

Adams County **Legal Journal**

Vol. 53

June 3, 2011

No. 3, pp. 14-23

IN THIS ISSUE

COMMONWEALTH VS. ZITTLE

**Our Trust department
makes a business of caring
for other people's property.**

*Karen Arthur
Trust Officer*



**Trust and investment services from
a bank with a long history of trust.**

For more information or a free
consultation, please call 717.339.5062.

Member FDIC



ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Subscribers should send subscriptions directly to the business office. Postmaster: Send address changes to Adams County Legal Journal, 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313.

Business Office – 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313. Telephone: (717) 334-1553

Periodicals postage paid at Gettysburg, PA 17325.

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW

NO.: 11-S-335

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

FARMERS AND MERCHANTS TRUST
COMPANY OF CHAMBERSBURG,
Plaintiff

vs.

JOHN A. SLEE

TO: John A. Slee

PRESENTLY OR FORMERLY of 6540 Mountain Drive, Chambersburg, PA 17202. A lawsuit has been filed against you in mortgage foreclosure and against your real estate at Lincoln Way East a/k/a 6924 Chambersburg Road (Parcel #12-A09-0047), Fayetteville, Pennsylvania 17222 because you have failed to make the regular monthly payments on your mortgage loan and the loan is in default. The lawsuit is an attempt to collect a debt from you owed to the plaintiff, Farmers and Merchants Trust Company of Chambersburg. A detailed notice to you of your rights under the Fair Debt Collection Practices Act (15 U.S.C. §1692, et. seq.) is included in the Complaint filed in the lawsuit. The lawsuit is filed in the Adams County Court of Common Pleas, at the above term and number.

A copy of the Complaint filed in the lawsuit will be sent to you upon request to the Attorney for the Plaintiff, Scott A. Dietterick, Esquire, P.O. Box 650, Hershey, PA 17033. Phone (717) 533-3280.

IF YOU WISH TO DEFEND, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AN ATTORNEY AND FILE YOUR DEFENSES OR OBJECTIONS IN WRITING WITH THE COURT. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE LAWYER OR CANNOT

AFFORD ONE GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE

Court Administrator
Adams County Courthouse
117 Baltimore Street
Gettysburg, PA 17325
Phone (717) 334-6781 Ext. 213

6/3

LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW

NO. 11-S-853

ACTION IN MORTGAGE FORECLOSURE

ADAMS COUNTY HABITAT FOR
HUMANITY, INC., Plaintiff

vs.

JACKIE W. WISE and SUE G. WISE,
Defendants

TO: Jackie W. Wise

YOU ARE hereby notified that Plaintiff, Adams County Habitat for Humanity, Inc. has filed a Mortgage Foreclosure Complaint, endorsed with a Notice to Defend, against you in the Court of Common Pleas of Adams County, Pennsylvania, docketed to 11-S-853, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 1554-A Fairfield Road, Gettysburg, PA 17325, whereupon your property would be sold by the Sheriff of Adams County.

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the Complaint filed in the Adams County Court of Common Pleas at No. 11-S-853 and described hereinabove, you must take action within twenty (20) days after this publication by entering a written appearance personally or by an 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 the relief requested by the Plaintiffs. You may lose property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Adams County Courthouse
Gettysburg, PA 17325
(717) 334-6781

Hartman & Yannetti
Gary E. Hartman, Esq.
Attorney for Plaintiffs
126 Baltimore Street
Gettysburg, PA 17325
(717) 334-3105

6/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on April 13, 2011.

The name of the corporation is
TRELAR INC.

The corporation has been incorporated under the Pennsylvania Business Corporation Law of 1988.

Robert E. Campbell, Esq.
Campbell & White, P.C.
112 Baltimore Street
Gettysburg, PA 17325
Attorneys

6/3

COMMONWEALTH VS. ZITTLE

1. A claim for ineffective assistance of counsel is not cognizable on direct appeal. Therefore, Appellant's claim that trial counsel was ineffective cannot be addressed herein, as this claim is properly addressed through post-conviction relief proceedings.

