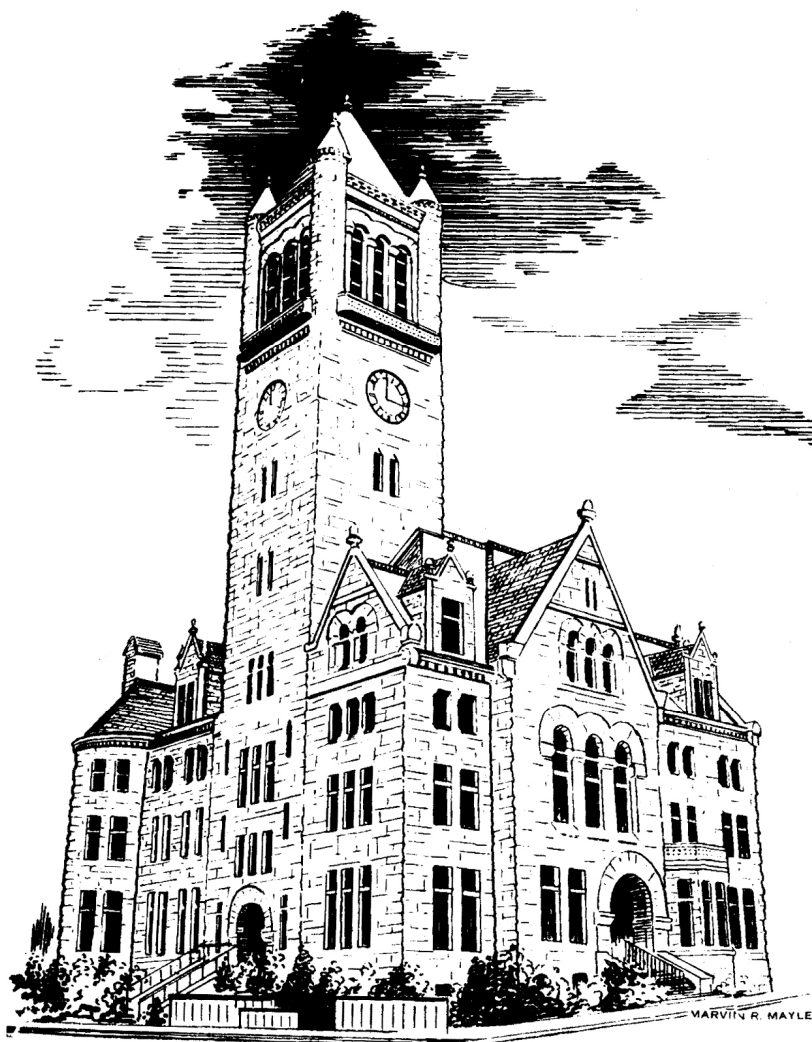


FAYETTE LEGAL JOURNAL

VOL. 88

MAY 3, 2025

NO. 18



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: Sheryl R. Heid
President Elect: Michelle L. Kelley
Vice-President: Jeffrey S. Proden
Secretary: Anne N. John
Treasurer: Louise D. Monaghan
Past President: Gretchen A. Mundorff
Executive Director: Garnet L. Gordon

Directors
Michael A. Aubele
Rachel A. Clark
Sarah E. Connelly
James E. Higinbotham, Jr.
Sean M. Lementowski
Daniel D. Taylor

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

RODNEY RYAN BOLEN, a/k/a RODNEY BOLEN, a/k/a RODNEY R. BOLEN, late of Luzerne Township, Fayette County, PA (3)

Administrator: Jeffrey A. Bolen
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

ROY BOWSER, a/k/a ROY D. BOWSER, late of Mill Run, Fayette County, PA (3)

Executrix: Pamela S. Hughes
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer Casini

LARRY W. FOSBRINK, late of North Union Township, Fayette County, PA (3)

Administratrix DBNCTA:
Loretta A. Ferrell
14013 Line Road
New Freedom, PA 17349
c/o 183 Market Street, #100
Kingston, PA 18704-5444
Attorney: David E. Schwager

