

Adams County **Legal Journal**

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COMMONWEALTH VS. BAKER

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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 – 295 (54 Pa. C.S. 311), the undersigned entity announce their intention to file in the office of the Secretary of the Commonwealth of Pennsylvania, on approximately 01/26/2012, a certificate for the conduct of business in Adams County, Pennsylvania, under the assumed or fictitious name, style, or designation of GEORGE MILLER RENTALS, with its principal place of business at 401 & 409 Third Street, Hanover, PA 17331. The names and addresses of the persons owning interest in said Business are: Michael Miller, 1 N. 6th Street, McSherrystown, PA 17344; George Miller III, 2141 Southpointe Drive, Hummelstown, PA 17036; Ina Ehrenberg, 19 Naugus Avenue, Marblehead, MA 01945; Glorietta Provenzano, 10507 Washingtonian Palm Way, Fort Myers, FL 33900; Elaine Dubs, 72 Sycamore Lane, Hanover, PA 17331; Benn Miller, 1132 Dunlin Court, Mechanicsburg, PA 17050; Tina Pfaff, 12 N. Jefferson Street, Hanover, PA 17331; and Patrick Miller, 715 Boundary Avenue, Hanover, PA 17331.

The character of the business is renting of real property.

5/18

NOTICE

NOTICE IS HEREBY GIVEN that JASON G. PUDLEINER, ESQ., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 3rd day of August 2012, and that he intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

5/11, 18 & 25

NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, June 1, 2012 at 8:30 a.m.

MULLINS—Orphan's Court Action Number OC-31-2012. The First and Final Account of George F. Mullins and Tina M. Linthicum, Co-Executors of the Estate of Rosalie Mullins a/k/a Rosalie F. Mullins deceased, late of Oxford Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

5/18 & 25

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that Peyton Rozala Topper, a minor, by her guardian, Erica Kissel, has filed with the Court of Common Pleas of Adams County, Pennsylvania, a Petition to change her name from Peyton Rozala Topper to Peyton Rozala Kissel.

Said Court has fixed a hearing on said Petition for July 6, 2012, at 8:30 a.m. in Courtroom No. 4 of the Adams County Courthouse, in Gettysburg, Pennsylvania, at which time and place all persons interested may appear and show cause, if any they have, as to why the prayer of said Petition should not be granted.

Roy A. Keefer, Esq.
Suite 204, 18 Carlisle Street
Gettysburg, PA 17325
Attorney for Petitioner

5/18

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 – 295 (54 Pa. C.S. 311), the undersigned entity(ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately April 4, 2012, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of THE SWOPE MANOR, with its principal place of business at 58-60 York Street, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are Jelcorp Healthcare, Inc. residing at 571 Oakhurst Drive, North Huntingdon, PA 15842.

The character or nature of the business is a bed and breakfast.

Edward W. Schmetzer, Paralegal
Bentz Law Firm, P.C.
680 Washington Road
Suite 200
Pittsburgh, PA 15228
412-563-4500

5/18

NOTICE

NOTICE IS HEREBY GIVEN that SEAN A. MOTT, ESQ., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 3rd day of August 2012, and that he intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

5/11, 18 & 25

COMMONWEALTH VS. BAKER

1. A person has authority to consent to a search if the person has a possessory or privacy interest in the area to be searched or the person has either explicitly or implicitly been granted permission to give consent by a person with a possessory or privacy interest in the area to be searched.

2. It is evident that consent may be given by one who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.

3. The authority which justifies the third-party consent does not rest upon the law of property, but rests rather on mutual use of the property by persons generally having joint access or control for most purposes.

4. The standard for measuring the scopes of a person's consent is based on objective evaluation of what a reasonable person would have understood by the exchange between the officer and the person who gave the consent.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CP-01-CR-371-2011, COMMONWEALTH OF
PENNSYLVANIA VS. MATTHEW EUGENE BAKER.

