

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ALAN ROBERT BENNETT, JR.

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 951 MDA 2013

Appeal from the PCRA Order April 29, 2013  
In the Court of Common Pleas of Snyder County  
Criminal Division at No(s): CP-55-CR-0000393-2008

BEFORE: ALLEN, J., LAZARUS, J., and FITZGERALD, J.\*

DISSENTING STATEMENT BY LAZARUS, J.

**FILED APRIL 15, 2014**

I respectfully dissent. Where the victims allegedly offered inconsistent testimony at the preliminary hearing and trial relating directly to who was driving the car at the time of the accident, there was a reasonable probability that the failure to have preliminary hearing notes to effectively impeach the victims may have undermined the reliability of the trial and, resultantly, the jury verdict. ***Commonwealth v. Boyer***, 962 A.2d 1213 (Pa. Super. 2008). The critical nature of the preliminary hearing notes for Bennett's defense at trial is further highlighted by the fact that neither of the victims testified that they saw Bennett driving or sitting in the driver's seat of the vehicle on the night of the incident – the heart of Bennett's defense at

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\* Former Justice specially assigned to the Superior Court.

trial.<sup>1</sup> Accordingly, I believe that counsel was ineffective for failing to have Bennett's preliminary hearing notes transcribed and would reverse the trial court's order denying PCRA relief and remand for a new trial.

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<sup>1</sup> My review of the record does not support the trial judge's statement in his Rule 1925(a) opinion that "[o]ne (1) of the members of the security staff testified that they saw the Defendant sitting in the driver's seat." Trial Court Opinion, 12/16/09, at 3.