

# FAYETTE LEGAL JOURNAL

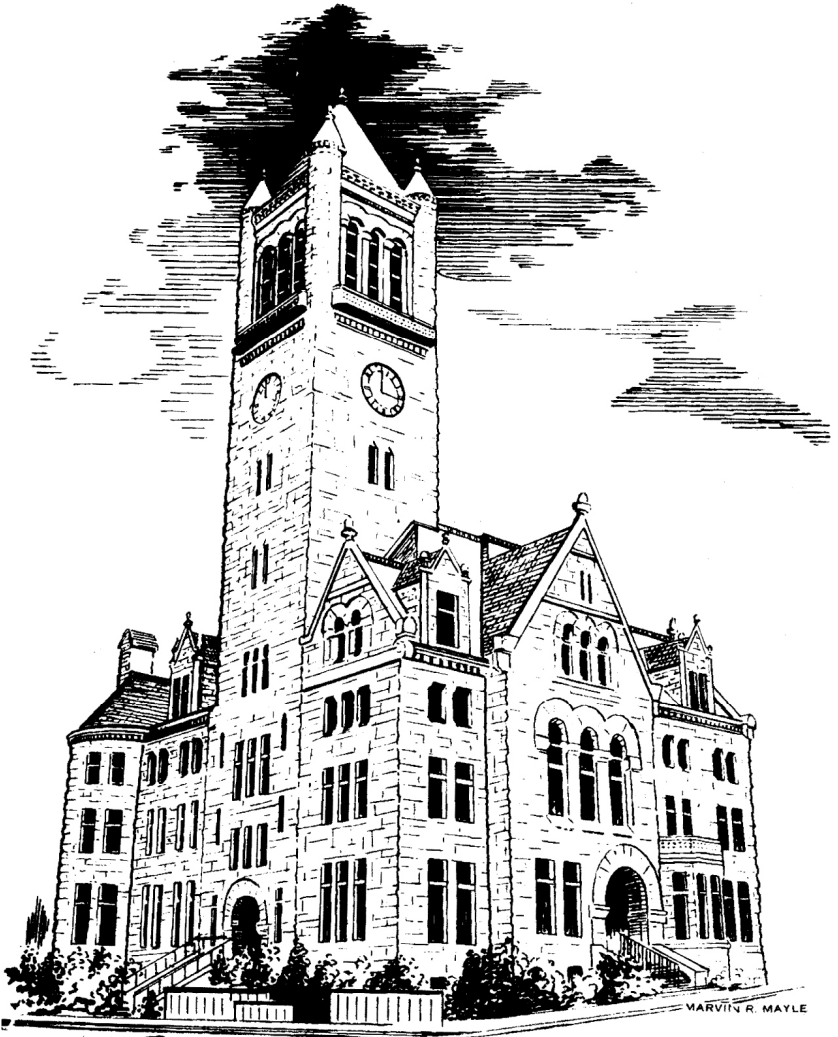
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## FAYETTE LEGAL JOURNAL

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**Co-Editors:** Garnet L. Gordon and Melinda Deal Dellarose

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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.

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## 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

**JAMES D. BRYSON, SR.**, late of Hopwood,  
Fayette County, PA (3)

*Executrix:* Sarah B. Smith  
438 Laurel Hill Road  
Smock, PA 15480  
c/o Radcliffe Law, LLC  
648 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* William M. Radcliffe

**CLARA CRISSINGER**, late of Brownsville,  
Fayette County, PA (3)

*Personal Representative:*  
Leonard W. Crissinger, Sr.  
c/o Davis and Davis  
107 East Main Street  
Uniontown, Pa 15401  
*Attorney:* Jeremy J. Davis

**SANDRA K. GROSSER, a/k/a SANDRA  
KAY GROSSER**, late of Bullskin Township,  
Fayette County, PA (3)

*Executor:* James E. Grosser  
c/o QuatriniRafferty, P.C.  
550 E. Pittsburgh Street  
Greensburg, PA 15601  
*Attorney:* David S. DeRose

**JAMES CURTIS MCDOWELL, a/k/a  
CURTIS MCDOWELL**, late of Uniontown,  
Fayette County, PA (3)

*Administrator:* Frederick Curtis McDowell  
c/o Fitzsimmons and Barclay  
55 East Church Street, Suite 102  
Uniontown, PA 15401  
*Attorney:* James N. Fitzsimmons, Jr.