Robert A. Bain II, Esq., Assistant District Attorney, for Commonwealth
Kristin L. Rice, Esq., Public Defender, for Defendant
Campbell, J., November 16, 2011

FINDINGS OF FACT

1. Officer Joseph Henry is a police patrolman employed by the Littlestown Borough Police Department. Officer Henry has more than 21 years experience with the Littlestown Borough Police Department.
2. Officer Henry's experience includes eight years with the Adams County Drug Task Force. During that work, he encountered drug paraphernalia and conducted drug investigations.
3. On April 5, 2011, Officer Henry was on duty in the Borough of Littlestown, Adams County, Pennsylvania, when he responded to a call at 320 Prince Street in Littlestown Borough to assist Officer Reed. The officers were investigating a reported theft of money that allegedly occurred earlier in the evening.
4. Upon arriving at 320 Prince Street, Officer Henry was given permission to enter the residence by the owner of the property Mr. Harper Eugene Baker, an individual previously known to Officer Henry.
5. After entering the residence at 320 Prince Street, Officer Henry encountered Defendant. He encountered Defendant (also

previously known to Officer Henry) downstairs with Officer Reed. They all then went upstairs to interview Defendant.

6. Officer Henry and Officer Reed interviewed Defendant in a second floor bedroom of the residence concerning the reported theft. Officer Reed explained to Defendant he was not under arrest and did not have to talk with the officers at that time.
7. During the interview, the officers learned from Defendant that earlier in the evening Defendant had gone with other individuals to Baltimore, Maryland, where he purchased heroin.
8. During the interview, Officer Henry asked Defendant if he had any additional heroin on him or on his person or in the room.
9. Officer Henry testified that Defendant responded, "No, you can look if you want." Officer Henry qualified Defendant's remark by stating "words to that effect."
10. Officer Henry then looked around the small bedroom which contained a lot of personal property. Officer Henry located a small mint container on the dresser. Officer Henry then opened the container and checked the interior of the container for any contraband that could be concealed there.
11. Inside the mint container, Officer Henry found a plastic baggie corner and a white powdery residue that he believed was consistent with a small amount of controlled substance in a plastic sandwich bag. At first glance, Officer Henry immediately suspected that he was looking at drug paraphernalia.
12. Defendant then said, "Oh, that's an old one."
13. Officer Henry learned that the room in which the interview of Defendant occurred and in which the alleged paraphernalia was found was the Defendant's sister's bedroom.
14. Defendant told Officer Henry that he used the bedroom for college and slept there sometimes.
15. Officer Henry was unable to recall whether Defendant indicated he was sleeping in the bedroom during the time period surrounding the interview and Officer Henry's search of that room.
16. On cross-examination, Officer Henry indicated that his inquiry of Defendant as to whether he had any more heroin was as follows: "I said to him, 'Do you have any more heroin on you? Do you have any more heroin with you? Any more heroin around,'

words to that effect, and Defendant said, ‘No, go ahead and look if you want’ or words to that effect. I took it as consent to look around the room for additional heroin.”

17. Defendant never indicated that the dresser in the bedroom was his. The closed mint tin was located on top of the dresser. Defendant’s sister, the primary occupant of the bedroom, was not present in the bedroom during the interview or the search.
18. Defendant’s father never gave any permission to search the residence.
19. In response to Defendant’s granting permission to “look around,” Officer Henry testified, “I wasn’t going to – I had no intention of tearing through drawers or anything, but I wanted to do a cursory search.” However, Officer Henry interpreted Defendant’s consent to “look around” to include searching inside containers, dressers, etc. because he was looking for heroin and he wanted to look in places where heroin could easily be concealed.
20. Despite responding for an initial theft investigation, the officers’ search was only for heroin as opposed to the allegedly missing money.

ISSUE

1. Did the search of the contents of a mint container violate Defendant’s constitutional protection against unreasonable search and seizure?

CONCLUSION OF LAW

1. Because the search of the closed mint container exceeded the scope of the consent given, the search was constitutionally impermissible.

