

**Chester
County
Bar
Association**

Chester County Law Reporter

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TABLE OF CONTENTS

59 CHESTER COUNTY REPORTS

Commonwealth v. Underwood

*Search – Warrant – Consent – Marital communication privilege –
Motion to suppress*371 (2011)

Classified Ads Page 9

Meeting Space
West Chester

Legal Notices

See Table of Contents 1

Chester County Law Reporter

(USPS 102-900)

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Commonwealth v. Underwood

Search – Warrant – Consent – Marital communication privilege – Motion to suppress

1. Searches incident to a warrant are preferred absent exigent circumstances; however, a warrant is unnecessary if the police are authorized to be on the property and are given consent to search.
2. Police cannot do indirectly through an agent that which they cannot do directly themselves.
3. Except as otherwise in the applicable statute, in a criminal proceeding, neither husband nor wife shall be competent or permitted to testify to confidential communications, whether they be acts or verbal, made by one to the other, unless this privilege is waived upon the trial.
4. Privileged communications between spouses must be made (a) in confidence, and (b) with the intention that they not be disclosed.
5. There is a legal presumption that a marital communication is confidential. It is the opposing party's burden to rebut the presumption.
6. Defendant seeks to suppress the physical evidence seized by police without a warrant from a locked basement at his residence as well as verbal and non-verbal communications made between he and his wife during the course of their marriage. Defendant was in his home with only his wife present; he was confronted by his wife regarding his "alleged" illegal activities. He responded, through his words, admitting the plants were marijuana, and through actions, by showing his private room. She later called the police, gave a written statement and consent to have the basement, including the locked room, searched. Defendant had the only key to the locked basement room. The fact that Defendant built the locked room while his wife resided elsewhere lends support to the idea that Defendant was appropriating the area for his exclusive use. The police did not have access to the room until the wife forced the lock open with instructions from, and while utilizing a screwdriver provided by, the police. It is this Court's opinion that Defendant's action of opening the locked basement door and allowing his wife to look inside was a gesture seeking to transmit information. The Court found Defendant had a reasonable expectation of confidentiality when he made certain statements and did certain acts in front of his wife. The Court *Held* her entry as an agent of the police was unlawful and that the items seized were inadmissible and granted the Motion to Suppress both the physical evidence and Defendant's statements.

R.E.M.

C.C.P. Chester County, Pennsylvania Criminal Action No. CP-15-CR-0001147-2011; Commonwealth of Pennsylvania vs. David Underwood

Jessica M. Krilivsky for the Commonwealth

S. Lee Ruslander, II for the Defendant

Gavin, S.J., October 20, 2011:-

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: CHESTER COUNTY, PENNSYLVANIA
:
VS. : NO. CP-15-CR-0001147-2011
:
DAVID UNDERWOOD :
Defendant : CRIMINAL ACTION

Jessica M. Krilivsky, Esquire, Assistant District Attorney for the Commonwealth
S. Lee Ruslander, II, Esquire, Attorney for the Defendant

OPINION and ORDER

BY: GAVIN, S.J.

October 20, 2011

Defendant seeks to suppress the physical evidence seized by police, on March 13, 2011, without a warrant from a locked basement at his residence (113 Pennsylvania Avenue, Coatesville, Chester County, Pennsylvania), as well as verbal and non-verbal communications made between he and his wife, Desiree Underwood, during the course of their marriage. Testimony was taken on May 25, 2011 and July 15, 2011.

BACKGROUND

On March 13, 2011, the Coatesville Police Department responded to a call from Desiree Underwood (hereinafter “Mrs. Underwood”) to assist her with marijuana plants located at her residence, 113 Pennsylvania Avenue, Coatesville, Chester County, which were being grown by her husband, the Defendant. The Defendant had unlocked the basement room and showed her the plants. Mrs. Underwood gave a written Statement and Consent to have the basement, including the locked room, searched. The police did not have access to the room until Mrs. Underwood forced the lock open. She then allowed them access to the room. Marijuana plants and other property found within the locked room were seized.

FINDINGS OF FACT

MRS. UNDERWOOD TESTIFIED:

1. She and Defendant are married. (N.T. 07/15/11, p. 6, ll. 3-4; N.T. 07/15/11, p. 8, ll. 23-24, p. 9, ll. 1-2).
2. From the period of October, 2000 through approximately August, 2010, both she and Defendant used the residence at 113 Pennsylvania Avenue, Coatesville, Pennsylvania, as their marital home. (N.T. 05/25/11, p. 16, ll. 14-17; N.T. 07/15/11, p. 6, ll. 10-15; p. 7, ll. 21-

24).

3. In June, 2010, Desiree Underwood voluntarily left the marital residence and took up residence at 1501 Walnut Street, Coatesville, Chester County, Pennsylvania, with her friend. (N.T. 05/25/11, pp. 7, 10, 12, 18; Cmwlth. Exhibit “C-1”; Def. Exhibit “D-1”).

4. Her mail was directed to the Walnut Street address. (N.T. 07/15/11, p. 13, ll. 19-22).

5. On March 11, 2011, she returned to the marital residence. (N.T. 05/25/11, p. 7; N.T. 07/15/11, p. 7, ll. 14-15, p. 8, ll. 5-6, 14-15, 21-22).