**ROSE MOSLEY**, late of German Township,  
Fayette County, PA (3)

*Personal Representative:* Bernadette Gosha  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Jeremy J. Davis

**FLORENCE RODGERS, a/k/a FLORENCE  
B. RODGERS**, late of North Union Township,  
Fayette County, PA (3)

*Personal Representative:* John Cindric  
C/o George and George  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* G.T. George

### Second Publication

**ROGER S. GALLET, a/k/a ROGER SIMON  
GALLET**, late of Chalk Hill, Fayette County,  
PA (2)

*Executor:* Louis Roger Gallet  
c/o Radcliffe Law, LLC  
648 Morgantown Road, Suite B  
Uniontown, PA 15401  
*Attorney:* William M. Radcliffe

**ELMER M. SEMENTA, a/k/a ELMER  
MARK SEMENTA**, late of South Union  
Township, Fayette County, PA (2)

*Co-Executors:* Patricia D. David and  
John W. David  
c/o Adams & Adams  
55 East Church Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Jason Adams

**A. JEFFREY G. S. WILSON**, late of  
Confluence, Fayette County, PA (2)

*Personal Representative:* Audrene Lloyd  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Jeremy J. Davis

**First Publication**

**THOMAS R. BAILEY**, late of Connellsville,  
Fayette County, PA (1)

*Executrix:* Janice E. Bailey  
1210 Oak Street  
Connellsville, PA 15425  
c/o Fike, Cascio & Boose  
Scully Building  
124 North Center Avenue  
P.O. Box 431  
Somerset, PA 15501-0431  
*Attorney:* Lois W. Caton

**BEGRENDA MEADOWS, a/k/a BEGREDA  
MEADOWS**, late of Uniontown, Fayette  
County, PA (1)

*Executrix:* Sonja Penwell  
458 Kingpin Hill Road  
Dunbar, PA 15431  
c/o 111 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert R. Harper

**NORMA K. SMITH, a/k/a NORMA SMITH**,  
late of Brownsville Borough, Fayette County,  
PA (1)

*Personal Representative:* Ray Smith, III  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

**LINDA TISSUE, a/k/a LINDA L. TISSUE**,  
late of Henry Clay Township, Fayette County,  
PA (1)

*Personal Representative:* Shelly R. Tissue  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**LEGAL NOTICES**

**To: Brandy Marques**

**In Re: A.A., minor child, born February 26, 2008**

**In Re: C.A., minor child, born February 12, 2007**

A petition for involuntary termination of parental rights has been filed asking the court to put an end to all rights you have to your children, A.A., born February 26, 2008 and C.A., born February 12, 2007. The court has set a hearing to consider ending your rights to your children.

The hearing will be held in the Greene County Courthouse, 10 E. High Street, Waynesburg, PA 15370 on August 26, 2020 at 9:30 a.m. in the assigned courtroom before Judge Farley Toothman.

You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your children may be ended by the court without you being present.

You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help. Southwestern Pennsylvania Legal Aid, 63 S. Washington Street, Waynesburg, PA 15370; (724) 627-3127 or Lawyer Referral Service, 10 E. High Street, Waynesburg, PA; (724) 852-5237.

This notice given by Greene County Children and Youth Services, 150 Fort Jackson County Building, 19 South Washington Street, Waynesburg, PA 15370.

