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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, October 7, 2011 at 8:30 a.m.

HUNT—Orphan's Court Action Number OC-92-2011. The First and Final Account of Marian L. Morgan, of the Last Will and Testament of James M. Hunt, deceased, late of Carroll Valley Borough, Adams County, Pennsylvania.

STEVENS—Orphan's Court Action Number OC-95-2011. The First and Final Account of Bart A. Stevens, Administrator of Estate of Barry L. Stevens, deceased, late of East Berlin Borough, Adams County.

BRADY—Orphan's Court Action Number OC-97-2011. The First and Final Account of Scott E. Brady, Executor of the Estate of Ruth L. Brady, deceased, late of Oxford Township, Adams County, Pennsylvania.

BAKER—Orphan's Court Action Number OC-98-2011. The First and Final Account of Karen L. DeGroft, Administratrix of John A. Baker Estate deceased, late of Germany Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

9/23 & 30

COMMONWEALTH VS. KASPAR

1. Evidence of a defendant's prior bad acts or crimes may be admissible where it is relevant for some other legitimate purpose and not utilized solely to blacken the defendant's character.

2. Evidence of other crimes, wrongs or acts may be admissible in situations where prior bad acts are part of a chain or sequence of events which formed the history of the case and were part of its natural development.

3. To determine the admissibility of evidence of other crimes, wrongs or acts, the probative value of the evidence must outweigh the prejudicial effect.

4. The trial court denied the Commonwealth's Motion to Admit Evidence because any probative value of the myspace.com conversations was greatly outweighed by the prejudicial effect.

5. The prejudicial effect of the myspace.com conversations greatly outweighed any probative value of the conversations.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CP-01-CR-969-2010, COMMONWEALTH OF
PENNSYLVANIA VS. PAUL JOHN KASPAR, JR.

Shawn C. Wagner, Esq., District Attorney, for Commonwealth
Roy A. Keefer, Esq., for Defendant
Campbell, J., May 9, 2011

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

The Commonwealth presently appeals from the trial court's Order of April 6, 2011 that denied its Motion to Admit Evidence filed April 5, 2011. For the reasons set forth herein, it is respectfully requested that the trial court's April 6, 2011 Order be affirmed.

Defendant, Paul John Kaspar, Jr., has been charged with 189 counts of possession of child pornography under 18 Pa. C.S.A. § 6312(d)(1), and this case is docketed at CP-01-CR-969-2010. Additionally, Defendant, in a separately docketed case, is charged with two counts of rape, statutory sexual assault, sexual assault, four counts of aggravated indecent assault, two counts of unlawful contact or communication with a minor, three counts of indecent assault, and one count of corruption of minors (collectively "the rape charges").¹ The rape charges are docketed at CP-01-CR-462-2010. On December 28, 2010, the Commonwealth filed a Motion for Joinder of Trial of Separate Informations, seeking to join the child pornography charges

¹ 18 Pa. C.S.A. §§ 3121(a)(1), 3121(a)(3), 3122.1, 3124.1, 3125(a)(1), 3125(a)(2), 3125(a)(4), 3125(a)(8), 6318(a)(4), 6318(a)(5), 3126(a)(2), 3126(a)(4), 3126(a)(8), and 6301(a)(1) respectively.

docketed at CP-01-CR-969-2010, and the rape charges docketed at CP-01-CR-462-2010. By Order dated January 6, 2011, the trial court denied the Commonwealth's Motion for Joinder. Accordingly, both cases would proceed separately.

The present appeal only concerns the Commonwealth's prosecution of Defendant for possession of child pornography. Jury selection occurred on April 4, 2011. On April 5, 2011, two days before Defendant's trial for possession of child pornography was scheduled to begin, the Commonwealth filed its Motion to Admit Evidence. Specifically, the Commonwealth sought to admit certain myspace.com conversations allegedly between Defendant and a juvenile girl, H.R. In these myspace.com conversations, Detective William T. Hartlaub of the Conewago Township Police Department actually posed as the juvenile girl, H.R., and conversed with Defendant, who was allegedly using the name "Jake Speed." These conversations occurred on April 5, 2010, April 29, 2010, April 30, 2010, and May 1, 2010. According to the Commonwealth's Motion, these conversations were relevant to show the *res gestae* of the case as well as to show that Defendant had control of the computer where the child pornography was found. Argument on the Commonwealth's Motion to Admit Evidence occurred on April 6, 2011. By Order dated April 6, 2011, this Court denied the Commonwealth's Motion to Admit Evidence, but also noted that depending on the testimony elicited at trial, the evidence may be admissible on rebuttal. The Commonwealth filed its Notice of Appeal on April 7, 2011,² and Defendant's trial was continued to the call of the parties pending the outcome of this appeal.

