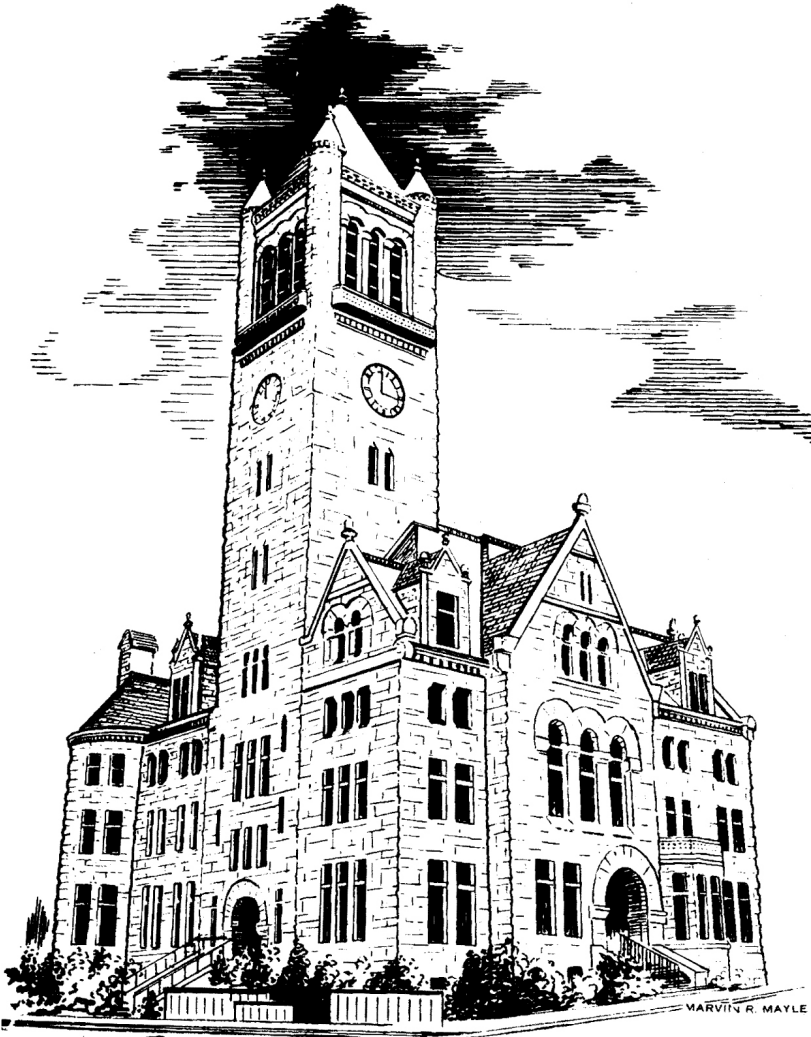


# FAYETTE LEGAL JOURNAL

VOL. 80

APRIL 15, 2017

NO. 15



## FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 2 West Main Street, Suite 711, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at [www.fcbar.org](http://www.fcbar.org) no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

**Co-Editors:** Garnet L. Crossland and Melinda Deal Dellarose

*Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA*

## FAYETTE COUNTY BAR ASSOCIATION Board of Directors

**President:** John M. Purcell

**President Elect:** Gary N. Altman

**Vice-President:** James Higinbotham, Jr.

**Secretary:** Bernard C. John

**Treasurer:** Vincent J. Roskovensky, II

**Past President:** Anne N. John

**Executive Director:** Garnet L. Crossland

### *Directors*

Davina D. Burd

Carolyn W. Maricondi

William M. Martin

Wendy L. O'Brien

Robert A. Gordon

Douglas S. Sholtis

Sheryl R. Heid

### ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

### LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,  
non-judgmental, safe, and effective

To talk to a lawyer today, call:

1-888-999-1941

717-541-4360

Call (800) 932-0311, ext. 2214.

## 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

**DONALD ROY ANDERSON, A/K/A  
DONALD R. ANDERSON**, late of Masontown,  
Fayette County, PA (3)

*Administratrix:* Maryellen Anderson  
c/o 2 West Main Street, Suite 501  
Uniontown, PA 15401  
*Attorney:* Bernadette K. Tummons

**GERTRUDE BLUMENSCHWEIN**, late of  
Uniontown, Fayette County, PA (3)

*Co-Executor:* Frederick Bonchosky  
205 Lexington Place  
Uniontown, PA 15401  
*Co-Executrix:* Liesel Nolan  
8246 Gilded Perch Drive  
Scottsdale, AZ 85255  
c/o Thompson, Calkins & Sutter LLC  
437 Grant Street, Suite 510  
Pittsburgh, PA 15219-6003  
*Attorney:* Orlando R. Sodini

**JAMES M. JANOSIK**, late of South Union  
Township, Fayette County, PA (3)

*Executrix:* Lesley Janosik  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**ROBERT GRANT ROBBINS**, a/k/a Robert G.  
Robbins, late of Connellsville, Fayette County,  
PA (3)

*Personal Representative:* Pamela S. Holsing  
c/o Riverfront Professional Center  
208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**DOLORES L. SLAZEK**, late of North Union  
Township, Fayette County, PA (3)

*Executor:* Benjamin Robert Slazek  
c/o George Port & George  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wayne H. Port

**DOROTHY D. SMITH**, late of Smithfield  
Borough, Fayette County, PA (3)

*Executor:* Terry Blystone  
c/o Higinbotham Law Offices  
45 East Main Street  
Suite 500  
Uniontown, PA 15401  
*Attorney:* James E. Higinbotham, Jr.

### Second Publication

**DOROTHY L. CAPPELLINI**, late of  
Masontown, Fayette County, PA (2)

*Administrator:* Alan Jerome Cappellini  
c/o 11 Pittsburgh Street  
Uniontown, PA 15401  
*Attorney:* Thomas W. Shaffer

**JOSEPH A. CINDRIC**, late of North Union  
Township, Fayette County, PA (2)

*Executrix:* Kathryn Cindric  
c/o Radcliffe & DeHaas, LLP  
2 West Main Street, Suite 700  
Uniontown, PA 15401  
*Attorney:* Ernest P. DeHaas, III

**LELA CLARK, A/K/A LELA MAE CLARK,**  
late South Union Township, Fayette County, PA

*Executrices:* Shirley Lukac and  
Carolyn Yingling (2)

c/o John & John  
96 East Main Street  
Uniontown, PA 15401

*Attorney:* Anne N. John

**HENRY SHIROCKY,** late of South  
Connellsville, Fayette County, PA (2)

*Personal Representative:* John Joseph  
204 Dewey Street

Pittsburgh, PA 15218  
c/o 815A Memorial Boulevard  
Connellsville, PA 15425

*Attorney:* Margaret Zylka House

**KRISTA LEE DEFRANKS, A/K/A KRISTA  
L. DEFRANKS,** late of Brownsville Township,  
Fayette County, PA (2)

*Administrator:* James A. DeFranks  
c/o Zebley Mehalov & White, P.C.

18 Mill Street Square  
PO Box 2123

Uniontown, PA 15401

*Attorney:* Daniel R. White

**LUCILLE SHIROCKY,** late of South  
Connellsville, Fayette County, PA (2)

*Personal Representative:* John Joseph  
204 Dewey Street

Pittsburgh, PA 15218  
c/o 215A Memorial Boulevard  
Connellsville, PA 15425

*Attorney:* Margaret Zylka House

**HELEN M. GRESH, A/K/A HELEN  
GRESH,** late of Luzerne Township, Fayette  
County, PA (2)

*Administrator:* Gary F. Gresh  
c/o Zebley Mehalov & White, P.C.