Janet S. Gasparatz, late of Hopwood, Fayette County, Pennsylvania, entered into The Janet S. Gasparatz Revocable Living Trust Agreement, as amended May 21, 2018. Janet S. Gasparatz, Settlor, died on October 12, 2019. Notice is hereby given to all persons indebted to said Trust to make payment to the undersigned without delay, and to those having claims or demands against said Trust to make known the same to the undersigned.

Submitted by:

Faith A. Burton and James S. Hall, Trustees  
c/o William M. Radcliffe, Esquire  
RADCLIFFE LAW, L.L.C.  
648 Morgantown Road, Suite B  
Uniontown, PA 15401  
1-724-439-3939

(2 of 3)

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### NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about July 14, 2020, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Pap's Pickers with the principal place of business at: 1065 University Drive, Connellsville, PA 15425.

The name or names and addresses of persons owning and interested are: Mulac Properties LLC, 7 Gaddis Street, Hopwood, PA 15445.

Richard A. Husband Esquire LLC  
208 South Arch Street, Suite 2  
Connellsville PA 15425

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IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW  
No. 2335 of 2019 G.D.  
JUDGE LESKINEN

THOMAS JENKINS and TAMMY  
JENKINS, his wife

Plaintiffs,

v.

RONALD DELL, individually and as  
REFRESH CONSTRUCTION, LLC

Defendants.

**TO: RONALD DELL, individually and as  
REFRESH CONSTRUCTION, LLC**

You are hereby notified that Thomas Jenkins and Tammy Jenkins, have filed a complaint at the above number and term in the above-mentioned court in a breach of contract/construction dispute wherein it is alleged that you performed repairs improperly and insufficiently to the detriment of the Plaintiffs.

### NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may entered against you by the court without further notice or 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 NOTICE TO  
YOUR LAWYER AT ONCE. IF YOU DO  
NOT HAVE A LAWYER OR CANNOT  
AFFORD ONE, GOT TO OR TELEPHONE  
THE OFFICE SET FORTH BELOW TO  
FIND OUT WHERE YOU CAN GET  
LEGAL HELP.**

**PENNSYLVANIA BAR ASSOCIATION  
PENNSYLVANIA LAWYER REFERRAL  
100 SOUTH STREET  
P.O. BOX 186  
HARRISBURG, PA 17108  
1-800-932-0311**

By Jason F. Adams, Esq.  
Adams & Adams  
55 E. Church Street  
Uniontown, PA 15401  
(724) 437-2711

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IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 CIVIL ACTION - LAW  
**ACTION TO QUIET TITLE**  
 No. 1271 of 2020 G.D.  
 JUDGE CORDARO

LORETTA RHODES,  
 Plaintiff,  
 v.  
 LEONA M. COBURN, her successors, heirs,  
 Personal representatives, and assigns, generally,  
 Defendant.

**TO: LEONA M. COBURN  
 her heirs, successors and assigns, generally,**

You are hereby notified that Loretta Rhodes, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that she is the owner in possession of that certain lot of land situate in North Union Township, Fayette County, Pennsylvania having a mailing address of 260 Turkeyfoot Road, Lemont Furnace, Pennsylvania, 15456.

Title to the above described property was conveyed to Leona M. Coburn by a deed from David G. Riggan and Dorothy J. Riggan, his wife, being recorded at the Recorder of Deeds Office at Deed Book 683, Page 26.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may entered against you by the court without further notice or 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 NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GOT TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

**PENNSYLVANIA BAR ASSOCIATION  
 PENNSYLVANIA LAWYER REFERRAL  
 100 SOUTH STREET  
 P.O. BOX 186  
 HARRISBURG, PA 17108  
 1-800-932-0311**

By Jason F. Adams, Esq.  
 Adams & Adams  
 55 E. Church Street  
 Uniontown, PA 15401  
 (724) 437-2711

## SHERIFF'S SALE

Date of Sale: October 15, 2020

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, October 15, 2020, at 2:00 p.m. in Courtroom Number One at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (1 of 3)

