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FAYETTE LEGAL JOURNAL

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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

LOUISE PATRICIA KANAR, a/k/a LOUISE P. KANAR, late of Franklin Township, Fayette County, PA (3)

Personal Representative: James P. Kanar c/o George & George, LLP 92 East Main Street Uniontown, PA 15401 Attorney: Joseph M. George

WALTER P. NOVINSKY, late of Redstone

Township, Fayette County, PA (3)

Executrix: Geraldine Helisek
1101 First Street

1101 First Street Hiller, PA 15444 c/o 304 Chamber Plaza Charleroi, PA 15022 Attornev: Kathleen A. Gustine

HELYN LUCILLE OSHNACK, a/k/a HELYN OSHNACK, late of South Union

Township, Fayette County, PA (3)

Personal Representative:

William W. Ochnools, In

William W. Oshnack, Jr. c/o 2 West Main Street, Suite 110 Uniontown, PA 15401 Attorney: Ricardo J. Cicconi

HANNABELLE PHARES, late of Washington

Township, Fayette County, PA (3)

**Administratrix: Carole A. Phares

Administratrix: Carole A. Phare: 215 Mikula Road Belle Vernon, PA 15012 c/o Shire Law Firm 1711 Grand Boulevard Park Centre Monessen, PA 15062 Attorney: Mark J. Shire

JOHN HOWARD RIFFLE, JR., late of

Uniontown, Fayette County, PA (3)

Administrator: Blaine Homistek
c/o Monaghan and Monaghan
57 East Main Street
Uniontown, PA 15401
Attorney: Gary D. Monaghan

DOROTHY S. SLATER, a/k/a DOROTHY E. SLATER, a/k/a DOROTHY SLATER, late

of North Union Township, Fayette County, PA
Co-Executors: (3)
Jarred E. Slater and Janet E. Kettering
c/o John & John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

Second Publication

SARA M. HENRY, a/k/a SARAH M. HENRY, a/k/a SARA HENRY, late of Saltlick

Township, Fayette County, PA (2)

Executrix: Thelma L. McClain
c/o P.O. Box 760
Connellsville, PA 15425

Attorney: Carolyn W. Maricondi

HELEN OHLER, a/k/a HELEN K. OHLER,

late of Bullskin Township, Fayette County, PA Executor: Scott J. Ohler (2) c/o P.O Box 760 Connellsville, PA 15425 Attorney: Carolyn W. Maricondi

NELLIE M. SARVER, late of Markleysburg,

Fayette County, PA (2)

Administrator: Ricky S. Butler
c/o 2944 National Pike Road

P.O. Box 245 Chalk Hill, PA 15421 Attorney: Charles C. Gentile

KATHRYN V. SEIGHMAN, a/k/a KATHERINE SEIGHMAN, a/k/a KATHRYN SEIGHMAN, late of North Union

Township, Fayette County, PA (2)

Executor: Thomas A. Novak c/o Zebley Mehalov & White, P.C.

18 Mill Street Square

P.O. Box 2123

Uniontown, PA 15401

Attorney: Daniel R. White

RONALD SOTTA, a/k/a RONALD C. **SOTTA**, late of Washington Township, Fayette

County, PA (2)

Executor: P. Joseph Grata 228 Second Avenue

Belle Vernon, PA 15012

c/o 823 Broad Avenue Belle Vernon, PA 15012

Attorney: Mark E. Ramsier

WAYNE RAYMOND THISTLETHWAITE, a/k/a WAYNE R. THISTLETHWAITE, late

of Luzerne Township, Fayette County, PA (2)

Executor: Raymond D. Popp

c/o Webster & Webster

51 East South Street

Uniontown, PA 15401 Attorney: Webster & Webster

PAMELA K. WILLIAMS, late of Washington

Township, Favette County, PA (2)

Administrator: Preston D. Williams

125 Dinsmore Street

Belle Vernon, PA 15012

c/o P.O. Box 1

401 Sixth Street at Washington Avenue

Charleroi, PA 15022

Attorney: Alan Benyak

First Publication

MIRIAM FIKE, late of North Union

Township, Favette County, PA (1)

Executrix: Brenda A. Alicastro

116 Short Road

Markleysburg, PA 15149

c/o P.O. Box 14

Murrysville, PA 15668

Attorney: Robert C. Klingensmith

MARY CATHERINE JENKINS, late of

Georges Township, Favette County, PA (1)

Administrator: Michael Jenkins

c/o Adams & Adams

55 East Church Street, Suite 101

Attorney: Jason F. Adams

EUGENE LEPRE, late of Dunbar Township,

Fayette County, PA (1)

Executor: Robert R. Lepre

9 Greenwood Road

Pittsburgh, PA 15221

c/o Frayer Law Offices

250 Mt. Lebanon Boulevard, Suite 207

Pittsburgh, PA 15234

Attorney: Dale P. Frayer

EMOGENE POSICK, late of Washington

Township, Fayette County, PA (1)

Executor: Aaron Anderson

114 Branch Avenue

Belle Vernon, PA 15012

c/o 823 Broad Avenue

Belle Vernon, PA 15012

Attorney: Mark E. Ramsier

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA No. 502 OF 2018, G.D.

