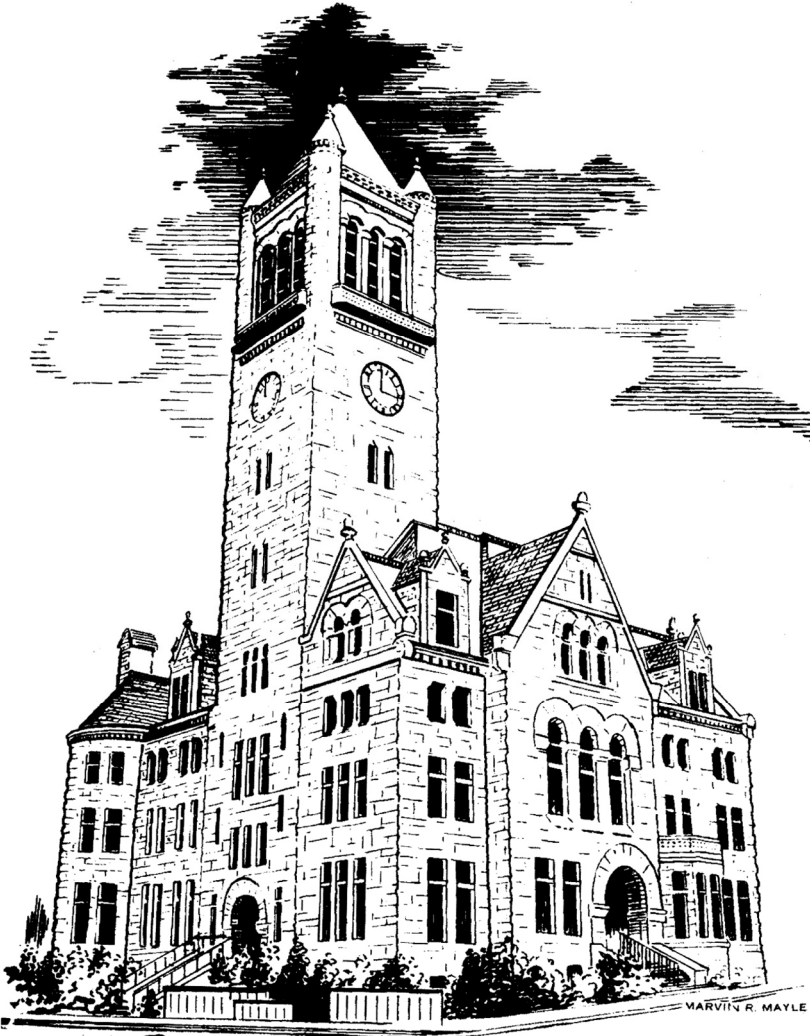


FAYETTE LEGAL JOURNAL

VOL. 85

JUNE 11, 2022

NO. 24



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at 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. Gordon and Melinda Deal Dellarose

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

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Mark D. Brooks

President Elect: John A. Kopas, III

Vice-President: Gretchen A. Mundorff

Secretary: Anne N. John

Treasurer: Louise D. Monaghan

Past President: Charles O. Zebley, Jr.

Executive Director: Garnet L. Gordon

Directors

Jennifer M. Casini

Rachel A. Clark

Jeremy J. Davis

Robert A. Gordon

Sheryl R. Heid

James E. Higinbotham, Jr.

Margaret Zylka House

Douglas S. Sholtis

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.

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

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

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

REGINA BALABAN, a/k/a REGINA ANN BALABAN, late of North Union Township, Fayette County, PA (3)

Administrator: Regis F. Balaban
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

VERNA B. CABLE, late of Springfield Township, Fayette County, PA (3)

Executrix: Joy D. Cable
c/o Adams Law Offices, PC
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

EDNA MAE COOPER, late of Lemont Furnace, Fayette County, PA (3)

Executor: James Irvin Cooper
c/o John and John
96 East Main Street
Uniontown, PA 15401
Attorney: Anne N. John

ROSINA C. ENDSLEY, a/k/a ROSINA CAROLINE ENDSLEY, late of Brownsville, Fayette County, PA (3)

Executrix: Renee Kolessar
c/o John and John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

ANDRE ETHERIDGE, a/k/a ANDRE WILLIAM ETHERIDGE, late of South Union Township, Fayette County, PA (3)

Personal Representative:
Twanna L. Etheridge
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

NANCY C. FARRIER, late of Masontown, Fayette County, PA (3)

Administratrix: Diana Farrier
c/o Radcliffe Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: Robert R. Harper, Jr.