James Custer  
Sheriff Of Fayette County

STERN & EISENBERG, PC  
1581 MAIN STREET, SUITE 200  
WARRINGTON, PENNSYLVANIA 18976

No. 572 of 2020 GD  
No. 124 of 2020 ED

**Notable Capital Fund, LLC  
Plaintiff  
v.**

**Diana Gower a/k/a Diana L. Gower , solely in her capacity as Administratrix of the Estate of Charles Gower a/k/a Charles M. Gower, deceased and United States of America  
Defendant(s)**

RE: PREMISES: 1164 Walnut Hill Road,  
Smithfield, PA 15478

DEAR SHERIFF:

SHOULD PLAINTIFF BE SUCCESSFUL  
BIDDER, TITLE WILL BE VESTED IN:

Notable Capital Fund, LLC

GEBHARDT & SMITH LLP

Shaan S. Chima, Esquire  
I.D. No. 312429

One South Street, Suite 2200  
Baltimore, Maryland 21202

Phone: 410-385-5109

Fax: 443-957-4329

Email: shaan.chima@gebbsmith.com

No. 182 of 2020 GD  
No. 137 of 2020 ED

**UNITED BANK, successor-by-merger to  
CENTRA BANK,  
2071 Chain Bridge Road, Suite 600  
Vienna, Virginia 22182-2622  
Plaintiff,**

**v.**

**KEJ PROPERTIES, LP,  
201 Lexington Place  
Uniontown, Pennsylvania 15401  
Defendant.**

By virtue of Writ of Execution No. 137 of 2020  
ED (Case/Docket No. 2020-00182)

SHERIFF'S SALE OF REAL ESTATE  
FAYETTE COUNTY COURTHOUSE  
Courtroom No. 1  
61 East Main Street  
Uniontown, Pennsylvania 15401  
Thursday, October 15, 2020

2:00 O’Clock P.M. Prevailing Time.

All that certain tract and parcel of land situate, lying and being in Fayette County, Pennsylvania, with all improvements thereon, owned by KEJ Properties, LP and generally known as 20 Highland Park Drive and 25 Highland Park Drive, South Union Township, Uniontown, Fayette County, Pennsylvania 15401 and having Uniform Parcel Identification Numbers of 34-1-68-14, 34-05-0356-A00 and 34-05-0356-B.

The improvements are believed to consist of commercial buildings.

Judgment Amount: \$1,088,781.42

To be sold as the property of KEJ Properties, LP.

Shaan S. Chima, Esquire

P.A. Bar No. 312429

GEBHARDT & SMITH LLP

One South Street, Suite 2200

Baltimore, Maryland 21202-3281

(410) 385-5109

TO ALL PARTIES IN INTEREST AND CLAIMANTS: Take notice that a Schedule of Distribution will be filed within thirty (30) days from the date of sale and distribution will be made in accordance with the Schedule of Distribution unless exceptions are filed thereto within ten (10) days thereafter. No further Notice of the filing of the Schedule of Distribution will be given.

Phelan Hallinan Diamond & Jones, LLP

No. 399 of 2020 GD

No. 128 of 2020 ED

**Pennsylvania Equity Resources, Inc.**

**Plaintiff**

**v.**

**Matthew T. Leonard**

**Defendant(s)**

By virtue of a Writ of Execution No. 2020-00399, Pennsylvania Equity Resources, Inc. v.

Matthew T. Leonard, owner(s) of property situate in the CONNELLSVILLE CITY, Fayette County, Pennsylvania, being 1227 Vine Street, Connellsville, PA 15425-4736

Parcel No.: 05160029

Improvements thereon: RESIDENTIAL DWELLING

Phelan Hallinan Diamond & Jones, LLP

No. 586 of 2020 GD

No. 121 of 2020 ED

**Legacy Mortgage Asset Trust 2019-Gs7**

**Plaintiff**

**v.**

**Monty Lilley**

**Defendant(s)**

By virtue of a Writ of Execution No. 2020-00586, Legacy Mortgage Asset Trust 2019-Gs7 v. Monty Lilley, owner(s) of property situate in the MENALLEN TOWNSHIP, Fayette County, Pennsylvania, being 7409 National Pike Road, A/K/A 7409 National Pike, Uniontown, PA 15401-5112.

