

[99] *Amended PCRA Petition*, Ex. 16.

On August 10, 2012, Cherry spoke briefly with Cindene Pezzell, the NCDBW's legal director, regarding Ms. Sprankle's case.[100]

D. Plea Offer and Plea Colloquy

In early September 2012, Cherry presented a plea offer to the Commonwealth. On September 7, 2012, District Attorney Jeffery Burkett wrote Cherry and made a "counter-offer[.]"[101] Burkett said he was "absolutely convinced" Ms. Sprankle "fully intended to kill Elmer Sprankle" on September 8, 2011.[102] Burkett presented Cherry with "two separate offers"– one a "specific time offer," the other being an offer to "drop some charges and allowing Judy to enter an open plea to other charges."[103]

First plea offer:

> Criminal-Attempt Homicide: If Ms. Sprankle pled guilty to attempted homicide against Elmer, she would receive a 96 month to 20 year prison sentence and the attempted homicide charge regarding Caltagarone would be dropped.[104]
>
> REAP: If Ms. Sprankle pled guilty to REAP, she would receive a 7 month to 24 month prison sentence,

[100] Rpp. 182-185.
[101] Rpp. 154-155.
[102] Rpp. 154-155.
[103] Rpp. 154-155.
[104] Rpp. 154-155.

> which would run consecutively with the attempted homicide sentence.[105]
>
> DFOS: If Ms. Sprankle pled guilty to DFOS, she would receive a 2 to 4 year prison sentence, which would run consecutively with the attempted murder and REAP sentences.[106]
>
> The cumulatively sentence was 127 months (10 years and 7 months) to 26 years in prison.

Second plea offer: Under the open plea offer, Burkett agreed to have a "full-blown" sentencing hearing because, as Burkett, himself, recognized, "Judy and Elmer's prior history appear[ed] to be so ugly[.]"[107] The sentencing hearing, Burkett wrote, would allow Cherry to "present any evidence, testimony, and arguments" in support of a mitigated sentence or a concurrent sentencing scheme.[108] According to Ms. Sprankle, Cherry never presented the plea letter to her or told her about the two offers.[109]

On September 10, 2012, Ms. Sprankle pled guilty to attempted murder, REAP, and DFOS.

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[105] Rpp. 154-155.
[106] Rpp. 154-155.
[107] Rpp. 154-155.
[108] Rpp. 154-155.
[109] *Amended PCRA Petition*, Ex. 20, ¶ 8.

E. Pre-Sentence Report

On September 12, 2012, investigator Kristine Lindemuth submitted her pre-sentence report. Under the "Defendant's Version" section, Lindemuth reported:

> On the day of the offense, both [Ms. Sprankle] and Elmer were summoned to DJ Chamber's office in Punxsutawney to dispose of a Harassment charge that was filed against the defendant in June 2011. [Ms. Sprankle] stated that Elmer was behind her as she drove to [the] DJ's Chambers office, so instead of just pulling into the parking lot, she circled through Punxsutawney before going to the office. She stated that she always carried a gun in her glove box for protection from Elmer. When she arrived at the office, she took the gun out the glove box and kept it on her person. After Elmer arrived, she ran up the office steps when Elmer yelled, "I fucked your daughter!" At that point, [Ms. Sprankle] stated that she turned around and told Elmer's girlfriend to "get out of the way" and Elmer drove around the corner. [Ms. Sprankle] followed his vehicle on foot around the corner of the building, and saw brake lights come on. She stated that at that point she took the gun out and started "walking and shooting."...[.][110]

Under the "Marital History" section, Lindemuth reported:

> ... It's reported that the first year of marriage [to Elmer Sprankle] was good but then Elmer started becoming more controlling and the physical abuse followed. At first, when [Elmer Sprankle] would be physically abusive, he was apologetic and would offer

[110] Rp. 168.

> excuses. The abuse subsided for a time after [Ms. Sprankle] became pregnant, but [the physical abuse] resumed. [Ms. Sprankle] relayed that she felt that she had let her children down by not protecting them from Elmer. She reports that in June 2011, her children disclosed to her the abuse they had endured during their childhood. Her daughter informed her that her father had sexually abused her when she was 5 years old while bathing her. She went to the police, however, the statute of limitations prohibited charges being filed. Further, her son relayed that he slept with a baseball bat for protection from his father… [.]
>
> She stated that she often thought the abuse was her fault, but knows better now. "I should have got out 40 years ago." The couple did have periods of separation, but she would always go back. Finally, approximately 2 years ago, the couple agreed to separate. The defendant reports that things were fine until she began dating her current boyfriend, Jim Schutz [sic]. At that point, Elmer became jealous and destructive of Mr. Schutz [six] and [Ms. Sprankle's] property. [Ms. Sprankle] gained a PFA against Elmer in September 2009, and he counteracted with a PFA against [her] by reporting that she had threatened his life. She denies these threats… [.][111]

Under the "Mental Health" section, Lindemuth reported:

> [Ms. Sprankle] sought mental health counseling on two separate occasions prior to her incarceration. During the 1980's, she travelled to State College for mental health counseling because Elmer did not approve of her going to counseling. After the

[111] Rp. 169.

> counselor mailed information to her, Elmer found out she was going to counseling and she quit attending. During their final separation in 2009, she began attending counseling in Punxsutawney. She was… diagnosed with Anxiety just prior to her incarceration… [.]
>
> Prior to the day of the incident, the defendant stated that she lived in fear of Elmer. During the interview, she stated that "now after 10 seconds, I'm not scared of him anymore." She also stated that she is very "comfortable" at the JCJ. She commented that she feels like she is "in protective custody" and "I can do jail well."[112]

Under the "Alcohol Use" section, Lindemuth reported:

> During her second year of marriage, [Ms. Sprankle] began drinking. She reports that she first began drinking so she could sleep. As time passed, she stated that she drank to "deal with everything," even the mere presence of Elmer. [Ms. Sprankle] further relayed that she drank so that she would pass out so that she could have intercourse with Elmer as it was "kind of like a rape thing." When drinking, [Ms. Sprankle] reports that if she was drinking at night after work she would consume approximately one 6 pack of beer. On days off work when she was home with Elmer, she drank vodka and coke.[113]

[112] Rp. 170.
[113] Rp. 170.

F. Sentencing Hearing

Dr. Silverman testified at the sentencing hearing and said Ms. Sprankle "felt she was a failure [at] protecting her children. She didn't want to be a failure [at] protecting her grandchildren."[114] Dr. Silverman never (1) testified that Ms. Sprankle had severe PTSD, (2) never explained the domestic violence cycle, (3) never explained how years of traumatic events and stress can alter the brain's neuropathways and how this transformation impacts an individual's perception of the world and decision-making, and (4) never testified that Ms. Sprankle's actions and decisions the day of the incident fell squarely into the type of behavior exhibited by women with her type and severity of PTSD.