2. It is well settled that a prosecutor has reasonable latitude during his closing argument to advocate his case, respond to arguments of opposing counsel, and fairly present the Commonwealth's version of the evidence to the jury.

3. Reversible error occurs only when the unavoidable effect of the challenged comments would prejudice the jurors and form in their minds a fixed bias and hostility toward the defendant such that the jurors and form in their minds a fixed bias and hostility toward the defendant such that the jurors could not weigh the evidence and render a true verdict. Prosecutorial misconduct is evaluated under a harmless error standard.

4. Generally, evidence of other crimes, wrongs or acts is not admissible at trial to show the character of the accused or to prove conformity therewith. But, evidence of other crimes or acts may be admitted if such evidence proves a common scheme, plan or design embracing the commission of two or more crimes so related to each other that proof of one tends to prove others.

5. To determine the admissibility of evidence of other crimes, wrongs or acts the probative value of the evidence must outweigh the prejudicial effect. The admissibility of evidence, including evidence of other crimes, wrongs, or acts, is solely within the discretion of the trial court and will only be reversed upon a showing of an abuse of that discretion.

6. It must be presumed as a matter of law that the jury did not consider the evidence of the prior offenses for any improper purpose. The law presumes that the jury will follow the instructions of the court.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CP-01-CR-1075-2009, COMMONWEALTH OF
PENNSYLVANIA VS. GARY DAVID ZITTLE

Robert A. Bain II, Esq., Assistant District Attorney, for Commonwealth
Kristin L. Rice, Esq., for Defendant

Campbell, J., January 18, 2011

OPINION PURSUANT TO PA. R.A.P. 1925(a)

Appellant, Gary David Zittle, appeals his convictions of Theft by Deception – False Impression under 18 Pa. C.S.A. § 3922(a)(1), Theft by Deception – Preventing Another from Acquiring Information under 18 Pa. C.S.A. § 3922(a)(2), and Deceptive Business Practices – Sale of Less than Represented Quantity under 18 Pa. C.S.A. § 4107(a)(2). For the reasons set forth below, it is respectfully requested that Appellant's convictions be affirmed.

David Paoletta, CEO and co-founder of Cambrooke Foods in Massachusetts, began a series of negotiations with Appellant via

email in October 2006 for a Rheon KN 400, a machine used in the baking industry. During the negotiations, Appellant was holding himself out as a sole proprietor and owner of Modern Baking Systems, located at his residence in East Berlin, Adams County, Pennsylvania. In February 2007, Appellant sent Mr. Paolella an email offer for a Rheon KN 400 machine that indicated the serial number, manufacturing date and a price of \$38,000.00. At this point, Mr. Paolella responded to Appellant's email by offering to put down earnest money and then paying the balance "COD." Appellant responded to Mr. Paolella's email by indicating he had a better idea. Appellant suggested that Mr. Paolella fly into Atlanta, Georgia to inspect the machine, and if he was happy with it, Mr. Paolella could then wire the funds to Appellant. Mr. Paolella then sent one of his employees to inspect the Rheon machine in Georgia, where the machine was located. After his employee inspected the machine, Mr. Paolella and Appellant reached an agreement where Appellant would sell Mr. Paolella the Rheon machine in exchange for \$37,000.00. Mr. Paolella was to wire the \$37,000.00 to Appellant, and the machine would be shipped immediately upon the transfer of the funds. Specifically, on March 12, 2007 Mr. Paolella wire transferred \$37,000.00 to Appellant's Modern Baking Systems account, and this transfer was verified by banking records. Upon receiving the specific address for the location of the machine for pickup, Mr. Paolella hired a common carrier to pick up the machine. However, the common carrier was turned away at the plant three times and was unable to pick up the machine. According to Mr. Paolella, when he contacted Appellant about his inability to obtain the Rheon machine, Appellant admitted that he did not own the machine. At this point, Mr. Paolella requested that Appellant return his \$37,000.00. However, Mr. Paolella only received \$5,000.00 of the \$37,000.00 back from Appellant.

