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**PRESS RELEASE**  
**KEVIN MENGEL HOMICIDE**  
**AUGUST 5, 2010**

**Pennsylvania law requires that in cases where the Commonwealth is seeking the death penalty, notice of that intent and the basis upon which the death penalty will be pursued must be filed in a written document at the time of the defendant's formal arraignment on murder charges.**

**Arraignment was scheduled today in the cases of Commonwealth v. Morgan Mengel and Commonwealth v. Stephen Shappell,, both of whom are accused of murdering Morgan Mengel's husband, Kevin Mengel, on June 17, 2010. For the reasons that follow, no death penalty notice was filed against either defendant.**

**A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing. The death penalty is a permissible sentence for some, but not all, first-degree murderers.**

**In order for the death penalty to be a permissible sentence in a given case, in addition to proof of the elements required for first-degree murder there must also exist proof beyond a reasonable doubt of at least one of 18 "aggravating circumstances" as that term is defined in section 9711 of the Judicial Code. If at least one aggravating circumstance is present, the law requires that the jury determine whether there are any "mitigating circumstances" as that term is defined in the Judicial Code. If there is at least one aggravating circumstance and no mitigating circumstances, the death penalty is appropriate. If there are both aggravating**

circumstances and mitigating circumstances, the jury (or judge in a non-jury trial) must determine whether the aggravating circumstances outweigh the mitigating circumstances. If so, the death penalty is lawful. If not, the sentence must be life in prison.

The first step in the analysis, then, is to determine whether any aggravating circumstances can be proven beyond a reasonable doubt. The only aggravating circumstances that may be considered are those listed in section 9711(d) of the Judicial Code. They are:

**(d) Aggravating circumstances. – Aggravating circumstances shall be limited to the following:**

**(1) The victim was a firefighter, peace officer, public servant concerned in official detention, as defined in 18 Pa.C.S. § 5121 (relating to escape), judge of any court in the unified judicial system, the Attorney General of Pennsylvania, a deputy attorney general, district attorney, assistant district attorney, member of the General Assembly, Governor, Lieutenant Governor, Auditor General, State Treasurer, State law enforcement official, local law enforcement official, Federal law enforcement official or person employed to assist or assisting any law enforcement official in the performance of his duties, who was killed in the performance of his duties or as a result of his official position.**

**(2) The defendant paid or was paid by another person or had contracted to pay or be paid by another person or had conspired to pay or be paid by another person for the killing of the victim.**

**(3) The victim was being held by the defendant for ransom or reward, or as a shield or hostage.**

**(4) The death of the victim occurred while defendant was engaged in the hijacking of an aircraft.**

**(5) The victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses.**

**(6) The defendant committed a killing while in the perpetration of a felony.**

**(7) In the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense.**

**(8) The offense was committed by means of torture.**

**(9) The defendant has a significant history of felony convictions involving the use or threat of violence to the person.**

**(10) The defendant has been convicted of another Federal or State offense, committed either before or at the time of the offense at issue, for which a sentence of life imprisonment or death was imposable or the defendant was undergoing a sentence of life imprisonment for any reason at the time of the commission of the offense.**

(11) The defendant has been convicted of another murder committed in any jurisdiction and committed either before or at the time of the offense at issue.

(12) The defendant has been convicted of voluntary manslaughter, as defined in 18 Pa.C.S. § 2503 (relating to voluntary manslaughter), or a substantially equivalent crime in any other jurisdiction, committed either before or at the time of the offense at issue.

(13) The defendant committed the killing or was an accomplice in the killing, as defined in 18 Pa.C.S. § 306(c) (relating to liability for conduct of another; complicity), while in the perpetration of a felony under the provisions of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and punishable under the provisions of 18 Pa.C.S. § 7508 (relating to drug trafficking sentencing and penalties).

(14) At the time of the killing, the victim was or had been involved, associated or in competition with the defendant in the sale, manufacture, distribution or delivery of any controlled substance or counterfeit controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act or similar law of any other state, the District of Columbia or the United States, and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. § 306(c), and the killing resulted from or was related to that association, involvement or competition to promote the defendant's activities in selling, manufacturing, distributing or delivering controlled substances or counterfeit controlled substances.

(15) At the time of the killing, the victim was or had been a nongovernmental informant or had otherwise provided any investigative, law enforcement or police agency with information concerning criminal activity and the defendant committed the killing or was an accomplice to the killing as defined in 18 Pa.C.S. § 306(c), and the killing was in retaliation for the victim's activities as a nongovernmental informant or in providing information concerning criminal activity to an investigative, law enforcement or police agency.

(16) The victim was a child under 12 years of age.

(17) At the time of the killing, the victim was in her third trimester of pregnancy or the defendant had knowledge of the victim's pregnancy.

(18) At the time of the killing the defendant was subject to a court order restricting in any way the defendant's behavior toward the victim pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or any other order of a court of common pleas or of the minor judiciary designed in whole or in part to protect the victim from the defendant.

The allegations in this case are that the defendants conspired to murder Kevin Mengel so that they could be together immediately without the inconvenience of

waiting for a divorce action. Some incidental benefits of that strategy: Kevin Mengel could not seek custody of his three children, and the business and other property jointly owned by Kevin Mengel and his wife would be hers alone. If proven, those facts would establish that this murder was calculated, cold-blooded, and depraved; an unconscionable act that cannot be tolerated in civilized society. However, those facts would not establish any of the 18 aggravated circumstances required by law for application of the death penalty. <sup>1</sup>

In many cases -- those in which there is arguably at least one aggravating circumstance -- I have discretion to file a death penalty notice or to refrain from doing so. In those cases my senior assistants and I gather information from the victim's family and the police department, review our evidence and applicable case law concerning the death penalty, and decide: 1) whether we have a lawful basis to seek a death penalty; and 2) whether we believe it is in the best interest of the victims family and the public to pursue the death penalty. In this case I have no discretion. In the absence of a good faith belief that I could prove an aggravating circumstance, filing a death penalty notice would be improper. Accordingly, none will be filed. <sup>2</sup> Instead, the defendants will receive a mandatory life sentence if convicted of first degree murder.

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<sup>1</sup> Special attention was given to whether aggravating circumstance number (2) applied, on the theory that Shappell would benefit indirectly as a result of Mengel becoming sole owner of marital property after Kevin Mengel's murder. However, there is no evidence at this point that any assets were to be transferred to Shappell in return for his participation, which would be required to prove this aggravating circumstance. The investigation is continuing. If evidence of payment surfaces in the future the Commonwealth could seek to file a death penalty notice at that time.

<sup>2</sup> Kevin Mengel's family was not in favor of pursuing the death penalty. Therefore, I may have made the same decision even if an aggravating circumstance was present. However, I never got that far because of my conclusion that there is no basis to seek the death penalty in this case.