18 Mill Street Square  
PO Box 2123

Uniontown, PA 15401

*Attorney:* Daniel R. White

**DOROTHY D. SMITH,** late of Smithfield  
Borough, Fayette County, PA (2)

*Executor:* Terry Blystone  
c/o Higinbotham Law Offices

45 East Main Street, Suite 500  
Uniontown, PA 15401

*Attorney:* James E. Higinbotham, Jr.

## First Publication

**DANIEL P. MACKILLOP,** late of Redstone  
Township, Fayette County, PA (2)

*Personal Representative:* Patricia L. Crawford  
c/o Davis & Davis

107 East Main Street  
Uniontown, PA 15401

*Attorney:* James T. Davis

**CHERYL I. CALHOUN,** late of 410 Terrace  
Drive, Uniontown, PA (1)

*Personal Representative:*

Brian F. Levine, Esquire  
22 E. Grant Street

New Castle, PA 16101

*Attorney:* Brian F. Levine

**MINNIE G. REED, A/K/A MINNIE REED,  
A/K/A MINNIE GRACE REED,** late of  
Bullskin Township, Fayette County, PA (2)

*Executor:* David C. Reed, Sr.  
c/o QuatriniRafferty

550 East Pittsburgh Street  
Greensburg, PA 15601

*Attorney:* David S. DeRose

**CLARENCE EDWARD COLE, A/K/A  
CLARENCE E. COLE, A/K/A CLARENCE  
COLE,** late of North Union Township, Fayette  
County, PA (1)

*Administrator:* Khristopher S. Cole  
c/o John & John

96 East Main Street  
Uniontown, PA 15401

*Attorney:* Simon B. John

**MARY M. FLYNN**, late of Connellsville  
Township, Fayette County, PA (1)  
*Personal Representative:* Kelly Patrick Flynn  
c/o Riverfront Professional Center  
208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

---

**WALTER B. GREENAWALT, A/K/A  
WALTER GREENAWALT**, late of Bullskin  
Township, Fayette County, PA (1)  
*Executrix:* Sharon G. Roskovich  
c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
Post Office Box 2123  
Uniontown, PA 15401  
*Attorney:* Daniel R. White

---

**JACOB W. TOWNSEND**, late of Masontown,  
Fayette County, PA (1)  
*Executor:* David J. Townsend  
110 Bower Hill Road  
Venetia, PA 15367  
c/o 76 East Main Street  
Uniontown, PA 15401  
*Attorney:* Douglas S. Sholtis

---

## LEGAL NOTICES

### NOTICE

Notice is hereby given pursuant to the Provisions of Act of Assembly No. 295, approved December 16, 1982, known as the Fictitious Names Act, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on March 28, 2017, a Certificate to conduct business in Westmoreland County, Pennsylvania, under the assumed or fictitious name, style or designation of C. Harper Chevrolet Buick GMC, with its principal place of business at 4435 State Route 51, P.O. Box 748, Belle Vernon, PA 15012. The name and address of the person interested in the said business is C. Harper Chevrolet, Inc., 4435 State Route 51, P.O. Box 748, Belle Vernon, PA 15012.

Gary J. Frankhouser, Esquire  
DAVIS & DAVIS  
107 East Main Street  
Uniontown, PA 15401

---

## SHERIFF'S SALE

Date of Sale: June 15, 2017

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, June 15, 2017, at 2:00 p.m. in Courtroom Number One at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2 of 3)

James Custer  
Sheriff Of Fayette County

STERN & EISENBERG PC  
M. TROY FREEDMAN, ESQUIRE

No. 19 of 2017 GD  
No. 47 of 2017 ED

**U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for Bear Stearns Asset Backed Securities I Trust 2005-HE12, Asset Backed Certificates, Series 2005-HE12,**

**Plaintiff,**

**vs.**

**Goldie Jeanette Brown,**  
**Defendant(s).**

SITUATE IN THE 3RD WARD of CONNELLSVILLE, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 316 EAST CRAWFORD AVENUE, CONNELLSVILLE, PA 15425.

PARCEL NO. 05-09-0103

IMPROVEMENTS - RESIDENTIAL  
REAL ESTATE

SOLD AS THE PROPERTY OF -  
GOLDIE JEANETTE BROWN

Edward J. McKee, Esquire  
Stern & Eisenberg, PC  
1581 Main Street, Suite 200  
The Shops at Valley Square  
Warrington, PA 18976  
Phone: (215) 572-8111

No. 2529 of 2016 GD  
No. 50 of 2017 ED

**Statebridge Mortgage Company, LLC,**  
**Plaintiff,**

**vs.**

**James M. Cronin and Mary B. Massek,**  
**Defendants.**

By virtue of Writ of Execution No. 2529 of 2016, Statebridge Mortgage Company, LLC, v. James M. Cronin and Mary B. Massek, 440 Bute Road, North Uniontown Township, Uniontown, PA 15401, Parcel No. 25-06-0099. Improvements thereon consisting of a Residential Dwelling, sold to satisfy judgment in the amount of \$49,250.66.

No. 2322 of 2016 GD  
 No. 46 of 2017 ED

**JPMorgan Chase Bank, National Association,  
 Plaintiff,  
 vs.  
 April D. DeBarr,  
 Defendant.**

ALL that certain tract of land situate in Redstone Township, Fayette County, Pennsylvania, bounded and described as follows:

BEGINNING at a comer in road leading from Masontown to Brownsville, said comer being common to Valentine Laick, School District of Redstone Township, and Republic Collieries Company; thence along line of Valentine Laick, South 74° 01' East, 999.07 feet to a point in property line of Laick; thence through Republic Collieries Company, South 07° 55' East, 628.96 feet to a point in center of private alley of Republic Collieries Company, the place of beginning of the herein described tract; thence in center of said private alley North 82° 05' East, 49.0 feet to a point in said alley; thence South 07° 55' East and through the partition wall of the two story frame double dwelling, which divides House No. 166 from House No. 165, a distance of 122.0 feet to a point in center of private road of Republic Collieries Company, now known as Edna Street; thence in center of said street South 82° 05' West, 49.0 feet to a point in said Street; thence North 07° 55' West, 122.0 feet to a point in said private alley, the place of beginning,

CONTAINING 0.137 of an acre, being a part of the J.D. VanK.irk tract of 80.182 acres, and having erected thereon House No. 166 which is one-half of the said two story frame dwelling.

EXCEPTING AND RESERVING thereout and therefrom all the coal within and underlying the above-described tract of land. Said coal being freed from any and all servitude to the overlying strata and ground, so that the entire amount of said coal may be mined without liability for any injury to said overlying strata and ground or anything therein and thereon.

ALSO EXCEPTING AND RESERVING the oil and gas thereunder and the right to explore, drill for and remove oil and gas found therein.

SUBJECT to the existing alley and roads

on said above described premises. Also subject to all existing pipelines, Republic Colliers Company reserving the right to itself, its successors and assigns, to use, maintain, repair and replace existing pipelines.

ALSO SUBJECT to all existing rights-of-way and public highways.

UNDER AND SUBJECT to all exceptions, reservations, rights of way and easements as appear in prior deeds of record or as conveyed by predecessors in title.