In reality, the Rheon machine was owned by Atlanta Cheesecake Company in Atlanta, Georgia. In February or March of 2007 Appellant expressed an interest in a Rheon KN 400 machine that was for sale at the Atlanta Cheesecake Company and that was purportedly the same Rheon machine that Appellant tried to sell to Mr. Paolella. There had been some negotiations with Appellant and Alan Weidner, an independent contractor with the Atlanta Cheesecake

Company, to buy the Rheon and several other pieces of equipment. Appellant never purchased the Rheon machine, nor was he given the exclusive rights to sell the Rheon machine by the Atlanta Cheesecake Company. At all times between October 2006 and March of 2007 Atlanta Cheesecake Company owned the Rheon KN 400.

As a result of the above-described incident, Appellant was charged with two counts of Theft by Deception under 18 Pa. C.S.A. § 3922(a) (1), (2) and one count of Deceptive Business Practices under 18 Pa. C.S.A. § 4107(a)(2).¹ On March 11, 2010 the Commonwealth filed a Motion for Admission of Other Acts Evidence Pursuant to Pa. R. Evid. 404(b). Specifically, the Commonwealth sought to introduce evidence that in 2004 Appellant contacted Ernest DiMartino, who operated a centrifuge business. After negotiations, Mr. DiMartino agreed to buy a centrifuge from Appellant, and he transferred money to Appellant to purchase the centrifuge. However, Appellant did not own the centrifuge or have an ownership interest in the centrifuge. As a result of this incident, Appellant pleaded guilty to Theft by Deception (18 Pa. C.S.A. § 3922(a)(1)) on May 26, 2006.² The Commonwealth also sought to introduce evidence that in 2005, Appellant offered to sell two food machines to Chad Rutledge in Illinois. Mr. Rutledge sent \$22,000.00 to Appellant's Modern Baking Systems account; however, Mr. Rutledge subsequently learned that Appellant did not own these machines or have an ownership interest in the machines. As a result of this incident, Appellant pleaded guilty to Theft by Deception (18 Pa. C.S.A. § 3922(a)(1)) on May 26, 2006.³ According to the Commonwealth, both of these incidents were relevant to show common scheme, plan or design and to evidence a continuing course of conduct. The Commonwealth further averred that if Appellant chose to take the stand in his own defense, these incidents would be relevant to impeach Appellant. Following a hearing on March 25, 2010, this Court entered an Order granting the Commonwealth's Motion to Admit 404(b) Evidence. This Court specifically noted in its order that the evidence would be

¹ By Order dated August 6, 2010, the Criminal Information was amended to add the charge of Deceptive Business Practices – Sale of Less than Represented Quantity under 18 Pa. C.S.A. § 4107(a)(2).

² This case is docketed at CP-01-CR-394-2005.

³ This case is docketed at CP-01-CR-34-2006.

admissible to establish common scheme, plan or design as well as to potentially impeach the Defendant in the event he testified in his own defense.

Following a jury trial on August 9, 2010, Appellant was found guilty of Theft by Deception – False Impression under 18 Pa. C.S.A. § 3922(a)(1), Theft by Deception – Preventing Another from Acquiring Information under 18 Pa. C.S.A. § 3922(a)(2), and Deceptive Business Practices – Sale of Less than Represented Quantity under 18 Pa. C.S.A. § 4107(a)(2).

On November 18, 2010, Appellant filed his Notice of Appeal.⁴ Appellant filed his Concise Statement of Matters Complained of on Appeal on December 10, 2010. Attorney Rice requested leave to supplement the Concise Statement because she was not Appellant's trial counsel and had not yet received the trial transcript. Pursuant to an Order dated January 5, 2011, this Court granted Attorney Rice until the close of business on January 12, 2011 to supplement Appellant's Concise Statement. Attorney Rice did not file a supplemental statement on January 12, 2011.