Rather, Dr. Silverman merely said Ms. Sprankle endured years of stress based on Elmer's abuse: "I felt she was showing the effects of 40 years of stress, extreme stress. And my conclusion was a reasonable person would do no better than she did with daily harassment and teasing, abuse, derogation, threats, and other behavior of that nature."[115]

[114] NT, Sentencing Hrg., 9/18/2012, p. 53.
[115] NT, Sentencing Hrg., 9/18/2012, pp. 52-53.

Dr. Silverman added, "I think [Ms. Sprankle] felt… she had basically illustrated a switch from the flight orientation to a fight orientation. And when that happens, I think the tension and anxiety that she put up with so long dissipated. And I think to this day, she is no longer the victim of fear, having taken some affirmative action."[116] Dr. Silverman also said, "[S]he was driven to an extreme measure, a pointless measure. After all, she didn't know how to use a gun and so forth. Never practiced it, I'm told. But I think she reached a limit, and what happened, happened."[117] Dr. Silverman said Ms. Sprankle was not a danger to society.[118] Assuming Elmer stopped harassing and tormenting her, Dr. Silverman had no doubt Ms. Sprankle would "be a solid citizen" in the community.[119]

Dr. Silverman, as mentioned, never diagnosed Ms. Sprankle with PTSD or BWS, nor did he explain how women who suffer from PTSD perceive their abuser's actions and threats. Dr. Silverman never explained why battered women, like Ms. Sprankle, stay with their abusers, nor did he explain how Ms. Sprankle's PTSD impacted her mental state before, during, and after the shooting. Cherry did not present a PTSD/BSW expert to explain how Ms.

[116] NT, Sentencing Hrg., 9/18/2012, pp. 53-54.
[117] NT, Sentencing Hrg., 9/18/2012, p. 57.
[118] NT, Sentencing Hrg., 9/18/2012, p. 54.
[119] NT, Sentencing Hrg., 9/18/2012, p. 54.

Sprankle's years of physical, sexual, and emotional abuse changed her brain circuitry in such a way that impacted her decision-making and perception of the world.

Ms. Sprankle testified and described the events and her mental state preceding the shooting. She said Elmer yelled, "I fucked Kim and I'm going to get it all. I'm going to get JP."[120] After hearing Elmer's threats, Ms. Sprankle said her initial thought was, "I can't live. I don't want to live like this. I don't care if I live or die."[121] Ms. Sprankle also said she shot at Elmer only after she saw him stop and place his car in reverse.[122]

G. PCRA Proceedings

On February 22, 2016, Ms. Sprankle filed a timely PCRA petition,[123] which she amended on August 4, 2016,[124] and supplemented on February 27, 2017.[125] In her petitions, Ms. Sprankle primarily focused on Cherry's failure to develop and present substantial and readily available evidence regarding her severe PTSD and how it impacted her perceptions of the world, decision-making, and brain circuitry, and how the combination of these things

[120] NT, Sentencing Hrg., 9/18/2012, p. 89.
[121] NT, Sentencing Hrg., 9/18/2012, p. 89.
[122] NT, Sentencing Hrg., 9/18/2012, p. 89.
[123] Rpp. 14-23.
[124] Rpp. 24-80.
[125] Rpp. 81-93.

impacted her mental state and actions the day of the shooting. Based on these pleadings, the PCRA court held evidentiary hearings on September 9, 2016 and May 15, 2017.

1. September 9, 2016 Hearing

a. Judy Sprankle's Testimony

Ms. Sprankle testified and said Cherry was her divorce attorney at the time of the shooting, so she asked Cherry to represent her in her criminal case.[126] She said Cherry only visited her twice at the Jefferson County jail between September 2011 and September 10, 2012. One of the visits simply concerned Cherry informing her she had retained Dr. Silverman to evaluate her. This conversation, like the other conversation, lasted only thirty minutes. During these two brief face-to-face meetings, Cherry did not discuss the counts in the *Information*, cases or statutes regarding attempted murder, self-defense, diminished capacity, or specific intent, nor did she mention the Commonwealth's plea offers.[127]

Ms. Sprankle said Cherry never explained the following to her regarding the attempted murder counts: Cherry never (1) discussed the elements of attempted murder, (2) explained that under state law, any

[126] NT, PCRA Hrg., 9/9/2016, p. 6.
[127] NT, PCRA Hrg., 9/9/2016, p. 42.

"attempt" was a "specific intent" crime, (3) explained the concept of "specific intent" and what it meant regarding the attempted murder counts, (4) explained the guilty plea process and procedures, and (5) explained what she would have to do and say – in open court – if she agreed to plead guilty to attempted murder, *i.e.*, admit in open court her sole intent, when she fired the gun, was to kill Elmer.[128]

Because Cherry did not explain the guilty plea process and procedures, the elements of attempted murder, or the concept of specific intent, Ms. Sprankle did not know she would have to testify under oath she intended to kill Elmer.[129] Had Cherry adequately informed her that pleading guilty to attempted murder required her to do so, she would not have pled guilty to attempted murder.[130] Ms. Sprankle said she read the written plea agreement,[131] but it did not mention the elements of the attempted murder, REAP, and DFOS counts, nor did it mention anything about having the specific intent to kill Elmer.[132]

[128] NT, PCRA Hrg., 9/9/2016, pp. 7, 9-10, 13, 15.
[129] NT, PCRA Hrg., 9/9/2016, pp. 7, 13.
[130] NT, PCRA Hrg., 9/9/2016, p. 15.
[131] Rpp. 154-155.
[132] NT, PCRA Hrg., 9/9/2016, p. 37.

Ms. Sprankle said Cherry told her she could plead guilty to attempted third-degree murder, but Cherry never explained the elements of attempted third-degree murder. Ms. Sprankle was certain Cherry advised her if she pled guilty to attempted third-degree murder, she would receive a five (5) year prison sentence because the trial court would run her REAP and DFOS sentences concurrently with the attempted third-degree murder sentence.[133] When counsel (Cooley) presented Ms. Sprankle with Cherry's post-sentencing motion, she referenced paragraph 11 where Cherry admitted that she (Sprankle) was wrongly "induced" to plead guilty because Cherry had "promised" the trial court would run the sentences concurrently.[134]

Ms. Sprankle testified she had no intent of killing Elmer or his girlfriend.[135] Immediatley before she fired, she had followed Elmer's car down the alleyway beside the magistrate's office. She said Elmer stopped his car momentarily. She then saw Elmer's reverse lights, which prompted her to fire because she truly believed, based on Elmer's years of abuse, he was going to use his car as a weapon and run her over.[136] Ms. Sprankle said she

[133] NT, PCRA Hrg., 9/9/2016, pp. 10-11.
[134] NT, PCRA Hrg., 9/9/2016, p. 38; Rpp. 149-150.
[135] NT, PCRA Hrg., 9/9/2016, pp. 17, 41.
[136] NT, PCRA Hrg., 9/9/2016, p. 41.

told Cherry what happened, but Cherry never discussed and explained the potential defenses of self-defense or diminished capacity with her.[137]

In terms of Burkett's September 7, 2012 plea letter, the first time Ms. Sprankle saw the plea letter was in July 2016 when counsel (Cooley) presented it to her at SCI-Cambridge Springs.[138]

b. Toni Cherry's Testimony

The Commonwealth called Cherry. Cherry said her practice focused primarily on family law and she had never represented anyone accused of murder or attempted murder before her representation of Ms. Sprankle.[139] Cherry was Ms. Sprankle's divorce attorney. She had a fee agreement with Ms. Sprankle for the divorce matter, but could not recall how she structured the fee agreement for the criminal matter, but said she may have charged $225/hour because this was her civil rate at the time.[140]

Cherry said she kept detailed accounting records regarding her work on Ms. Sprankle's criminal case. She said she had an accounting log that detailed every interaction she had with Ms. Sprankle regarding her criminal case. She said her accounting log identifies each time she visited Ms.

