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CERTIFICATE OF REGISTRATION

NOTICE IS HEREBY GIVEN that in compliance with the requirements of 15 Pa. C.S. § 8913, a Certificate of Registration—Domestic Limited Liability Company was filed on October 10, 2012 with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, for the purpose of registering a Limited Liability Company.

The name of the Limited Liability Company is LAUNDRY FAIRY, LLC, having a registered address of 573 Ridge Road, Gettysburg, Adams County, Pennsylvania 17325.

The purpose for which the Limited Liability Company was organized is to engage in and do any lawful act concerning any and all lawful business for which limited liability companies may be formed in accordance with the laws of the Commonwealth of Pennsylvania.

Christina M. Simpson, Esq.  
28 East High Street  
Gettysburg, PA 17325

12/7

LEGAL NOTICE-ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the home office located at 101 South Queen Street in the Borough of Littlestown, Pennsylvania, between the hours of 1 and 2 p.m., on January 12, 2013 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt  
President/Treasurer

12/7, 14, 21 & 28

## COMMONWEALTH VS. HARRINGTON

1. Whether the affirmative defense of involuntary intoxication under the facts argued by the Appellant is a viable defense in Pennsylvania is an issue of first impression.

2. That is not to say, however, that relief from criminal sanctions is not available to one who commits an unconscious act as a result of a drug-induced state. Pennsylvania law clearly requires that before punitive sanctions can be imposed, including those resulting from motor vehicle violations, the burden is on the Commonwealth to prove the defendant acted with the requisite *mens rea*.

3. At a minimum, in order to sustain a conviction for driving under the influence of a controlled substance, the Commonwealth is required to prove at least recklessness. This holds true even though voluntary intoxication is not a defense in Pennsylvania.

4. In order to sustain a conviction, the Commonwealth has the burden of proving each element of the crime beyond a reasonable doubt. However, the Commonwealth is not required to prove guilt beyond all doubt or to a mathematical certainty.

5. Criminal intent may be inferred from facts and circumstances if such facts and circumstances are able to support an inference of the defendant's guilt beyond a reasonable doubt.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CP-01-CR-765-2011, COMMONWEALTH OF PENNSYLVANIA VS. CORY LEE HARRINGTON.

Amber Lane, Esq., Assistant District Attorney, for Commonwealth

Sean Mott, Esq., Assistant Public Defender, for Defendant

George, J., June 22, 2012

### OPINION PURSUANT TO Pa. R.A.P. 1925(a)

On June 27, 2011, Eastern Adams Regional Police Sergeant Ramsburg observed a green Nissan sedan traveling westbound in the center turn lane of York Road, Oxford Township, Adams County. The vehicle was traveling approximately 50 miles per hour in the turn lane as if it was the westbound lane. Sergeant Ramsburg, assisted by Eastern Adams Regional Police Officer Mulder, conducted a vehicle stop. Officer Mulder approached the driver's side of the vehicle and observed the Appellant, Cory Lee Harrington, to be the operator of the motor vehicle. When Officer Mulder requested Appellant's information, he noticed a strong odor of gasoline emitting from Appellant and his vehicle. Officer Mulder's inquiry concerning the odor of gasoline resulted in Appellant explaining he "did not know why" he smelled. Appellant was unable to provide his personal information, however, he kept handing Officer Mulder money claiming that it was his driver's license. Officer Mulder described Appellant as being very confused and disoriented. When asked if he had been drinking, Appellant

indicated that he had had four beers but felt fine. Officer Mulder requested Appellant to step out of the vehicle so that he may speak with him. When Appellant exited the vehicle, Officer Mulder noticed his belt was undone, he had no shoes, and that his appearance was dirty. Appellant explained to the officer that he did not know where or how he got like that. After the administration of field sobriety tests, Officer Mulder determined Appellant to be under the influence of an intoxicant to the extent that he was incapable of safe driving. Appellant conceded that he was drunk and was placed under arrest. Appellant was taken to Gettysburg Hospital for a blood draw. While at the hospital, Appellant admitted to ingesting the controlled substance, Ambien, prior to driving. A subsequent blood test revealed the presence of Zolpidem in Appellant's blood at a level of 440 ng/mL.<sup>1</sup>

Appellant was charged with driving under the influence of a controlled substance in violation of 75 Pa. C.S.A. § 3802(d)(2) of the Pennsylvania Motor Vehicle Code (relating to driving under the influence of any drug which impairs the individual's ability to safely drive). At a nonjury trial held on April 11, 2012, the Commonwealth presented the testimony of Sergeant Ramsburg and Officer Mulder which established the above-referenced factual background. In addition, the Commonwealth called Dr. Edward Barbieri, a forensic toxicologist, who opined that the level of Zolpidem in Appellant's blood was at a level which would impair one's ability to safely operate a motor vehicle. Dr. Barbieri further offered that the concentration of Zolpidem in the Appellant's blood was greater than the therapeutic level for the drug.