6. Her sister (Amy Sweigart) informed her Defendant was growing marijuana at her home. (N.T. 05/25/11, p. 7, ll. 1-3, p. 10, l. 24, p. 11, l. 1; N.T. 07/15/11, p. 7, ll. 17-20, p. 11, ll. 7-13, p. 12, ll. 5-7).

7. She confronted the Defendant and he opened the locked basement room for her to see the contents.¹

8. She saw four (4) plants with grow lights on a table. (N.T. 05/25/11, p. 15).

9. She testified Defendant admitted to her the plants were marijuana. (N.T. 07/15/11, p. 7, ll. 18-20, p. 11, ll. 16-18).

10. She testified her husband asked her if “[she] was going to tell on him.” (N.T. 05/25/11, p. 8, ll. 15-18).

11. She called the police on March 13, 2011 and showed them the locked room in the basement. (N.T. 07/15/11, p. 6, ll. 21-23, p. 7, ll. 2-3, 5-6; p. 23, ll. 7-9).

12. She told the police she had moved back to the residence the previous Friday, March 11, 2011, to work on her marriage with Defendant. (N.T. 07/15/11, p. 7, ll. 9-12; p. 8, ll. 14-15).

13. She forced the lock open with a screw driver AS DIRECTED BY THE POLICE. (N.T. 07/15/11, p. 9, ll. 7-12).

14. She provided a written statement, and written consent to search the basement and to seize any property within the locked room. (N.T. 07/14/11, p. 10-2-7; Cmwlth. Exhibit C-1).

15. She testified she left the residence on March 13, 2011 and has not returned. (N.T. 07/15/11, p. 23, ll. 10-13).

AMY SWEIGART (Mrs. Underwood’s Sister) TESTIFIED:

1. She did not tell Mrs. Underwood Defendant had marijuana plants. (N.T. 07/15/11, p. 41-42).

2. She did not have any conversations with Mrs. Underwood about Defendant participating in illegal activity at Defendant’s house.

¹Defendant had the only key to the locked basement room. (N.T. 05/25/11, p. 12, ll. 19-24, p. 13, ll. 1-4; N.T. 07/15/11, p. 19, ll. 7-9).

OFFICER CHRIS MCCARTHY TESTIFIED:

1. He was called to the Defendant's residence on March 13, 2011. (N.T. 07/11/11, p. 28).
2. He followed Mrs. Underwood to the basement. Id.
3. He was aware, from other calls to the house, that Mrs. Underwood was Defendant's wife and she had left the marital residence for a period of time. (N.T. 07/15/11, p. 29, pp. 32-33).
4. On March 13, 2011, she told him she had returned to the marital residence and was there for several days. (N.T. 07/15/11, p. 29, ll. 16-17).
5. The door in the basement was locked with a deadbolt. (N.T. 07/15/11, p. 33, ll. 11-12).
6. Mrs. Underwood did not have a key. (N.T. 07/15/11, p. 33, ll. 11-12).
7. He called the Assistant District Attorney (hereinafter "ADA") on duty for clarification as to how to proceed. (N.T. 07/15/11, p. 34, ll. 8-10).
8. He was instructed by the ADA to get the Defendant's consent, or to obtain a warrant, prior to entering the locked room. (N.T. 07/15/11, p. 34, ll. 15-18, p. 35, ll. 21-23).
9. Defendant was not reachable over the phone and was not at the residence. (N.T. 07/15/11, p. 35, ll. 13-17).
10. He obtained a written consent and a written statement from Mrs. Underwood. (Cmwlth. Exhibit "C-1" and Def. Exhibit "D-1").
11. His Lieutenant directed him to have Mrs. Underwood open the lock. (N.T. 07/11/11, pp. 36, ll. 13-17).
12. A screwdriver was furnished to Mrs. Underwood and she was instructed how to open the lock with the screwdriver by the police. (N.T. 07/15/11, p. 36, ll. 13-24, p. 37, l. 1).

DISCUSSION

No citation is necessary for the proposition that both the federal and state constitutions afford protection from unreasonable searches and seizures. Further, searches incident to a warrant are preferred absent exigent circumstances.

Of course, a warrant is unnecessary if the police are authorized to be on the property and are given consent to search. Therefore, this case turns, in part, on the question of authority to consent.

Much has been made of the fact that the Underwoods HAD been estranged and HAD lived separately for the prior ten (10) months. While that is true, in the days leading up to the search, they cohabited at the marital residence. Much is also made of the fact that Mrs. Underwood had not made mortgage payments, etc. While

that also is true, her name was on the deed and deeds are commonly accepted as proof of ownership. With ownership comes access, and the right to authorize access to others.

Defendant raises the issue that one should be able to carve out an area in a commonly owned property for one's own use and subject to one's exclusive control. I agree with this proposition as my own life's experience tells me that married persons do carve out areas of their home for exclusive use. Generally, the exclusivity is not demonstrated with a lock, as here. The fact that Defendant built the locked room while Mrs. Underwood resided elsewhere lends support to the idea that Defendant was appropriating the area for his exclusive use.

POLICE ENTRY OF THE HOME

Mrs. Underwood had actual authority to authorize the police to enter the home AND basement as she was then a current resident of the home. The police entry was reasonable as they knew this to be her residence based on prior contact.