DISCUSSION

The right of the people to be secure in their houses from unreasonable searches and seizures is guaranteed by both the Fourth Amendment to the United States Constitution, as applicable to the States by the Fourteenth Amendment, and the Commonwealth’s Constitution, Article 1 Section 8. **U.S. CONST., amend. IV, amend. XIV; PA. CONST. art, 1, Section 8.** A search conducted without a warrant is deemed to be unreasonable under the Fourth Amendment and is therefore constitutionally impermissible, unless an established exception applies. *Commonwealth v. Strickler*, 757 A.2d 884, 888

(Pa. 2000). A search warrant is not required, where a person with the proper authority unequivocally and specifically consents to the search. *Florida v. Jimeno*, 500 U.S. 248, 250-51 (1991); *Strickler*, 757 A.2d at 888. A person has authority to consent to a search if the person has a possessory or privacy interest in the area to be searched or the person has either explicitly or implicitly been granted permission to give consent by a person with a possessory or privacy interest in the area to be searched. *Commonwealth v. Reid*, 811 A.2d 530, 544 n.26 (Pa. 2002) (citing *United States v. Matlock*, 415 U.S. 164, 171-72 (1974); *Stoner v. California*, 376 U.S. 483, 488-90 [1964]). To establish a valid consensual search, the prosecution must first prove that the consent was given during a legal police interaction, or if the consent was given during an illegal seizure, that it was not a result of the illegal seizure; and second, that the consent was given voluntarily. *Reid*, 811 A.2d at 544; *Strickler*, 757 A.2d at 888-901.

Although the first inquiry is ordinarily whether the police interaction with Defendant was lawful, instantly Defendant presents no argument to the contrary.¹ Rather, Defendant argues that he did not have either actual or apparent authority to consent to a search of the bedroom or items within the bedroom where the paraphernalia was found. Alternatively, Defendant argues that in the event he did have authority and did give voluntary consent to search, the search undertaken by the police exceeded the scope of his consent.

Defendant first argues that he lacked the authority to consent to a search of the bedroom. In support, Defendant argues that the bedroom was actually his sister's and he had no common authority over it. In order to consent to a warrantless search of property, a third party must possess common authority over the premises or effects sought to be inspected. *Matlock*, 415 U.S. at 171 & n.7; *Commonwealth v. Gutierrez*, 750 A.2d 906, 909 (Pa. Super. 2000).

¹ Based on the testimony of record, it is apparent that Officer Henry and Officer Reed advised Defendant that he was not under arrest and that he did not have to talk with the police. The evidence does not suggest that the police officers used any threatening or coercive behavior to secure Defendant's consent to search. Defendant was not placed in custody nor was he removed from his father's home. Defendant was not isolated; there is no testimony that he was physically touched by the officers or that they directed his movement in any way. Further, there is no indication that the encounter was for an excessively long period of time, or under any circumstances that suggest that Defendant was placed under undue duress or subject to any unlawful coercion. The encounter with police was lawful.

Under *Matlock* and *Gutierrez*, it is evident that consent may be given by one “who possessed common authority over or other sufficient relationship to the premises or effects sought to be inspected.” *Gutierrez*, 750 A.2d at 909 (citing *Matlock*, 415 U.S. at 171). “Common authority is, of course, not to be implied from the mere property interest a third party has in the property. The authority which justifies the third-party consent does not rest upon the law of property... but rests rather on ***mutual use of the property by persons generally having joint access*** or control for most purposes.” *Gutierrez*, 750 A.2d at 909-10 (citing *Matlock*, 415 U.S. at 171 n.7) (emphasis added). Thus, if Defendant enjoyed mutual use of the property together with his sister and if he had joint access for most purposes, then he had actual authority to consent to a search of the room. Here, Defendant told police that he used the room for college and slept there sometimes. Therefore, Defendant admitted to his mutual use of the room, as his bedroom, jointly with his sister.