PARCEL I.D. #30-26-0014

COMMONLY KNOWN AS: 13 Edna Street, Republic, PA 15475

TAX PARCEL NO. 30-26-0014

No. 3 of 2017 GD  
 No. 42 of 2017 ED

**U.S. Bank, National Association as Trustee  
 for NRZ Pass-Through Trust VII NPL,  
 Plaintiff,  
 vs.  
 Daniel L. Depta and Kimberly M. Depta,  
 Defendants.**

All that certain lot of ground situate in the Township of Upper Tyrone, County of Fayette and Commonwealth of Pennsylvania, being Lot No.5 in Plan B of Lots laid out by Martin H. King as of record in the Recorders Office of Fayette County, Pennsylvania, in Plan Book 1, page 76, and being bounded and described as follows:

Beginning at an alley at the Northwest comer; thence South 77 1/2° East, 40 feet along said Street to comer of Lot No.6; thence South 12 1/2° West, 120 feet to an alley; thence North 77 1/2° West, 40 feet to an alley; thence North 12 1/2° East, 120 feet to the place of beginning.

Excepting and reserving therefrom all the coal and all the minerals under the coal contained in or underlying the said lot of ground and expressly subject to all rights and privileges granted and conveyed or secured in two certain deeds bearing date of February 21, 1879, made by T. Brent Swearingen and wife, one to M.H. Blake and the other H.C. Frederick, E.M. Ferguson and Walter Ferguson.

Also known as parcel number 39-04-0062

COMMONLY KNOWN AS: 900 Kingview Road, Scottdale, PA 15683 TAX PARCEL NO. 39-04-0062

No. 1747 of 2016 GD  
No. 44 of 2014 ED

No. 550 of 2014 GD  
No. 48 of 2017 ED

**BVA FEDERAL CREDIT UNION,**  
**Plaintiff,**  
**vs.**  
**IRA A. DUNN,**  
**Defendant.**

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF IRA A. DUNN OF, IN AND TO:

ALL THE FOLLOWING DESCRIBED REAL ESTATE SITUATED IN THE BOROUGH OF FAYETTE CITY, COUNTY OF FAYETTE, COMMONWEALTH OF PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AND NUMBERED AS 139-141 SOUTH HIGH STREET, FAYETTE CITY, PA 15438. DEED BOOK VOLUME 3134, PAGE 20, PARCEL NUMBER 12-03-0094, 12-03-0093-01, 12-03-0092,12-03-0099, 12-03-0093 & 12-03-00-95.

No. 2549 of 2016 GD  
No. 35 of 2017 ED

**U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY,**  
**Plaintiff,**  
**vs.**  
**BRANDON J. HARRIS,**  
**Defendant.**

ALL that certain piece of ground in the City of Uniontown, Fayette County, Pennsylvania, being Lot No. 34, Patterson Heirs Plan of Lots. Fayette County Plan Book 2, page 62, being approximately 40 x 125. HAVING THEREON ERECTED A DWELLING KNOWN AND NUMBERED AS 252 Braddock Avenue, Uniontown, PA 15401.

PARCEL ID: 38-11-0017

Fayette County Deed Book 3027 page 1436.

TO BE SOLD AS THE PROPERTY OF BRANDON J. HARRIS.

**BANK OF AMERICA, N.A.,**  
**Plaintiff,**  
**vs.**  
**TILLMAN R. HARRIS A/K/A TILLMAN HARRIS**  
**ALICIA R. HARRIS A/K/A ALICIA HARRIS,**  
**Defendants.**

ALL THAT CERTAIN LOT OF LAND SITUATE IN THE THIRD WARD OF THE CITY OF UNIONTOWN, FAYETTE COUNTY, PENNSYLVANIA, DESIGNATED AS LOT NO. 11 IN THE GALLAGHER PLACE PLAN OF LOTS LAID OUT BY CHISHOLM AND KUNKLE, AND RECORDED IN THE RECORDER OF DESD8 OFFICE OF FAYETTE COUNTY PENNSYLVANIA IN PLAN BOOK VOLUME 4, PAGE 168. SAID LOT NO. 11 BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

FRONTING 40 FEET ON THE NORTH SIDE OF LINCOLN STREET AND EXTENDING BACK OF EVEN WIDTH 120 FEET TO JUSTIN STREET WITH LOT NO. 10 ADJOINING ON THE WEST AND LOT NO. 12 ADJOINING ON THE EAST.

BEING THE SAME PREMISES which REGINA WHITCOMB-MARASCO and JOSEPH MARARSCO, by Deed dated 11/28/2007 and recorded 12/03/2007 in the Office of the Recorder of Deeds in and for Fayette County in Deed Book Volume 3047, Page 909, granted and conveyed unto TILLMAN R. HARRIS and ALICIA R. HARRIS.

BEING KNOWN AS: 147 LINCOLN STREET, UNIONTOWN, PA 15401  
PARCEL #38-04-0633



No. 49 of 2017 GD  
 No. 53 of 2017 ED

**Bank of America, N.A. successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP Plaintiff,**  
**vs.**  
**Rodney P. Kozy and Lori A. Kozy, Defendants.**

All that certain piece, parcel or lot of land situate in Masontown, Fayette County, Pennsylvania, known as Lots No. 72 and 73 in a plan of lots laid out and offered for sale by Frank Maglotti and Maria Maglotti, his wife, more particularly bounded and described as follows:

Beginning at a point on the East side of Field Street at the Northwest corner of Lot No. 71 and running thereby North 77 degrees 45 minutes East, 120 feet to a 12 foot alley; thence by same North 12 degrees 15 minutes West, 80 feet to a corner of Lot No. 74; thence by same South 77 degrees 45 minutes West, 120 feet to the said Field Street; thence by same South 12 degrees 15 minutes East, 80 feet to the place of beginning.

COMMONLY KNOWN AS: 30 North Field Street, Masontown, PA 15461  
 TAX PARCEL NO. 21-07-0024

No. 2548 of 2016 GD  
 No. 62 of 2017 ED

**U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff,**  
**vs.**  
**CHARLES B. MCCLELLAND JR., Defendant.**

ALL THOSE TWO CERTAIN lots of land situate in the Third Ward of the City of Uniontown, Fayette County, Pennsylvania, being Lots Nos. 24 and 25 in the Gallagher Place Plan of Lots laid out by Chisholm and Kunkle, recorded in Fayette County Plan Book No. 4, Page 168. Being 80' x120' and having thereon erected a dwelling known as: 78 BAILEY AVENUE, UNIONTOWN, PA 15401.

Tax Parcel# 38-04-0593  
 Reference Fayette County Record Book 2979, Page 1778.

EXCEPTING and reserving, exceptions and conditions contained in this and prior instruments of record, and as contained in Fayette County Record Book 2979, Page 1778.

Phelan Hallinan Diamond & Jones, LLP

No. 872 of 2016 GD  
 No. 64 of 2017 ED

**Wells Fargo Bank, N.A., Plaintiff,**  
**vs.**  
**Carolyn S. Maulding, Defendant.**

By virtue of a Writ of Execution No. 872 OF 2016, Wells Fargo Bank, N.A. v. Carolyn S. Maulding, owner(s) of property situate in the NORTH UNION TOWNSHIP, Fayette County, Pennsylvania, being 362 1st Street, a/k/a 362 First Street, West Leisenring, PA 15489  
 Parcel No.: 25040028  
 Improvements thereon: RESIDENTIAL DWELLING

ZEBLEY, MEHALOV & WHITE, P.C.