ENTRY OF THE LOCKED ROOM

The plot thickens once the police are confronted with a locked door and Mrs. Underwood's acknowledgement that she did not have a key to the room. Clearly, a reasonable police officer should have, at least, considered that the person who did have the key meant to deny access to the area to others. In fact, the on-call District Attorney² was called and advised that Defendant be contacted to obtain his consent to search. This advice was followed, but was unsuccessful as Mr. Underwood was not reached. The on-call ADA's advice should have alerted the officer that Mrs. Underwood's authority to consent, actual or apparent, was questionable.³ The officer's dilemma as to how to proceed reminds me of Robert Frost's poem, *The Road Not Taken*,

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I –
I took the one less traveled by,
And that has made all the difference.

Here, I equate the road less traveled with obtaining a search warrant which the on-call ADA has instructed him to do. See Finding of Fact #8 under the McCarthy testimony. Had a warrant been sought, it would have clearly issued based on the observations made by Mrs. Underwood and the admission made by

²Chester County has an Assistant District Attorney available 24/7 to answer questions regarding search and seizure etc.

³ See Commonwealth v. Stader, 593 Pa. 421, 931 A.2d 630 (2007).

Mr. Underwood. The officers were lawfully on the premises and could have remained there while a warrant was sought. They chose instead to disregard the on-call ADA's recommendation and adopt that of their Lieutenant's, to utilize Mrs. Underwood as their agent - the road "more traveled". They instructed her as to how to use a screwdriver to gain entrance to the room, something they could not do directly. They cannot do indirectly through an agent that which they cannot do directly themselves. Given the preference for warrants and the instructions of the on-call ADA, I find it unreasonable for the officer to believe that Mrs. Underwood had either actual or apparent authority to authorize access to the room. Accordingly, I find that her entry as an agent of the police was unlawful and that the items seized are inadmissible.

ADMISSIONS OF MR. UNDERWOOD

CONFIDENTIAL STATEMENTS AND ACTIONS

I first address marital communications in general. See 42 Pa.C.S.A. § 5914.⁴ A marital communication privilege prevents a testifying spouse like Mrs. Underwood from disclosing confidential communications between her and Defendant, her husband. United States v. Ammar, 714 F.2d 238, 258 (3d Cir.(Pa.)1983) (*cert. denied*, 464 U.S. 936, 104 S.Ct. 344, (1983)). Privileged communications between spouses must be made (1) in confidence, and (2) with the intention that they not be disclosed. Commonwealth v. May, 540 Pa. 237, 249-51, 656 A.2d 1335, 1342 (1995); see also United States v. Broome, 732 F.2d 724, 729 (9th Cir.1990)(citing United States v. McCown, 711 F.2d 1441, 1452-53 (9th Cir.1983)). It goes without saying that it is " 'the relationship that exist[s] at the moment of the communication' " which is protected, " 'not the substance of the message itself.' " Commonwealth v. Ferri, 410 Pa.Super. 67, 73, 599 A.2d 208, 211 (1991), alloc. den., 534 Pa. 652, 627 A.2d 730 (1993), *cert. denied*, 510 U.S. 1164, 114 S.Ct. 1189, (1993) (quoting Commonwealth v. Clark, 347 Pa.Super. 128, 133, 500 A.2d 440, 443 (1985)). The "prohibitions against the giving of testimony by one married party against the other is based upon the reservation of "domestic peace, harmony and the sanctity of the marriage." Commonwealth v. Wilkes, 414 Pa. 246, 251, 199 A.2d 411, 413 (1964). In furtherance of this principle, a legal presumption that a marital communication is confidential has been established. Commonwealth v. Hancharik, 534 Pa. 435, 442-44, 633 A.2d 1074, 1078 (1993). It is the opposing party's burden to rebut the presumption. Haddad v. Lockheed Cal. Corp., 720 F.2d 1454, 1456 (9th Cir.1983); United States v. Weinberg, 439 F.2d 743,

⁴"Except as otherwise provided in this subchapter, in a criminal proceeding neither husband nor wife shall be competent or permitted to testify to confidential communications made by one to the other, unless this privilege is waived upon the trial." 42 Pa.C.S.A. § 5914.

750 (9th Cir.1971).

Mrs. Underwood testified she and Defendant were working on their marriage. She testified she had a desire, along with Defendant, to continue their marriage. There was no evidence the Defendant disagreed. I find the marriage, along with the presumption of confidentiality, was intact on March 13, 2011. Additionally, I find Defendant had a reasonable expectation of confidentiality when he made certain statements and did certain acts in front of his wife between March 11, 2011 and March 13, 2011⁵; Defendant was in his home with only his wife present; he was confronted by his wife with his “alleged” illegal activities. He responded, through words (admitting the plants within were marijuana) and actions (showed his private room). This Court interprets his statements and acts as further evidence of his continued desire to preserve his marriage by being forthright with his wife and demonstrating his trust in her and their marriage. The Commonwealth has not met its burden to show otherwise.

CONFIDENTIALITY

DEFENDANT’S STATEMENTS:

The Commonwealth argues Defendant’s statements are not confidential; as (1) information about the plants came from another source⁶, and (2) his actions show contempt for the marriage not reliance upon it. (Cmwlt. Brief, p. 14, par.1, p. 13, par. 2). As stated above, I disagree with the Commonwealth’s interpretation. As I do not find the presumption of confidentiality has been rebutted by the Commonwealth, Mrs. Underwood is prevented from testifying to any statements her husband made to her during the period of March 11, 2011 through March 13, 2011 regarding anything contained in the locked basement room or the purpose, intention in building said room. 42 Pa.C.S.A. § 5914.