Appellant first claims ineffectiveness of trial counsel. Specifically, Appellant alleges that trial counsel was ineffective in advising Appellant not to testify and in failing to clarify for the jury the distinction between Appellant as an individual and Modern Baking Systems as a separate entity.⁵ However, a claim for ineffective assistance of counsel is not cognizable on direct appeal. *Commonwealth v. Grant*, 813 A.2d 726, 738 (Pa. 2002). At this time Appellant's claim of ineffective assistance of counsel is not within the jurisdiction of this Court. Additionally, an evidentiary hearing on this claim has not been conducted, making it impossible for this Court to

⁴ At trial, Appellant was represented by private counsel, Attorney David M. Hoover. On November 10, 2010, Attorney Hoover filed a Motion to Withdraw as Counsel. By Order dated November 17, 2010, this Court granted Attorney Hoover's Motion to Withdraw as Counsel. Since that date, Appellant has been represented by Attorney Kristin Rice of the Adams County Public Defender's Office, and she represents Appellant in the instant matter. Attorney Rice also represented Appellant during pre-trial proceedings including during the Commonwealth's Motion to Admit Rule 404(b) Evidence.

⁵ At trial, this Court conducted an extensive colloquy with Appellant regarding his right to testify in his own defense. Appellant indicated that he understood his rights in this regard and voluntarily waived his right to testify. (N.T. pp. 142-43, Trial Transcript, August 9, 2010).

intelligently address the issue. Therefore, Appellant's claim that trial counsel was ineffective cannot be addressed herein, as this claim is properly addressed through post-conviction relief proceedings. *Commonwealth v. May*, 887 A.2d 750, 758 (Pa. 2005).

Next, Appellant argues that the Assistant District Attorney engaged in prosecutorial misconduct by stating, "You cannot sell something you don't own." According to Appellant, this statement constitutes prosecutorial misconduct because it is a misstatement of common business practices. However, it is well settled that "a prosecutor has reasonable latitude during his closing argument to advocate his case, respond to arguments of opposing counsel, and fairly present the Commonwealth's version of the evidence to the jury." *Commonwealth v. Cox*, 983 A.2d 666, 687 (Pa. 2009) (citation omitted). A challenged statement by a prosecutor must be evaluated in the context in which it was made. *Id.* Reversible error occurs only when the unavoidable effect of the challenged comments would prejudice the jurors and form in their minds a fixed bias and hostility toward the defendant such that the jurors could not weigh the evidence and render a true verdict. *Id.* Prosecutorial misconduct is evaluated under a harmless error standard. *Commonwealth v. Cousar*, 928 A.2d 1025, 1042 (Pa. 2007).

Apparently Appellant is referencing the following excerpts of the Assistant District Attorney's closing argument:

ASSISTANT DISTRICT ATTORNEY: We shouldn't need a law that says you can't sell things that you don't own but we do. We have that law. We have a few laws that say you can't sell things that you don't own. Essentially that is what we are charging [Appellant] with here. . . .

It should be very simple and appeal to everyone's common sense that you cannot sell property that doesn't belong to you. . . .

Some people make food for people with special dietary needs, and as the evidence as shown here today, [Appellant] sells things that don't belong to him.

(N.T. pp. 160-61, 163, Trial Transcript, August 9, 2010).

Considering above-stated standards and the Assistant District Attorney's statements, Appellant's argument is without merit. While Appellant contends that these statements are "misstatements of common business practices," the Assistant District Attorney's statements do not constitute prosecutorial misconduct. Rather, the Assistant District Attorney was advocating the Commonwealth's theory of the case that Appellant represented that he owned the Rheon machine, offered to sell the machine to Mr. Paolella, accepted money for the machine, and then failed to deliver the machine or return the full amount of monies paid because, in reality, Appellant did not own or even have an interest in the Rheon machine. This theory also was supported by the evidence at trial. Additionally, this Court does not believe that the effect of these statements would prejudice the jurors to a degree that would make them incapable of weighing the evidence fairly and rendering a true verdict. In fact, at the outset of the trial, this Court instructed the jury that the District Attorney's opening statement was simply a roadmap of the evidence the Commonwealth expected to present during trial. (**N.T. p. 7, Trial Transcript, August 9, 2010**). This Court also gave the following instruction to the jury at the close of trial regarding the arguments of counsel:

THE COURT: During your deliberations you will be considering things that you have observed, seen and heard in the courtroom during this trial. Some of what you have heard is evidence and some of it is not. It is important again that you distinguish between evidence and other parts of the case, which although important, are not evidence.