Defendant relies on *Commonwealth v. Davis*, 743 A.2d 946 (Pa. Super. 1999) and *Commonwealth v. Gutierrez*, 750 A.2d 906 (Pa. Super. 2000) to argue that Defendant could not have had actual authority to consent to search. Because both of those cases are distinguishable on their facts, Defendant’s reliance thereon is misplaced. In *Gutierrez*, a security company that was hired by an apartment complex in which defendant resided to install, monitor, repair, and inspect the fire alarm and prevention system discovered, during a routine inspection, controlled substances hidden in a ceiling cavity behind the fire alarm. *Gutierrez*, 750 A.2d at 908. That company alerted police who were admitted to the apartment by the security company technician. *Id.* The Superior Court held that the security company had limited authority to enter into the apartment complex and did not share common authority with the tenant of the apartment as is necessary to consent to a search of the apartment by police. *Id.* at 909. Likewise, in *Davis*, an apartment building manager used a pass key to obtain access to an apartment for purposes of making annual repair and maintenance inspections. *Davis*, 743 A.2d at 949. Upon discovering drug paraphernalia on the kitchen table, the apartment manager contacted police and granted police access to the apartment. *Id.* The *Davis* court held that although the manager had the authority to enter into and inspect the premises for maintenance reasons, such authority was granted for a specifically limited purpose

and does not equate to common authority over the apartment for Fourth Amendment search purposes. *Id.* at 952-53.

In contrast, in the instant case, Defendant advised police that he used the bedroom while home from college and that he sometimes slept there. By making such concessions, Defendant acknowledged that he had access to the bedroom and that he made actual use of the bedroom for its ordinary purposes. Police were not required to inquire further as to the degree and scope of his usage (i.e. such as how many nights per year, per week, and what he did while within that bedroom). It was sufficient that Defendant acknowledged that he had access to and made use of the bedroom while home from college. Defendant acknowledged that he made mutual use of the bedroom and that he generally had joint access to the bedroom along with his sister. The interview of Defendant occurred within the confines of the bedroom he sometimes used. Accordingly, Defendant possessed common authority over the bedroom for Fourth Amendment purposes and was authorized to give consent to a search of that room.²

Defendant next argues that the search conducted by Officer Henry exceeded the scope of the consent given by Defendant. Here I am constrained to agree.

When an official search is properly authorized, the scope of the search is limited by the terms of its authorization. *Reid*, 811 A.2d at 549-50 (citing *Walter v. United States*, 447 U.S. 649, 656 [1980]). The standard for measuring the scope of a person's consent is based on objective evaluation of what a reasonable person would have understood by the exchange between the officer and the person who gave the consent. *Reid*, 811 A.2d at 550 (citing *Florida v. Jimeno*, 500 U.S. 248, 251 [1991]). When an official search of the property is authorized, whether by consent or by the issuance of a valid warrant, the scope of the search is limited by the terms of its authorization. *Reedy v. Evanson*, 615 F.3d 197, 225 (3d. Cir. 2010). Therefore, in order to measure the scope of Defendant's consent in this particular case, it is necessary to determine what Officer Henry could have objectively believed from his exchange with Defendant, specifically Defendant's statement to "look if you want."

² Having determined that Defendant had actual authority to consent to a search of the bedroom that he mutually used with his sister, the same room within which the interview was taking place, it is unnecessary to address Defendant's argument that Defendant lacked apparent authority to consent to the search.

Specifically, in this case, the inquiry is whether Defendant's statement that officers could "look if you want" could objectively and reasonably include authorization to search inside of containers located within the bedroom. First, while it is clear that Defendant gave consent to "look around," upon considering Officer Henry's testimony, it is unclear as to exactly what Defendant said in response to Officer Henry's questioning. Indeed, it is equally unclear what exactly Officer Henry asked. On direct examination, Officer Henry testified, "I asked him, do you have any more heroin? He said, 'No, you can look if you want' *or words to that effect*." N.T. pg. 7. Then, on cross-examination Officer Henry testified, "I said to him, 'Do you have any more heroin on you? Do you have any more heroin with you? Any more heroin around,' *words to that effect* and he said, 'No, go ahead and look if you want' *or words to that effect*." Based on those exchanges, Officer Henry took Defendant's answer to be "consent to look around the room for additional heroin." **N.T. pg. 11.** Officer Henry was unable to recite precisely what Defendant said, always qualifying his recitation of the dialogue by indicating "words to that effect" were expressed.