CONFIDENTIALITY

DEFENDANT’S ACTIONS:

⁵The Court must look to whether the spouse making the statement had a reasonable expectation the communications would be held confidential. Commonwealth v. Small, 602 Pa. 425, 446, 980 A.2d 549, 562 (2009); Commonwealth v. May, 540 Pa. 237, 247-249, 656 A.2d 1335, 1341-1342 (1995).

⁶It is unclear how Mrs. Underwood’s sister (Amy Sweigart) allegedly knew about the marijuana. Ms. Sweigart denies she had such knowledge or made any such statements. (N.T. 07/15/11, p. 41-42). I do not find credible Mrs. Underwood’s testimony that Ms. Sweigart informed her of the existence of the marijuana. See Finding of Fact #6.

⁷The Act of May 23, 1887 codified the common law rule of spousal privilege in effect at the time of the Wilkes decision. See 19 P.S. § 683; Wilkes, 199 A.2d at 413.

The Pennsylvania Supreme Court, in Wilkes, held “[c]onfidential communications between [spouses] and facts which have come to their knowledge through the marital relationship cannot be divulged without consent. Wilkes, supra.⁷ The Superior Court in Commonwealth v. Clark, 347 Pa.Super. 128, 500 A.2d 440 (1985) applied protection to BOTH acts and words made between spouses. When faced with the question as to whether the wife’s observations of her husband washing a shotgun were privileged, it stated:

While there is no Pennsylvania case law regarding this issue, it would be anomalous to exclude acts done at the time the confidential oral communications were made from the protection of the privilege. The marital relationship gave rise to both the statements and the actions surrounding the gun. Thus, Mrs. Clark should not have testified as to the statements or to appellant’s simultaneous acts, as both resulted from the marital relationship.

See Clark, 500 A.2d at 440 (emphasis added) (*reversed* by Commonwealth v. McBurrows, 779 A.2d 509 (Pa.Super.2001)). Sixteen (16) years later, in Commonwealth v. McBurrows, 779 A.2d 509 (Pa.Super.2001), the Superior Court overruled Clark, but not on the grounds its reasoning was not sound, but because it did not find it should expand the privilege to acts which were NOT “intended by one spouse to convey a message to the other spouse.” Id. at 518. The McBurrows Court found the facts in Clark did not support a finding that **the acts were done contemporaneously with the statements**. Therefore, it overruled Clark stating that the privilege did not extend to the actions observed by the wife, not because actions cannot be found to be confidential, but because its nature can only be deduced by the language used with it, and no statements had been made by the Clark defendant. Id.

The issue of whether non-verbal communications fall within the spousal privilege was again addressed in Commonwealth v. Bobin, 916 A.2d 1164 (Pa.Super.2007). The defendant’s wife in Bobin observed her husband’s confused behavior prior to a car accident which resulted in the death of the other driver. The Bobin Court carved out a distinction between its facts and those presented in McBurrows. Namely, because the accident involved a charge without the element of an intentional act to kill, like the murder in McBurrows, it would not allow the wife to testify to what she saw.

I believe the better distinction between the facts in Clark, Bobin and

McBurrows is the original one pointed out by the McBurrows Court; that the actions of a spouse can only be found to be confidential if they are tied to a confidential communication, i.e. statements made contemporaneously with the actions which convey “the clear intent of confidentiality based upon the marital relationship between the parties.” See McBurrows at 518. The McBurrows Court stated:

[We are] mindful of the ... public policy considerations of protecting confidential communications between spouses, and find persuasive the reasoning of those jurisdictions that have restricted the privilege. We specifically rely on the case of State v. Newman, 235 Kan. 29, 680 P.2d 257 (1984). The Newman court acknowledged the split within the jurisdictions on this issue. However, after considering [its] Kansas Code and the public policy interests involved, [the Newman Court] concluded the statutory marital privilege **does not extend to all observations** of the acts of one spouse by the other. It found “[t]he marital privilege is limited to spoken or written statements **or nonverbal signs or gestures seeking to transmit information** from one spouse to another.” Id. at 266 [(emphasis added)].

See McBurrows at 518.

It is this Court’s opinion that Defendant’s action of opening the locked basement door and allowing his wife to look inside was a “gesture seeking to transmit information.” Id. He was “telling” her in a non-verbal manner, what he was doing in that room in response to her questions about his illegal activity. All done during a period Mrs. Underwood testified they were trying to work on their marriage.

Based on the foregoing, I enter my:

Jessica M. Krilivsky, Esquire, Assistant District Attorney for the Commonwealth
S. Lee Ruslander, II, Esquire, Attorney for the Defendant

AND NOW, this 20th day of October, 2011, the Motion to Suppress is GRANTED both as to the physical evidence and Defendant's statements.

BY THE COURT:

/s/ Thomas G. Gavin, S.J.

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TABLE OF CONTENTS
LEGAL NOTICES

Corporation Notice 2
Estate Notices **1st Publication** 2
Estate Notices **2nd Publication** 3
Estate Notices **3rd Publication** 5
Nonprofit Corporation 7
Notice of Marshall’s Sale of Real Property 8
Adoption Notice 9
Opening for Criminal Court Appointed/Conflict Counsel 9

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CORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation pursuant to the provision of the Business Corporation Law of 1988.