No. 2294 of 2014 GD  
 No. 63 of 2017 ED

**Earnest C. Jenkins a/k/a Ernest Jenkins, Plaintiff,**  
**vs.**  
**PPGK, LLC, and the United States of America, Department of Internal Revenue Service, Defendants.**

All that certain lot or parcel of land comprising 17.71 acres situate in Uniontown, Georges Township, Fayette County, Pennsylvania. The address of this property is 2373 Morgantown Road, Uniontown, Pennsylvania, 15401.

There is erected on the premises a brick and concrete commercial building.

Together with such rights of way and under and subject to the exceptions and reservations as

appear in prior deeds of record.

For a more complete description see Record Book Volume 3128, page 5, Fayette County Recorder of Deeds.

Having tax assessment no. 14-15-0031.

Seized and taken in execution as the property of PPGK, LLC, owner or reputed owner of the property, at the suit of Earnest C. Jenkins a/k/a Ernest Jenkins in the Court of Common Pleas of Fayette County, Pennsylvania at No. 2294 of 2014, G.D.

McCABE, WEISBERG & CONWAY, P.C.  
By Joseph I Foley, Esquire ID #314675  
123 South Broad Street, Suite 1400  
Philadelphia, Pennsylvania 19109  
(215) 790-1010

No. 76 of 2016 GD

No. 52 of 2017 ED

**Ditech Financial LLC,**

**Plaintiff,**

**vs.**

**Joseph D. Stevenson and Carla M. Stevenson,  
Defendants.**

FIRST: ALL that certain piece or parcel of land situate in Gemlan Township, Fayette County, Pennsylvania, being part of the Edenborn Mining Village, bounded and described as follows, and as shown by Plan No. Exhibit "B", recorded with deed of H. C. Frick Coke Company to Mark Sugarman and Ada Sugarman, his wife, in Deed Book 618, Page 363, at item second in said deed:

BEGINNING at a point in the middle of a street known as Fourth Street in the Northeastern corner of the land hereby conveyed, which place of beginning is located South 70 degrees West, 1303.40 feet from the stake at the corner in the line now or formerly of Albert Dzierwenski a the junction of the lines of his land, South 66 degrees 46 minutes East, and South 21 degrees 28 minutes East, 506.47 feet, and which stake corner of said Dzierwenski land is located North 21 degrees 28 minutes West, said 506.47 feet, and which stake corner of said Dzierwenski land is located, North 21 degrees 28 minutes West, said 506.47 feet from the Northeast corner of the Antioch Baptist Church lot; thence from said place of beginning, running along in the middle of a 20 foot alley, South 16 degrees 26 minutes East, 132 feet to the middle of the intersection of said alley with a 15 foot alley; thence along in the middle of said 15 foot alley, South 73 degrees 34 minutes West, 45.83 feet to a point; thence by land conveyed by H. C. Frick Coke Company to Mark and Ada Sugarman, of which this is a part, running along the Eastern line of land on which the Western half of double dwelling house number 323-324 of Edenborn Mining Village comprising number 323 is located, North 16 degree 26 minutes West, 132 feet to the middle of Fourth Street, this last named line running through the middle of the

MARTHA E. VON ROSENSTIEL, P.C.  
Martha E. Von Rosenstiel, Esq/ No 52634  
Heather Riloff, Esq/ No 309906  
Jeniece D. Davis, Esq/ No 208967  
Tyler J. Wilk, Esq/ No 322247  
649 South Ave, Ste 7  
Secane, PA 19018  
(610)328-2887

No. 1507 of 2015 GD

No. 222 of 2016 ED

No. 65 of 2017 ED

**Federal National Mortgage Association  
("Fannie Mae")**

**3900 Wisconsin Avenue, NW  
Washington DC 20016-2892**

**Plaintiff,**

**vs.**

**Todd Reppert**

**715 Fayette Avenue**

**Belle Vernon, PA 15012**

**Defendants.**

DOCKET# 2015-01507; 2016-ED-222

All that certain lot of land situate in Washington Township, Fayette County, Pennsylvania, being lots numbers Forty-five and Forty-six (45 and 46) in Section No. Three (3) in a plan of lots laid out by John Brown and called Lynnwood, the plan whereof is recorded in Fayette County Plan Book 5, Page 142

TAX PARCEL# 41-05-0088

PROPERTY: 130 Homewood Avenue,  
Belle Vernon, PA 15012

IMPROVEMENTS: Residential Dwelling  
TO BE SOLD AS THE PROPERTY OF:

Todd Reppert

JAMES CUSTER, SHERIFF

partition wall of said double dwelling house number 323-324; thence along in the middle of Fourth Street, North 73 degrees 34 minutes East, 45.83 feet to the place of beginning; CONTAINING an area of 0.139 of an acre, and having thereon erected the Eastern half of said double dwelling house number 323-324, comprising number 324 of said Edenborn Mining Village.

EXCEPTING and RESERVING, the coal and mining rights and waivers heretofore conveyed and reserved and under and subject to the right at any time hereinafter to lay, maintain, repair, replace, renew and remove water pipelines along in said street and alley, and under and subject to the right of the public to use said street and alley for passage thereover, and also excepting and reserving and under and subject to all existing easements and all conveyances and easements heretofore made or granted, excepted or reserved.

SECOND: ALL that certain piece or parcel of land situate in German Township, Fayette County, Pennsylvania., being part of the Edenborn Mining Village, bounded and described as follows, and as shown by Plan No. Exhibit "B", recorded with deed of H. C. Frick Coke Company to Mark Sugarman and Ada Sugarman, his wife, in Deed Book 618, Page 363, at item second in said deed:

BEGINNING at a point in the middle of a street known as Fourth Street in the Northeastern corner of the land hereby conveyed, which place of beginning is located South 70 degrees West, 1303.40 feet; and thence South 73 degrees 34 minutes West, 45.83 feet from a stake at the corner in the line of land now or formerly of Albert Dzierwinski at the junction of the lines of his land, South 66 degrees 46 minutes East, and South 21 degrees 28 minutes East, 506.47 feet, and which stake corner of said Dzierwinski land is located North 21 degrees 28 minutes West, said 506.47 feet from the Northeast corner of the Antioch Baptist Church lot; thence from said place of beginning by land conveyed by H. C. Frick Coke Co. to Mark Sugannan and Ada Sugarman, of which this is a part; and thence along the Western side of the lot of land on which the Eastern half of double dwelling house numbers 323-324, comprising number 324 of said Edenborn Mining Village, is located, South 16 degrees 26 minutes East, 132 feet to a point in the middle of a fifteen foot alley, said line running through the middle of the partition wall

of said double dwelling house number 323-324; thence along in the middle of said alley, South 73 degrees 34 minutes West, 36.82 feet to a point; thence by other land so conveyed by H. C. Frick Coke Company to Mark Sugarman and Ada Sugarman, North 16 degrees 26 minutes West, 132 feet to a point in the middle of Fourth Street; and thence along in the middle of Fourth Street, North 73 degrees 24 minutes East, 36.82 feet to the place of beginning CONTAINING an area of 0.111 of an acre, and having thereon erected the Western half of said double dwelling house numbers 323-324, comprising 323 of said Edenborn Mining Village.