IN RE:

CHANGE OF NAME OF

TYLER A. GIVEN TO

TYLER A. MEESE

To: All interested parties: Notice is hereby given that an Order of said Court authorized the filing of said Petition and fixed the 22nd day of may, 2018, at 9:30 A.M., as the time before Presiding Judge Joseph M. George, Jr., at the Fayette County Courthouse, Courtroom Number 5, Uniontown, Pennsylvania as the place, when and where, all persons may show cause, if any they have, why said name should not be changed as prayed for.

J.W. Eddy, Esquire 80 East Main Street Uniontown, PA 15401

NOTICE

Estate of Joshua Paul Atkins a/k/a Joshua P. Atkins a/k/a Joshua Atkins, Deceased. Late of S. Connellsville Borough, Fayette County, PA. D.O.D. 2/12/18. Letters of Administration on the above Estate have been granted to the undersigned, who request all persons having claims or demands against the estate of the decedent to make known the same and all persons indebted to the decedent to make payment without delay to Lauren Dawn Atkins. Administratrix, c/o Martin K. Brigham, Esq. and Charles P. Hehmeyer, Esq., 1845 Walnut St., 20th Fl., Philadelphia, PA 19103. Or to her Attys., Martin K. Brigham and Charles P. Hehmeyer, Raynes Lawn Hehmeyer, 1845 Walnut St., 20th Fl., Philadelphia, PA 19103. (1 of 3)

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL DIVISION No. 248 OF 2018, G.D.

LEGAL NOTICE

In Re: CHANGE OF NAME OF J.A.C., a minor child.

TO: Stormy Carnes and Any interested parties or creditors:

Notice is hereby given that on February 9, 2018, the Petition of Matthew A. Bibel, was filed in the above named Court, praying for a Decree to change his minor child's name from Johnathan Andrew Carnes to Johnathan Andrew Bibel.

The Court has fixed May 23, 2018, at 9:30 A.M. in Courtroom Number 1, Fayette County Courthouse, Uniontown, Pennsylvania as the time and place for a hearing on the merits of said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

IMPORTANT NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses and objection s in writing with the court. You are warned that if you fail to

do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may loose money or property or other important rights to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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BY: Jennifer M. Casini, Esquire Casini & Geibig, LLC Attorneys at Law 615 W. Crawford Ave. Connellsville, PA 15425 (724) 628-7799

NOTICE LEGAL ADVERTISEMENT

Notice is hereby given that a hearing is scheduled for Wednesday, June 13, 2018, at 9:30 a.m., before The Honorable Joseph M. George, Jr., in Courtroom No. 5, of the Fayette County Courthouse, for the sale of the South Side Elementary School by the Connellsville Area Board of School Directors.

Interested persons may appear at the aforementioned hearing to offer testimony in favor of or in opposition to the proposed sale.

Connellsville Area Board of School Directors

(1 of 3)

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, June 4, 2018 at 9:30 A.M.

<u>Estate Number</u> <u>Estate Name</u> <u>Accountant</u>

2613-0170 MARY B. ECHOLS George M. Barney, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, June 18, 2018 at 9:30 A.M.

in Court Room No. 1 of the **Honorable STEVE P. LESKINEN**, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, June 4, 2018 at 9:30 A.M.

Estate Number	Estate Name	Accountant
2615-0787	BESSIE A. GABELT a/k/a BESSIE GABELT	Mary Ann Baysinger, Administratrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on Monday, June 18, 2018 at 9:30 A.M.

in Court Room No. 2 of the **Honorable JOHN F. WAGNER** or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CRIMINAL DIVISION

COMMONWEALTH OF :

PENNSYLVANIA,

:

VS.