CHRISTINE LOUISE HYDAK, a/k/a

CHRISTINE L. HYDAK, late of Perryopolis Borough, Fayette County, PA (3)

Personal Representative: Steven G. Hydak
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

DEBORAH JOSEPH, a/k/a DEBORAH A. JOSEPH, late of Uniontown, Fayette County, PA (3)

Administratrix: Heather Joseph
606 Hopwood Coolspring Road
Hopwood, PA 15445
c/o Tremba Kinney Greiner & Kerr
1310 Morrell Avenue, Suite C
Connellsville, PA 15425
Attorney: John Greiner

KATHRYN A. PLUTO, late of North Union Township, Fayette County, PA (3)

Administratrix: Shirley M. Krevinko
c/o 50 East Main Street
Uniontown, PA 15401
Attorney: Patrick C. McDaniel

MARTIN E. PLUTO, late of North Union Township, Fayette County, PA (3)

Administratrix: Shirley M. Krevinko
c/o 50 East Main Street
Uniontown, PA 15401
Attorney: Patrick C. McDaniel

THOMAS LEE ROMAN, late of German Township, Fayette County, PA (3)

Executrix: Gina Marie Jones
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

DONNA RUSSELL, late of Springhill, Fayette County, PA (3)

Administrator: Eva Marie Russell
245 Fallen Timber Road
Point Marion, PA 15474
c/o Zihmer Law Firm
3244 Washington Road, Suite 210
McMurray, PA 15317
Attorney: Tracy Zihmer

ELLEN G. SMILEY, late of Everson Borough, Fayette County, PA (3)

Administratrix: Robin R. Mills
3510 Kings Hill Road
Connellsville, PA 15425
c/o 183 Market Street, #100
Kingston, PA 18704-5444
Attorney: David E. Schwager

DEBRAH ANN SMODIC, a/k/a DEBRAH LEE, late of North Union Township, Fayette County, PA (3)

Personal Representative:

Anna Grace Milliron
c/o 68 South Beeson Boulevard
Uniontown, PA 15401

Attorney: James E. Higinbotham, Jr.

ROBERT L. STALEY, a/k/a ROBERT L. STALEY, JR., late of Newell Borough, Fayette County, PA (3)

Co-Executors: Robert Staley and
Rochelle N. Staley Acklin
c/o 51 East South Street
Uniontown, PA 15401

Attorney: Anthony S. Dedola, Jr.

MARGARET I. STOLARIK, late of Menallen Township, Fayette County, PA (3)

Executrix: Patricia M. Smith
c/o 51 East South Street
Uniontown, PA 15401

Attorney: Anthony S. Dedola, Jr.

HERBERT FRANKLIN SUMEY, SR., a/k/a HERBERT F. SUMEY, late of German Township, Fayette County, PA (3)

Co-Executrices: Janice Elaine Maruniak
and Rebecca Eileen Bailey
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401

Attorney: Ernest P. DeHaas, III

THOMAS R. THARP, late of Menallen Township, Fayette County, PA (3)

Executrix: Jennifer Black
c/o Riverfront Professional Center
208 South Arch Street, Suite 2
Connellsville, PA 15425

Attorney: Richard A. Husband

PHILIP TRUXEL, a/k/a PHILIP M. TRUXEL, late of Connellsville, Fayette County, PA (3)

Executrix: Malinda Angel
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425

Attorney: Jennifer Casini

Second Publication

CHARLOTTE M. BUCKLEY, a/k/a CHARLOTTE MIRIAM BUCKLEY, late of Fairchance Borough, Fayette County, PA (2)

Executrix: Judith S. McCourt
P.O. Box 184

Fairchance, PA 15436
c/o 556 Morgantown Road
Uniontown, PA 15401

Attorney: John A. Kopas, III

MARLENE CUPP, a/k/a MARLENE M. CUPP, late of Farmington, Fayette County, PA (2)

Executrix: Erica Upp (2)
c/o Radcliffe Martin Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401

Attorney: William Martin

FRED ALFRED RANKIN, a/k/a FRED RANKIN, a/k/a FRED A. RANKIN, late of North Union Township, Fayette County, PA (2)

