NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
EDWARD E. STEWART, Appellee	No. 393 EDA 2012

Appeal from the Order entered December 9, 2011,
in the Court of Common Pleas of Philadelphia County,
Criminal Division, at No(s): CP-51-CR-0410601-2006.

BEFORE: BOWES, ALLEN, and PLATT*, JJ.:

MEMORANDUM BY ALLEN, J.: Filed: January 11, 2013

This is the Commonwealth's appeal from the order granting Edward E. Stewart ("Stewart") a new trial following his timely petition for post-conviction relief pursuant to the Post Conviction Relief Act. 42 Pa.C.S.A. §§ 9541-46 ("PCRA"). We reverse and reinstate Stewart's judgment of sentence.

Stewart was first brought to trial on murder and related charges on March 26, 2007. During the jury selection process, trial counsel informed the trial court that he would not be calling any defense witnesses. The following exchange between the trial court, trial counsel, and Stewart then occurred:

> **THE COURT**: [Stewart] you understand that you're hear for jury selection?

*Retired Senior Judge assigned to the Superior Court.

[**STEWART**]: Yes.

THE COURT: We're going to be going to trial. I'm about to start reading or stating some witnesses who might be called to testify. Some might just be names that are mentioned during the course of the trial. I'm going to state those to the jury panel that comes in here. Are there any witnesses that you have discussed with [trial counsel]?

[**STEWART**]: No, not at this time.

THE COURT: Well, at what time did you think that those would be relevant?

[**STEWART**]: No.

THE COURT: Well, what do you mean "not at this time"?

[**TRIAL COUNSEL**]: Are there any witnesses that you wanted me to call that I did not?

THE COURT: There is not going to be any other time. This is the time.

[**STEWART**]: I know that.

THE COURT: Okay. So is that just a slip-of-the-tongue, so-to-speak?

[**STEWART**]: Yes.

THE COURT: And so you have never given any witnesses to [trial counsel] so that he could investigate, is that correct, or am I incorrect? Don't look at him. I'm talking to you.

[**STEWART**]: That's correct.

THE COURT: And do you have some witnesses that you've never given to [trial counsel] and that right now you're thinking, uh-oh, I should have given him such-and-such?

[**STEWART**]: No.

THE COURT: Okay. So there are no witnesses that you have whatsoever?

[**STEWART**]: No.

THE COURT: All right, I'd just like the record to be clear on that.

N.T., 3/26/07, at 7-9.[1]

The trial court and the parties then proceeded to choose a jury. Prior to the start of Stewart's trial the next day, the court crier informed the trial court that Stewart was in an altercation that morning in the holding cell and was en route to the hospital. The court then rescheduled Appellant's trial for July 30, 2007. On that date, counsel for the parties appeared, but Appellant apparently had not been brought up from the holding cell. ***See*** N.T., 7/30/07, at 5-10. At that time, trial counsel once again informed the court that there would not be a defense witness list.

Stewart's trial began the next day. The testimony presented has been summarized as follows:

> During the trial, Alvin Hooper, Jr., testified he and [Stewart] were friends, and they operated a speakeasy in the basement of a row home located on the 4100 block of Old York Road. On April 7, 2006, he, [Stewart], and the victim were at the speakeasy having drinks. The three men were laughing and "talking trash" with each other, and [Stewart] and the victim began discussing the military. At some point, Mr. Hooper, who testified that he was not intoxicated, had his head down and his eyes closed when he heard "a pop." He opened his eyes, saw the victim fall to the ground, and [Stewart] stated, "What did I do?" Mr. Hooper replied, "You know what you did.

---

[1] A certified copy of this transcript, as well as others, including Stewart's trial, was not forwarded to this Court, and appear only in the Commonwealth's reproduced record. Because Stewart has not objected to the authenticity of the Commonwealth's reproduced record, in the interest of judicial economy, we will rely on the reproduced record to review the PCRA court's determinations.

You just shot the guy," and [Stewart], who was now pointing the gun towards Mr. Hooper, replied, "Are you going to tell?" Mr. Hooper indicated that he would not tell and [Stewart] asked Mr. Hooper to assist in wrapping the body in a carpet. Mr. Hooper refused to help and left the basement, with [Stewart] following him to the car. [Stewart] instructed Mr. Hooper to go home and throw away his clothes. [Stewart] told Mr. Hooper he would buy him new clothes, and Mr. Hooper said to [Stewart], "Look, that's cool. You don't have to do that. I'm not messing with you no more. Don't call me. I won't call you." Mr. Hooper drove away, and upon the advice of his friend, who is a police officer, Mr. Hooper went immediately to the police station to report the shooting. Mr. Hooper testified that neither he nor the victim was in possession of a gun at the time of the shooting but there was a gun on a shelf behind the bar. Mr. Hooper indicated the gun had been behind the bar for days but Mr. Hooper "never paid it any mind."