:

JOSEPH FRANKENBERRY, : No. 158 of 1981; 158 1/2 of 1981 Defendant/Petitioner : Senior Judge David C. Klementik

MEMORANDUM AND ORDER

KLEMENTIK, S.J. May 10, 2018

Before the Court is the consideration of evidence presented by Petitioner, Joseph Frankenberry, in support of his Amended Petition for Post-Conviction Relief. An evidentiary hearing was conducted on February 1, 2018 through which Petitioner participated by video conference. A factual summary and the legal standard were set forth in the Court's Memorandum dated December 6, 2017. In that memorandum the Court dismissed all but one of the Petitioner's claims, thereby leaving only one issue for which the court opined there was a sufficient question of fact to allow for an evidentiary hearing.

The issue before the court regarded Petitioner's claim that the Prosecution in the original trial had committed Brady {1} violations by failing to turn over material evidence in the nature of tape-recorded statements wherein two other codefendants discussed hiring Charles Ralph Huey to kill the victim. Specifically, Petitioner alleges that certain tape recordings were made by codefendant Elmer Younkin of conversations between himself and the victim's husband, Phoebe Tomasek. The Petition averred that two witnesses were prepared to testify of the content of the recordings of the co-conspirators regarding their plan to hire Huey, but without mention of Petitioner. Petition alleges that these tape recordings were exculpatory, were known to the Commonwealth, and were not provided to defense counsel in preparation for trial. The Commonwealth counters that there is evidence to suggest that the transcripts of the tape recordings were provided to defense counsel who, in fact, reviewed them.

^{1} Brady v. Maryland, 373 U.S. 83 (1963) held that prosecutorial suppression of evidence that is material to guilt or punishment violates due process. A Brady claim is specifically cognizable under the PCRA. 42 Pa.C.S.A. §9543(a)(2)(vi)

The Evidence

The first witness to testify was co-conspirator, Phoebe Tomasek, who was convicted as a co-conspirator to the homicide and a separate trial approximately one month before the Petitioner's trial. She is currently incarcerated at SCI Muncy and is serving a life sentence for that crime. The other co-conspirator who was a party to the taped telephone conversations was Elmer Younkin, now deceased, who taped his telephone conversations in conjunction with his activities as a bookie. At least one tape recording was identified as being between Elmer Younkin and Phoebe Tomasek who at that time were paramours and had discussed arranging to have someone kill Phoebe's husband, John Tomasek.

In support of the Petition, Phoebe had signed a sworn statement verifying that she was aware of the existence of tape-recorded statements possessed by law enforcement wherein Elmer Younkin discussed the hiring of Charles Ralph Huey in order to kill John Tomasek. She further indicates in her statement, actually prepared by Petitioner's counsel, that she did not hire Mr. Frankenberry to kill her husband. Her testimony, however, was contrary to the verified statement.

Specifically, she testified that she did not know whether or not the recordings ever mentioned Mr. Huey, Mr. Frankenberry, or anybody else. She was told after the murder that Mr. Frankenberry was involved. Elmer Younkin did not tell her who he hired, and she never met or had any interaction with Mr. Frankenberry. The transcript of the recording does provide some evidence that Elmer and Phoebe discussed "eliminating" John Tomasek and that her daughter-in- law, Robin, knew someone who could perform the job for \$500. Phoebe's daughter, Peggy Broadwater, had cooperated with the authorities to confirm the voice on the tapes as being that of her mother. The taped conversations were offered into evidence in Phoebe's trial; however, on motion of the defense, the conversations were suppressed as having been recorded without Phoebe's knowledge.

On July 27, 1981, a document with attachments entitled "Additional Answer to Discovery Pursuant to the Formal Discovery Motion" was clocked into the Clerk of Courts office to the docket No. 160 of 1981, being the Elmer Younkin file. Subparagraph 1(i) indicates that a copy of a transcript of certain telephone conversations made, or received by Elmer Wayne Younkin, and recorded by Elmer Wayne Younkin, was attached thereto. The first page of the 34-page transcript begins with the following header: "MEMOREX 90220 Phoebe #4 Side 1." A review of the various conversations contained in the transcript reveals conversations between Elmer and other "Males" as well as other "Females". The overwhelming majority of the conversations are identified as being between Elmer and Phoebe. Within the 30-plus pages of transcript there is absolutely no reference to any named individual who was to commit the homicide of John Tomasek. The sole reference regarding the possible candidate is, as indicated above, someone that Phoebe's daughter-in-law, Robin, may know. Mrs. Tomasek admits that she did not know of Mr. Frankenberry's involvement until after

the homicide had been committed, and that she only learned this from Elmer Younkin. The transcript ends with: "End Side 1". On the whole, the transcript neither directly inculpates nor exculpates Joseph Frankenberry. If any, the scale is slightly tipped toward implicating Joseph Frankenberry because she indicates that Elmer Younkin told her that Frankenberry was involved in the homicide. Phoebe Tomasek did not testify at the Younkin-Frankenberry trial.