This creates uncertainty in determining what exactly Defendant was consenting to. It is apparent from his own testimony that Officer Henry did not believe he had carte blanche authority to make a thorough and comprehensive search of the bedroom and its contents. He testified that upon being told he could "look if he wanted," he "just made a cursory check of the bedroom." Then, on cross-examination he testified, "I wasn't going to – I had no intention of tearing through drawers or anything, but I wanted to do a cursory search." But yet he testified that he also interpreted Defendant's statement to "look around if you want" to mean he could look anywhere in the room. During the search, Officer Henry observed a small mint container on top of the dresser. Contrary to his assertion that he had no intention of going through drawers or anything, as part of his search he opened that container and located what he believed to be drug paraphernalia inside. By opening containers and searching inside, it is clear that Officer Henry performed more than a cursory search of the room. He did more than simply look around the room. After having looked around the room and observing the mint containers, had Officer Henry suspected, based on his experience with the Drug Task Force and based on his interview with Defendant concerning Defendant's

procurement of heroin earlier in the day, that the tin may have contained controlled substances, he could have secured a search warrant to make a more thorough and exhaustive search beyond the scope of the consent given. Additionally, he may have inquired of Defendant whether the mint container was his and whether he could look inside. He did neither, instead assuming Defendant's consent was carte blanche authority to not only look around the room cursorily, but also to look inside of closed containers located within the room.

In summary, because of the vague and imprecise testimony concerning what exactly the officers asked of Defendant and what exactly he said in response concerning the officer's authority to "look if you want," it is impossible to ascertain the appropriate scope of the consent. Assuming Defendant said precisely, "You can look around if you want," a reasonable interpretation of such a statement is that police could walk through the room looking for anything readily apparent. It was reasonable for the officers to do what Officer Henry indicated he intended to do, that is make a cursory check of the bedroom by looking around to see if there was anything that raised his suspicions as a trained officer that there was either heroin readily apparent or in some other place necessitating further search. Presumably, it is because of Officer Henry's extensive training and experience, including eight years of work with the drug task force, that he recognized a small mint container as a likely hiding place for drug contraband. However, based on the exchange between Defendant and the officers, I do not find that the authority granted by Defendant to make a cursory search extended to opening and searching inside of closed containers. Additional steps could have been taken and should have been taken by the officers to either secure Defendant's specific consent to open the container and search therein or to secure a warrant allowing for such a comprehensive search.

For the foregoing reasons, Defendant's Motion to Suppress is granted, and the attached Order is entered.

ORDER

AND NOW, this 16th day of November 2011, for the reasons set forth in the attached Opinion, Defendant's Motion to Suppress is granted. The evidence found within the mint container, specifically a plastic baggie corner containing white powdery residue, is suppressed and deemed inadmissible at trial in this matter.

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

(No Estate Notices Submitted)

SECOND PUBLICATION

ESTATE OF WILLIAM J. BROWNE,
DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Patricia E. Gabaree, 1021 Jackson Square Road, Spring Grove, PA 17362

Attorney: John J. Mooney III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF ROBERT EUGENE PRICE
a/k/a ROBERT E. PRICE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Jody K. Price, 342 Heritage Drive, Gettysburg, PA 17325

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

ESTATE OF BERNADETTE M. WEAVER,
DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administratrix c.t.a.: Joyce A. Jarosick, 109 Elk Drive, Hanover, PA 17331

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

ESTATE OF DONALD F. WOOD, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executor: ACNB Bank, Attn: Christine Settle, 16 Lincoln Square, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

THIRD PUBLICATION

ESTATE OF KATHRYN J. GROOT,
DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Raymond J. Sheedy III, 1019 Crouse Mill Road, Keymar, MD 21557

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

ESTATE OF CHRISTIANA A. LEONARD,
DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Robbin A. Leonard, 125 North Second St., McSherrystown, PA 17344

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF ALBERT F. RITTER a/k/a
ALBERT FRANKLIN RITTER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Kent L. Sauers, 2 Butternut Lane, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., Shultis Law, LLC, 1147 Eichelberger Street, Suite F, Hanover, PA 17331

ESTATE OF JAMES D. ROSENBERY,
DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Laura Miller, 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 RALPH E. WOODWARD JR.,
DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