The defense presented testimony from the Appellant who indicated he did not remember the specifics relating to the night of the incident. He described his general habits and history of Ambien use which included his prescription for a daily dose of Ambien in the amount of one 10 mg pill per day. He conceded he did not read the warnings which accompanied the prescription and, on occasion, took more than the prescribed amount.

The defense also called a forensic toxicologist, Dr. Lawrence Guzzardi. Dr. Guzzardi contested the conclusion that the level of Zolpidem in Appellant's blood exceeded normal therapeutic doses and instead asserted that it could be consistent with the dosage

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<sup>1</sup> Zolpidem is the generic name for Ambien.

prescribed to Appellant. Dr. Guzzardi further explained that the use of a larger dose of Zolpidem would not have caused a concurrent increase in the drug's side effects. Finally, Dr. Guzzardi discussed the phenomenon of "sleep driving." He indicated that there are medically documented cases of individuals who use Zolpidem participating in erratic behaviors after commencement of the drug-induced sleep caused by the Zolpidem. One of the documented erratic behaviors is that the individual unconsciously will operate a motor vehicle. Dr. Guzzardi conceded that this side effect is very infrequent but indicated that Appellant's behavior on the night of the incident could be explained by the "sleep driving" phenomenon.

The Appellant currently appeals his nonjury trial conviction. He argues that the trial court improperly failed to recognize the defense of involuntary intoxication based on the novel theory that the Appellant's ingestion of the Zolpidem was pursuant to a valid medical prescription. Appellant further argues that the Court erred in permitting Dr. Barbieri's opinion that the amount of Zolpidem in the Appellant's blood exceeded therapeutic levels, as the underlying science supporting the opinion is not generally accepted in the relevant scientific community. Appellant next argues that the trial court erroneously disregarded Dr. Guzzardi's opinion that an increase in the concentration of Zolpidem does not correlate to a similar increase in the degree of side effects associated with the drug. Finally, Appellant argues that the verdict is against the weight of the evidence.

The common thread in the several issues raised by Appellant is his claim that involuntary intoxication is a defense to the charge of which he was convicted. He suggests he did nothing more than use a medically prescribed drug in a dosage directed by his physician. He argues that any scientific evidence to the contrary is invalid as the principles upon which it is based are not accepted by the scientific community. He further argues that if his use exceeded the prescribed dosage, the point is irrelevant, as increased use of the drug does not have a synergistic effect. He concludes, therefore, that once the intended effects of the medication put him to sleep, he is no longer responsible for the unconscious act of operating a motor vehicle which followed.

Appellant's argument originates from a panel opinion of the Superior Court in *Commonwealth v. Smith*, 831 A.2d 636 (Pa. Super. 2003).

In *Smith*, the Court considered a defense claim that the trial court erred in failing to instruct the jury on the affirmative defense of “involuntary intoxication” under circumstances where the defendant consumed minimal alcohol while wearing a prescribed pain medication patch. *Id.* at 638. The defendant argued that she did not realize the patch would heighten the effects of alcohol and thus became “involuntarily intoxicated.” *Id.* Appellant currently cites *Smith* for the proposition that Pennsylvania recognizes the defense of involuntary intoxication. However, contrary to Appellant’s argument, *Smith* never reached the question of whether involuntary intoxication was cognizable under Pennsylvania law or encompassed circumstances where an individual used a prescribed medication in compliance with the prescription. Rather, without answering that inquiry, the Court concluded that “even assuming the proffered defense is viable,” the facts before the Court did not establish involuntary intoxication. *Id.* at 640.