The next witness to testify was attorney Vincent Roskovensky, II who was trial counsel for Joseph Frankenberry in 1981. He testified that he had never been provided tapes or transcripts of tapes in response to broad discovery requests. Having sat alongside attorney Peter Hook, trial counsel for Phoebe Tomasek, he recalled that certain tapes were discussed and were suppressed as indicated above; however, he did not know the contents of the tapes. On cross examination attorney Roskovensky was asked to explain an entry in his Petition for Counsel Fees for June 23, 1981in the Frankenberry case wherein it indicates that he "Reviewed Tape Transcripts". He was unable to explain the basis for that entry and further denied any knowledge of audiotapes or the Respondent-Commonwealth presented transcripts. Further, Roskovensky a docketed instrument entitled "Additional Answer to Discovery" in the No. 158 of 1981 docket for Joseph Peter Frankenberry which, at paragraph 3 thereof, indicates that "[a]ttached hereto is a copy of a transcript of certain telephone conversations made, or received, by Elmer Wayne Younkin and recorded by Elmer Wayne Younkin. Some of the conversations contained in the transcript are in reference The stamped "distribution" for the document issued from to the criminal homicide." the District Attorney's office, indicates that a copy was provided to "ATTY Roskovensky". In response to his review of the "Additional Answer To Discovery" attorney Roskovensky had no recollection of having seen that document or any transcripts of audiotapes. We must conclude from this testimony and the evidence supplied that 30 years of time have caused loss of recollection of details by defense counsel. The documentary evidence strongly suggests that attorney Roskovensky had some knowledge that audiotapes existed; however, the transcripts of taped conversations supplied for the Phoebe Tomasek trial made no reference to Charles Huey or Joseph Frankenberry.

The next witness to testify, James E. Baranowski, had prepared an investigative report dated July 15, 2016 at the request of counsel for Joseph Frankenberry. Mr. Baranowski, a retired state trooper, had been tasked to investigate the Frankenberry file to determine if there was any exculpatory evidence that could be used for post conviction relief. He indicates in the Summary: " As a result of my investigation it was revealed that there were several audio recordings that were made by Mr. Elmer Younkin, during which Mrs. Phoebe Tomasek discussed hiring Mr. Huey to kill her husband." The report, however, indicates that he was unable to find any such audiotapes and has no personal knowledge of their contents. The existence of the audiotapes appears to be manifested in his interview with Mrs. Peggy Broadwater, the estranged daughter of Phoebe Tomasek. As previously discussed, Mrs. Broadwater listened to at least one audiotape wherein she was able to identify her mother's voice on the tape. She was

advised by the Troopers that they found the tapes while serving a search warrant on Mr. Younkin who was being arrested for bookmaking. As indicated, a review of the 34 page transcript of conversations between Elmer and Phoebe reveals no mention of either Mr. Huey or Mr. Frankenberry. They do, however, indicate discussions between Elmer and Phoebe about killing Phoebe's husband, John Tomasek. Mr. Baranowski further testified that he attempted to locate audiotapes from Mr. Younkin's bookmaking arrest file; however, he was unable to locate them. He interviewed the investigating officer of the Tomasek homicide, Trooper (Retired) Montgomery Goodwin who had no recollection of any audio recordings in the case. None of the witnesses interviewed by Mr. Baranowski specifically stated that an audio recording between Elmer Younkin and Phoebe Tomasek discussed hiring Mr. Huey or any individual by name. Accordingly, we conclude that the report of unfound audiotapes does not exculpate Joseph Frankenberry by virtue of a specific reference to Mr. Huey. As indicated, while Elmer and Phoebe discussed killing John Tomasek, there is no specific mention of a named individual to be assigned the job.

Peggy Broadwater testified that she had been asked by the investigating Troopers to listen to an audio tape to identify for them whether the female voice on the tape was that of her mother, Phoebe Tomasek, conversing with her paramour, Elmer Younkin. She was able to confirm that the voice was, indeed, that of her mother. She testified that she only listened to the one tape and that there was no reference to Mr. Huey or any other named individual who was to carry out the homicide of John Tomasek. Indeed, this testimony completely refutes the Baranowski report which ties the discussion within the audiotapes to hiring Mr. Huey for the job. Baranowski's testimony and report are completely discredited inasmuch as the only meaningful context for the audiotapes by the Petitioner is that Mr. Huey, and not Mr. Frankenberry, was to be hired for the homicide. The Broadwater testimony does, however, provide some evidence that at least one other audiotape was in existence because it captures a conversation between her and Mr. Younkin. The testimony further confirms that the tapes were inadmissible as she indicates that she was so advised by the troopers at the time she was interviewed by them.