The name of the corporation is Perseus Enterprises Inc.

Articles of Incorporation were filed on November 22, 2011.

The purpose or purposes for which it was organized are: To engage in any lawful business activity.

ESTATE NOTICES

Letters Testamentary or of Administration having been granted in the following Estates, all persons having claims or demands against the estate of the said decedents are requested to make known the same and all persons indebted to the said decedents are requested to make payment without delay to the respective executors, administrators, or counsel.

1st Publication

BENKE, Carl H., Jr., late of Kennett Square. Carl H. Benke, III, care of **GEORGE S. DONZE**, Esquire, 696 Unionville Road, Suite 6, Kennett Square, PA 19348, Administrator. **GEORGE S. DONZE**, Esquire, Donze & Donze, 696 Unionville Road, Suite 6, Kennett Square, PA 19348, atty.

BOYLE, Victoria G., late of East Goshen Township. Francis J. Boyle, care of **JOHN A. WETZEL**, Esquire, 101 East Evans Street, Suite A, West Chester, PA 19380, Executor. **JOHN A. WETZEL**, Esquire, Swartz Campbell LLC, 101 East Evans Street, Suite A, West Chester, PA 19380, atty.

BRODERICK, Sally Ann, late of Westtown Township. Bernadette Park, care of **JAMES A. GILLIN**, Esquire, 2 Old State Road, Media, PA 19063, Executrix. **JAMES A. GILLIN**, Esquire, 2 Old State Road, Media, PA 19063, atty.

CUNNINGHAM, Charles Edward, Sr., late of Exton. Caren C. Ryan, care of **KEVIN J. RYAN**, Esquire, 220 W. Gay Street, West Chester, PA 19380-2917, Executrix. **KEVIN J. RYAN**, Esquire, Ryan, Morton & Imms LLC, 220 W. Gay Street, West Chester, PA 19380-2917, atty.

DANNEBERGER, Edwin H., late of Goshen Township. Heidi Beth Danneberger, care of **KEVIN HOLLERAN**, Esquire, 17 E. Gay Street, Suite 100, P.O. Box 562, West Chester, PA 19381-0562, Executor. **KEVIN HOLLERAN**, Esquire, Gawthrop Greenwood, P.C., 17 E. Gay Street, Suite 100, P.O. Box 562, West Chester, PA 19381-0562, atty.

GRASSBERG, Eugene, late of Pennsbury Township. Mary McLaughlin-Koprowski, care of **JEAN WHITE E. JONES**, Esquire, 130 West Lancaster Avenue, Wayne, PA 19087, Executrix. **JEAN WHITE E. JONES**, Esquire, Butera & Jones, 130 West Lancaster Avenue, Wayne, PA 19087, atty.

JONES, Marie T., late of Uwchlan Township. Edward J. Fagan and Maureen A. Worrell, care of **JAY G. FISCHER**, Esquire, 342 East Lancaster Avenue, Downingtown, PA 19335, Executors. **JAY G. FISCHER**, Esquire, Valocchi & Fischer, 342 East Lancaster Avenue, Downingtown, PA 19335, atty.

KING, BARBARA M., late of Pennsbury Township. L. PETER TEMPLE, Esquire, P.O. Box 384, Kennett Square, PA 19348, Executor. L. PETER TEMPLE, Esquire, Larmore Scarlett LLP, P.O. Box 384, Kennett Square, PA 19348, atty.

KRAUSE, Kay M., a/k/a Kay Marie Krause, late of West Goshen Township. Kevin M. Krause, care of DOUGLAS L. KAUNE, Esquire, 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, Executor. DOUGLAS L. KAUNE, Esquire, Unruh, Turner, Burke & Frees, P.C., 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, atty.

RASCH, Sunna Cooper, late of East Bradford Township. Nancy Rasch Salamon, 349 W. Barnard Street, West Chester, PA 19382, Executrix. NIKOLAOS I. TSOUROS, Esquire, MacElree Harvey, Ltd., 17 W. Miner Street, P.O. Box 660, West Chester, PA 19381-0660, atty.

ROSS, Milton W., late of West Brandywine Township. Michael C. Ross, care of RICHARD M. LUTZ, Esquire, 300 W. State Street, Suite 302, Media, PA 19063, Executor. RICHARD M. LUTZ, Esquire, 300 W. State Street, Suite 302, Media, PA 19063, atty.

WILLIAMS, Betty Jane, late of Phoenixville. Ruth Ann Dabback, care of DOUGLAS L. KAUNE, Esquire, 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, Executrix. DOUGLAS L. KAUNE, Esquire, Unruh, Turner, Burke & Frees, P.C., 120 Gay Street, P.O. Box 289, Phoenixville, PA 19460, atty.

YOUNG, Morey T., late of East Fallowfield. Blanche E. Young, care of NICHOLAS WACHINSKI, Esquire, 327 West Front Street, Media, PA 19063, Executrix. NICHOLAS WACHINSKI, Esquire, 327 West Front Street, Media, PA 19063, atty.

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CURLEY, Virgil N., late of Phoenixville. KEVIN B. CURLEY, Esquire, 19 Landmark Drive, Malvern, PA 19355, Executor. KEVIN B. CURLEY, Esquire, 19 Landmark Drive, Malvern, PA 19355, atty.