[137] NT, PCRA Hrg., 9/9/2016, p. 41.
[138] NT, PRCA Hrg., 9/9/2016, p. 12.
[139] NT, PCRA Hrg., 9/9/2016, p. 69.
[140] NT, PCRA Hrg., 9/9/2016, p. 70.

Sprankle at the Jefferson County jail. While her civil representation of Ms. Sprankle overlapped with the criminal matter, Cherry said she only discussed criminal matters with Ms. Sprankle when she visited her at the Jefferson County jail.[141]

When counsel (Cooley) asked Cherry how many times she visited Jefferson County jail, she was non-responsive and simply said she spoke with Ms. Sprankle – regarding her criminal case – over the phone and through letters.[142] Cherry claimed she discussed the counts in the *Information* and other case-related documents several times with Ms. Sprankle over the course of her representation.[143] When counsel (Cooley) asked how many of these "discussions" occurred face-to-face at the Jefferson County jail, Cherry, again, was non-responsive and simply said she spoke with Ms. Sprankle several times over the course of her representation.[144] Based on Cherry's accounting invoice, she visited Ms. Sprankle twice between September 8, 2011 and September 10, 2012: she met with her for thirty (30) minutes on September 8, 2011 and for four (4) hours on September 10, 2012.[145]

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[141] NT, PCRA Hrg., 9/9/2016, pp. 71-72.
[142] NT, PCRA Hrg., 9/9/2016, p. 72.
[143] NT, PCRA Hrg., 9/9/2016, p. 79.
[144] NT, PCRA Hrg., 9/9/2016, p. 77.
[145] Rpp. 182-185.

Cherry claimed she explained to Ms. Sprankle that attempted murder is a specific intent crime and she explained the concept of specific intent. She denied advising Ms. Sprankle to plead guilty to attempted third-degree murder. She said attempted third-degree murder was not part of the case until the trial court mistakenly mentioned it during the plea colloquy. She did not intervene and attempt to correct the trial court because she thought the mistake could possibly help Ms. Sprankle on appeal.[146]

When counsel (Cooley) asked Cherry if many or some of her conversations with Ms. Sprankle before the plea colloquy included Cherry advising Ms. Sprankle she would have to admit – on the record - she intended to kill Elmer, Cherry was non-responsive again and simply said Ms. Sprankle told her what she wanted to do and Ms. Sprankle was very aware she would have to admit she intended to kill Elmer.[147]

Cherry denied telling Ms. Sprankle if she pled guilty to attempted third-degree murder she would receive a five (5) year prison sentence.[148] Cherry said she "never used a number" when she discussed the possible plea

[146] NT, PCRA Hrg., 9/9/2016, pp. 78-79.
[147] NT, PCRA Hrg., 9/9/2016, p. 79.
[148] NT, PCRA Hrg., 9/9/2016, pp. 79-80.

deals with Ms. Sprankle.[149] Cherry said she told Ms. Sprankle she "hoped" for concurrent sentences, but denied telling her there was a "strong likelihood" the trial court would issue concurrent sentences.[150] Cherry then said she in fact talked about the possibility of concurrent sentences, but claimed she told Ms. Sprankle she could not guarantee concurrent sentences, but that the trial court might issue concurrent sentences.[151]

Counsel (Cooley) then showed Cherry a copy of the PSM she filed on September 12, 2012 and asked her to read paragraph 11:

> 11. That Defendant was induced to enter a guilty plea because she was told that the sentences would be served concurrently rather than consecutively.[152]

Despite making this claim in the PSM, Cherry denied she was the one who induced Ms. Sprankle and denied being the one who told her the trial court would issue concurrent sentences. According to Cherry, Ms. Sprankle was induced to plead guilty based on conversations she had with Jefferson County jail inmates.[153] When counsel asked who these inmates were and

[149] NT, PCRA Hrg., 9/9/2016, p. 105.
[150] NT, PCRA Hrg., 9/9/2016, p. 92.
[151] NT, PCRA Hrg., 9/9/2016, p. 83.
[152] Rp. 149.
[153] NT, PCRA Hrg., 9/9/2016, pp. 82-83.

why she did not specify this fact in the PSM, Cherry said she did the best she "could with what [she] had" and she tried to "bring in all the issues[.]"[154]

Cherry said she received the plea letter on (Friday) September 7, 2012. Cherry, though, could not recall if she spoke with Ms. Sprankle at the Jefferson County jail on September 7th, 8th, or 9th. Ms. Sprankle pled guilty on (Monday) September 10, 2012. Cherry, however, claimed she showed Ms. Sprankle the plea letter on (Monday) September 10th when she spent "significant" time with her discussing whether she should plead guilty.[155] Cherry claimed she spent the entire weekend (September 8th and 9th) preparing for Ms. Sprankle's September 10th court hearing.[156]

When counsel asked Cherry if she had written letters to Ms. Sprankle discussing and explaining the Commonwealth's plea offer or the guilty plea process, Cherry was non-responsive. If Cherry had in fact written letters to Ms. Sprankle, counsel asked if she had those letters with her in court. Cherry did not bring these letters – or any documents – to court with her.[157]

Cherry hired Dr. Silverman to evaluate Ms. Sprankle. Cherry said she "thoroughly" researched Dr. Silverman by calling lawyers from other

[154] NT, PCRA Hrg., 9/9/2016, pp. 83, 84.
[155] NT, PCRA Hrg., 9/9/2016, pp. 80, 81, 82.
[156] NT, PCRA Hrg., 9/9/2016, pp. 81-82.
[157] NT, PCRA Hrg., 9/9/2016, p. 79.

counties who had used him. Cherry's accounting records, however, do not corroborate this claim, as there are no entries proving or even suggesting she contacted and spoke with other attorneys regarding Dr. Silverman.[158] Before Ms. Sprankle's case, Cherry had never hired or worked with Dr. Silverman.[159]

Counsel (Cooley) presented Cherry with a copy of Dr. Silverman's CV and asked her to read the specialties listed on his CV. Cherry complied and mentioned the following specialties: ADD/ADHD, bipolar depression, bipolar disorder, manic depressive disorder, depression, depressive disorder, insomnia, obsessive compulsive disorder, schizophrenia, and sleep disorders.[160] When counsel asked if BWS or PTSD were listed, Cherry was non-responsive and simply said Dr. Silverman was an experienced psychiatrist. When counsel re-asked the question, Cherry said Dr. Silverman was qualified under Pennsylvania law as a "board certified psychiatrist" and would probably be qualified as a BWS expert.[161] When asked how she could justify such a statement based on the area of expertise listed on his CV, Cherry could not articulate her reasoning or justification.[162]

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[158] Rpp. ____ (Cherry's accounting invoice).
[159] NT, PCRA Hrg., 9/9/2016, p. 93.
[160] NT, PCRA Hrg. ,9/9/2016, p. 93; Rpp. 177-181 (Dr. Silverman's CV).
[161] NT, PCRA Hrg., 9/9/2016, pp. 93-94.
[162] NT, PCRA Hrg., 9/9/2016, p. 94.