[On cross-examination,] Mr. Hooper admitted that he had been arrested twice for [driving] while under the influence and once for possession with the intent to deliver a controlled substance. Mr. Hooper indicated he could not remember whether [Stewart] was drinking on the night in question but the victim was a customer at the speakeasy. Mr. Hooper admitted that, prior to the shooting, he did not observe [Stewart] with a gun in his hands and he doesn't know whether anyone came in or left the bar while he was sleeping. [Stewart] was the sole resident of the row home where the shooting occurred, and Mr. Hooper denied having keys to the premises. Mr. Hooper expressly denied shooting the victim.

Police Officer Raymond Heim confirmed that, on April 7, 2006 at approximately 3:25 p.m., Mr. Hooper, who had blood and human tissue on his pants, shirt, and shoes, ran into police headquarters and indicated he had just witnessed a man being shot in the head with a rifle at a speakeasy on Old York Road. Specifically, Mr. Hooper, who was visibly shaken indicated "Spawn" had shot the victim during an argument over the military. Mr. Hooper accompanied the police to the 4100 block of Old York Road and pointed to a row home where a speakeasy was being operated in the basement and the shooting had occurred.

The police discovered the deceased victim lying on the floor in front of the bar with a gunshot wound to the side of his head.

Detective Gregory Rodden testified that he investigated the shooting, observed the victim's body lying on the floor in front of the bar, and discovered mail, including a water bill, addressed to [Stewart]. He found in the bar area two shotgun shells, a fired cartridge casing, and bullet holes in a chair. Detective Henry Glenn testified he seized Mr. Hooper's bloody clothing, including blue jeans, a green-colored army style-jacket, and Timberland boots, and submitted them to the criminalistics lab. Gamal Emira, a forensic scientist, confirmed the blood was of human origin.

Kenneth James Lay, a firearms laboratory supervisor, received the ballistics evidence. He indicated the fifty-one uncoated lead fragments, as well as the shot wad, were unsuitable for microscopic comparison. The "plastic over the powder wad" was 12 gauge in caliber and flattened with blood-like and tissue-like substances attached. The plastic shot cup wad was torn and distorted with blood-like and tissue-like substances. The plastic cup shot wad had a weight of 17.3 grains [sic] and it was also a 12 gauge in caliber. Mr. Lay indicated that a plastic shot wad does not typically penetrate the skin if shot from more than five to six feet away, and he opined that the shotgun was fired from a distance of two to three feet away from the victim.

Patricia Stewart, who is [Stewart's] grandmother, testified that [Stewart] was not living on the 4100 block of Old York Road on the day in question, and instead, he was living at 4819 Franklin Street. Ms. Stewart admitted that, during the investigation, she told the police that [Stewart] lived at the subject home on Old York Road. Ms. Stewart confirmed that [Stewart's] friends called him "Spawn."

Bennett Preston, M.D., testified that he conducted a post-mortem examination of the victim on April 8, 2006, confirmed the victim died as a result of a gunshot wound to the head, and opined the manner of death was homicide. He indicated the victim would have dropped "right on the spot" after he was shot, and the victim was shot from a close-range.

Omar Saladeen Taylor, who used to be on the police department, testified that he knows Mr. Hooper and [Stewart], a/k/a "Spawn." Mr. Taylor indicated that, on April 7, 2006, Mr. Hooper telephoned him and told him he had just witnessed Spawn shooting someone. Mr. Hooper told Mr. Taylor that Spawn and the victim were arguing over whether the Army or the Marines were better. Mr. Hooper further told Mr. Taylor that, during the argument, Mr. Hooper saw [Stewart] reach under a bar, pull out a gun, and shoot the victim in the head. Mr. Taylor advised Mr. Hooper to travel directly to the nearest police vehicle or station.