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DEFORNO, Adelaide Entress, a/k/a Adelaide E. Deforno, late of Valley Township. Dr. Patrick E. Deforno, care of ELLIOTT GOLDBERG, Esquire, 1800 E. Lancaster Avenue, 2nd Floor, Paoli, PA 19301, Administrator. ELLIOTT GOLDBERG, Esquire, DiGiacomo, Goldberg & Levin, 1800 E. Lancaster Avenue, 2nd Floor, Paoli, PA 19301, atty.

DENENBERG, Naomi, late of Tredyffrin Township. G. Bradley Rainer and Michael S. Denenberg, care of SCOTT H. KERR, Esquire, Cira Centre, 2929 Arch Street, 13th Floor, Philadelphia, PA 19104, Executors. SCOTT H. KERR, Esquire, Reger Rizzo & Darnall LLP, Cira Centre, 2929 Arch Street, 13th Floor, Philadelphia, PA 19104, atty.

DOYLE, Catherine M., late of East Fallowfield. Kathleen B. Quinn, care of MATTHEW L. CONLEY, Esquire, 300 N. Pottstown Pike, Suite 220, Exton, PA 19341, Executor. MATTHEW L. CONLEY, Esquire, Conley Law Practice, LLC, 300 N. Pottstown Pike, Suite 220, Exton, PA 19341, atty.

GEHMAN, Gary L., late of Pocopson Township. Melissa H. Gehman, care of JOSEPH S. NESCIO, Esquire, 113 East Evans Street, Matlack Building, Suite D-2, West Chester, PA 19380, Executrix. JOSEPH S. NESCIO, Esquire, 113 East Evans Street, Matlack Building, Suite D-2, West Chester, PA 19380, atty.

GRAZIANO, Anthony, late of Oxford. Ruth G. Graziano and Laura G. Farabaugh, 503 Elk Mills Road, Oxford, PA 19363, Executors.

HICKEY, Stephen P., Sr., late of East Bradford Township. Jesse Hickey, care of FRANCIS C. MILLER, Esquire, 21 W. Washington Street, Suite D, West Chester, PA 19380, Executor. FRANCIS C. MILLER, Esquire, 21 W. Washington Street, Suite D, West Chester, PA 19380, atty.

JASIENSKI, John J., Sr., late of Penn Township. Anthony M. Jasienski, 438 Sharp Road, Avondale, PA 19311, Executor. DAVID C. PATTEN, Esquire, 306 North Church Street, P.O. Box 489, West Chester, PA 19381, atty.

LAMBORN, Janet Ruth, late of Borough of Phoenixville. Cecile Wray, 316 Forgedale Road, Fleetwood, PA 19522, Executor. JOHN C. BRADLEY, JR., Esquire, Masano Bradley, LLP, 1100 Berkshire Boulevard, Suite 201, Wyomissing, PA 19610, atty.

MCHEHRY, Violet P., late of Chester County. SAMUEL A. GOODLEY, JR., Esquire, 7 Center Street, P.O. Box 474, Intercourse, PA 17534, Executor. SAMUEL A. GOODLEY, JR., Esquire, Byler, Goodley & Winkle, P.C., 7 Center Street, P.O. Box 474, Intercourse, PA 17534, atty.

MURTHA, Joan I., late of Westtown Township. Michael P. Murtha, 288 Garden Station Road, Avondale, PA 19311, Executrix. WILLIAM E. HOWELL JR., Esquire, 110 E. State Street, Suite 19, Kennett Square, PA 19348, atty.

PRIME, Alfred Cox, a/k/a Alfred C. Prime, late of Willistown Township. Mark Cox Prime, P.O. Box 379, Atglen, PA 19310, Executor. WILLIAM T. KEEN, Esquire, Keen, Keen & Good, 3460 Lincoln Highway, Thorndale, PA 19372, atty.

SILVER, Marla L., late of East Goshen Township. Scott Jon Wheeler, care of L. PETER TEMPLE, Esquire, P.O. Box 384, Kennett Square, PA 19348, Executor. L. PETER TEMPLE, Esquire, Larmore Scarlett LLP, P.O. Box 384, Kennett Square, PA 19348, atty.

STEWART, Cherie, late of Wayne, Tredyffrin Township. Sean Perkins, 242 Valley Stream Lane, Wayne, PA 19087, Executor.

THOMPSON, Charles E., late of West Bradford Township. Diane L. Thompson, 1501 Marshallton Thorndale Road, Downingtown, PA 19335, Executor. JERRY L. JOHNSON, Esquire, P.O. Box 218, 114 W. Lancaster Avenue, Downingtown, PA 19335, atty.

VERONESI, Aldo J., late of Tredyffrin Township. Nancy M. Veronesi, 422 Red Coat Lane, Wayne, PA 19087, Executor. LEIGH P. NARDUCCI, Esquire, Narducci, Moore, Fleisher & Roeberg, LLP, 589 Skippack Pike, Suite 300, Blue Bell, PA 19422, atty.

WHITE, Dolores M., a/k/a Dolores M. Shaffer, Healy, White, late of West Chester, East Goshen. Kathleen Malicki, 656 Churchill Rd., Chester Springs, PA 19425, Executrix.