For example, although the arguments we heard from the attorneys are important, they are not evidence and you should not consider them as evidence.

In deciding the case, however, you should carefully consider the evidence in light of the arguments which counsel made. It is the right and indeed the duty of each lawyer to discuss the evidence in a manner which is most favorable to decide who (sic) he or she represents. You should be guided by each lawyer's arguments to the extent that they are supported by the evidence you heard

and insofar as they aid you in applying your own reason and your own common sense.

However, you are not required to accept the argument of either lawyer. It is for you and you alone to decide the case based on the evidence as it was presented from the witness stand and in accordance with these instructions.

(N.T. pp. 164-65, Trial Transcript, August 9, 2010).

This Court sincerely doubts that the effect of the Assistant District Attorney's statements was so pervasive as to affect the jury's ability to render the true verdict, and, as a precautionary measure, the jury was instructed that it could only rely on arguments by counsel if they were supported by evidence. Here, the Assistant District Attorney's statements were supported by the evidence presented at trial and the Commonwealth's theory of the case. Therefore, Appellant's prosecutorial misconduct claim is without merit.

Finally, Appellant argues that the trial court erred in admitting prior bad acts evidence under Rule 404(b). Generally, evidence of other crimes, wrongs or acts is not admissible at trial to show the character of the accused or to prove conformity therewith. **Pa. R. Evid. 404(b)(1)**. However, evidence of other crimes, wrongs or acts may be introduced to prove (1) motive; (2) intent; (3) absence of mistake or accident; (4) a common scheme, plan or design embracing commission of two or more crimes so related to each other that proof of one tends to prove the others; or (5) the identity of the person charged with the commission of the crime upon trial. **Pa. R. Evid. 404(b)(2)**; *Commonwealth v. Morris*, 425 A.2d 715, 720 (Pa. 1981). Specifically, evidence of other crimes or acts may be admitted if such evidence proves "a common scheme, plan or design embracing [the] commission of two or more crimes so related to each other that proof of one tends to prove others." *Commonwealth v. Einhorn*, 911 A.2d 960, 967 (Pa. Super. 2006) (citations omitted). The degree of similarity is an important factor in determining the admissibility of other crimes or bad acts. *Id.* Finally, "the importance of the intervening time period is inversely proportional to the similarity of the crimes in question." *Id.*

To determine the admissibility of evidence of other crimes, wrongs or acts the probative value of the evidence must outweigh the prejudicial effect. **Pa. R. Evid. 404(b)(3)**. The admissibility of

evidence, including evidence of other crimes, wrongs, or acts, is solely within the discretion of the trial court and will only be reversed upon a showing of an abuse of that discretion. *Commonwealth v. Stallworth*, 781 A.2d 110, 118 (Pa. 2001).

Instantly, the Commonwealth introduced the testimony of Ernest DiMartino, owner of Centrifuge Experts International in Texas. In 2004, Mr. DiMartino began negotiations with Appellant to purchase a centrifuge, specifically a Sharpels P-5000, located at an Anheuser-Busch plant in Wilmington, North Carolina. Appellant represented to Mr. DiMartino that he was associated with Modern Baking Systems and that he had a contract with Anheuser-Busch to liquidate its assets. Mr. DiMartino traveled to the Anheuser-Busch plant to inspect the centrifuge, and after inspection Mr. DiMartino determined that he wanted to buy the centrifuge. Appellant and Mr. DiMartino agreed upon a price of \$30,000.00 for the centrifuge. Appellant subsequently sent Mr. DiMartino an invoice for the centrifuge that listed Modern Baking System's address as 397 Lake Meade Drive, East Berlin, PA 17316. Mr. DiMartino then transferred \$30,000.00 to Appellant. After the money was transferred, the centrifuge was to be removed from the location, loaded on a truck, and shipped to Mr. DiMartino's location. However, the centrifuge could not be removed from the location because Appellant was not authorized by Anheuser-Busch to liquidate any of its equipment. As of the date of trial, Mr. DiMartino had not received any money back from Appellant. Based on these facts, Appellant pleaded guilty to one count of theft by deception, a felony of the third degree, docketed at CP-01-CR-394-2005.