[Stewart] testified that he was not at the speakeasy on the date and time in question, he denied shooting the victim, and he denied having any problems with the victim. He testified that, at the time of the shooting, he was at 4819 North Franklin Street, where he was living with his fiancée and children. He testified that he was watching the children during the time of the shooting, and he did not learn of the shooting until approximately 5:00 or 6:00 p.m. that day when he checked the messages on his cell phone. He testified that Mr. Hooper had left him a message indicating he was at the police station and [Stewart] better "handle his business." [Stewart] indicated that his father owned the home at 4100 Old York Road, and Mr. Hooper ran an after-hours bar out of the basement. [Stewart] admitted that both he and Mr. Hooper had invested money in order to operate the bar, and they both had keys to the premises. [Stewart] denied either owning a shotgun or being aware that a shotgun was kept at the speakeasy. He further denied being in the company of the victim at any time on April 6 or April 7, 2006.

Barbara Boulware testified that she was at the speakeasy during the evening of April 6, 2006 into April 7, 2006, and [Stewart] and the victim drove her home at approximately 1:00 p.m. on April 7, 2006. Ms. Boulware admitted that she had been drinking while she was at the speakeasy.

Commonwealth v. Stewart, 976 A.2d 1216 (Pa. Super. 2009), unpublished memorandum at 1-7 (citations omitted).

Based on this evidence, the jury convicted Stewart of first-degree murder and possessing an instrument of crime. The trial court sentenced Stewart to an aggregate term of life in prison. After Stewart's timely filed post-sentence motion was denied by operation of law, Stewart filed a timely appeal to this Court. On May 21, 2009, this Court affirmed Stewart's judgment of sentence. ***Stewart***, ***supra***. Stewart did not file a petition for allowance of appeal to our Supreme Court.

On November 30, 2009, Stewart filed a timely *pro se* PCRA petition. The PCRA court appointed counsel, and PCRA counsel filed an amended petition on October 26, 2010. Within this amended petition, Stewart asserted that trial counsel was ineffective for failing to interview alibi witness Rasheda Grazier and present her testimony at trial. [Stewart] further asserted that trial counsel was ineffective for failing to file and serve an alibi notice according to Pa.R.Crim.P. 567, and for failing to ensure that Ms. Grazier was sequestered prior to the presentation of testimony. On January 20, 2011, the Commonwealth filed a motion to dismiss Stewart's PCRA petition, and on March 16, 2011, Stewart filed a supplemental amended PCRA petition. The PCRA court held evidentiary hearings, at which trial counsel, Ms. Grazier, and Stewart testified, on June 14 and June 17, 2011. The PCRA court heard the argument of the parties on July 8, 2011. After reviewing all the pleadings and the entire record, the PCRA court found that

trial counsel was ineffective, and granted Stewart a new trial. This timely appeal by the Commonwealth followed. Both the Commonwealth and the PCRA court have complied with Pa.R.A.P. 1925.

The Commonwealth raises the following issues on appeal:

> 1. Is counsel ineffective for not investigating a putative alibi witness – [Stewart's] fiancée – where [Stewart] did not tell counsel that he had an alibi witness until the eve of trial and [Ms. Grazier] never disclosed the putative alibi to counsel or anyone during the 16 months that [Stewart] remained in jail, and counsel therefore reasonably concluded that the last-minute witness would be easily discredited and would harm the defense?
>
> 2. Is [Stewart] entitled to a new trial on a claim of ineffectiveness where he failed to establish prejudice?

Commonwealth Brief at 3.

In reviewing the propriety of an order granting or denying PCRA relief, an appellate court is limited to ascertaining whether the record supports the determination of the PCRA court and whether the ruling is free of legal error. ***Commonwealth v. Johnson***, 966 A.2d 523, 532 (Pa. 2009). We pay great deference to the findings of the PCRA court, "but its legal determinations are subject to our plenary review." ***Id.*** Furthermore, to be entitled to relief under the PCRA, the petitioner must plead and prove by a preponderance of the evidence that the conviction or sentence arose from one or more of the errors enumerated in section 9543(a)(2) of the PCRA. One such error involves the ineffectiveness of counsel.

To obtain relief under the PCRA premised on a claim that counsel was ineffective, a petitioner must establish by a preponderance of the evidence that counsel's ineffectiveness so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. ***Id.*** "Generally, counsel's performance is presumed to be constitutionally adequate, and counsel will only be deemed ineffective upon a sufficient showing by the petitioner." ***Id.*** This requires the petitioner to demonstrate that: (1) the underlying claim is of arguable merit; (2) counsel had no reasonable strategic basis for his or her action or inaction; and (3) petitioner was prejudiced by counsel's act or omission. ***Id.*** at 533. A finding of "prejudice" requires the petitioner to show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** Counsel cannot be deemed ineffective for failing to pursue a meritless claim. ***Commonwealth v. Loner***, 836 A.2d 125, 132 (Pa. Super. 2003) (*en banc*), *appeal denied*, 852 A.2d 311 (Pa. 2004).