Parcel No.: 2217001901

Improvements thereon: RESIDENTIAL DWELLING

Phelan Hallinan Diamond & Jones, LLP

No. 1029 of 2017 GD

No. 126 of 2020 ED

**Mtqlq Investors, L.P.**

**Plaintiff**

**v.**

**KEITH RAFAY, in his capacity as Administrator and Heir-at-Law of FERNE M. RAFAY, Deceased**

**STEPHANIE BRANGARD, in her capacity as Heir-at- Law of FERNE M. RAFAY**

**WILLIAM RAFAY, in his capacity as Heir-at -Law of FERNE M. RAFAY**

**Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest From or Under Ferne M. Rafay, Deceased**

**Defendant(s)**

By virtue of a Writ of Execution No. 1029 OF 2017 GD, Mtqlq Investors, L.P. v. KEITH RAFAY, in his capacity as Administrator and Heir-at-Law of FERNE M. RAFAY, Deceased, STEPHANIE BRANGARD, in her capacity as Heir-at-Law of FERNE M. RAFAY WILLIAM RAFAY, in his capacity as Heir-at-Law of FERNE M. RAFAY, Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest From or Under Ferne M. Rafay, Deceased, owner(s) of property situate in the Fayette County, Pennsylvania, being 176 Rankin Airshaft Road, Uniontown, PA 15401-2124

Parcel No.: 25120039



Improvements thereon: RESIDENTIAL  
DWELLING

\*\*\* END SHERIFF SALES \*\*\*

No. 1737 of 2019 GD  
No. 136 of 2020 ED

**PENNSYLVANIA HOUSING FINANCE  
AGENCY,  
PLAINTIFF  
vs.  
PHILLIP H. SCHWARTZ,  
DEFENDANT**

ALL that lot of land in North Union Township, Fayette County, Pennsylvania, being Lot No. 86, Laurel Terrace Plan of Lots, Fayette Plan Book Volume No. 6, page 158. HAVING THEREON ERECTED DWELLING KNOWN AND NUMBERED AS: 35 ROOSEVELT DRIVE UNIONTOWN, PA 15401.

Tax Parcel# 25-43-0146

Fayette Deed Book 3061, page 308

TO BE SOLD AS THE PROPERTY OF PHILLIP H. SCHWARTZ UNDER FAYETTE COUNTY JUDGMENT NO. 1737 OF 2019 GD.

Phelan Hallinan Diamond & Jones, LLP

No. 833 of 2019 GD  
No. 122 of 2020 ED

**PNC Bank, National Association  
Plaintiff  
v.**

**Unknown Heirs, Successors, Assigns, and All  
Persons, Firms, or Associations Claiming  
Right. Title or Interest From or Under  
Joseph M. Misselli a/k/a Joseph M. Misselli,  
Jr, Deceased  
Defendant(s)**

By virtue of a Writ of Execution No. 833-01"-2019-GD, PNC Bank, National Association v. Unknown Heirs, Successors, Assigns, and All Person. , Firms, or Associations Claiming Right, Title or Interest From or Under Joseph M. Misselli a/k/a Joseph M. Misselli, Jr, Deceased, owner(s) of property situate in the BULLSKIN TOWNSHIP, Fayette County, Pennsylvania, being 174 Bethann Road, Acme, PA 15610-1244.