EXCEPTING and RESERVING, the coal and mining rights and waivers heretofore conveyed and reserved and under and subject to the right at any time hereinafter to lay, maintain, repair, replace, renew and remove water pipelines along in said street and alley, and under and subject to the right of the public to use said street and alley for passage thereover, and also excepting and reserving and under and subject to all existing easements and all conveyances and easements heretofore made or granted, excepted or reserved.

All that certain piece or parcel or Tract of land situate in the Township of German, Fayette County, Pennsylvania, and being known as 3 Back Street, McClellandtown, Pennsylvania 15458.

Title vesting in Joseph D. Stevenson and Caria M. Stevenson, husband and wife, by deed from Ronald R. Gera and Carol A. Zipp, Co-Executors under the last will and testament of Raymond L. Gera, now deceased dated January 29 2004 and recorded February 3, 2004 in Deed Book 2893, Page 1144 Instrument Number 200400001551.

Tax Parcel Number: 15-25-0015

Phelan Hallinan Diamond & Jones, LLP

No. 1655 of 2012 GD  
No. 58 of 2017 ED

**Santander Bank, N.A. Formerly Known as  
Sovereign Bank, N.A.,  
Plaintiff,  
vs.  
Shelley L. Verbosky a/k/a Shelly Verbosky  
Barry T. Verbosky,  
Defendant(s).**

By virtue of a Writ of Execution No. 1655-2012,  
Santander Bank, N.A. Formerly Known as  
Sovereign Bank, N.A.  
v.

Shelley L. Verbosky a/k/a Shelly Verbosky  
Barry T. Verbosky, owner(s) of property situate  
in the SOUTH UNION TOWNSHIP, Fayette  
County, Pennsylvania, being 222 Kimberly  
Drive, a/k/a 1048 Kimberly Drive, Uniontown,  
PA 15401

Parcel No.: 34-12-013455  
Improvements thereon: RESIDENTIAL  
DWELLING

---

McCABE, WEISBERG & CONWAY, P.C.  
By Joseph I Foley, Esquire ID #314675  
123 South Broad Street, Suite 1400  
Philadelphia, Pennsylvania 19109  
(215) 790-1010  
  
No. 24 of 2017 GD  
No. 56 of 2017 ED

**The Huntington National Bank,  
Plaintiff,  
vs.  
Brandon Rinaldo Viola, Administrator of the  
Estate of Rinaldo J. Viola, Jr.,  
Defendant.**

ALL that certain lot of land situate in the  
Borough of Masontown Fayette County,  
Pennsylvania known as Lot No. 6 in the plan of  
lots laid out by D.R. Anderson and T. Irvin  
Altman, bounded and described as follows:

SAID LOT FRONTS forty-four (44) feet  
on the eastern side of Water Street and  
extending back eastwardly of even width one  
hundred sixty-five (165) feet to an alley;  
bounded on the North by Lot No. 7 in said plan,  
and on the South by Spring Alley.

Being known as: 100 North Water Street,  
Masontown, Pennsylvania 15461

Title to the premises is vested in Rinaldo J.  
Viola, Jr. by Deed from William B. Bowman by  
Judith Ann Dickinson, his Attorney-in-Fact,  
dated August 20, 2014 and recorded October 1,  
2014 in Deed Book 3260, Page 732. The said  
Rinaldo J. Viola, Jr. died on February 6, 2016  
whereupon Letters of Administration were  
granted to Brandon Rinaldo Viola by on April 1,  
2016 by the Register of Wills in and for Fayette  
County nominating and appointing him as  
Administrator of the Estate of Rinaldo J. Viola,  
Jr.

Tax Parcel Number: 21-07-0408

---

McCABE, WEISBERG & CONWAY, P.C.  
123 South Broad Street, Suite 1400  
Philadelphia, Pennsylvania 19109  
(215) 790-1010

No. 2491 of 2016 GD  
No. 49 of 2017 ED

**LSF8 Master Participation Trust,  
Plaintiff,  
vs.  
Jill Wilttrout and David J. Wilttrout,  
Defendants.**

ALL THAT CERTAIN TRACT OF LAND  
SITUATE IN THE TOWNSHIP OF  
BULLSKIN, COUNTY OF FAYETTE AND  
COMMONWEALTH OF PENNSYLVANIA,  
BOUNDED AND DESCRIBED AS  
FOLLOWS:

BEGINNING AT STONES NEAR A  
HICKORY TREE WITH THE CORNER  
BEING IN IN THE MIDDLE OF THE PUBLIC  
ROAD, THENCE IN AND ALONG THE SAID  
PUBLIC ROAD AND ALONG LAND NOW  
OR FORMERLY OF JESSE WILTROUT,  
SOUTH 54 DEGREES 30; EAST 27.3  
PERCHES: THENCE BY LAND NOW OR  
FORMERLY OF EDWARD KAXIEWICZ  
NORTH 22 DEGREES WEST 40 PERCHES  
TO STONES; THENCE BY LAND NOW OR  
FORMERLY OF JESSE WILTROUT, SOUTH  
20 DEGREES WEST TO THE PLACE OF  
BEGINNING. CONTAINING 1 ACRE AND  
140 PERCHES.

All that certain piece or parcel or Tract of  
land situate in the Township of Bullskin, Fayette  
County, Pennsylvania, and being known as I 98

Wiltrout Hollow Road, F/K/A 198 Wiltrout Hollow, White, Pennsylvania 15490.

Being known as: 198 Wiltrout Hollow Road, F/K/A 198 Wiltrout Hollow, White, Pennsylvania 15490

Title vesting in Jill Wiltrout and David J. Wiltrout by deed from Laura B. Wiltrout dated July 27, 1999 and recorded August 2, 1999 in Deed Book 2372, Page 14 Instrument Number 199900013366.

Tax Parcel Number: 4-26-66

---

McCABE, WEISBERG & CONWAY, P.C.  
By Christine L. Graham, Esquire ID #309480  
123 South Broad Street, Suite 1400  
Philadelphia, Pennsylvania 19109  
(215) 790-1010

No. 1125 of 2014 GD

No. 57 of 2017 ED

ALL that certain place or parcel of land known as lot No. 252 in Section B of a plan of lots in Marchland, Jefferson Township (now known as Newell Borough), Fayette County, Pennsylvania, laid out by the Minerva Land and Improvement Company together with the improvements thereon erected and more particularly described as follows

BEGINNING at the northwest corner of Fifth Street and Gertrude Avenue; thence Northwardly along Gertrude Avenue, a distance of 115 feet to an alley; thence Westwardly along said alley, a distance of 30 feet to corner of Lot No. 251; thence Southwardly along said Lot No. 251, a distance of 115 feet to Fifth Street; thence Eastwardly along said Fifth Street, a distance of 30 feet to the place of beginning.

HAVING erected thereon a 1 ½ story dwelling house known as 402 Gertrude Avenue, Newell, PA 15466.

All that certain piece or parcel or Tract of land situate in the Township of Jefferson, Fayette County, Pennsylvania. Being known as: 402 Gertrude Street, Newell, Pennsylvania 15466

Title vesting in Deborah Wolpink by deed from National City HomeLoan Services, Inc., f/k/ a Altegra Credit Co. dated January 10, 2003 and recorded April 16, 2003 in Deed Book 2857, Page 1170 Instrument Number 20030007513.

Tax Parcel Number: 3-04-0198

---

# 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, May 1, 2017  
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2616-0272	AIMIE W. MANKINS	Zelma Maxine Gross, Administratrix
2614-0494	RALPH C. RICHTER	Patricia Ann Hall, surviving Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on Monday, May 15, 2017 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, May 1, 2017  
at 9:30 A.M.