WILSON, Charles E., a/k/a Charles Eugene Wilson, Jr. and Charles E. Wilson, Jr., late of East Goshen Township. Laura J. Wilson, care of DUKE SCHNEIDER, Esquire, 17 West Miner Street, P.O. Box 660, West Chester, PA 19381-0660, Executrix. DUKE SCHNEIDER, Esquire, MacElree Harvey Ltd., 17 West Miner Street, P.O. Box 660, West Chester, PA 19381-0660, atty.

3rd Publication

ASHBAUGH, Florence R., late of Willistown Township. Thomas Ashbaugh and John Ashbaugh, care of RUSSELL J. RESSLER, Esquire, 30 Valley Stream Parkway, Malvern, PA 19355, Executors. RUSSELL J. RESSLER, Esquire, Stradley, Ronon, Stevens & Young, LLP, 30 Valley Stream Parkway, Malvern, PA 19355, atty.

BORNMANN, Elizabeth J., late of West Whiteland Township, West Chester, PA. Pamela Plasser, 716 Chessie Court, West Chester, PA 19380, Executrix. ELIZABETH PLASSER KELLY, Esquire, 256 Eagleview Boulevard, P.M.B. 155, Exton, PA 19341, atty.

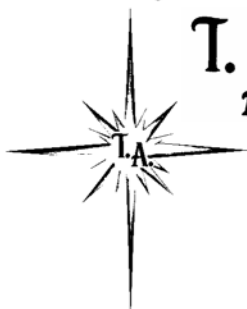
BOYLAN, Valerie E., late of Chester County. Alison DeLuca and Lesley West, care of ROBERT P. BRENDZA, Esquire, 404 Santillo Way, Downingtown, PA 19335, Executor. ROBERT P. BRENDZA, Esquire, 404 Santillo Way, Downingtown, PA 19335, atty.

BULACK, Alexander, late of Downingtown Borough. Robert Bulack, care of HUDSON L. VOLTZ, Esquire, 110 Hopewell Road, Suite 200, Downingtown, PA 19335, Executor. HUDSON L. VOLTZ, Esquire, Hudson L. Voltz, P.C., 110 Hopewell Road, Suite 200, Downingtown, PA 19335, atty.

CANNON, Thomas Micheal, Jr., late of West Chester. Catherine M. Cannon, 223 Summit House, West Chester, PA 19382, Administrator.

DICKSON, Judith C., late of Exton. Robert Alan Dickson, care of J. MICHAEL RYAN, Esquire, 300 North Pottstown Pike, Suite 150, Exton, PA 19341, Executor. J. MICHAEL RYAN, Esquire, 300 North Pottstown Pike, Suite 150, Exton, PA 19341, atty.

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ERCOLE, David Christian, late of West Vincent Township. Jason Ercole, care of ALLISON BELL ROYER, Esquire, 280 N. Providence Road, Media, PA 19063, Administrator C.T.A. ALLISON BELL ROYER, Esquire, 280 N. Providence Road, Media, PA 19063, atty.

FAUST, Jean Wike, late of Willistown Township. Herbert A. Faust, care of WILLIAM L. MCLAUGHLIN, JR., Esquire, 23 South Valley Road, P.O. Box 494, Paoli, PA 19301, Executor. WILLIAM L. MCLAUGHLIN, JR., Esquire, 23 South Valley Road, P.O. Box 494, Paoli, PA 19301, atty.

FORTE, Jermina, late of Exton, Uwchlan, Chester County. Maria LaGrossa, 417 Wharton Blvd. W., Exton, PA 19341, Executor.

GRUNWELL, Judith V., late of West Chester. William R. Grunwell, Jr., 1144 Carolina Ave., West Chester, PA 19380, Executor. TODD ALLEN ELLIOTT, Esquire, Elliott Legal Services, 835 West Chester Pike, West Chester, PA 19382-4863, atty.

HOOPEES, Philomena J., a/k/a Mena, late of West Chester, PA/West Bradford Township. Jeffrey B. Hoopes, 210 E. Pine St., Ephrata, PA 17522, Executor.

LANSER, Richard D., Sr., late of Borough of Elverson. Mark I. Lanser, 6075 Fisher Drive, Narvon, PA 17555, Executor.

MCCAREY, Margery H., a/k/a Marjorie H. McCarey, late of Berwyn. Thomas A. McCarey, 285 Dayleview Road, Berwyn, PA 19312, Executor. J. MICHAEL CONSIDINE, JR., Esquire, 12 East Barnard Street, Suite 100, West Chester, PA 19382, atty.

MISKIEWICZ, Martha V., late of Pottstown. Jane A. Kramer, care of ELIZABETH R. HOWARD, Esquire, 301 Gay Street, P.O. Box 507, Phoenixville, PA 19460, Executrix. ELIZABETH R. HOWARD, Esquire, 301 Gay Street, P.O. Box 507, Phoenixville, PA 19460, atty.

PATTERSON, Betty Lee, late of Coatesville. Francis L. Patterson IV, 116 Island Drive, Hockessin, De 19707 and Alicia Acampora, 11 Circle Lane, Cherry Hill, NJ 08003, Executors. PATRICIA M. LARRIMORE, Esquire, Main Line Elder Law, 704 Southwinds Drive, Bryn Mawr, PA 19010, atty.

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SWAYNE, Robert E., late of West Chester. John Jordan, Gloria Torrieri, James Hoffert and Joyce Hoffert, care of **MARY WADE MYERS**, Esquire, 18 W. Market Street, West Chester, PA 19382, Executors. **MARY WADE MYERS**, Esquire, 18 W. Market Street, West Chester, PA 19382, atty.