Moreover, trial counsel's strategic decisions cannot be the subject of a finding of ineffectiveness if the decision to follow a particular course of action was reasonably based and was not the result of sloth or ignorance of available alternatives. ***Commonwealth v. Collins***, 545 A.2d 882, 886 (Pa. 1988) (cited with approval by ***Commonwealth v. Hall***, 701 A.2d 190, 204 (Pa. 1997)). Counsel's approach must be "so unreasonable that no

competent lawyer would have chosen it." ***Commonwealth v. Ervin***, 766 A.2d 859, 862-63 (Pa. Super. 2000) (quoting ***Commonwealth v. Miller***, 431 A.2d 233, 234 (Pa. 1981). Our Supreme Court has defined "reasonableness" as follows:

> Our inquiry ceases and counsel's assistance is deemed constitutionally effective once we are able to conclude that the particular course chosen by counsel had *some reasonable* basis designed to effectuate his client's interests. The test is not whether other alternatives were more reasonable, employing a hindsight evaluation of the record. Although weigh the alternatives we must, the balance tips in favor of a finding of effective assistance as soon as it is determined that trial counsel's decision had any reasonable basis.

Commonwealth v. Pierce, 527 A.2d 973, 975 (Pa. 1987) (quoting ***Com. ex rel. Washington v. Maroney***, 235 A.2d 349, 352-53 (Pa. 1967)). ***See also Commonwealth v. Clark***, 626 A.2d 154, 157 (Pa. 1993) (explaining that a defendant asserting ineffectiveness based upon trial strategy must demonstrate that the "alternatives not chosen offered a potential for success substantially greater than the tactics utilized)." A defendant is not entitled to appellate relief simply because a chosen strategy is unsuccessful. ***Commonwealth v. Buksa***, 655 A.2d 576, 582 (Pa. Super. 1995).

"An alibi is a defense that places the defendant at the relevant time in a different place than the scene involved and so removed therefrom as to render it impossible for him to be the guilty party." ***Commonwealth v. Rainey***, 928 A.2d 215, 234 (Pa. 2007) (citation omitted). This Court has recently stated:

> A defense counsel's failure to call a particular witness to testify does not constitute ineffectiveness *per se*. ***Commonwealth v. Cox***, 603 Pa. 223, 267, 983 A.2d 666, 693 (2009) (citation omitted). "In establishing whether defense counsel was ineffective for failing to call witnesses, a defendant must prove the witnesses existed, the witnesses were ready and willing to testify, and the absence of the witnesses' testimony prejudiced petitioner and denied him a fair trial." ***Id.*** at 268, 983 A.2d at 693.

Commonwealth v. Johnson, 27 A.3d 244, 247 (Pa. Super. 2011). Stated differently, trial counsel will not be found ineffective unless the PCRA petitioner can demonstrate that the witness's testimony would have aided the defense. ***Commonwealth v. Brown***, 767 A.2d 576, 582 (Pa. Super. 2001). Trial counsel's failure to call a witness will not be considered ineffective *per se*, because such a decision generally involves a matter of trial strategy. ***Commonwealth v. Days***, 718 A.2d 797, 803 (Pa. Super. 1998).

The PCRA court summarized the content of Stewart's PCRA petition and the testimony from the evidentiary hearings as follows:

> [Stewart], in an attachment to his Amended PCRA petition, included an affidavit from Rasheda Grazier dated October 9, 2010. In her affidavit, Ms. Grazier stated that she was available and willing to testify at petitioner's trial and, if called, would have testified that on April 7, 2006, the date of the murder, she was not feeling well because of her pregnancy and that [Stewart] had been with her throughout the day since she needed him to care for her children. She also stated that [Stewart] received telephone messages on April 7, 2006 from Hooper and [Stewart] asked her to listen to the messages. In the affidavit, Hooper was described by Ms. Grazier as crying and sounding scared, and he asked [Stewart] to meet him at the bar. Ms. Grazier also stated in her affidavit that she