Administrator: Robert E. Rankin
c/o 9 Court Street
Uniontown, PA 15401

Attorney: Vincent J. Roskovensky, II

DONNA G. REPPERT, late of Washington Township, Fayette County, PA (2)

Personal Representative: Daniel P. Reppert
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425

Attorney: David Tamasy

KUBINA GEORGE SAMUEL, late of Perry Township, Fayette County, PA (2)

Administratrix: Amber Leigh Kubina
c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400
Attorney: Benjamin F. Goodwin

GENEVIEVE F. SPROUL, late of Stewart Township, Fayette County, PA (2)

Personal Representative: Richard Hayden
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

FRANCIS M. SQUIRES, late of Uniontown,
Fayette County, PA (2)

Executor: Philip Squires
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Samuel J. Davis

ROSEMARY SUMEY, late of Smock, Fayette
County, PA (2)

Executrix: Domoneque Guerrieri-Sebeck
56 Braddock Street
Uniontown, PA 15401
c/o Tremba Kinney Greiner & Kerr
1310 Morrell Avenue, Suite C
Connellsville, PA 15425
Attorney: John Greiner

First Publication

VILMA S. AMBROSE, late of Washington
Township, Fayette County, PA (1)

Executor: Raymond L. Ambrose
300 Center Street
Belle Vernon, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

ROSA BORRIELLO, late of Washington
Township, Fayette County, PA (1)

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

**DAVID COURTS, a/k/a DAVID BERNARD
COURTS**, late of Dunbar Township, Fayette
County, PA (1)

Personal Representative: Sandra Absher
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

**RAYMOND E. FRANKHOUSER, a/k/a
RAYMOND ERIC FRANKHOUSER**, late of
Menallen Township, Fayette County, PA (1)

Executor: Kevin Hager
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

CHARLOTTE CAROLINE HOLT, late of
South Connellsville Borough, Fayette County,
PA (1)

Personal Representative:
Jacquelyn D. Bartholomai
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

**ALBERT THOMAS KAPALKO, a/k/a A.
THOMAS KAPALKO**, late of Fairchance,
Fayette County, PA (1)

Executrix: Martha Smith
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

**JAMES A. ORR, a/k/a JAMES ALBERT
ORR**, late of Fayette County, PA (1)

Executor: James R. Orr
P.O. Box 591
Belle Vernon, PA 15012
c/o Bumbaugh, George, Prather & DeDiana
10526 Old Trail Road, Suite 1
North Huntingdon, PA 15642-2031
Attorney: L. Christian DeDiana

JOSEPH P. SESTI, late of South Union
Township, Fayette County, PA (1)

Executrix: Natalie Jordan
311 East 72nd. Street, Apt. 3D
New York, NY 10021
c/o 724 Church Street
Indiana, PA 15701
Attorney: James D. Carmella

**MARY SETLIFF, a/k/a MARY
CATHERINE SETLIFF**, late of Saltlick
Township, Fayette County, PA (1)

Executor: Guy S. Setliff
417 Kibe Road Ext.
Acme, PA 15610
c/o KING Legal Group
114 North Maple Avenue
Greensburg, PA 15601
Attorney: Robert King

GENE SWANEY, late of Hopwood, Fayette County, PA (1)

Executor: Alan Swaney
18023 Collins Street
Encino, California 91316

LEGAL NOTICES

Articles of Incorporation

Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, PA for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988.

The name of the proposed nonprofit corporation is: Mechatronics Engineering and Technology Association. The purpose for which it was organized is: The Mechatronics Engineering and Technology Association (META) is a professional organization that aims to promote the advancement of mechatronics engineering and technology in the United States.

In the Court of Common Pleas of Fayette County, Pennsylvania.

In Re: Pennsylvania Housing Finance Agency,
Plaintiff,
vs.
Joshua Hale and All Unknown Heirs of Cynthia L. Keefer, deceased,
Defendants.