The Commonwealth also presented the testimony of Rodney Wagner who was previously employed by the Adams County Adult Probation and Parole Department and supervised Appellant's probation. Mr. Wagner corroborated Mr. DiMartino's testimony and also testified regarding another incident with Appellant. According to Mr. Wagner, Appellant had also contacted an individual in Illinois, Chad Rutledge, who was looking for bakery equipment.⁶ Mr. Rutledge

⁶ According to the Commonwealth's Motion to Admit Prior Acts Evidence under Rule 404(b) and the arguments presented at hearing on the motion, this incident occurred in 2005. However, at trial Mr. Wagner never testified as to the year in which this incident occurred.

and Appellant came to an agreement in which Appellant would sell Mr. Rutledge the piece of baking equipment for approximately \$22,000.00. Mr. Rutledge paid Appellant, but he never received the equipment because Appellant did not own the equipment. Based on these facts, Appellant pleaded guilty to one count of theft by deception, a felony of the third degree, docketed at CP-01-CR-34-2006.

The above-described testimony was admissible to show a common plan, scheme or design of Appellant. The incidents involving Mr. DiMartino and Mr. Rutledge are eerily similar to the instant matter. In each situation, Appellant entered into negotiations with an individual for expensive equipment, and the individual would send money to Appellant in exchange for the equipment only to find out that Appellant did not own or have an interest in the equipment. Moreover, in each incident Appellant did not refund the full amount of the money he received for the equipment. Furthermore, these incidents, including the instant matter, occurred within a three-year period of 2004 to 2007. In summary, these incidents were strikingly similar and all occurred within a short period of time. As such, the prior acts evidence was relevant to show a common scheme, plan or design of Appellant, and the probative value was not outweighed by the prejudicial effect.

Additionally, as a precautionary measure, this Court appropriately instructed the jury immediately following the admission of the prior bad acts evidence at trial as follows:

THE COURT: ... Let me make sure the jury is aware of why we heard that evidence. Ladies and gentlemen, the evidence that you've just heard tending to prove that [Appellant] was guilty of an offense previously is something that he is not on trial here for today. It's offered to you for a very limited purpose. That purpose is not to show necessarily that [Appellant] is a bad person per se[;] rather it is simply to show common plan, scheme or design in the way he was operating. In other words, the only purpose that you can consider that testimony for on your deliberations today is whether there was a certain MO or mod[u]s operandi, mode of operating that he was following in relationship to the alleged incident, okay?

(N.T. pp. 139-40, Trial Transcript, August 9, 2010).

This Court also gave the following instruction to the jury during formal jury instructions:

THE COURT: Now, ladies and gentlemen, I do need to remind you that in this case you heard testimony tending to prove that the [Appellant] was guilty of theft by deception offenses in the past. In this I'm speaking of the evidence presented by the probation officer and one other witness concerning other incidents for which the Defendant is not now on trial.

This evidence, as I mentioned to you before, is before you for a very limited purpose and that is for the purpose of tending to show [Appellant's] actions in conformity with a certain common plan, scheme or design. This evidence must not be considered by you in any way other than for the stated purpose. You must not regard the evidence as showing that the [Appellant] is a person of bad character or criminal tendencies from which you might be inclined to infer guilt.

If you find the [Appellant] guilty, it must be because you are convinced (sic) the evidence that he committed the crime charged in this case and not because you believe he has committed other previous offenses.

(N.T. pp. 175-76, Trial Transcript, August 9, 2010).