Parcel No.: 04-20-0109 and 04-20-0110

Improvements thereon: RESIDENTIAL  
DWELLING

# Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and  
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

**Tuesday, September 8, 2020, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2620-0828	CONSTANCE ROSS BERRY	David Edward Manion, Executor
2618-0398	DORIS W. COLDREN	Scott W. Coy, Executor
2619-0466	EARL E. CALHOUN	Barbara Casini and Donna Zimmerman, Co-Executors

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

**Monday, September 21, 2020, at 9:30 A.M.**

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

**Tuesday, September 8, 2020, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2618-0481	JOHN A. LEONI a/k/a JOHN ANTHONY LEONI a/k/a JOHN LEONI	Fred Ciarochi, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

**Monday, September 21, 2020, at 9:30 A.M.**

in Courtroom No. 5 of the **Honorable Joseph M. George Jr.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :  
vs. :  
: :  
CHRISTIAN HAWK LYNN-JORDAN, : No. 2537 of 2018  
Defendant. : Honorable Steve P. Leskinen

OPINION

LESKINEN, J.

August 17, 2020

*Richard Bower, Esq., District Attorney, for the Commonwealth*  
*Jack Connor, Esq. for Defendant*

Before the Court is an Omnibus Pretrial Motion seeking to dismiss the charges against Defendant because the Commonwealth carelessly failed to save and reproduce the MVR of the alleged DUI stop and field sobriety tests. The Motion was filed on May 7, 2019. The hearing was originally scheduled for July 18, 2019. Based on the record as it existed at the time, this Court denied the Motion to Dismiss and limited Defendant to an adverse inference instruction at trial by Order filed July 5, 2019. Subsequently, based on new evidence as to the alleged systematic failure of the Uniontown Barracks of the Pennsylvania State Police to preserve MVR evidence, the Court reconsidered its decision and re-opened the record of this OPT Motion. That alleged systematic failure involved between ten and twenty DUI arrests where the MVR video recording should have been available, but was automatically deleted from the PSP system after 60 days without a "hard" DVD or CD disc being produced by the evidence custodian. Ultimately, Exhibits 1 and 2 were offered to the Court on September 10, 2019. Disposition was further delayed because the parties requested additional time to attempt to resolve the cases. The Court was finally advised earlier this week by defense counsel that no agreed resolution was possible in this case as well as one other.

Upon consideration of the Omnibus Pretrial Motion, the testimony and arguments of counsel, this Court must order that Defendant's motion be DENIED in part.

BACKGROUND

Defendant was the driver of a vehicle that left the roadway and struck an embankment on Collier Road near Langley Road. The PSP was dispatched and Troopers Duvall and Smolleck responded to the scene at approximately 3:43 a.m. on August 5, 2018. Defendant appeared uninjured, but was sweating profusely and was unsteady. He allegedly displayed obvious signs of intoxication, and was requested to submit to field sobriety tests, which further confirmed intoxication. He was transported to the hospital, but then refused a blood draw. At 4:45 a.m. Defendant signed a DL-26A form at the barracks.

Virtually all of the evidence in this case would have been preserved on the MVR video, as the patrol car-mounted video camera records audio and video immediately in front of the police car where discussions and field sobriety tests would have taken place. In addition, the video camera normally also records conversations with the Defendant while he is being transported. Trooper Duvall submitted a formal request for the video recording to be reproduced by the evidence custodian on the very day of the arrest, August 5, 2018 (Exhibit 2). A report dated December 14, 2018 authored by the primary MVR custodian stated that "no available video" (Exhibit 1).

The Commonwealth did not produce the MVR (video of the stop and field sobriety tests, as well as interactions within the patrol vehicle) because it was not copied to a disc before automatic deletion (which for some unfathomable reason, occurs after only sixty (60) days despite the minimal cost of electronic storage), so the MVR for this case is no longer available. The evidence custodian testified-in a consolidated hearing that is not currently part of this record-that he searched for the video within the 60 days, but did not author his report until more than two months later. The Court cannot credit that testimony, but finds that the evidence custodian did not attempt to copy the video to a disc within the sixty days that elapsed prior to automatic deletion.