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

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2615-0389	LILLIAN A. GREENAWALT a/k/a LILLIAN AGNES GREENAWALT	Sharon G. Roskovich, Administratrix CTA
2615-0661	MILDRED P. TOWNSEND	Frances L. Kress, Executrix

Monday, May 15, 2017 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.

JEFFREY L. REDMAN  
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (1 of 2)

**JUDICIAL OPINION**

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

COMMONWEALTH OF PENNSYLVANIA, :  
 v. :  
 RAHMEL WILLIAMS, : NO. 1289 OF 2016  
 Appellant. : JUDGE JOSEPH M. GEORGE, JR.

ATTORNEYS AND LAW FIRMS  
*Richard E. Bower, Esquire*, District Attorney, For the Commonwealth  
*Shane M. Gannon, Esquire*, Assistant Public Defender, For the Appellant

**OPINION**

GEORGE, J. April 7, 2017

Following a trial by jury, Appellant, Rahmel Williams, was convicted of Kidnapping, Simple Assault, Reckless Burning and Tampering with Physical Evidence. {1} On January 19, 2017, Appellant was sentenced to a term of imprisonment of not less than thirteen (13) years and three (3) months nor more than thirty-one (31) years. Appellant filed a timely post-sentence motion for modification of sentence and the Court denied same. Subsequently, Appellant filed a timely appeal to the Pennsylvania Superior Court. This Opinion is in support of the verdict of the jury and the sentencing order.

**CONCISE ISSUES**

Appellant filed the following Statement of Errors Complained of on Appeal:

1. Did the Commonwealth fail to present sufficient evidence to prove beyond a reasonable doubt that Appellant unlawfully removed the victim a substantial distance or confined the victim for a substantial period of time in a place of isolation so as to sustain a conviction of Kidnapping, 18 Pa. C.S.A. § 2901(a)(3)?
2. Did the Trial Court abuse its discretion in admitting as evidence two (2) photographs of the victim’s genitalia area that were taken following the alleged assault?
3. Did the sentencing court err in sentencing Appellant on the crime of Simple Assault to a consecutive period of incarceration to the crime of Kidnapping, as the two (2) crimes merged for sentencing purposes?

---

{1} 18 Pa. C.S. § 2901(a)(3), 2701(a)(1), 3301(d)(2) and 4910(1), respectively.

4. Did the sentencing court abuse its discretion by imposing a harsh, severe and manifestly unreasonable and excessive sentence by sentencing Appellant to the maximum sentence allowable by law for each offense and by running each offense in a consecutive order?

### FACTS

At approximately 11:00 p.m. on June 4, 2016, Joy Lucenti (hereinafter “Victim”) arrived at the Parks Casino bar on Connellsville Street in Uniontown, Fayette County, Pennsylvania to celebrate a friend’s birthday. Sometime after midnight, Victim left the bar with Appellant, whom she met that night, to go to the gas station down the street. After Victim purchased condoms at the convenient store, she and Appellant left together. Victim asked to be dropped off on the road she resided on, Brushwood Road, which intersected with Connellsville Street. Nevertheless, Appellant traveled in the opposite direction for approximately one mile. Eventually, Appellant pulled the car over to a very remote area of the road.

After Appellant stopped the vehicle, Victim attempted to get out of the car. As she touched the door, Appellant punched her in the face and threatened to shoot her if she attempted to leave the vehicle. Victim testified that Appellant pinned her down, got on top of her and had her put a condom on him. Victim stated that Appellant then had sex with her without her consent, bit her on her arm and shoulder and strangled her. She also testified that he inserted a hard metal object in her anus. Finally, Appellant let Victim leave his vehicle after he noticed blood on the car seat.

Victim retrieved her clothes from the car, put her underwear and pants on and hobbled towards the top of the road. After Appellant drove past her, Victim called her boyfriend, William Spaw, who came to pick her up at approximately 1:30 a.m. Victim made him take her home; however, several hours later, Spaw took Victim to Uniontown Hospital. Victim was subsequently transferred to UPMC Mercy in Pittsburgh where she underwent emergency surgery. {2}

Appellant testified and corroborated some of Victim’s testimony. He stated that he met Victim at Parks Casino bar and then drove her to the gas station. Appellant testified that he engaged in sexual intercourse with Victim, however, he claims it was consensual. Appellant admitted to hitting Victim in the face up to five times after he believed she stole his money. After he recovered his money, Appellant stated Victim left his vehicle and entered another car.

On June 5, 2016, Appellant found out that the police were looking for him. On June 6, 2016, the police and fire departments were called to a vehicle fire, after Appellant set his car on fire. {3} During a search of the vehicle, the police found the clothes Appellant wore that night as well as a lug wrench, the hard metal object that was believed to be used on Victim. {4} On June 20, 2016, Appellant turned himself into police custody.

---

{2} On June 5, 2016, Dr. Garth Elias performed a colostomy on Victim and testified at trial that Victim had impalement injuries of the rectum and significant bruising at the lower portion of the rectum and buttocks.



After hearing the evidence presented at trial, a jury panel found Appellant guilty of Kidnapping, Simple Assault, Reckless Burning and Tampering with Physical Evidence but not guilty of Aggravated Assault, Rape by Forceful Compulsion and Involuntary Deviate Sexual Intercourse by Forceful Compulsion. Thereafter, Appellant was sentenced to a term of imprisonment of not less than thirteen years and three months nor more than thirty-one years.

## DISCUSSION

Appellant first claims that the evidence presented at trial by the Commonwealth was insufficient to establish Appellant's kidnapping conviction.

The standard of review for a challenge to the sufficiency of the evidence is to determine whether, when viewed in a light most favorable to the verdict winner, the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt. The Commonwealth may sustain its burden of proving every element beyond a reasonable doubt by means of wholly circumstantial evidence.

The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubt raised as to the accused's guilt is to be resolved by the fact-finder. [In this context, appellate courts] do not assess credibility nor . . . assign weight to any of the testimony of record. Therefore, [the verdict will not be disturbed] unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.

Commonwealth v. Vogel song, 90 A.3d 717, 719 (Pa. Super. 2014).

The relevant statutory language of the kidnapping charge states:

(a) Offense defined.-- Except as provided in subsection (a.1), a person is guilty of kidnapping if he unlawfully removes another a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following intentions:

(3) to inflict bodily injury on or to terrorize the victim or another.

18 Pa. C.S. § 2901(a)(3). Appellant specifically argues that the Commonwealth was unable to establish that Appellant unlawfully removed Victim a substantial distance or confined Victim for a substantial period of time in a place of isolation as to constitute a conviction under the kidnapping statute.

---

{3} In the process of setting the car on fire, Appellant burned his leg. He sought treatment at Ruby Memorial Hospital on June 6, 2016. When he arrived at the hospital, he checked in under the name Randall Means.

{4} The serologist who testified at trial explained that there was blood detected on the wrench, but the sample was too weak to do confirmatory testing on the wrench. The DNA results from the lug wrench were not interpretable due to insufficient quantity of DNA.

A careful review of the evidence presented at trial demonstrates that the Commonwealth proved beyond a reasonable doubt that Appellant unlawfully removed Victim a substantial distance. First, a substantial distance is not limited to a linear distance or a certain time period. *Commonwealth v. Hughes*, 399 A.2d 694, 696 (Pa. Super. 1979). Second, the determination of whether the victim was moved a substantial distance is evaluated under the circumstances of the incident. *Commonwealth v. Chester*, 526 Pa. 578, 609, 587 A.2d 1367, 1382 (1991).