DONALD D. FRANKHOUSER, late of North Union Township, Fayette County, PA (3)

Personal Representative:
Dawn Marie Shaw
171 Turkeyfoot Road
Lemont Furnace, PA 15456
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

LORRAINE ABRAHAM HERBERT, late of Vanderbilt Borough, Fayette County, PA (3)

Executor: Randall S. Herbert, Jr.
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

WILLIAM MOORE, a/k/a WILLIAM O. MOORE, JR., late of Farmington, Fayette County, PA (3)

Executrix: Wanda L. Anker
P.O. Box 184
Farmington, PA 15437
c/o Kopas Law Office
556 Morgantown Road
Uniontown, Pa 15401
Attorney: John Kopas

DONALD B. SIMPSON, a/k/a DONALD BLAKE SIMPSON, late of North Union Township, Fayette County, PA (3)

Executor: Donald M. Simpson
PO Box 61
Hopwood, PA 15445

c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

JAMES STICKLES, a/k/a JAMES LEE STICKLES, late of Springhill Township, Fayette County, PA (3)

Personal Representative:
Robert L. Stickles
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

DORIS WAGNER, a/k/a DORIS JEAN WAGNER, late of Menallen Township, Fayette County, PA (3)

Co-Executrix: Sharon Hixenbaugh and Colleen Fitzpatrick
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

Second Publication

ARTHUR E. BENSON, late of Connellsville, Fayette County, PA (2)

Executor: Arthur David Benson
213 North 12th. Street
Connellsville, PA 15425
c/o Rowan Law Office
890 Vanderbilt Road
Connellsville, PA 15425
Attorney: Mark Rowan

JAMES HAYDEN, a/k/a JAMES E. HAYDEN, JR., late of North Union Township, Fayette County, PA (2)

Administratrix: Zoe Claire Hayden
1690 Newtown Langhorne Road PMB 4663
Newtown, PA 18940
c/o Newcomer Law Offices
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing Newcomer

JAMES NICOLETTE, a/k/a JAMES E. NICOLETTE II, late of Bullskin Township, Fayette County, PA (2)

Executrix: Eva Joy Nicolette
773 Kreinbrook Hill Road
Mt. Pleasant, PA 15666
c/o 749 North Church Street
Mt. Pleasant, PA 15666
Attorney: Paul Toohey

THOMAS E. PAVLOVICH, a/k/a THOMAS EUGENE PAVLOVICH, late of Masontown, Fayette County, PA (2)

Executor: Ralph Cavalcante
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

MELVIN THOMAS SHULTZ, a/k/a MELVIN T. SHULTZ, a/k/a TOM SHULTZ, late of Springfield Township, Fayette County, PA (2)

Co-Executrices: Stacie L. Keefer and Anna K. Upton
c/o Molinaro Law Offices
P.O. Box 799
Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

First Publication

DONNA M. BEATTY, late of Connellsville, Fayette County, PA (1)

Administrator: Ivana Beatty
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

JOSEPH HETZ, a/k/a JOSEPH PAUL HETZ, "Pauilly", late of Georges Township, Fayette County, PA (1)

Executrix: Melissa A. Shawl
143 Poundstone Road
Uniontown, PA 15401-6807
c/o Lynch Law Group
375 Southpoint Boulevard, Suite 100
Canonsburg, PA 15317
Attorney: Frank Gustine

PAUL A. LAWS, late of Springfield Township,
Fayette County, PA (1)

Executor: John R. Laws
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

ELIZABETH MARUCCI, late of Redstone
Township, Fayette County, PA (1)

Executor: Vincent P. Marucci
127 Motorcycle Road
Grindstone, PA 15442
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

KENNETH C. SMITHLEY, late of Georges
Township, Fayette County, PA (1)

Executrix: Robin Calhoun
c/o Goodwin Como. P.C.
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401
Attorney: Benjamin Goodwin

MARC TINSTMAN, late of Brownsville,
Fayette County, PA (1)

Administrator: Nathan Tinstman
130 Armour Street
Richeyville, PA 15301
c/o Neighborhood Attorneys, LLC
8 East Pine Avenue
Washington, PA 15301
Attorney: Jessica Roberts

TERRI TINSTMAN, late of Brownsville,
Fayette County, PA (1)

Administrator: Nathan Tinstman
130 Armour Street
Richeyville, PA 15358
c/o Neighborhood Attorneys, LLC
8 East Pine Avenue
Washington, PA 15301
Attorney: Jessica Roberts

LEGAL NOTICES

NOTICE

Notice is hereby given that Louis Gallet, Inc., a Pennsylvania business corporation with its principal office at 120 Delaware Avenue, Uniontown, Pennsylvania 15401, has elected to dissolve and will file Articles of Dissolution in the Office of the Department of State of the Commonwealth of Pennsylvania under the provisions of the Pennsylvania Business Corporation Law, 15 Pa.C.S.A. §1977.