Whether the affirmative defense of involuntary intoxication under the facts argued by the Appellant is a viable defense in Pennsylvania is an issue of first impression. It is difficult, however, for this Court to conclude that such a defense exists under circumstances where a person voluntarily ingests prescribed medication, as there is nothing involuntary about that act. Indeed, recognizing such a defense would vitiate current driving under the influence of controlled substance law as the voluntary ingestion of prescribed controlled substances, even within the prescribed dosage, is illegal where the drug usage renders one incapable of safely operating a vehicle. 75 Pa. C.S.A. § 3802(d) (2). That is not to say, however, that relief from criminal sanctions is not available to one who commits an unconscious act as a result of a drug-induced state. Pennsylvania law clearly requires that before punitive sanctions may be imposed, including those resulting from motor vehicle violations, the burden is on the Commonwealth to prove the defendant acted with the requisite *mens rea*. *Commonwealth v. Hurst*, 889 A.2d 624 (Pa. Super. 2005) (misdemeanor of the second degree under Pennsylvania Motor Vehicle Code is not an absolute liability offense and requires proof of *mens rea*); but see *Commonwealth v. Collins*, 810 A.2d 698 (Pa. Super. 2002) (Commonwealth is not required to establish an intentional or involuntary act to prove a violation of driving under the influence of alcohol). Therefore, at a minimum, in order to sustain a conviction for driving under the influence

of a controlled substance, the Commonwealth is required to prove at least recklessness. This holds true even though voluntary intoxication is not a defense in Pennsylvania. 18 Pa. C.S.A. § 308. Therefore, where one uses drugs in compliance with a valid prescription and thereafter commits an involuntary act, the requisite *mens rea* is not established and conviction should not follow. Further discussion of this issue, however, is unnecessary as an interpretation of the legal issues surrounding the defense of involuntary intoxication is not implicated by Appellant's conviction.

At trial, the Commonwealth offered compelling evidence that Appellant was under the influence of a controlled substance to the extent that it rendered him incapable of safely operating his motor vehicle. His operation of the vehicle as observed by police evidenced erratic and dangerous driving. When observed, he was disheveled and confused, leading the officer to conclude he was under the influence of an intoxicant. Failed field sobriety tests cemented the officer's initial belief. Subsequent blood tests confirmed Appellant was under the influence of the controlled substance Zolpidem. The Commonwealth's evidence further established that the level of Zolpidem in Appellant's blood was sufficient to negatively affect one's motor skills and render a person incapable of safely operating a vehicle. See *Commonwealth v. Williamson*, 962 A.2d 1200 (Pa. Super. 2008).

Appellant took the stand in his own defense and offered very little credible information relevant to the charges against him. Essentially, he claimed that he could not remember the day of the incident, but if it was a normal day, he would have eaten a late dinner, took his medication, watched TV briefly, and gone to bed. He offered no further specifics. As mentioned, he conceded taking more than the prescribed dosage of medication on occasion, however, he could not recall doing so on the date at issue. The Appellant's testimony is supplemented by his expert who briefly discussed the phenomenon of sleep driving and indicated the current circumstances could be explained by that phenomenon.

Undoubtedly, in order to sustain a conviction, the Commonwealth has the burden of proving each element of the crime beyond a reasonable doubt. However, the Commonwealth is not required to prove guilt beyond all doubt or to a mathematical certainty. *Commonwealth v. Williams*, 383 A.2d 503 (Pa. 1978). Moreover, circumstantial

evidence is sufficient to establish an element of the crime. *Commonwealth v. Quartapella*, 539 A.2d 855 (Pa. Super. 1988). More specifically, criminal intent may be inferred from facts and circumstances if such facts and circumstances are able to support an inference of the defendant's guilt beyond a reasonable doubt. *Commonwealth v. Williams*, 362 A.2d 244 (Pa. 1976).

As previously mentioned, the Commonwealth's evidence more than carried its burden. On the other hand, the Appellant's unpersuasive and nonspecific evidence did little to alter this conclusion. In essence, the proffered defense of involuntary intoxication was rejected not on legal grounds but rather because there was no credible factual basis to support it. There was a paucity of any credible evidence that on the night of the incident, Appellant took the prescribed medication and went to bed only to find himself inexplicably awakened while driving down the highway. Indeed, Appellant's evasive answers were not persuasive. On the other hand, the Commonwealth's evidence overwhelmingly established that Appellant, while operating a motor vehicle, voluntarily consumed a controlled substance which rendered him incapable of safe driving.