Cherry knew Dr. Silverman had contacted the NCDBW, but she could not explain why he did so, if he, himself, was a BWS expert. Cherry surmised Dr. Silverman called the NCDBW because he was trying to "find anything" to help Ms. Sprankle. Cherry briefly spoke with Cindene Pezzell, the NCDBW's legal coordinator, on August 10, 2012,[163] but she referred Pezzell to Dr. Silverman and never followed up with Pezzell after this initial call.[164] Cherry claimed Pezzell told Dr. Silverman the NCDBW could not help Ms. Sprankle – which is the exact opposite of what Pezzell told counsel (Cooley) in February 2016.[165]

Pezzell told counsel she made several suggestions regarding Ms. Sprankle's case, but said Cherry never followed up with her or the NCDBW regarding her suggestions. When counsel Cherry asked if the NCDBW attorneys were wrong, Cherry said, "I think they are wrong. Dr. Silverman had extensive discussions with them."[166] This resulted in the following colloquy between counsel (Cooley) and Cherry where Cherry admitted Dr. Silverman lacked the qualifications to diagnosis Ms. Sprankle with BWS or PTSD:

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[163] Rpp. 182-185.
[164] NT, PCRA Hrg., 9/9/2016, pp. 95, 97.
[165] NT, PCRA Hrg., 9/9/2016, pp. 95-96.
[166] NT, PCRA Hrg., 9/9/2016, p. 96.

Q So how did they get your number?

A From Dr. Silverman.

Q So Dr. Silverman calls them first?

A Yes.

Q They call you, and you send them back to Dr. Silverman. Why would Dr. Silverman send them to you if they're just going to send them back to Dr. Silverman?

A I believe Dr. Silverman did not send them to me. He gave me numbers, but Dr. Silverman dealt with them.

Q Did you ask them any questions?

A I don't recall. I don't recall at this point. I knew that I wasn't getting much because we had these statements.

Q What do you mean getting much?

A I didn't have anything else.

Q What does that mean?

A I didn't have anything from Silverman. I wanted Silverman to coordinate with them because I wanted Silverman to testify.

Q To what?

A I was hoping for a diagnosis of battered woman.

> Q But how could he do that if he's not a battered woman expert?
>
> A I expected him to coordinate with anyone else because I told him I would fund it if he had anyone else that he needed, and I was making the payments to him... I wanted him to coordinate -- I wanted him to coordinate the mental health issue because he would be the expert who would testify.[167]

If Cherry knew Dr. Silverman was unqualified to diagnosis BSW or PTSD – because he had "to coordinate" with others to render such an opinion – counsel asked what type of preparation and research she did regarding these issues before advising Ms. Sprankle to plead guilty. Cherry admitted she conducted no BWS or PTSD research:

> Q So I'm asking what -- your research – you're saying you got Dr. Silverman. You're going to put him on as a battered woman expert. I don't know how, but you say you are. My question is, What research did you do to prepare yourself for that line of questioning?
>
> A I think we all do the same. I have general knowledge.
>
> Q What does that mean? Be specific, please. I mean, you're talking vague generalities a lot when I'm asking you questions and the DA is asking you. I'm being very specific. What did you do?
>
> A Well, I'm familiar with it based on what I see in divorce cases.

[167] NT, PCRA Hrg., 9/9/2016, pp. 97-98.

Q No, I'm asking you in this case what did you do?

A I relied on my knowledge.[168]

Cherry then tried to suggest her work on civil PFAs gave her all the knowledge she needed regarding BWS/PTSD, but when counsel interrupted and asked her to identify the BWS/PTSD experts she used during these PFA proceedings, Cherry admitted, again, she had never consulted with, retained, or presented a BWS/PTSD expert in her PFA cases or criminal cases.[169] Cherry also admitted she "did no independent research" regarding the BWS/PTSD issue.[170] When asked, "What specifically do you know about battered women," Cherry said she knew little, if anything, about BWS/PTSD and that she "relied on" Dr. Silverman to develop the BWS/PTSD evidence.[171]

2. Dr. Victoria Reynolds's Assessment and Report

In early October 2016, Ms. Sprankle retained Dr. Victoria Reynolds, a well-respected and experienced psychologist who specializes in evaluating, diagnosis, and treating adults and children who have experienced or endured traumatic events and who suffer from PTSD. Dr. Reynolds

[168] NT, PCRA Hrg., 9/9/2016, p. 99.
[169] NT, PCRA Hrg., 9/9/2016, p. 100.
[170] NT, PCRA Hrg., 9/9/2016, p. 100.
[171] NT, PCRA Hrg., 9/9/2016, p. 100.

evaluated Ms. Sprankle for fifteen (15) hours at SCI-Cambridge Springs on October 7th and 8th, 2016. Dr. Reynolds also interviewed Ms. Sprankle's family members and current husband and reviewed the plea colloquy and sentencing hearing transcripts as well as other case-related documentation.

Based on her evaluation, interviews, and review of all relevant case-related documents and transcripts, Dr. Reynolds provided counsel with a comprehensive affidavit containing her findings and conclusions.[172] Dr. Reynolds diagnosed Ms. Sprankle with severe PTSD and opined. She also said the years of constant and extreme stress altered the neuropathways in Ms. Sprankle's brain, which made her view the world through a binary lens: environments or stimuli were perceived as threatening or non-threatening. Stated differently, the neuropathways to her brain's cortical region, which controls high-level thinking, atrophied over time because the constant stress forced Ms. Sprankle to constantly rely on her brain's limbic region, which organizes and regulates self-protective behavior, such as detecting threats, stimulating fear, and activating the appropriate physical responses to threats such as fleeing, fighting, or freezing. The re-hardwiring of Ms. Sprankle's brain, where it relied primarily on the limbic system to dictate decision-

[172] Rpp. 94-135.

making and behavior, strongly suggested her actions on the day of the shooting were not the result of a conscious and premeditated determination to kill Elmer. Dr. Reynolds also said the facts and conclusions contained in her affidavit could have easily been developed before Ms. Sprankle pled guilty.