The Commonwealth presently argues that the trial court erred in denying its Motion to Admit Evidence. The standard of review of a trial court's evidentiary ruling is well-established: The reviewing court will not disturb the trial court's ruling absent an abuse of discretion. *Commonwealth v. Einhorn*, 911 A.2d 960, 967 (Pa. Super. 2006). An abuse of discretion is more than just an error in judgment, and, on appeal, the trial court will not be found to have abused its discretion unless the record discloses that the judgment exercised

² In its Notice of Appeal, the Commonwealth certified that pursuant to Pa. R. App. P. 311(d), the April 6, 2011 Order denying its Motion to Admit Evidence substantially handicapped its prosecution of Defendant for possession of child pornography.

was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will or such lack of support as to be clearly erroneous. *Commonwealth v. Henkel*, 938 A.2d 433, 440 (Pa. Super. 2007).

Evidence of a defendant's prior bad acts or crimes may not be presented at trial to establish the defendant's criminal character or proclivities. **Pa. R. Evid. 404(b)(1)**; *Commonwealth v. Hudson*, 955 A.2d 1031, 1034 (Pa. Super. 2008) (citation omitted). However, evidence of a defendant's prior bad acts or crimes may be admissible "where it is relevant for some other legitimate purpose and not utilized solely to blacken the defendant's character." *Commonwealth v. Russell*, 938 A.2d 1082, 1092 (Pa. Super. 2007). For instance, "[e]vidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident." **Pa. R. Evid. 404(b)(2)**. Additionally, under the *res gestae* exception to Rule 404(b), evidence of other crimes, wrongs or acts may be admissible in situations where prior bad acts are part of a chain or sequence of events which formed the history of the case and were part of its natural development." *Commonwealth v. Walker*, 656 A.2d 90, 99 (Pa. 1995). Importantly, 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 admission of evidence becomes problematic when its prejudicial effect creates a danger "that it will stir such passion in the jury as to sweep them beyond a rational consideration of guilt or innocence of the crime on trial." *Commonwealth v. Sherwood*, 982 A.2d 483, 497 n.25 (Pa. 2009) (citation omitted).

Instantly, the Commonwealth sought to admit myspace.com conversations allegedly between Defendant, and Detective Hartlaub posing as H.R., a juvenile female, to show the *res gestae* of its case. Specifically at argument, the Commonwealth maintained that the myspace.com conversations were relevant to show why Defendant appeared at Magic Elm Skateland, where he was arrested for the rape charges. After Defendant was arrested for the rape charges, a search warrant was executed which led investigators to suspect there might be child pornography on Defendant's computer. Further search of Defendant's computer was halted until another search warrant was obtained to allow police to search Defendant's computer for child

pornography. The second search revealed 189 images of child pornography on Defendant's computer and the charges in the instant case, possession of child pornography, were filed as a result. According to the Commonwealth, the myspace.com conversations were necessary to show the natural development of the case, namely how and why the initial search warrant was obtained for Defendant's computer. The Commonwealth further maintained that the myspace.com conversations were necessary to show that Defendant was using the computer in which the child pornography was found and that Defendant had access and control over the pornographic images. Following argument, the trial court, specifically the undersigned, denied the Commonwealth's Motion to Admit Evidence because any probative value of the myspace.com conversations was greatly outweighed by the prejudicial effect. However, the trial court indicated in its April 6, 2011 Order that the myspace.com conversations may be admissible at trial on rebuttal depending on the testimony elicited at trial.

This Court did not commit an abuse of discretion when it denied the Commonwealth's Motion to Admit Evidence. The conversations that the Commonwealth sought to introduce do not reference any photographs or videos, nor does Defendant make any reference to any pornographic photos or videos in the myspace.com conversations. Moreover, the conversations the Commonwealth sought to introduce occurred in 2010. However, of the 189 counts of child pornography that Defendant faces, 160 of the counts are based on files downloaded in 2008, thus providing little probative value to myspace.com conversations that occurred on Defendant's computer in 2010.

Finally, the prejudicial effect of the myspace.com conversations greatly outweighed any probative value of the conversations. The content of the conversations, including the overall sexual nature of the conversations and numerous references of previous sexual encounters between Defendant and H.R., would likely influence the jury to a degree that would render it incapable of properly determining the Defendant's guilt or innocence as it relates to the child pornography charges Defendant instantly faces. The crux of the myspace.com conversations deal with the rape charges Defendant is facing in a separately docketed case and not the child pornography

case presently at issue.³ The conversations would also likely confuse the jury as the child pornography charges and rape charges are being tried separately. Based on the above, the trial court's ruling that denied the Commonwealth's Motion to Admit Evidence was not manifestly unreasonable or based on partiality, prejudice, bias, or ill-will; rather, the probative value of the conversations was greatly outweighed by their prejudicial effect. Further, contrary to the Commonwealth's assertions, its prosecution of Defendant for possession of child pornography charges is not substantially handicapped by the preclusion of the text of the myspace.com conversations in its case-in-chief. Therefore, the trial court did not abuse its discretion when it denied the Commonwealth's Motion to Admit Evidence.