Although Victim was not moved a far distance from where she was expecting Appellant to drop her off, Victim testified that she was scared and was assaulted. Additionally, the area in which Victim was taken was secluded, increasing the potential of harm to Victim. See *In re T.G.*, 836 A.2d 1003 (Pa. Super. 2003) (defendant unlawfully removed victim a substantial distance, even though she was taken to the house next door, when defendant forcibly took victim inside defendant's home, would not let her leave and allowed defendant to exercise her will on victim without interference, thus substantially increasing the risk of harm to victim). As a result of this evidence, the jury was free to conclude that Appellant unlawfully removed Victim a substantial distance.

Since the Commonwealth proved Victim was unlawfully removed a substantial distance, it was unnecessary to prove Victim was confined for a substantial period of time in a place of isolation. Nevertheless, the Commonwealth provided sufficient evidence of this element as well. A person has been confined to a place of isolation when the victim has been isolated from the usual protections of society, regardless of geographic isolation. *Commonwealth v. Mease*, 516 A.2d 24, 26 (Pa. Super. 1986). Therefore, under the kidnapping statute, a location can constitute a place of isolation if the detention is under circumstances which make discovery or rescue unlikely. *Commonwealth v. Jenkins*, 687 A.2d 836, 838 (Pa. Super. 1996).

In the instant case, Victim was confined inside a car and taken to an isolated location. As she attempted to exit the vehicle, Appellant punched her in the face and threatened her with injury if she tried to leave, thereby restricting her movements. The incident occurred off road, in a vehicle, in a secluded area, in the early morning hours and without police knowledge, making discovery or rescue unlikely.

It is also irrelevant, in this specific case, that Victim voluntarily entered Appellant's vehicle. Victim was expecting Appellant to drop her off on the street she resided on. Instead, Appellant drove down several different roads and eventually pulled over in a secluded area and refused to let her leave the vehicle. The fact that Victim initially agreed to enter Appellant's vehicle does not negate the later kidnapping. See *Commonwealth v. Malloy*, 579 Pa. 425, 856 A.2d 767 (2004) (despite victim initially entering defendant's vehicle voluntarily, the Commonwealth provided sufficient evidence of kidnapping when after defendant drove to initial destination with victim, defendant struck victim in the head, forced her back into the car and transported her to a remote location and shot victim in the head). Therefore, the facts establish that Appellant unlawfully confined Victim in a place of isolation.

Furthermore, while it is unclear the amount of time that elapsed during this incident, the exact duration is a factor in determining whether the incident lasted a substantial period of time. Other factors include the mental state of the victim and whether the restraint was criminally significant in that it increased the risk of harm to the victim. *Hughes*, 399 A.2d at 698; *Commonwealth v. Markman*, 591 Pa. 249, 273, 916 A.2d 586, 600 (2007). Victim testified that she was scared and believed Appellant would shoot her upon threats made to her. Victim was alone with Appellant and was confined to a very small space, increasing the risk of harm to her had she tried to leave. The Commonwealth therefore proved Victim was unlawfully confined for a substantial period. Since sufficient evidence was established by the Commonwealth with respect to the kidnapping charges, then Appellant's first concise issue is meritless.

Next, Appellant contends that this Court abused its discretion in admitting into evidence two photographs of Victim's genitalia that were taken following the alleged assault. The admission of photographs during trial is reviewed under the abuse of discretion standard. *Commonwealth v. Solano*, 588 Pa. 716, 735, 906 A.2d 1180, 1191 (2006). An abuse of discretion will not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous. *Commonwealth v. Travaglia*, 611 Pa. 481, 28 A.3d 868, 873-74 (2011) (citations omitted).

When considering the admissibility of photographs which are graphic in nature, the trial court must engage in a two-step analysis:

First a [trial] court must determine whether the photograph is inflammatory. If not, it may be admitted if it has relevance and can assist the jury's understanding of the facts. If the photograph is inflammatory, the trial court must decide whether or not the photographs are of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of jurors.

*Commonwealth v. Tharp*, 574 Pa. 202, 222, 830 A.2d 519, 531 (2003).

During trial, Appellant, relying on *Commonwealth v. LeGares*, 709 A.2d 922 (1998), {5} argued that the photographs were cumulative and thus nonessential because: (1) Victim's treating physician, Dr. Elias, was able to testify as an expert witness regarding Victim's injuries; and (2) Appellant was not contesting Victim's injuries. Appellant therefore argued that the prejudicial effect the photographs would have on the jury was more than the probative value of the photographs.

---

{5} *LeGares* held that the admission of a color photograph of a homicide victim's head wound was an abuse of discretion by the trial court because the photograph "was not essential evidence but rather was merely cumulative of other properly admitted evidence." 709 A.2d at 925.

Under the two-step analysis, the first step was to determine whether the photographs were inflammatory. After reviewing the photographs, this Court determined them to be inflammatory since the images depicted Victim's genitalia and the injuries she sustained in that area of her body. The second step required this Court to examine whether the photographs were of essential evidentiary value, which we determined to be the case.

Here, the Commonwealth used the photographs in an attempt to establish certain elements of the crimes charged. The images of Victim's injuries were probative of several of the crimes, specifically the aggravated assault charge, since they could have been used to establish the necessary intent and the serious bodily injury elements of that crime. See *Commonwealth v. Small*, 559 Pa. 423, 448, 741 A.2d 666, 680 (photographs of murder victim's decomposed body were probative of the attempted rape and first degree murder convictions since they helped to establish the necessary intent element of the crimes). Moreover, the photographs were not merely cumulative of Dr. Elias' expert testimony because the photographs were useful in aiding the jury to understand the detailed medical testimony articulated by Dr. Elias. As our Supreme Court has held, an expert witness's testimony conveyed to the jury, in clinical terms, the nature of a victim's injuries does not render photograph evidence merely duplicative because the meaning of the words can be usefully illustrated through photographic images. *Commonwealth v. Pruitt*, 597 Pa. 307, 328, 951 A.2d 307, 319 (2008). Finally, this Court took a number of precautionary steps, such as limiting the number of photographs the Commonwealth was permitted to admit, limiting the juror's exposure to the photographs by giving them only one opportunity to review them and providing the jury with cautionary instructions on two separate occasions, immediately prior to the jurors reviewing the photographs and during the Court's jury instructions at the end of the trial and prior to jury deliberations. Since the photographs were of evidentiary value and the Court took precautionary steps in limiting prejudice to Appellant, then Appellant's second concise issue is without merit.

In his third concise issue, Appellant argues this Court erred by failing to merge Simple Assault with Kidnapping for sentencing purposes. "A claim that crimes should have merged for sentencing purposes raises a challenge to the legality of the sentence. Therefore, [the appellate court's] standard of review is de novo and [the] scope of review is plenary." *Commonwealth v. Nero*, 58 A.3d 802, 806 (Pa. Super. 2012). The merger statute states "[n]o crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense." 42 Pa. C.S. § 9765. Thus, the merger of sentences is only appropriate when both elements outlined in Section 9765 are met. *Commonwealth v. Wade*, 33 A.3d 108, 116 (Pa. Super. 2011).

A review of the facts of the case shows that Appellant committed multiple distinct criminal acts.