Based on Dr. Reynolds's findings and conclusions, Ms. Sprankle filed a supplemental amended PCRA petition that included the following claim:

> Trial Counsel Was Ineffective For Not Developing the Findings and Conclusions Presented in Dr. Reynolds's Affidavit and Trial Counsel's Ineffectiveness Renders Judy Sprankle's Guilty Plea Unknowing and Involuntary. U.S. Const. amdt. 6, 8, 14; Pa. Const. art. I, §§ 8, 9.[173]

In her supplemental amended PCRA petition, Ms. Sprankle averred, "Had Toni Cherry performed effectively and developed the facts and conclusions contained in Dr. Reynolds' affidavit *before* [I] pled guilty, [I] would not have pled guilty to attempted murder."[174] Ms. Sprankle also requested another hearing where Dr. Reynolds could testify. The PCRA court granted the request and held another hearing on May 15, 2017.

[173] Rp. 83.
[174] Rp. 82.

3. May 15, 2017 Hearing

Dr. Reynolds testified and said she is a clinical psychologist specializing in assessing, diagnosing, and treating individuals with PTSD and other trauma-related behaviors and disorders. She has assessed, diagnosed, and treated PTSD/trauma patients for more than two decades and has worked with combat veterans, rape victims, abused and battered women, and abused and neglected children. She said she has been qualified as a PTSD/trauma expert in numerous state and federal courts, particularly in domestic violence cases. Prosecutors and defense attorneys have presented her as a PTSD/trauma expert.[175] The PCRA court admitted Dr. Reynolds as an expert in "clinical psychology with an expertise in trauma and abuse for domestic violence cases."[176]

Dr. Reynolds used a variety of "generally accepted" standardized assessment tools when she evaluated Ms. Sprankle in October 2016. Based on these standardized assessments, her review of the transcripts, legal pleadings, and police reports, and interviews with Ms. Sprankle's family, Dr. Reynolds concluded that Ms. Sprankle was a battered woman who had endured decades of physical, emotional, sexual, and psychological abuse

[175] NT, PCRA Hrg., 5/15/2017, pp. 4-7.
[176] NT, PCRA Hrg., 5/15/2017, p. 13.

from Elmer. Dr. Reynolds discussed many of the more traumatizing instances of domestic violence and abuse, *e.g.*, marital rape, placing a gun to Ms. Sprankle's head, threatening to kill Ms. Sprankle and the kids, physical beatings, throwing Ms. Sprankle down the steps, running Ms. Sprankle's car off the road.[177]

At the sentencing hearing, the trial court suggested Ms. Sprankle and Elmer were codependent and this was why Ms. Sprankle could not and did not leave Elmer. Dr. Reynolds disagreed. She said Ms. Sprankle was not dependent on Elmer. Rather, from Ms. Sprankle's perspective, it was just as dangerous to try and leave as it was for her to stay. Dr. Reynolds referenced statistics showing how the likelihood of harm increased substantially for domestic violence victims once they left their abusive partner or spouse.[178] Dr. Reynolds mentioned the twenty plus times Ms. Sprankle attempted to leave Elmer, only to return to him. In each situation, Elmer tracked down Ms. Sprankle and threatened to kill himself, the kids, or her. On other occasions, Elmer apologized for the abuse in order to hoodwink her into

[177] NT, PCRA Hrg., 5/15/2017, pp. 15-17, 21-24.
[178] NT, PCRA Hrg., 5/15/2017, p. 29.

staying.[179] Ms. Sprankle also did not leave because of her strong Catholic upbringing.[180]

Based on the intensity and consistency of Elmer's threats and abuse, Dr. Reynolds said Ms. Sprankle was in a constant state of fear trying to figure out how to survive the relationship.[181] As the physical, emotional, sexual, and psychological abuse continued, Dr. Reynolds said Ms. Sprankle began to disassociate from traumatically violent events. When a person disassociates from a traumatic experience, the mind literally shuts down so it cannot create memories of the traumatic event.[182]

Dr. Reynolds described the domestic violence cycle's different phases. The relationship begins as a "real" relationship, but is followed by instances of abuse that follow a predictable pattern. The husband, for instance, generally abuses the wife and this abuse leads to a forgiveness stage. The wife feels sympathetic to the abusive husband because she loves him and her love for him often leads her to forgive him. Once forgiveness is granted, though, the abusive husband generally returns to his abusive ways and the

[179] NT, PCRA Hrg., 5/15/2017, pp. 18-19.
[180] NT, PCRA Hrg., 5/15/2017, p. 20.
[181] NT, PCRA Hrg., 5/15/2017, p. 19.
[182] NT, PCRA Hrg., 5/15/2017, p. 25.

domestic violence cycle begins anew. [183] Ms. Sprankle's relationship with Elmer fell squarely into this pattern of abuse, forgiveness, and more abuse.

Dr. Reynolds said Elmer's abusive behavior escalated after Ms. Sprankle separated from him in 2009. The family said Elmer began threatening Ms. Sprankle's life more and more after the separation.[184]

Dr. Reynolds diagnosed Ms. Sprankle with a "severe" form of PTSD – which she characterized as a "dissociative subtype." This subtype includes period of blankness, an inability to recall aspects of a traumatic event, and the feeling and believing they are somewhere else or simply not in the moment.[185]

Dr. Reynolds discussed the various PTSD symptoms Ms. Sprankle exhibited not only during her fifteen (15) hours of evaluation, but also during her relationship with Elmer. PTSD survivors, like Ms. Sprankle, see the world "as a very dangerous place," which leads to hypervigilance and the constant surveying of their environment to ensure it is free of real or

[183] NT, PCRA Hrg., 5/15/2017, pp. 26-27.
[184] NT, PCRA Hrg., 5/15/2017, pp. 28-29.
[185] NT, PCRA Hrg., 5/15/2017, pp. 30-32.

perceived threats. These individuals, moreover, believe others around them perceive the world as they do.[186]

Dr. Reynolds also discussed how chronic stress and hypervigilance impacted the brain's neuropathways, particularly those going to and from the brain's cortical and limbic regions. As Dr. Reynolds explained, Ms. Sprankle's stress was not simply heightened, it was extreme and prolonged and it fundamentally changed her brain's neuropathways to a point where she was hard-wired to constantly be in fight-or-flight mode. As a result, Ms. Sprankle was hard-wired to interpret stimuli in a binary way, *i.e.*, either threatening or non-threatening. When the brain constantly transfers information through the (lower level) limbic system, the information bypasses the (higher level) cortical areas responsible for processing, judging, and discriminating information. This bypass allows the person to react with a fight, flight, or immobilizing response, all of which are considered survival responses. If the person routinely bypasses the neuropathways to the (higher level) cortical areas because they are consistently under stress, the (higher level) cortical neuropathways atrophy, while the (lower level) limbic neuropathways are strengthened. Over time, as this continues, the person's

[186] NT, PCRA Hrg., 5/15/2017, pp. 38-43, 45.

ability to process, judge, and discriminate information in a rational, objective, and sensible way is greatly impaired and reduced.[187]

Dr. Reynolds explained how this re-hardwiring of the limbic system played out the day of the incident. When Ms. Sprankle saw Elmer at the magistrate's office, the binary manner in which she processed information immediately characterized the environment as threatening. The fact Ms. Sprankle had a gun only reinforced the PTSD narrative because it showed a constant need to feel safe in a world she viewed as unsafe.[188] Also, by the day of the incident, Ms. Sprankle believed the police were unhelpful because they rarely, if ever, intervened when she had called them in the past and this made her feel even more alone and distrustful of the world around her.[189]

Ms. Sprankle also displayed obvious signs of hyperarousal, hypervigilance, and fight or flight mode. Once Elmer made threats to her, she immediately approached Elmer's car with the intent of defending herself. When Elmer drove into the alleyway beside the magistrate's office, Ms. Sprankle followed on foot. Elmer, though, stopped and Ms. Sprankle believed she saw his reverse lights.