> had several telephone conversations with [trial counsel] wherein she told counsel that [Stewart] was with her at the time of the killing yet he never met with her and never had an investigator interview her. [Ms. Grazier testified similarly at the evidentiary hearing.] [Stewart] also attached to his Supplemental Amended PCRA Petition two letters which [Stewart] alleged he had sent to trial counsel. In one letter, dated March 4, 2007, [Stewart] indicates that a female witness had told [Stewart] she had spoken to trial counsel and [Stewart] stated that she is coming to court for him. In the second letter, dated July 18, 2007, [Stewart] asks trial counsel " . . . did you get with my witness Rasheda Grazier" and provides a phone number and address.
>
> Trial counsel testified at the evidentiary hearing and denied that [Stewart] told him, prior to the first trial, that he was somewhere else other than at the scene of the shooting. When shown the March 4, 2007, letter purportedly sent to him, trial counsel testified that he did not have an independent recollection of that particular document; he also did not [have] any recollection of having received the July 18, 2007 letter. He also stated that, although he had spoken to Ms. Grazier over the telephone during the time in which he represented [Stewart], she never informed him that she was with [Stewart] somewhere else at the time the shooting occurred. [Trial counsel did not state when he had spoken with Ms. Grazier, and there were no notations in his file memorializing any contact with her whatsoever.] Trial counsel did not have any independent recollection of whether Ms. Grazier called him before the second trial. Whenever it was that he spoke with her, he never inquired as to where [Stewart] was at the time of the murder, but did recall asking [Stewart] that.

PCRA Court Opinion, 5/22/12, at 3-5 (footnotes and citations omitted).

The PCRA court further noted trial counsel's response to the inquiry as to why he did not seek to file a belated notice of alibi on July 30, 2007, the

date he told the Court he had first discovered there was an alibi witness. Trial counsel responded:

> Again, I go back to the argument that at that point to just ask for leave to file [alibi notice] would not - - there would be no reasonable way I could investigate this at this point, because of the fact that him telling me on the day in which jury selection took place, whether it was before jury selection, after jury selection, sometime during that day, I don't have an independent recollection.
>
> But to change the entire playing field or to change the entire plan of how I was going to attack this case on the day before with a statement from him, having spent time with him and investigating and talking to him and not believing, in my mind, half the things that he was telling me, one, I didn't think that this avenue of approach was going to be credible or fruitful.
>
> Two, I didn't believe him.
>
> And three, to ask for leave at this point, I think, again, would have gone back to my other point; that if Ms. Grazier had been permitted to be interviewed by the Commonwealth at this point, she would not have been a credible witness in this case if she were called as an alibi witness.
>
> My strategy in this case was to try to pin this murder on Alvin Hooper. My strategy was basically to point to him, saying that he was the one that was involved in the killing.

PCRA Court Opinion, 5/22/12, at 5 (quoting N.T., 6/14/11, at 25-27).

The PCRA court found that Stewart met all three prongs of the test to establish ineffectiveness of counsel:

> In the instant case, the record established that [Stewart] had told counsel of the existence of the alibi witness some time prior to trial but at least as late as the day jury selection began. The witness was present and willing to testify. Trial counsel recalled, and the record from trial

bore out, that he had learned of Ms. Grazier as an alibi witness at least the day before opening statements, and yet made no attempt to explore her testimony to determine whether it would be beneficial for [Stewart] to call her as a witness. The only explanation that trial counsel offered at the evidentiary hearing for this failure was his conclusion, made without any discussion with the witness as to her possible testimony, that she was incredible and would be subject to heavy cross-examination by the prosecution. This explanation was unacceptable.

***

In the instant case, the only issue was the credibility of the Commonwealth witnesses versus that of [Stewart]. Interviewing and possibly calling a known alibi witness was inexcusable here where there was only one eyewitness presented by the Commonwealth. Counsel did not offer any reasonable basis for his decision to not even investigate this possible alibi witness, nor can this Court find any. That conclusion might have been reasonable had counsel at least spoken to the witness to assess her information. However, for trial counsel to personally determine that Ms. Grazier was incredible absent an interview of her constituted ineffectiveness. As the Court stated in [***Commonwealth v. McCaskill***, 468 A.2d 472, 478 (Pa. Super. 1983)], the duty to investigate exists even if counsel believes the particular avenue offers little chance of leading to a successful defense. Trial counsel also cited to the possibility that Ms. Grazier would have been strenuously cross-examined by the prosecution as to why she had failed to tell anyone about her testimony sooner, but that was for [trial counsel] to inquire about in the first instance, and then for the jury to hear and decide whether she was credible or not. Matters of credibility are best left to the fact-finders. ***Commowneatlh v. Adams***, 350 A.2d 412, 416 (Pa. 1976).