For all the reasons stated herein, it is respectfully requested that the trial court's April 6, 2011 Order denying the Commonwealth's Motion to Admit Evidence be affirmed.

³ The text of the myspace.com conversations are far more probative to the rape charges pending in the other case, and they likely would be admissible in that case.

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 BETTY S. BREAM, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Bradley A. Freet, 7344 Surina Drive, Arlington, TN 38002; Carol Zumbum, 411 Rocky Ridge Road, Spring Grove, PA 17362

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

ESTATE OF KATHRYN J. DUNCAN, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Margaret D. Parker, 9373 Highlander Road, Walkersville, MD 21793

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RONALD L. DUPLER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrices: Dorothy P. Miller, 13096 Tierra Vergel Drive, El Paso, TX 79938; Brenda L. Horan, 1330 Hunterstown-Hampton Road, New Oxford, PA 17350; Rhonda L. Racine, 15 Slaybaughtown Road, Gardners, PA 17324

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

ESTATE OF MEYER S. GREENBERG, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executor: Lisa Siedlecki, 490 Barlow 2 Way Taverns Road, Gettysburg, PA 17325

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

ESTATE OF JOHN McDONALD a/k/a JOHN J. McDONALD, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Alberta L. Palluzzi, 7457 Jacobs Mill Road, East Berlin, PA 17316

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

ESTATE OF ROBERT C. MOUL, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executor: Kathy L. Bowers, 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 HELEN CATHERINE SWOMLEY, DEC'D

Late of Freedom Township, Adams County, Pennsylvania

David R. Swomley, 1240 Red Rock Road, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF MARY E. COLLIER a/k/a MARY ELIZABETH COLLIER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Administrator: Judy S. Adams, 57 Sedgwick Dr., East Berlin, PA 17316

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF RUBY E. FUNT a/k/a RUBY ELIZABETH FUNT, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Donna Riddle and Richard Funt, c/o Heather Roberts, Esq., Entwistle & Roberts, Esq., 66 West Middle St., Gettysburg, PA 17325

Attorney: Heather Roberts, Esq., Entwistle & Roberts, Esq., 66 West Middle St., Gettysburg, PA 17325

ESTATE OF RICHARD J. MACKEY, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: James N. Mackey, 592 Guernsey Road, Aspers, PA 17304

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHARLES E. MARKLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Janette A. Foreman, 308 Baer Avenue, Hanover, PA 17331; Lori J. Unger, 7 Emerson Court, Hanover, PA 17331

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

ESTATE OF BLAKE SCOTT WALKER, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Administrator: David S. Walker, 595 Goldenville Road, Gettysburg, PA 17325

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

ESTATE OF CHARLES L. WILKINSON, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Joy A. Lawrence, 148 Citrus Avenue, Imperial Beach, CA 91932

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF BEATRICE MCCREE DIEHL, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Allen David Diehl, 3 Ash Drive, Littlestown, PA 17340; Peggy Ann Horwedel, 19 Michael Street, Hanover, PA 17331

Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, PA 17331

ESTATE OF BETTY J. GEBHART, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Daniel T. Gebhart, 70 Airport Road, Hanover, PA 17331; Michael J. Gebhart, 590 Gooseville Road, New Oxford, PA 17350

Attorney: Timothy J. Shultis, Esq., 249 York Street, Hanover, PA 17331

ESTATE OF JOHN L. HARDMAN, DEC'D

Late of the Borough of Orrtanna, Adams County, Pennsylvania

Executrix: Debra K. Gelles, 2 Yvonne Trail, Fairfield, PA 17320

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

(continued on page 4)

THIRD PUBLICATION (CONTINUED)

ESTATE OF BERNICE M. HECK, DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Administratrix: Denise M. Therit, 3588
Centennial Rd., Hanover, PA 17331

Attorney: George W. Swartz, II, Esq.,
Mooney & Associates, 230 York St.,
Hanover, PA 17331

ESTATE OF ROSALIE MULLINS a/k/a
ROSALIE L. MULLINS, DEC'D

Late of Oxford Township, Adams
County, Pennsylvania

Co-Executors: George F. Mullins,
2740 Carlisle Pike, New Oxford, PA
17350; Tina M. Linthicum, 1175
Collins Rd., Little Hocking, OH 45742

Attorney: Stonesifer and Kelley, 209
Broadway, Hanover, PA 17331

ESTATE OF ELSIE B. RIEBLING, DEC'D

Late of Union Township, Adams
County, Pennsylvania

Executors: Roland E. Riebling and
Betty J. Plank, 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 ROBERT C. ROBINSON,
DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Executor: Kenneth E. Robinson, 195
Fish and Game Road, East Berlin,
PA 17316

Attorney: John C. Zepp, III, Esq., P.O.
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Springs, PA 17372