[187] NT, PCRA Hrg., 5/15/2017, pp. 46-50.
[188] NT, PCRA Hrg., 5/15/2017, pp. 51-52.
[189] NT, PCRA Hrg., 5/15/2017, pp. 52-53.

At this point, because her brain circuitry had been re-hardwired to bypass the (higher level) cortical functions of thoroughly and objectively assessing a situation, Ms. Sprankle immediately went into fight or flight mode. She quickly chose to defend herself, believing if she did not, Elmer would use his car as a weapon and run her over. According to Dr. Reynolds, because Ms. Sprankle's brain circuitry had been re-hardwired to bypass the (higher level) cortical region and go directly to the (lower level) limbic region, the decision to shoot was not a deliberative act.[190]

Dr. Reynolds also opined that, as she had so frequently done throughout her relationship with Elmer, Ms. Sprankle dissociated from the situation as it was happening. When she dissociated, the (higher level) cortical region of her brain shut down. As Dr. Reynolds point it, "There was no thought. There was no planning. There was just reaction."[191]

In terms Ms. Sprankle's statements during and after the shooting, where she said she wanted to kill Elmer, Dr. Reynolds said she likely was not even aware she was making these statements. The lack of awareness, she said, related back to the bypassing of the brain's (higher level) cortical region

[190] NT, PCRA Hrg., 5/15/2017, pp. 52-54.
[191] NT, PCRA Hrg., 5/15/2017, p. 99.

and allowing the (lower level) limbic region to dictate her actions and thoughts.[192]

When the PCRA court questioned Dr. Reynolds, she reiterated that Ms. Sprankle is not mentally ill. Rather, because years of intense stress and trauma reworked her brain's neuropathways, she saw what other people saw, but the lens in which she viewed the world was binary, meaning her perceptions fell into two categories: threatening or non-threatening. In other words, she had a lower threshold of tolerance and perceived events and stimuli as threatening at a much higher frequency than those who do not suffer from PTSD.[193]

Dr. Reynolds reviewed Dr. Silverman's CV, reports, and sentencing hearing testimony. Based on her review, she said Dr. Silverman's knowledge of PTSD was not up to the current standards. She said Dr. Silverman used outdated terminology in his reports and failed to mentioned basic information regarding abuse and trauma. She was particularly interested in the fact Dr. Silverman's CV mentioned nothing about having experience assessing, diagnosing, and treating individuals who have suffered or endured

[192] NT, PCRA Hrg., 5/15/2017, pp. 54-56.
[193] NT, PCRA Hrg., 5/15/2017, p. 96.

traumatic events. It also mentioned nothing about receiving specialty training or education regarding PTSD sufferers or battered women.[194]

Dr. Reynolds ended her testimony by saying the facts and opinions in her affidavit and those presented at the hearing could have been developed and presented after Ms. Sprankle's arrest in September 2011, but before she pled guilty in September 2012. Had trial counsel contacted her during this period, she was available to evaluate Ms. Sprankle and testify on her behalf.[195]

[194] NT, PCRA Hrg., 5/15/2017, pp. 56-57.
[195] NT, PCRA Hrg., 5/15/2017, pp. 101-102.

ARGUMENTS

1. The record does not support the PCRA court's findings regarding Toni Cherry's representation of Ms. Sprankle. Cherry's representation was objectively unreasonable. She failed to develop readily available evidence regarding Ms. Sprankle's severe PTSD and how it impacted her perceptions, decision-making, and brain circuitry. Cherry's deficient representation prejudiced Ms. Sprankle. There is a reasonable probability had Cherry developed the readily available PTSD facts contained in Dr. Reynolds's affidavit and testimony and properly advised Ms. Sprankle this evidence could form the foundation of legitimate self-defense and diminished capacity defenses at trial, Ms. Sprankle would have pled not guilty and proceeded to a jury trial.

A. Introduction

A trial court must grant a post-sentencing motion to withdraw a guilty plea if denying the motion results in a manifest injustice. *Commonwealth v. Yeomans*, 24 A.3d 1044, 1046 (Pa. Super. 2011). A showing of manifest injustice may be established "if the plea was entered into involuntarily, unknowingly, or unintelligently." *Id*. Ms. Sprankle can prove her plea is involuntarily, unknowingly, or unintelligently, if she proves Cherry's ineffectiveness wrongly induced her to plead guilty. Ineffectiveness allegations "provide a basis for withdrawal of [a] plea only where there is a causal nexus between counsel's ineffectiveness, if any, and an unknowing or involuntary plea." *Commonwealth v. Flood*, 627 A.2d. 1193, 1199 (Pa. Super.

1993). The issue, therefore, is whether Ms. Sprankle was "misled or misinformed and acted under that misguided influence when entering [her] guilty plea." *Id.* Ms. Sprankle meets this standard.

To be clear, this claim is *not* an ineffectiveness claim regarding Cherry's failure to retain a qualified PTSD/BWS expert. *Cf. Hinton v. Alabama*, 134 S.Ct. 1081, 1089 (2014) (holding that the selection of an expert is a classic example of the type of "strategic choic[e]" that, when made "after thorough investigation of [the] law and facts," is "virtually unchallengeable."). Cherry retained Dr. Silverman who evaluated Ms. Sprankle, produced two reports, and testified at the sentencing hearing. Dr. Silverman, therefore, did what he was asked to do. Thus, his inability to develop the readily available PTSD/BWS findings and conclusions developed by Dr. Reynolds is not his fault.

The fault falls squarely on Cherry's shoulders. She – not Dr. Silverman – had a constitutional duty to adequately investigate Ms. Sprankle's case and develop all readily available evidence that mitigated or undermined the Commonwealth's claim Ms. Sprankle intended to kill Elmer on September 8, 2011. There is simply no reasonable excuse why Cherry failed to develop the readily available PTSD/BWS evidence Dr. Reynolds developed in 2016. The

PTSD/BWS evidence Dr. Reynolds developed did not materialize *after* Ms. Sprankle pled guilty in September 2012. Rather, it materialized and was readily identifiable *well before* September 2011.

This claim, therefore, is a straightforward ineffectiveness claim alleging Cherry failed to develop *readily available* evidence (1) regarding the severity of Ms. Sprankle's PTSD, (2) how years of stress and trauma impacted her brain's neuropathways, (3) how her reconfigured neuropathways impacted her decision-making and perception of the world, and (4) how her actions on September 8, 2011 were the result of a limbic-driven, dissociative, fight or flight mental state and not a cortical-driven, rational, deliberative mental state.