Petitioner's final witness, other than his own testimony, was Trooper (Retired) Montgomery Goodwin, P.S.P., who was the investigating officer for the homicide. Unfortunately, due to the number of years having passed, Trooper Goodwin was unable to recall anything regarding audiotapes.

Conclusions

The burden of proof was on the Petitioner to prove by a preponderance of the evidence that his conviction resulted from constitutional violations which undermined the truth determining process or the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced. In the first instance Petitioner argues that the government committed Brady violations by failing to turn over material evidence in the

nature of tape-recorded statements wherein two other codefendants discussed hiring Charles Ralph Huey to kill the victim. The evidence reveals, however, that a discovery document was supplied to attorney Roskovensky which specifically referenced audiotapes wherein there was a discussion of the plan for a homicide. There is no explanation as to how it may have occurred that the document did not find its way into his possession as his name was clearly listed on the distribution. Attorney Roskovensky's testimony of failure to recall reference to audiotapes is consistent, however, with the normal loss of recollection of details after the passage of 35 years. The forgoing is compounded by the fact that no audiotapes have ever been found despite the Baranowski investigation and interview of numerous key personnel involved in the investigation. Finally, the transcript reviewed and submitted into evidence provides no reference whatsoever to a named individual who was to be engaged by Elmer Younkin and Phoebe Tomasek to carry out the homicide. The Baranowski report which clearly states in its "Summary" that the audiotapes reveal a discussion for hiring Mr. Huey to commit the homicide is totally debunked by the testimony. Mr. Baranowski attributes his reference to Mr. Huey as having come from Peggy Broadwater; however, Peggy Broadwater flatly denies ever hearing anything about Mr. Huey on the audiotapes that she heard for identification of her mother's voice.

The only final question unaddressed is whether additional audio tapes, if found, would constitute exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced. It is the Petitioner's burden of proof to either produce the tapes or prove that Petitioner's due process was constitutionally violated by prosecutorial suppression of evidence that was material to guilt. Petitioner would have the court take judicial notice of other cases in Fayette County where, under similar circumstances, there was a finding that such improper prosecutorial suppression of evidence occurred. The court must rely upon the evidence presented in each case to determine if a constitutional violation has occurred and cannot generally connect the dots and extrapolate them to the current case under consideration.

Petitioner has failed to meet his burden of proof. Accordingly, we enter the following order.

ORDER

AND NOW, this 10th day of May, 2018, for the reasons set forth in the forgoing Memorandum, the Petition for Post-Conviction Relief is DENIED.

BY THE COURT David C. Klementik, Senior Judge Specially Presiding

Janice Snyder Clerk of Courts

LUNCH AND LEARN

THE IMPAIRED LAWYER - A Call for Action

Presented by
Brian S. Quinn, Esquire
Education and Outreach Coordinator
Lawyers Concerned for Lawyers of PA

Wednesday, June 13, 2018

Recent studies show that there has been a dramatic increase in impairment due to alcoholism, addiction and mental health disorders among members of the legal profession.

As LCL's Educator, Mr. Quinn will discuss the early warning signs of impairment, how best to approach the impaired individual and the LCL services that are available to lawyers, judges, their family members and law students

A practicing lawyer with over 40 years of experience, Mr. Quinn will also share his own story of addiction and impairment and the role that Lawyers Concerned for Lawyers played in saving his life and restoring his place in the legal profession.

REGISTRATION:

Cindy at the Fayette County Bar Association (724) 437-7994 or cindy@fcbar.org 12:00 noon to 1:00 p.m.
First Niagara Building
Lower level - Corporate Training Center
Cost to attend: \$30
\$20 young lawyer

ASERT TRAINING CLE

Individuals with Autism Spectrum Disorder in the Justice System: A Training For Professionals

Tuesday, May 22, 2018
3.0 Substantive CLE Credits

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The training will be comprised of 3 content areas:

- o Statewide data from the Pennsylvania Autism Census and the Statewide Autism Survey of Justice System Professionals
- o Clinical overview of Autism Spectrum Disorder including core deficits and symptoms
- o How to practically apply information learned about Autism Spectrum Disorder to everyday job duties

Registration Not Required
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Fayette County Courthouse
Courtroom One

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