Submitted by:
William M. Radcliffe, Esquire
RADCLIFFE LAW, L.L.C.
648 Morgantown Road, Suite B
Uniontown, PA 15401

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

NOTICE OF FILING OF PETITION FOR
APPOINTMENT OF PLENARY GUARDIAN
OF PERSON AND ESTATE AND ORDER
APPOINTING GUARDIAN

In the matter of In Re: D.A., an alleged
incapacitated person, No. 65 OC 2021

Notice is hereby given that, on November 17, 2021 a Petition was filed in the above-named Court by Adult Protective Services, by and through Liberty Healthcare, requesting an order to appoint a plenary guardian for the Person and Estate of D.A. On January 13, 2021, the above-named Court entered an Order Determining Incapacity and Appointing Permanent Plenary Guardian of the Person and Estate.

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO. 53 OF 2022, G. D.

SHEILA PETERSON,
Plaintiff,
Vs.
JEANNE L. MOORE,
Defendant.

NOTICE TO DEFENDANT,
JEANNE L. MOORE

You have been named as a defendant in a custody action instituted by plaintiff, Sheila Peterson, against you in this Court. Plaintiff alleges in the Complaint in Ejectment immediate and exclusive possession of the property at 1304 Hawthorn Street, Connellsville, Fayette County, Pennsylvania, Tax Parcel Number 06-02-0111, be granted to plaintiff, Sheila Peterson.

The service of this Complaint by publication is made pursuant to an Order of Court dated May 23, 2022 and filed at the above term and number.

You are hereby notified to plead to the Complaint in this action of which the above is a brief summary within twenty (20) days from today.

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION

ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PENNSYLVANIA LAWYER
REFERRAL SERVICE
PENNSYLVANIA BAR ASSOCIATION
100 SOUTH STREET
P. O. BOX 186
HARRISBURG, PA 17108
PHONE: 1-800-692-7375

By: David D. Tamasy, Esquire
Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Phone: 724-626-8882

IN RE: Reppert, Todd A. d/b/a Reppert
Appliance and Furniture

Case No. 21-22274-GLT, Chapter 7

Inventory and Equipment of
Reppert Appliance and Furniture

Date of Sale 7/7/2022 at 10:00 a.m.
A Hearing will be held on 7/7/2022 at 10:00 a.m.
Courtroom A, 54th Floor, U.S. Steel Tower
600 Grant Street, Pittsburgh, PA 15219
Objections due by: June 13, 2022
Initial Offer \$ 16,500.00
Higher and better offers will be considered at the hearing
Hand money required: \$2,500.00
(Cash or Certified Funds Only)
Contact: Robert H. Slone, Trustee
223 South Maple Avenue
Greensburg, PA 15601
Ph# (724) 834-2990
For more information:
www.pawb.uscourts.gov/easi.htm

WARMAN ABSTRACT & RESEARCH LLC**JOHN F. WARMAN****518 Madison Drive****Smithfield, PA 15478****724-322-6529****johnfranciswarman@gmail.com****COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE****A DECADE OF EXPERIENCE E&O INSURED WILL TRAVEL ACCEPTING NEW CLIENTS****SOMERSET COUNTY CHILDREN AND YOUTH SERVICES****EXTERNAL JOB ADVERTISEMENT****Assistant Solicitor****(Full-time, contract position)**

Starting salary: 59,703.00 + Health Insurance Benefits & Rich Retirement Plan
Somerset County Children and Youth Services (CYS) is currently accepting applications for the position of Assistant Solicitor. The Assistant Solicitor will handle all legal matters as directed for the Somerset County Office of Children & Youth Services providing advice/service to the Agency Administration of the Office of Children & Youth Services. For a full listing of job duties associated with this position, please see the "Job Openings" link on the Somerset County homepage (<http://www.co.somerset.pa.us/>).