In the absence of this undeveloped, yet readily available, PTSD/BWS evidence, Cherry erroneously advised Ms. Sprankle to plead guilty to attempted murder, REAP, and DFOS because, as Cherry put it during the PCRA hearing, Dr. Silverman's evaluations produced nothing in terms of PTSD/BWS. (NT, PCRA Hrg., 9/9/2016, p. 98 ("I didn't have anything else.... I didn't have anything from Silverman."). Dr. Silverman's two reports reinforce Cherry's testimony; neither mention a single word about (1) PTSD/BWS, (2) the origins of PTSD/BWS, and (3) how prolonged abuse and

trauma affects the brain's neuropathways and the victim's perception of the world and reactions to real or perceived threatening stimuli.[196]

As Dr. Reynolds's affidavit and testimony establishes, Cherry's statement to Ms. Sprankle regarding the alleged lack of PTSD/BWS evidence was wrong. Put differently, Cherry *misinformed* Ms. Sprankle about the PTSD/BWS evidence. Cherry's misguided view of the PTSD/BWS evidence, moreover, resulted in her not advising Ms. Sprankle about pleading not guilty, proceeding to a jury trial, and presenting a self-defense defense, a diminished capacity defense, or both. This misinformation, without question, influenced Ms. Sprankle's decision to plead guilty. *Commonwealth v. Flood*, 627 A.2d. at 1199.

Based on Cherry's misadvice, Ms. Sprankle believed no evidence existed to counter or undermine the Commonwealth's claim she intended to kill Elmer on September 8, 2011. This misinformed belief is obviously wrong. The readily available PTSD/BWS evidence strongly suggests Ms. Sprankle did not rationally contemplate her actions on September 8, 2011, and, therefore, did not intend to kill Elmer. Rather, it suggests she was in a limbic induced, dissociative, fight or flight mental state when she fired at

[196] Rpp. 159-166.

Elmer's car. Thus, had Ms. Sprankle been properly advised regarding the PTSD/BWS evidence, self-defense, and diminished capacity, it is reasonably probable she would have pled *not* guilty, proceeded to a jury trial, and presented a self-defense defense, a diminished capacity defense, or both.

B. Trial Counsel Ineffectiveness Claims

Ms. Sprankle has a right to effective trial counsel. U.S. Const. amdt. 6; *Martinez v. Ryan*, 566 U.S. 1, 12 (2012). Although she pled guilty, she still had a right to effective representation during the pre-plea and plea stages. *Hill v. Lockhart*, 474 U.S. 52 (1985); *Commonwealth v. Lewis*, 63 A.3d 1274, 1280 (Pa. Super. 2013). In the guilty plea context, entry of a guilty plea will serve as a basis for relief only if the ineffectiveness caused the defendant to enter an involuntary or unknowing plea. *Commonwealth v. Allen,* 732 A.2d 582, 587 (Pa. 1999). The voluntariness of a plea "depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *Commonwealth v. Lynch*, 820 A.2d 728, 733 (Pa. Super. 2003); *accord Hill v. Lockhart*, 474 U.S. at 56. In determining whether a plea was entered knowingly and intelligently, a reviewing court must review all the circumstances surrounding the plea's entry. *Commonwealth v. Allen*, 732 A.2d at 587. To prove prejudice, the defendant must show it is reasonably

probable that, but for counsel's errors or misinformation, she would not have pled guilty and would have proceeded to trial. *Hill v. Lockhart,* 474 U.S. at 59. The "reasonable probability test is not a stringent one." *Commonwealth v. Hickman*, 799 A.2d 136, 141 (Pa. Super. 2002). Ms. Sprankle meets this standard.

Cherry's misinformation regarding the PTSD/BWS evidence induced Ms. Sprankle to plead guilty. Stated differently, had Cherry developed and presented the readily available PTSD/BWS evidence and explained how this evidence could support meritorious self-defense and diminished capacity defenses, Ms. Sprankle would not have pled guilty and would have proceeded to a jury trial.

C. Self-Defense and Diminished Capacity

Cherry's failure to develop the readily available PTSD/BWS evidence impacted her advice to Ms. Sprankle. The most damaging by-product of this failure was Cherry's subsequent failure to adequately inform Ms. Sprankle of two possible defenses based on the PTSD/BWS evidence: (1) self-defense and (2) diminished capacity.

1. PTSD/BWS and Self-Defense

Pennsylvania courts have written extensively on the interplay between PTSD/BWS and self-defense:

> A battered woman is a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights. Battered women have been compared to hostages, prisoners of war, and concentration camp victims, and the battered woman syndrome is recognized as a post-traumatic stress disorder.

Commonwealth v. Stonehouse, 555 A.2d 772, 783 (Pa. 1989) (quotations and citation omitted)

Researchers "have suggested that the psychological effects of the battered woman syndrome can be compared to classic brainwashing. These effects include fear, hyper-suggestibility, isolation, guilt, and emotional dependency, which culminate in a woman's belief that she should not and cannot escape." *Id*. at 783 n.6. Researchers have also "shown that many battered women are highly competent workers and successful career women, who include among their ranks doctors, lawyers, nurses, homemakers, politicians and psychologists." *Id*. at 784. Furthermore, research has shown that "among battered women who kill [or attempt to kill i], the final incident

that precipitates the [criminal offense] is viewed by the battered woman as more severe and more life-threatening than prior incidents." *Id*.

Thus, based on "the unique psychological condition of the battered woman" and "the myths" jurors "commonly h[o]ld about battered women," it is "clear that where a pattern of battering has been shown, the battered woman syndrome must be presented to the jury through the introduction of relevant evidence." *Id*. at 785; *accord Commonwealth v. Dillon*, 598 A.2d 963, 969 (Pa. 1991) (Cappy, J., concurring) ("[T]he necessity for and the importance of expert testimony is clear as it is helpful to the jury to assail these myths and to consider the evidence in a fair and impartial manner.").

Stated differently,

> To support the battered woman's argument in a proper case, expert testimony can be introduced to show how a battering relationship generates different perspectives of danger, imminence, and necessary force. Expert testimony can also explain why the defendant stayed in the relationship, why she never called the police, or why she feared increased violence. The behavioral patterns that emerge in a study of battered women are collectively referred to as "learned helplessness." This learned helplessness and its resulting feeling of inability to control the beatings lead to a process of victimization, rendering the woman psychologically paralyzed and unable to perceive the existence of any available options.

Commonwealth v. Dillon, 598 A.2d at 966 (Nix, C.J., concurring).