Attorney for Plaintiff: Lois M. Vitti, Esquire,
Vitti Law Group, Inc., 663 Fifth Street,
Oakmont, PA 15139. (412) 281-1725.

**COMPLAINT IN MORTGAGE
FORECLOSURE**

CASE NO. 2528 of 2024 GD

You have been named as Defendants in a civil action instituted by Pennsylvania Housing Finance Agency. against you in this Court. This action has been instituted to foreclose on a Mortgage dated June 9, 2008, and recorded in the Recorder's Office of Fayette County in MBV 3064, Page 1835 on June 18, 2008.

You are hereby notified to plead to the above- referenced Complaint within twenty (20) days from the date of publication of this Notice or a judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by 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 judgment may be entered against you without further notice for the 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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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 FOR OR NO FEE.

LAWYER REFERRAL SERVICE:
Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
100 South Street
P. O. Box 186
Harrisburg, PA 17108
Telephone: 1-800-692-7375

WATSON MUNDORFF, LLP

Notice of Revocable Trust
Pursuant to 20 Pa. C.S. § 7755(c)

The Shirley Bonita Bankes Revocable Living Trust under agreement dated 7/25/2004

Notice is hereby given of the administration of THE SHIRLEY BONITA BANKES REVOCABLE LIVING TRUST, DATED JULY 25, 2004. Shirley Bonita Bankes, settlor of the trust, of Upper Tyrone Township, County of Fayette and Commonwealth of Pennsylvania, died on February 22, 2025. All persons indebted to the said decedent are requested to make payment to the undersigned without delay, and all persons having claims or demands against said trust are requested to make known the same.

William P. Bankes, II., Successor Trustee
c/o WATSON MUNDORFF, LLP
720 Vanderbilt Road
Connellsville, PA 15425-6218
Phone: 724-626-8882

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


DiBella Weinheimer
Geer McAllister Best Coco Lloyd Whalen



Holly Whalen ♦ Amy Coco ♦ Bethann Lloyd

INSIST UPON OUR EXPERIENCED TEAM

LAWYERS DEFENDING LAWYERS

- Disciplinary Board
- Legal Malpractice
- Security Fund / IOLTA
- Ethics & Conflict Analysis
- Subpoena Assistance
- Licensure
- Conflict Resolution

WWW.DIBELLA-WEINHEIMER.COM 412 261-2900

JUDICIAL OPINION

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

COMMONWEALTH OF :
PENNSYLVANIA :
v. :
KODY MICHAEL DENNIS, : No. 1037 of 2023
DEFENDANT. : Honorable President Judge Steve P. Leskinen

OPINION AND ORDER

Leskinen, P.J. March 27, 2025

Before the Court is the Nunc Pro Tune Omnibus Pretrial Motion in which the Defendant raises a Petition for Writ of Habeas Corpus, a Motion to Suppress Physical Evidence, and a Motion to Compel Disclosure of the Identity of Confidential Informants. The Defendant is charged with Conspiracy-Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver, 18 Pa. C.S. § 903.

PETITION FOR WRIT OF HABEAS CORPUS

To grant a petition for a Writ of Habeas Corpus, the Court must decide that the Commonwealth did not establish a prima facie case. *Com. v. James*, 863 A.2d 1179, 1182 (Pa. Super. 2004). To establish a prima facie case, the Commonwealth must show sufficient probable cause that the Defendant committed the offense. *Id.* The evidence should be such that, if presented at trial and accepted as true, the Court would be warranted in allowing the case to go to the jury. *Id.* Evidence is viewed in the light most favorable to the Commonwealth, and all reasonable inferences based on that evidence which could support a guilty verdict are considered. *Com. v. Packard*, 767 A.2d 1068, 1071 (Pa. Super. 2001). The Commonwealth is not required to prove guilt beyond a reasonable doubt. *Id.*

The charge of criminal conspiracy is defined as:

- (a) A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:
 - (1) agrees with such other person or persons that they or one of more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
 - (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa. C.S. § 903.
35 P.S. § 780-113(a)(30) states:

Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

Evidence was presented that the Defendant had engaged in numerous hand-to-hand drug transactions during the period of September 2022 until April 12, 2023. On one of the last transactions before the search warrant was issued, Trooper Lizik of the Pennsylvania State Police testified that he observed the Defendant when he was approached by a confidential informant who wanted to purchase drugs from him. The Defendant then called his brother, who exited his residence and Defendant introduced him to the confidential informant. His brother, Blake Dennis, was then observed participating in a hand-to-hand transaction with the informant. The testimony of the Trooper related to this transaction alone was sufficient to support the charge of conspiracy. In addition, the phone that was confiscated from the Defendant in the search of his residence, when downloaded, indicated that he was engaged in delivering drugs. The evidence presented established more than mere presence at the scene and a mere association with the other perpetrators.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

The Defendant asserts that the search of the residences pursuant to the search warrants issued by Cynthia R. Eddy, U.S. Magistrate Judge were improperly issued as there was a lack of probable cause and therefore, the evidence procured from the search should be suppressed. A defendant may move to suppress evidence in the court where the trial will occur as Rule 12 provides. FRCRP Rule 41(h).

A federal search warrant can be used in a state investigation in Pennsylvania if the search is either deemed to be federal in character or state in character. The characterization of whether its primarily federal or state in character depends on the extent of involvement of the federal officers. The requirements for either a federal or state basis are not at issue in this case as the requirements for both are similar and have been met.

The standards for issuing a search warrant are governed by the Fourth Amendment and further delineated by the Federal Rule of Criminal Procedure, specifically Rule 41. (U.S. Const. Amend. IV.) The Standards in Pennsylvania are listed in the Pennsylvania Rules of Criminal Procedure Rules 200 to 206. In both jurisdictions, the warrants must comply with the Fourth Amendment of the United States Constitution which requires that the warrant be issued by a neutral and detached magistrate or judicial officer, based on probable cause, supported by an oath or affirmation, and specifically describing the place to be searched and the persons or items to be seized. *U.S. v. Artis*, 919 F.3d 1123 (2019). If, as in this case, the search is state in character, the search warrant need only conform to the federal constitutional requirements and does not need to specifically meet the federal criminal rule requirements.

The Pennsylvania requirements for the issuance of a search warrant are: 1) the warrant is to be issued by any issuing authority within the judicial district where the place to be searched or the person seized is located. (Pa.R.Crim.P. 200). The search

warrant may be issued for the search and seizure of contraband, fruits of a crime or evidence that constitutes evidence of the commission of an offense. (Pa.R.Crim.P. 201). The search warrant may not be issued but upon probable cause supported by one or more affidavits sworn to before the issuing authority or by using advanced communication technology.

(Pa.R.Crim.P. 203). The issuing authority may only consider the "four corners" of the affidavit in determining whether probable cause has been established and whether the search warrant should be issued. *Id.* The warrant must indicate the date it is issued, the issuing authority, specifically identify the property to be seized, describe the property to be searched with particularity, direct the time period in which the search must be conducted, and unless otherwise authorized, must specify that the search be conducted only during daylight hours. (Pa.R.Crim.P. 205 and 206).

The Defendant asserts that the information provided by the confidential informants was unreliable and failed to establish probable cause and the corroboration by the State Police and FBI was not specifically disclosed. The courts generally apply a "totality of the circumstances" test to evaluate the informant's reliability. However, if the information provided by the informant, is corroborated by the police then it is sufficient to establish probable cause. CW-1 is a cooperating witness who was assisting the police and received monetary compensation. CW-1 was considered reliable by the investigators as information provided had been corroborated by law enforcement and had provided information and assistance concerning separate drug trafficking investigations. The information provided led to arrests and seizures. The specific information was not included as it would reveal the identity of the confidential informant and there was expressed concern in the warrant that if the informant was able to be identified then this could lead to bodily injury or death for the informant.