Interested candidates should send a cover letter, resume or any other supporting documentation to:

Somerset County Human Resources Director
300 N. Center Avenue, Suite 500
Somerset, PA 15501

Priority consideration will be given to candidates whose material is received on or before June 17, 2022. All applications will be held in the strictest confidence. Somerset County is an Equal Opportunity employer and will not discriminate on the basis of race, color, national origin, sex or handicap in its activities, programs or employment practices.

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OFF AYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :
V. :
ANDRA RYAN SLEDGE, SR., :
DEFENDANT. : No. 2693 of 2019

OPINION AND ORDER

Wagner, P.J.

May 17, 2022

Before the Court is the Post Sentence Motion filed by the Defendant, Andra Ryan Sledge, Sr., after his conviction on the charges of Possession with Intent to Deliver and Possession of 364.99 grams of cocaine, and Possession of Drug Paraphernalia. On February 25, 2022, the Defendant was sentenced to four (4) to eight (8) years incarceration. Thereafter, the Defendant filed a Post Sentence Motion raising the following issues in support of obtaining a new trial:

1. Did the trial court abuse its discretion in failing to grant the Defendant's motion for a mistrial based upon the Commonwealth's failure to serve the search warrant for the cellular phones and by not providing the Defendant with the results of the search warrant?
2. Did the trial court abuse its discretion in failing to grant the Defendant's motion for a mistrial based upon the affiant's comments on the Defendant's post-arrest silence and the Prosecutor's reiteration of the Defendant's post-arrest silence in its closing argument.

FACTUAL BACKGROUND

On June 28, 2019, the Fayette County Task Force assisted by police officers from the City of Connellsville Police Department served a search warrant for the property located at 403- 405 North Pittsburgh Street in Connellsville, Pennsylvania, known as "The Studio". One side of the building is a residential building and the back of it is a music studio. (N.T. of 1/5/22 at pg. 19). Members of the task force arrived at the location and were given entry by the Defendant. (N.T. at pg. 21). When the officers entered the residence, Benjamin Sledge was present. (N.T. at pg. 22). In the back room of the residence, the task force members located a shoe box with several baggies of varying sizes of crack cocaine and currency. (N.T. at pg. 31). The sum of two thousand three hundred dollars (\$2,300.00) was in the shoe box. (N.T. at pg. 33). The box also contained various papers with the Defendant's name on them and a bottle of medicine also with his name on it. (N.T. at pg. 133). The Defendant was found to have five hundred and two dollars (\$502.00) on his person. (N.T. at pg. 36). During the search, measuring cups, pots and pans were found on the counters in the kitchen area with white residue in

them. (N.T. at pg. 129).

The task force located six (6) cell phones in the residence. (N. T. at pg. 147). During trial, the defense was informed that a search warrant had been issued to permit the extraction of information from the phones. *Id.* The Allegheny County forensic unit attempted to extract information from the phones but was unable to obtain any information from them. (N.T. at pg. 152). In response to a question from the defense counsel, Officer Garlick testified that "Andra had an opportunity to express that to us when I questioned him at The Studio." At that point, defense counsel made a motion for a mistrial as the officer's response brought up the Defendant's right to remain silent and the defense received no notice of the warrant and search of the cell phones and no information was presented as to the results of the search were provided to the defense. (N.T. at pg. 153). The request for a mistrial was denied and the court ordered that the Commonwealth could not present any testimony regarding the contents of the cell phones. In addition the Court directed the jury to disregard the information and testimony.

DISCUSSION

The Defendant asserts that the trial court abused its discretion in failing to grant the Defendant's request for a mistrial. The trial court may grant a mistrial only where the incident upon which the motion is based is of such a nature that its unavoidable effect to is deprive the Defendant of a fair trial by preventing the jury from weighing the evidence and rendering a true verdict. *Commonwealth v. Baldwin*, 158 A.3d 1287 (Pa. Super. 2017). The trial court is vested with the discretion to grant a mistrial whenever the alleged prejudicial event may reasonably be said to deprive the Defendant of a fair and impartial trial. *Id.* In making its determination of whether to declare a mistrial, a court must discern where misconduct or prejudicial error actually occurred, and if so, the degree of any resulting prejudice. *Id.*

The grant of a mistrial is an extreme remedy and should be granted only when the prejudice to the defendant cannot be ameliorated to ensure a fair trial. *Commonwealth v. Cash*, 137 A.3d 1262 (Pa. 2016). A mistrial is not necessary where cautionary instructions are adequate to overcome any possible prejudice. *Commonwealth v. Risoldi*, 238 A.3d 434 (Pa. Super. 2020) citing *Commonwealth v. Cash*, 137 A.3d 1262 (Pa. 2016).