VIGLIOTTI, Donald A., late of Easttown Township. Dawn M. Becket, care of **SHERI L. PECARSKY**, Esquire, 308 Harper Drive, Suite 200, Moorestown, NJ 08057, Executrix. **SHERI L. PECARSKY**, Esquire, Sherman, Silverstien, Kohl, Rose & Podolsky, P.C., 308 Harper Drive, Suite 200, Moorestown, NJ 08057, atty.

WALTON, Anna, late of West Goshen Township. Shirel Walton, care of **HUDSON L. VOLTZ**, Esquire, 110 Hopewell Rd., Ste 200, Downingtown, PA 19335, Executor. **HUDSON L. VOLTZ**, Esquire, Hudson L. Voltz, P.C., 110 Hopewell Rd., Ste 200, Downingtown, PA 19335, atty.

YOUNG, Joy, late of Penn Township. William Stephen Young, care of **TIMOTHY F. RAYNE**, Esquire, 17 West Miner Street, P.O. Box 660, West Chester, PA 19381-0660, Administrator. **TIMOTHY F. RAYNE**, Esquire, MacElree Harvey, Ltd., 17 West Miner Street, P.O. Box 660, West Chester, PA 19381-0660, atty.

NONPROFIT CORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Commonwealth of Pennsylvania, Department of State, on November 15, 2011 to form a nonprofit corporation under the name of "Kase's Corner, Inc." pursuant to the provisions of the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

The corporation has been organized as a nonprofit exempt organization for the promotion of fundraising and participation in charitable events, and for other nonprofit charitable purposes.

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1st Publication**NOTICE**

NOTICE is hereby given that a hearing has been set for Monday, January 23, 2012, at 11:00 a.m., in Court Room No. 3 of the Chester County Justice Center, 201 West Market Street, West Chester, Pennsylvania, to consider the Petition for At-Large Representation on the Board of School Directors of the Oxford Area School District.

Ellis H. Katz, Esquire
SWEET, STEVENS, KATZ & WILLIAMS LLP
331 East Butler Avenue
New Britain, PA 18901
215-345-9111
Attorneys for Petitioner,
Oxford Area School District

2nd Publication**NOTICE OF MARSHAL'S SALE OF REAL ESTATE**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILMINGTON SAVINGS FUND SOCIETY, FSB, Plaintiff v.
DISTINCTIVE DENTISTRY OF CHESTER COUNTY, P.C., *ET AL.*, Defendants
NO. 2:11-CV-02645-PBT*

[*This action is the action under which the following other actions are consolidated: Civil Action No. 11-cv-02646-PBT; Civil Action No. 11-cv-02647-PBT; Civil Action No. 11-cv-02648-PBT; and Civil Action No. 11-cv-02649-PBT.]

Marshal's Sale of Real Estate on December 22, 2011 at 10:00 A.M. at the U.S. Marshal Service, 2110 U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106

The Real Estate known as 2 East Street Road, West Chester, Chester County, Pennsylvania 19382, UPI No. 66-1-4.3, as more particularly described in Deed Book 6666 Page 1202 recorded October 31, 2005 in the Chester County Recorder of Deeds Office.

Seized in execution as property of: MattAlex Realty, LLC. Judgment amount: \$467,122.52, plus continuing interest from April 16, 2011 at the per diem rate of \$112.64 through date of sale and costs through date of sale.

The improvements are: Commercial

10% of the bid is due at the time of sale in the form of a money order, cashier's check or certified funds (no cash); the balance is due ten (10) days after the Court confirms the sale. Other terms and conditions to be announced at the sale. Schedule of Distribution will be filed by Plaintiff's attorney within thirty (30) days of the date of sale.

For more information, contact Jennifer Hiller Nimeroff, Esquire at (215) 665-8181.

ADOPTION NOTICE**IN THE COURT OF COMMON PLEAS OF
CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION**

IN RE: A.J.C.

Case Number: AD-11-0076

TO: Ricardo Reza

Petitions have been filed by Chester County Department of Children, Youth and Families asking the Orphans' Court to put an end to all rights you and Angela Lea Clark, a/k/a Angela Lea Hugill, have to a male minor child, A.J.C. (d.o.b. 5/6/09), and to show cause why the parental rights to this child should not be terminated involuntarily. The Court has awarded Citations on these Petitions for Involuntary Termination of Parental Rights.

The Court has set a Call of the List for Monday, January 9, 2012, at 9:00 o'clock A.M., Honorable John L.Hall, Court Room No. 15, Chester County Justice Center, 201 West Market Street, West Chester, Pennsylvania, to determine which day your case will be heard, and to show cause, if any you have, why the relief sought in the Petition should not be granted. You or your lawyer should be present at the Call of the List to find out the specific date that your case will be heard.

If neither you nor your lawyer appears for the Call of the List, you may not find out when your hearing will be.

You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to this child may be ended by the court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the Lawyer Reference Service, Chester County Bar Association, 15 West Gay Street, West Chester, PA 19380, Telephone No. (610) 429-1500 to find out where you can get legal help.

Lawrence J. Persick, Esq.
Attorney for Chester County
Department of Children, Youth and Families

3rd Publication**OPENING FOR CRIMINAL COURT
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