CW-1 engaged in three documented controlled purchases involving the Defendant. In mid-October 2022, he arranged a controlled purchase of narcotics from the Defendant. The Defendant drove from 2 East Street in Uniontown and arrived in a Chevrolet Malibu to 114 Titus Place. The Defendant met with CW-1 inside the property. The transaction was video and audio taped. CW-1 turned over cocaine after exiting the property. A second transaction occurred at 114 Titus Place and CW-1 purchased cocaine from Gregory Dennis and observed three firearms while inside the property. The third transaction occurred at the same location and CW-1 again purchased fentanyl from co-defendant Gregory Dennis at this time.

The Defendant asserts that the search of 2 East Street in Uniontown was unlawful as the narcotic sales occurred outside the property, even though he concedes that one of the transactions did occur inside that property. More than one transaction occurred inside 114 Titus Place during this investigation.

CW-2 was also a cooperating witness who had worked with the investigators to receive financial compensation for his/her cooperation. CW-2 was the informant that spoke to Cody who contacted his brother, Blake. Then Blake left his residence and engaged in a hand-to-hand exchange with CW-2. The informant's information was corroborated by the investigator's observations of the transactions and the provision of the purchased drugs to the investigators. CW-2 was searched as was his vehicle prior to the

transactions with the Defendant's brother, Blake.

CW-3 also arranged for a purchase of drugs from an associate of the Defendant. At the location for the transaction, the Defendant drove the associate to meet with CW-3 to complete the transaction. CW-3 provided the drugs purchased to the officers, and the transaction was also recorded.

There is no requirement that specific cases need to be listed to establish that the information provided by the confidential informant is reliable. The transactions occurred after the informants were searched, provided funds and then searched later when the drugs were transferred to the officers. More than one of these transactions were recorded by either the informant or by the external cameras. In addition, the transactions outside were observed by law enforcement officers.

The Defendant further asserts that the search of the three residences, 2 East Street, 114 Titus Place and 62-1/2 Whiteman Avenue, all in the City of Uniontown, Pennsylvania were unlawful as there was no probable cause to authorize the searches.

As to the search warrant issued for 114 Titus Place, in mid-October 2022, the Defendant traveled from 2 East Street to the 114 Titus Place address. At that time, the CW-1 and the Defendant went inside the residence. CW-1 made an audio and video recording of the purchase of cocaine and which also showed codefendant Gregg Dennis in possession of a firearm. In mid-March and mid-April, 2023, CW-1 purchased cocaine and fentanyl from co-defendant Gregg Dennis inside the property.

At the 2 East Street property, while the Defendant was in the front of the residence, he made a telephone call to Blake who was inside the property that CW-2 was there, Blake exited the residence onto the porch and sold tramadol, fentanyl and flurofentanyl to CW-2. CW-4 was also involved with a sale at 2 East Street of fentanyl from Blake inside the property.

At the time of these incidents, the Defendant was on an ankle monitor, he was at the 2 East Street location as confirmed by his ankle monitor and by the recording from a pole camera. The actions of the informants were recorded and also monitored by law enforcement. The totality of the circumstances was sufficient to provide the probable cause needed for a warrant. The warrants for 114 Titus Place and 2 East Street were valid based on the criminal activities that took place both inside and outside of the property as there was more than a fair probability that evidence of crimes and/or contraband would be located on the properties.

The affiant for the warrants was Aaron Muscatillo, an FBI special agent who indicated that he had been involved with a task force investigating a street gang that had ties to Uniontown and was actively engaged in narcotics trafficking. The affiant also requested a warrant for the Defendant's residence at 62 1/2 Whiteman Avenue, which is listed with the parole board as his residence and where he sleeps based on the data taken from his ankle monitor. The only information in the warrant relates to the agent's experience and information from other law enforcement officers that evidence of a drug dealer's criminal activities will likely be found where the dealer resides, even if no drug trafficking was observed there. The Commonwealth cites to two cases from the Third

Circuit from 2000 and 2001. However, a recent Pennsylvania Superior Court case, *Commonwealth v. Nicholson*, 262 A.3d 1276 (Pa.Super. 2021), held that "an officer's professional experience can be a relevant factor for probable cause under the totality of the circumstances, it is only properly considered where the officer can demonstrate a nexus between his experience and the search, arrest, or seizure of evidence." *Id.* An allegation based on an assumption or supposition not supported by the facts is insufficient to support the inference of criminal activity in the premises, in spite of the fact that there are plenty of allegations relating to criminal activity of the individual who lived in the premises. *Nicholas* at 1280, citing *Commonwealth v. Way*, 492 A.2d at 1152.