The Defendant based his request for a mistrial upon the Commonwealth's failure to serve the search warrant for the cellular phones and for failing to provide the Defendant with the results of the search warrant. The Defendant argues that the failure to provide exculpatory discovery evidence was a violation of Rule of Criminal Procedure 573 which requires the Commonwealth to provide any favorable evidence to the accused that is material to either guilt or punishment. The cell phones were sent to the Allegheny County Crime Lab to extract the contents of the cell phones. The officer testified that drug dealers generally have numerous cell phones to conduct their drug sales. (N.T. at pg. 138). Six cell phones were recovered at the property. *Id.* The officer testified that no evidence was retrieved from the cell phones. (N.T. at pg. 148). He later testified that the content of the cell phones had no evidentiary value and their evidentiary value was the large number of phones at the property. *Id.*

The police failed to provide a copy of the warrant and the reports related to the cell phones to either the Commonwealth or the defense and the officer did not have the reports as part of his file. (N.T. at pg. 154). As to a Brady violation, the evidence that nothing was extracted from the cell phones was not exculpatory to the accused, nor was it suppressed by the Commonwealth, as the police had failed to turn it over to the Commonwealth for release, and the fact that no information was extracted from the cell phones was not prejudicial to the Defendant.. The lack of information about the contents of the cell phones is neither exculpatory or inculpatory evidence. It is not a violation of the mandatory discovery rule.

The Court issued a cautionary instruction regarding the cell phones. The Court directed in his jury instructions that only evidence that the jury should consider about the cell phones was the number of cell phones in the residence. Juries are presumed to follow the trial court's cautionary instructions. *Riso/di*, citing to *Commonwealth v. Fletcher*, 41 A. 2d 892 (Pa. Super. 2012). The statements of the witness and the cautionary instruction were sufficient to ameliorate any harm that may have occurred related to the comments regarding the cell phones during the trial.

The Defendant further alleges that the trial court erred in failing to grant a mistrial when the officer commented on the Defendant's post arrest silence. During the trial, defense counsel asked the following question of the officer: "It wouldn't have evidentiary value to Andra if he had access, because there is no evidence of drug dealing in his cell phone, so he is not selling drugs, correct?" The officer's response was "Andra had an opportunity to express that to us when I questioned him at The Studio." Counsel then requested a sidebar to request a mistrial.

In the closing, there was no reference to post arrest silence, rather defense counsel objected only to the prosecutor's statement that defense counsel could have requested to look at the cell phones. (N.T. at pg. 195). Defense counsel objected that he did not have to present any evidence. *Id.* The court sustained his objection and gave a curative instruction that the defendant has no burden to present evidence. There was no renewed request for a mistrial after the prosecutor's statement in the closing. The statement did not rise to the level that it tainted the evidence presented or interfered with the ability of the jury to reach a fair verdict in the case.

The trial court's determination that a mistrial was not warranted and that the cautionary instructions were adequate to overcome any possible prejudice. Therefore, the Defendant's post trial motion is hereby DENIED.

BY THE COURT:
WAGNER, P.J.

ATTEST:
Clerk of Courts

Mark D. Brooks, Esquire and Tremba, Kinney, Greiner & Kerr, LLC are pleased to announce that our Connellsville office is relocating to 1310 Morrell Avenue, Suite C, Connellsville, PA 15425, as of June 1, 2022.



We are maintaining our existing telephone and facsimile numbers, as well as email addresses and assure this will be a smooth transition.

Telephone (724) 628-7955

Facsimile (724) 628-7747

Mark D. Brooks, Esquire – mbrooks@westpalawyers.com

Cheyenne Byers – cstefan@westpalawyers.com

Megan Haggerty – mhaggerty@westpalawyers.com

We take this opportunity to thank you for being a part of this exciting endeavor and invite you to stop in at the new location.

We value your business and we are looking forward to our continued business relationship with you.

TREMBA, KINNEY, GREINER & KERR, LLC

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

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI

& ASSOCIATES

412-281-2200

www.gislaw.com

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