For these reasons, Defendant asserts that the failure to preserve the evidence was intentional and in bad faith, and argues that the charges should all be dismissed as a sanction.

#### DISCUSSION

The MVR, which would have showed video of the signs of impairment, was lost by the Commonwealth without any good explanation. The Troopers assert that the MVR would have confirmed their account of the interactions with, as well as showing the field sobriety tests conducted on, Defendant.

As a sanction for the inadequately explained absence of the video, Defendant is asking that the entire case be dismissed. At the outset, the Court notes that there are a number of summary offenses charged that do not in any way rely on the video, so it would be inappropriate to even consider dismissing the entire case.

Moreover, the arresting officer himself proceeded in the utmost good faith in requesting a copy of the video on the very day of the arrest. The Court does not find that the evidence custodian acted in bad faith by failing to produce a copy, even though it appears he attempted to cover his error by claiming he checked for the video within the sixty days, which is inconsistent with the other credible testimony adduced. Finally, the Court does not find that the PSP, as an institution, exercised bad faith in this matter. At one of the hearings in this or a related matter consolidated with this for hearing purposes, this Court did comment that the failure to reproduce videos in this and a number of other similar cases was a "ridiculous" practice, but it appears to be negligence, not deliberate indifference or intentional action.

Balanced against that is the fact that the Defendant has only his own testimony to counter the testimony of the two Troopers that were investigating the incident, and his documented refusal to submit to a blood draw. While this is inherently unfair, there is a

method that allows Defendant a remedy without the extreme measure of dismissing the case.

The inadequately explained absence of video of the field sobriety testing and the other interactions with the Defendant that the video should have shown will be subject to an adverse inference by the fact-finder at trial.

When the following three factors are present, and there is no satisfactory explanation for a party's failure to produce an item, the fact-finder is allowed to draw a common-sense inference that the item would have been evidence unfavorable to that party. Sugg. Crim. Inst. 3.21B. The three necessary factors are:

- (1) the item is available to that party and not to the other;
- (2) it appears this item contains or shows special information material to the issue; and
- (3) the item would not be merely cumulative evidence.

Id.

The video recording was clearly in the exclusive control of the Commonwealth. It is apparent that the evidence contained therein would be particularly material to this case, and it is demonstrably true that the evidence would not be merely cumulative. Moreover, this Court finds as a fact that there is no satisfactory explanation for the Commonwealth's failure to produce the video taken between 3:43 a.m. and 4:45 a.m. on August 5, 2018.

Therefore, at trial, the Defendant is entitled to have the fact-finder consider the above-cited adverse inference instruction set forth at Sugg. Crim. Inst. 3.21B.

#### ORDER

AND NOW, this 24th day of June, 2020, the Court orders that Defendant's Omnibus Pretrial Motion be DENIED in part.

Because there was no good explanation for the Commonwealth's failure to preserve the MVR, Defendant is entitled to have the fact-finder at trial instructed as to the permissible adverse inference against the Commonwealth as set forth at Sugg. Crim. Inst. 3.21B.

The delay occurring from the date of filing of the Omnibus Pretrial Motion, May 7, 2019, through the date of filing of this Order is attributed to the Defendant, and is excluded from computation under Pa.R.Crim.P. 600.

BY THE COURT:  
LESKINEN

ATTEST:  
Clerk of Courts

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## LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, September 16th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics:  
**Sentencing Guidelines and the Justice Reinvestment Initiative**
- Presenters:  
Honorable Joseph M. George, Jr. - Judge, Fayette County Court of Common Pleas  
Ryan S. Meyers - Pennsylvania Commission on Sentencing  
Joshua Britt - Fayette County Adult Probation

### CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

#### Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

#### Attorneys admitted to practice in Pennsylvania after January 1, 2012

- No charge for attendance with CLE Credit

#### Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**\*\* All fees to be paid at the door \*\***

A light lunch will be provided.

### RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to [cindy@fcbar.org](mailto:cindy@fcbar.org) on or before Monday, September 14th.

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