As no nexus was described between the Defendant's criminal acts and his residence at 62 ½ Whiteman Avenue, and no acts or observations at that location were described in the affidavit, therefore, there was no probable cause supporting a search warrant of that residence. Therefore, the search of 62 ½ Whiteman was unlawful. Evidence obtained from 62 ½ Whiteman as a result of this warrant must be suppressed.

MOTION TO COMPEL DISCLOSURE OF IDENTITY OF CONFIDENTIAL INFORMANTS

In this case, the Commonwealth has provided information from confidential informants as well as evidence from audio and video recordings, recordings from external pole cameras, and corroboration from law enforcement officers who observed alleged drug transactions by the Defendant and his co-conspirators to establish the Defendant's involvement in this conspiracy. The defense has requested that the court compel the release of the identities of the confidential informants involved in this case.

The Commonwealth has a qualified privilege to withhold the identity of a confidential source. To overcome this qualified privilege and obtain the identity of each confidential informant, the Defendant must first establish that pursuant to Pa. R.Crim.P. 573 (8)(2)(a)(i), the information sought is material to the preparation of the defense and the request is reasonable. *Commonwealth v. Marsh*, 997 A.2d 318 (Pa. 2010). Only after the defendant establishes that the identity of the confidential informant is material to the defense is the court required to exercise its discretion to determine whether the information should be revealed by balancing relevant facts, which are initially weighted in favor of the Commonwealth. *Id.* The defense has failed to offer any evidence to support the material nature of the informants. Some of the transactions were on video and audio between the co-conspirators and the informants while others were conducted under close surveillance of law enforcement. The Defendant and his co-defendants were observed by law enforcement officers, recorded by external pole cameras, recorded by audio and video equipment, all of which corroborated the information provided by the informants. The release of their personal information would not support a mistaken identity defense but would rather place them at great personal risk if the co-conspirators were informed of their identities. The defense has failed to establish that the identities of the informants are material in this case so as to pierce the Commonwealth's qualified privilege to withhold the identity of the confidential informants. The Motion must therefore be denied.

ORDER

AND NOW, this 27th day of March, 2025 after consideration of the Defendant's Nunc Pro Tune Omnibus Pretrial Motion, the Court hereby ORDERS and DECREES that Defendant's Petition for Writ of Habeas Corpus contained therein is hereby DENIED. The Court hereby DENIES the Motion to Suppress as to the evidence seized from the properties located at 2 East Street, Uniontown, Pa. 15401 and 114 Titus Place, Uniontown, Pa 15401. The Court hereby GRANTS the Defendant's motion as to the evidence seized as a result of the search of the property located at 62 ½ Whiteman Street, Uniontown, as the evidence presented in the warrant was insufficient to establish probable cause for the search. Therefore, the Court hereby ORDERS and DIRECTS that the evidence seized pursuant to the search warrant from 62 ½ Whiteman Street is hereby SUPPRESSED.

The Court further ORDERS that the Defendant's Motion to Compel the Release of the Identity of the Confidential Informants is hereby DENIED.

BY THE COURT:
STEVE P. LESKINEN
PRESIDENT JUDGE

ATTEST:
Clerk of Courts



130th Annual

FAYETTE COUNTY BAR ASSOCIATION

BAR BANQUET

SUNDAY, MAY 18TH

FIRST FLIGHT ISLAND RESTAURANT
301 WHITEHEAD STREET

Key West, Florida

6:00 COCKTAILS & HORS D'OEUVRES
7:00 DINNER

RSVP TO THE ASSOCIATION BY APRIL 14TH
724-437-7994 *or* GARNET@FCBAR.ORG

FCBA MEMBERS COMPLIMENTARY
GUESTS WELCOME! GUEST FEE \$100