Trial counsel's stated strategy was to pin the murder on the one eyewitness, Alvin Hooper. Presenting an alibi defense, which was done through [Stewart's] testimony, was not inconsistent with that strategy and having had a witness to corroborate [Stewart's] testimony would only

> have augmented that defense. Instead, the jury was left to possibly wonder where [Stewart's] fiancée was.

PCRA Court Opinion, 5/22/12, at 9-11 (footnotes omitted).

In support of its issues raised on appeal, the Commonwealth first contends that the PCRA court erred in concluding that trial counsel failed to provide any reasonable basis for his decision not to interview Ms. Grazier. To the contrary, the Commonwealth asserts that trial counsel reasonably concluded that Ms. Grazier "would be easily impeached and would therefore harm the defense." Commonwealth Brief at 18. According to the Commonwealth, because trial counsel "had a reasonable basis for his strategic choice," the trial court erred in granting Stewart a new trial. ***Id.*** The Commonwealth further contends that the PCRA court erred by not considering the prejudice prong of the ineffectiveness test. As noted above, in order to be entitled to relief, Stewart bore the burden of establishing that had trial counsel called Ms. Grazier to testify, the outcome of his trial would likely have been different. ***Johnson***, 966 A.2d at 533. The Commonwealth asserts that Ms. Grazier's testimony at the evidentiary hearing failed to establish this fact.

After careful review of the record, we agree with the Commonwealth that trial counsel's decision not to call Ms. Grazier as an alibi witness was a reasonable strategic decision and that Stewart failed to establish prejudice.

Initially, the PCRA court determined that trial counsel's strategic decision would have been reasonable had he at least spoken to Ms. Grazier.

By definition, however, alibi testimony establishes that a person was somewhere else when a crime was perpetrated. ***Rainey, supra***. Thus, trial counsel was aware of the essence of Ms. Grazier's testimony, *i.e.*, that [Stewart] was with her when the murder occurred. At the evidentiary hearing, Ms. Grazier testified to this fact. Moreover, Ms. Grazier stated in her affidavit and testified at the evidentiary hearing that she was in communication with trial counsel before both of Stewart's trials. ***See*** N.T., 6/14/11, at 109-10. Stewart failed to establish that Ms. Grazier had any additional information that would have benefitted him. Thus, because trial counsel's strategy in not calling Ms. Grazier as an alibi witness was reasonably based, Stewart's ineffectiveness claim fails. ***See e.g.***, ***Commonwealth v. Davis***, 554 A.2d 104, 112 (Pa. Super. 1989) (rejecting the defendant's claim that trial counsel was ineffective for failing to call an alibi witness; "By calling an alibi witness, trial counsel would have risked a shift in focus from the credibility of the Commonwealth's witness to that of the alibi witness. If successfully impeached, the alibi witness could have done more harm than good for the defense").

Finally, Stewart failed to establish the requisite prejudice. By questioning Stewart at trial about his whereabouts at the time of the murder, trial counsel introduced "alibi" testimony, and the Commonwealth was unable to ask Stewart about his post-arrest silence. Although the PCRA court determined that "having had a witness to corroborate [Stewart's] testimony would only have augmented that defense," PCRA Court Opinion,

5/22/12, at 11, Ms. Grazier's proffered alibi would have been subject to scrutiny on cross-examination by the Commonwealth, regarding her bias and her failure to come forward sooner. Thus, presenting "corroborating" alibi testimony may have harmed Stewart's defense. ***See e.g.***, ***Commonwealth v. Hammond***, 953 A.2d 544, 560 (Pa. Super. 2008) (reversing PCRA court's grant of new trial based upon failure to call witness; even assuming trial counsel's failure to interview personally was unreasonable, the defendant could not demonstrate that the failure to call the witness prejudiced him).

In sum, the PCRA court erred in concluding that trial counsel did not have a reasonable basis for not calling Ms. Grazier as an alibi witness. In addition, the PCRA court erred in concluding that Stewart met his burden of establishing that he was prejudiced by the absence of Ms. Grazier's testimony. We therefore reverse the order granting Stewart a new trial, and reinstate his judgment of sentence.

Order reversed. Judgment of sentence reinstated. Jurisdiction relinquished.

Judge Bowes files a Dissenting Memorandum.