It must be presumed as a matter of law that the jury did not consider the evidence of the prior offenses for any improper purpose. See *Commonwealth v. Brown*, 786 A.2d 961, 971 (Pa. 2001), *cert. denied*, 537 U.S. 1187 (2003) ("The law presumes that the jury will follow the instructions of the court."). Thus, because the evidence of prior bad acts was introduced to demonstrate a common scheme, plan or design of Appellant in the instant case, and the jury was appropriately instructed on the proper purpose for this evidence, this Court did not abuse its discretion in allowing testimony regarding Appellant's prior bad acts.

Therefore, for all the reasons stated herein, it is respectfully requested that the Appellant's convictions be affirmed.

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 BARBARA R. BALAKIR, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Laura J. Cruise, 61 Hemlock Drive, Hanover, PA 17331

ESTATE OF THERESA M. GOUKER, DEC'D

Late of the Borough of McSherrytown, Adams County, Pennsylvania

Executrix: Karen Lee Keener, 104 Forest Hills Rd., Red Lion, PA 17356

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

ESTATE OF THELMA E. GRIFFIE, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Harold L. Griffie and James D. Griffie, c/o Law Office of Wm. D. Schrack III, 124 West Harrisburg Street, Dillsburg, PA 17019-1268

Attorney: Law Office of Wm. D. Schrack III, 124 West Harrisburg Street, Dillsburg, PA 17019-1268

ESTATE OF PATRICIA A. KARAS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Diana L. Karas, 14 Lawrence Place, New Oxford, PA 17350

ESTATE OF KATHLEEN I. MALINOSKY a/k/a KATHLEEN IRENE MALINOSKY, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: William J. Malinosky, 248, Route 194 North, Abbottstown, PA 17301

Attorney: Amy E. W. Ehrhart, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF JOHN JAMIESON FROST, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Judith Frost Witthohn, 1544 Marburg Road, Spring Grove, PA 17362

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

ESTATE OF LOIS L. PATKA, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Stephen Hartman, c/o Suzanne H. Griest, Esq., 129 East Market Street, York, PA 17401

Attorney: Suzanne H. Griest, Esq., 129 East Market Street, York, PA 17401

THIRD PUBLICATION**ESTATE OF DOROTHY S. BREAM, DEC'D**

Late of the Borough of Arendtsville, Adams County, Pennsylvania

Co-Executors: John L. Stevens and Jean E. McCauslin, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF IRA H. HERRING, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Personal Representative: Roger Heyser, 1560 Old Harrisburg Road, Gettysburg, PA 17325

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

ESTATE OF LEO J. KOLARIK a/k/a LEO J. KOLARIK, SR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Leo J. Kolarik, Jr., 1T2 Mitchell Court, Hanover, PA 17331

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

ESTATE OF CAROLINE M. MURREN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Debra M. Miller, 3037 Centennial Rd., Hanover, PA 17331

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

ESTATE OF DORMAN L. RICHSTINE, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrices: Nancy R. Brown, 75 Oak Hill Drive, Hanover, PA 17331; Susan Y.R. Avaritt, 4436 York Road, New Oxford, PA 17350

Attorney: Robert E. Campbell, Campbell & White, P.C., 112 Baltimore St., Suite 1, Gettysburg, PA 17325

ESTATE OF KENNETH J. ROHRBAUGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Donna Thelma McCleaf, 305 Table Rock Rd., Gettysburg, PA 17325

Attorney: Phillips & Phillips, 101 West Middle St., Gettysburg, PA 17325

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that a Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, on April 7, 2011, pursuant to the Fictitious Names Act, setting forth that Hoffman Homes, Inc., 815 Orphanage Road, Littlestown, PA 17340-9729, is the only entity owning or interested in the non-profit business known and conducted as HOFFMAN HOMES FOR YOUTH, and the location where said business will be located is 815 Orphanage Road, Littlestown, PA 17340-9729.

Andrew J. Miller, Esq.
MPL Law Firm

6/3