Put yet another way, particularly regarding the interplay between PTSD/BWS and self-defense:

> … it is clear that many jurors believe the myths about battered women and will often be unable to understand either why a woman failed to leave her husband or why she did not contact the police for assistance. These stereotypic beliefs underscore the importance of expert testimony to explain why women remain silent about and in denial of the abuse they have suffered. Without expert testimony, many jurors –who have little knowledge or understanding of the dynamics of batterers and their victims–find the tales of abuse and the reactions of those abused simply beyond their ken.
>
> …
>
> The danger of not presenting expert testimony in these cases is that the jury may well be predisposed to judge the actions and reactions of a woman in a position that they cannot hope to comprehend. In my view, many jurors who know nothing about battered women simply find the tales of abuse too incredible to believe and thus, refuse to keep an open mind about the rest of the evidence, being convinced that "no one would have put up with such abuse therefore it must not be true." *The testimony of the expert is intended to refute some of the common prejudices against battered women, thus permitting the jury to have a better ability to judge the evidence rationally, rather than judge it on the basis of an erroneous prejudice*. Once the jury is educated by an expert about the battered woman syndrome, they are

> in a much better position to assess the facts before them.
>
> This Court has consistently held that in self-defense cases, the jury must decide whether the acts of the defendant are reasonable in *light of the way in which the defendant perceives the alleged danger*. *It is only when the jury understands* how *the defendant perceives the alleged danger are they able to make a rational judgment about the defendant's actions. In a self-defense case in which the defendant is a battered woman, rationally understanding the way in which she perceives danger may not be "within the range of ordinary training, knowledge, intelligence and experience" of the jury*.

Commonwealth v. Dillon, 598 A.2d at 970-971 (Cappy, J., concurring) (emphasis added; citations omitted)

"[E]xpert testimony regarding battered woman syndrome," therefore, "is admissible as probative evidence of the defendant's state of mind as it relates to a theory of self-defense." *Commonwealth v. Miller*, 634 A.2d 614, 621-622 (Pa. Super. 1993). "The syndrome does not represent a defense to [attempted homicide] in and of itself, but rather, is a type of evidence which may be introduced on the question of the reasonable belief requirement of self-defense in cases which involve a history of abuse between the victim and the defendant." *Id*. at 622; *accord Commonwealth v. Peck*, 113 A.3d 357 (Pa. Super. 2014).

The PTSD/BWS evidence developed by Dr. Reynolds corresponds, precisely, with the above quotes and statements from this Court and Supreme Court. Thus, had Cherry developed the readily available PTSD/BWS evidence, she could have used this evidence to present potentially meritorious self-defense and/or diminished capacity defenses. According to Dr. Reynolds, by the time Ms. Sprankle turned the corner and began walking towards Elmer's car, she was in a limbic-induced, dissociative, fight or flight mental state. It was through this dissociative prism that Ms. Sprankle saw Elmer's reverse lights and immediately and *reasonably* believed he had every intention of using his car as a weapon by running her over. To defend herself from what she perceived to be a deadly weapon, she did what any reasonably prudent battered woman with severe PTSD would do: she fired at Elmer's car with the hopes of persuading him not to run her over.

The reasonableness of Ms. Sprankle's perceptions and actions cannot be judged by considering what the hypothetical reasonable person would have done under these circumstances. Rather, the reasonableness of her perceptions and actions must be judged by considering how a "reasonably prudent battered woman would have perceived and reacted to [Elmer's] behavior." *Commonwealth v. Stonehouse*, 555 A.2d at 784.

In the end, Ms. Sprankle need not prove a jury would acquit her of all or some of the charges based on self-defense. Instead, she need only show the information and/or advice Cherry gave or did not give her before pleading guilty was incomplete, misinformed, or erroneous. Here, had Ms. Sprankle known of the PTSD/BWS facts developed by Dr. Reynolds *before* she pled guilty and known that these facts could have formed the foundation of a legitimate self-defense claim, Ms. Sprankle would not have pled guilty. Put differently, Ms. Sprankle was "misled or misinformed and acted under [this] misguided influence when entering [her] guilty plea." *Commonwealth v. Flood*, 627 A.2d. at 1199.

2. Diminished Capacity

Diminished capacity is a limited defense, which does not exculpate the defendant from criminal liability entirely, but instead negates the element of specific intent. *Commonwealth v. Taylor*, 876 A.2d 916 (Pa. 2005). Thus, a defendant asserting a diminished capacity defense admits responsibility for the underlying action, but contests the degree of culpability based upon his inability to formulate the requisite mental state. *Commonwealth v. Gibson*, 951 A.2d 1110, 1131-1132 (Pa. 2008). Diminished capacity is a defense available to a charge of attempted murder. *Commonwealth v. Rovinski*, 704 A.2d 1068,

1071-1072 (Pa. Super. 1997). In an attempted murder case, therefore, a diminished capacity defense requires the defendant to establish she "had a mental defect" at the time of the charged offense that "affected [her] cognitive abilities of deliberation and premeditation necessary to formulate specific intent to kill." *Commonwealth v. Fears*, 86 A.3d 795, 804 n.1 (Pa. 2014).

Dr. Reynolds explained how Ms. Sprankle was in a limbic-driven, dissociative, fight or flight mental state when she fired at Elmer. As Dr. Reynolds described, this limbic-driven decision-making actually represents a defect in Ms. Sprankle's brain circuitry. The constant physical, sexual, emotional, and psychological abuse as well as the constant stress produced from this abuse, all but eliminated the (higher level) cortical neuropathways, which are responsible for higher-level thinking and methodical decision-making. The atrophying of these (higher level) cortical neuropathways allowed Ms. Sprankle to view the world through a binary lens and quickly determine if a stimulus or environment was threatening or non-threatening. Thus, based on these facts, Ms. Sprankle could have presented a legitimate diminished capacity defense at trial. She had a "mental defect" when she fired at Elmer that "affected [her] cognitive abilities of deliberation and

premeditation necessary to formulate specific intent to kill." *Commonwealth v. Fears*, 86 A.3d at 804 n.1.

In the end, Ms. Sprankle need not prove a jury would have acquitted her of all or some of the charges based on diminished capacity. Instead, she need only show the information and/or advice Cherry gave or did not give her before pleading guilty was incomplete, misinformed, or erroneous. Here, had Ms. Sprankle known of the PTSD/BWS facts developed by Dr. Reynolds *before* she pled guilty and known these facts could have formed the foundation of a legitimate diminished capacity defense, Ms. Sprankle would not have pled guilty. Put differently, Ms. Sprankle was "misled or misinformed and acted under [this] misguided influence when entering [her] guilty plea." *Commonwealth v. Flood*, 627 A.2d. at 1199.

CONCLUSION

WHEREFORE, based on the foregoing facts and authorities, Ms. Sprankle respectfully requests this Court to vacate her guilty plea based on Toni Cherry's prejudicial ineffectiveness.

Respectfully submitted this the 5th day of February, 2018.

/s/Craig M. Cooley
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CERTIFICATE OF SERVICE

On February 5, 2018, counsel e-filed Ms. Sprankle's opening brief via PAC-File. The Commonwealth received email notification of the filing along with a PDF copy of the opening brief.

CERTIFICATION OF COMPLIANCE

Pursuant to Pa.R.A.P. 2135(d), counsel certifies Ms. Sprankle's opening brief does not exceed 14,000 words.