When considering whether there is a single criminal act or multiple criminal acts, the question is not whether there was a 'break in the chain' of criminal activity. [The] issue is whether the actor commits multiple criminal acts beyond that which is necessary to establish the bare elements of the additional crime, [and if so,] then

the actor will be guilty of multiple crimes which do not merge for sentencing purposes.

*Commonwealth v. Pettersen*, 49 A.3d 903, 912 (Pa. Super. 2012) (citations omitted).

In *Pettersen*, the defendant was sentenced to 21 ½ to 70 years imprisonment when a jury convicted him of three counts of aggravated assault, one count of burglary and several other crimes after he broke into the victim's residence, struck her in the head with a hammer, stabbed her ten times in the chest and back area and placed a bag over her head and tried to suffocate her. *Id.* at 906-07. On appeal, the defendant argued the three aggravated assault charges should have merged for sentencing purposes because they occurred during a single criminal act. The Superior Court, in holding that the defendant engaged in three separate criminal acts, stated that “[a]lthough the time between the separate acts was relatively short, the three assaults were committed with different weapons and caused distinct injuries to different parts of the victim’s body.” *Id.* at 912.

Similarly to *Pettersen*, Appellant’s acts here were committed by different means and caused injuries to separate parts of Victim’s body. The Commonwealth provided evidence that Appellant punched Victim in the face several times, strangled her and bit her on the shoulder and arm multiple times. When Appellant punched Victim in the face in an attempt to stop her from leaving the vehicle, he completed the crime of kidnapping. And when Appellant strangled Victim and bit her in the arm and shoulder, he completed the crime of simple assault. Therefore, a comparison of these crimes in the context of the facts of the case confirms that Appellant’s argument does not merit relief.

Appellant last claims that his sentence was harsh, severe and manifestly unreasonable. He bases this claim on receiving the maximum sentence for each offense and this Court running each offense consecutively. As such, Appellant’s claim of error with regard to the sentence imposed is a challenge to the discretionary aspects of the sentence.

Imposition of a sentence is vested in the discretion of the sentencing court and will not be disturbed absent a manifest abuse of discretion. *Commonwealth v. Vasquez*, 560 Pa. 381, 384-85, 744 A.2d 1280, 1282 (2000). An abuse of discretion is not shown merely by an error in judgment; rather, the Appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision. *Commonwealth v. Mastromarino*, 2 A.3d 581, 589 (Pa. Super. 2010). A sentence imposed is not excessive if it does not exceed statutory limits and the sentencing colloquy clearly demonstrates that the sentencing court carefully considered all evidence relevant to the determination of a proper sentence. *Commonwealth v. Burtner*, 453 A.2d 10, 12 (Pa. Super. 1982). Finally, in considering whether a sentence is excessive and harsh, the appellate court must give great weight to the sentencing judge’s discretion, as he is in the best position to measure various factors. *Commonwealth v. Ellis*, 700 A.2d 948, 958 (Pa. Super. 1997).

Appellant was sentenced to the legal maximum sentence for each offense: (1) up to twenty years for his first degree felony kidnapping conviction; {6} (2) up to seven years

for his third degree felony reckless burning conviction; {7} (3) and up to two years each for his second degree misdemeanor convictions of simple assault and tampering with physical evidence {8}. Additionally, this Court imposed the sentences consecutive to one another. {9} As a result, Appellant's aggregate sentence was a term of imprisonment of thirteen years and three months to thirty-one years.

Upon sentencing Appellant, this Court took into consideration a number of factors, {10} including the nature and seriousness of the offenses. The jury found that Appellant kidnapped and assaulted Victim and then subsequently burned the vehicle where the assault took place in an attempt to destroy evidence and ultimately cover up his crimes. First, Appellant's actions were violent, resulting in bodily injury to Victim. Second, Appellant's actions were intentional, meaning it was his conscious object to both kidnap and assault Victim. And third, by attempting to conceal his identity and destroy evidence, his actions indicate that not only did Appellant know what he did was wrong, but that he also felt he did not need to face the consequences of his actions.

This Court also took into consideration a sentence that would best suit the rehabilitative efforts of Appellant. A careful review of the pre-sentence investigation report shows that Appellant's prior record included a long list of convictions dating back to 1996, including several serious felony convictions. As stated at the time of sentencing, this indicated to the Court the failure of prior rehabilitative efforts. Therefore, it was incumbent upon this Court to provide Appellant with long term correctional treatment that will best lead to rehabilitating Appellant throughout his sentence.

In order to challenge the discretionary aspects of a sentence, an appellant must show actions by the sentencing court that were either: (1) inconsistent with a specific provision of the sentencing code; or (2) contrary to the fundamental norms underlying the sentencing process. *Commonwealth v. Hornoman*, 920 A.2d 1282, 1284 (Pa. Super. 2007). After reviewing the pre-sentence investigation report and considering the facts and circumstances of the case, Appellant's sentence was neither inconsistent with the sentencing code provisions nor contrary to the fundamental norms underlying the sentencing process. Accordingly, Appellant's last concise issue is without merit.

BY THE COURT:  
JOSEPH M. GEORGE, JR., Judge

ATTEST:  
CLERK OF COURTS

---

{6} 18 Pa. C.S. § 1103(1).

{7} 18 Pa. C.S. § 1103(3).

{8} 18 Pa. C.S. § 1104(2).

{9} The imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment." *Commonwealth v. Moury*, 992 A.2d 162, 171-72 (Pa. Super. 2010).

{10} See Sentencing Proceedings, p. 7 (filed 1/24/17).

## LUNCH AND LEARN

### **New Advance Technology in the Areas of Accident Reconstruction**

Tuesday, April 25, 2017  
1.0 Substantive CLE Credit  
Cost to attend: \$30  
\$20 young lawyer

This program will demonstrate by case examples and videos standard 2D standard scene diagramming, 2D standard vehicle documentation, 3D scene and vehicle laser scanning, 3D animations, Event data recorder (EDR) downloads for trucks, CDR downloads of vehicles, 3D scanning of buildings, video analysis and drone usage.

Frank Costanzo, owner of Accident Cause and Analysis, is a Traffic Accident Reconstructionist with over 2000 full-scale collision investigations and reconstructions. His is a certified court expert with over 30 years' experience in collision investigations and reconstructions.

-----  
**Mental Health Procedures Act**

Friday, April 28, 2017  
1.0 Substantive CLE Credit  
Cost to attend: \$30  
\$20 young lawyer

An overview of the Mental Health Procedures Act which establishes rights and procedures for all involuntary treatment of mentally ill persons, whether inpatient or outpatient, and for all voluntary inpatient treatment of mentally ill persons, and related court proceedings.

-----  
**Fayette County Drug Court**

Tuesday, May 9, 2017  
1.0 Substantive CLE Credit  
Cost to attend: \$30  
\$20 young lawyer  
-----

**Registration:**  
**Cindy at the Fayette County Bar Association**  
**(724) 437-7994 or [cindy@fcbbar.org](mailto:cindy@fcbbar.org)**  
12:00 noon to 1:00 p.m.  
First Niagara Building

*Quality... Experience... Results...  
It's what your clients deserve.*

*Medical Malpractice • Auto Accidents • Personal Injury*



# GISMONDI

& ASSOCIATES

412-281-2200

[www.gislaw.com](http://www.gislaw.com)

700 Grant Bldg., 310 Grant St., Pgh., PA 15219