As Appellant's conviction was based upon factual determinations, his legal arguments on appeal are not implicated by the verdict. Specifically, since it was unnecessary for the Court to determine whether Appellant's consumption of the medication exceeded the prescribed dosage, the testimony of Dr. Barbieri opining as to the dosage consumed was immaterial to the verdict. As this was a non-jury trial, the Court was able to disregard improper evidence in determining questions of fact and law. *Commonwealth v. Gonzales*, 609 A.2d 1368, 1370-71 (Pa. Super. 1992). Interestingly, it was the Court that first inquired whether the ratio of blood to serum conversion upon which Dr. Barbieri based his opinion were ratios which were generally accepted by a professional in the field of toxicology. It was only after Appellant's expert testified at the near conclusion of the evidence that defense counsel objected on the basis of *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). While arguably this issue is waived, it is immaterial, as the Court's disposition did not rely upon the objectionable testimony.

Similarly, whether an increased dosage of Zolpidem has a synergistic effect on one's intoxication had no import on relevant factual



conclusions. The unchallenged evidence established that Appellant was under the influence of some dosage of a controlled substance which caused him to be incapable of safe driving. Moreover, for the reasons set forth above, the verdict did not shock this jurist's sense of justice.<sup>2</sup>

For the foregoing reasons, it is respectfully requested that judgment of sentence be affirmed.

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<sup>2</sup> A verdict is against the weight of the evidence only when the verdict is "so contrary to the evidence as to shock one's sense of justice." *Commonwealth v. Cousar*, 928 A.2d 1025, 1036 (Pa. 2007).



**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

**FIRST PUBLICATION****ESTATE OF JOHN L. BAUGHER, DEC'D**

Late of Reading Township, Adams County, Pennsylvania

Executrix: Phyllis M. Baugher, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

**ESTATE OF SHIRLEY F. GREENHOLT, DEC'D**

Late of Germany Township, Adams County, Pennsylvania

Executrices: Lori G. Lupolt and Wendy Ann Stauffer, c/o Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

**ESTATE OF MARY E. HOOVER, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: Paul K. Hoover Sr., 1236 Russell Tavern Road, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ROBERT W. KOONS, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Stephen Herr Koons, P.O. Box 785, Carboro, NC 27510; Philip Alan Koons, 1107 North Tioga Street, Ithaca, NY 14850

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High Street, Gettysburg, PA 17325

**ESTATE OF EARL W. MCCLEAF, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Personal Representatives: Linda Moore n/k/a Linda Van Deuren, 13882 Harbaugh Church Road, Waynesboro, PA 17268; Earl W. McCleaf Jr., 123 Walnut Street, Mont Alto, PA 17237

Attorney: Clinton T. Barkdoll, Esq., Kulla, Barkdoll, Ullman & Painter, P.C., 9 East Main Street, Waynesboro, PA 17268

**ESTATE OF GUY E. MCINTIRE, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Michael McIntire and David McIntire, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

**ESTATE OF BRUNETTA L. SIBERT, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Thomas E. Sibert, 1175 Brickcrafters Road, New Oxford, PA 17350

**ESTATE OF GRACE C. STAUFFER, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: David P. Stauffer, 23127 Robertson Road, Doylesburg, PA 17219

**ESTATE OF MARTHA B. THORNTON, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Counsel Trust Company, c/o Alan M. Cashman, Esq., 141 Broadway, Suite 310, Hanover, PA 17331

Attorney: Alan M. Cashman, Esq., 141 Broadway, Suite 310, Hanover, PA 17331

**SECOND PUBLICATION****ESTATE OF FRANK E. BASEHOAR SR. a/k/a FRANK ELIAS BASEHOAR, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Douglas A. Basehoar, 3473 Lyon Park Court, Woodbridge, VA 22192

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

**ESTATE OF ADELINE S. FRANTZ, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

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**ESTATE OF EVELYN T. GLEESON, DEC'D**

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**ESTATE OF JAMES R. HARNER, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

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**ESTATE OF FRANCIS C. PERRIN, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

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**ESTATE OF CHARLOTTE B. THOMAS, DEC'D**

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**THIRD PUBLICATION****ESTATE OF LOUISE T. BRADY, DEC'D**

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**ESTATE OF MARGARET B. BRANDT,  
DEC'D**

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**ESTATE OF DORIS W. KING a/k/a  
DORIS WAREHIME KING, DEC'D**

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**ESTATE OF THEODORE LESKANICH,  
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**ESTATE OF LUTHER H. MARTIN a/k/a  
LUTHER HOWARD MARTIN, DEC'D**

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**ESTATE OF CONNIE M. PEARSON a/k/a  
CONNIE M. HAYES, DEC'D**

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**ESTATE OF MAYBELLE H. RUPP, DEC'D**

Late of Tyrone Township, Adams  
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