

Lebanon County Legal Journal

The official legal periodical for Lebanon County
containing the decisions rendered in the 52nd Judicial District

Vol. 56

Lebanon, Pennsylvania, December 5, 2018

No. 19

Public Notices

DECEDENTS' ESTATES

NOTICE OF SUMMONS

NOTICE OF PURGE OF INACTIVE PROCEEDINGS

Opinion

Commonwealth of PA vs. Anthony Gambles No. CP-38-CR-0002075-2017

Published every Wednesday. Advertisements must be sent to
LCBA, 547 South 10th Street, Lebanon PA 17042
or emailed to lebcobar@verizon.net
by 11 a.m. of preceding Monday.

Lebanon County Legal Journal, per bound volume.....	\$95.00
Advance Sheets, per year.....	\$97.75
Single copy, advance sheets.....	\$4.00

717-273-3113; www.lebanoncountylegaljournal.org

Owned and published by the Lebanon County Bar Association

Paul W. Kilgore, Esq., Chair
Stephanie Axarlis, Esq., Editor
Jennifer Wentzel, Esq., Editor

DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF ROSE MARIE BARRY a/k/a Rose Marie Barry, late of Swatara Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Kathleen B. Kulbitsky, Executrix
1876 Kenbrook Road
Lebanon, PA 17046

Edward J. Coyle., Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF JOHN F. EGGERT, late of Swatara Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executrices.

Elizabeth Barry, Co-Executrix
Christine Henning, Co-Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF FRANCES H. FISHER, late of Cornwall Borough, Lebanon County, Pennsylvania, deceased, Letters Testamentary have been granted to the undersigned Executrix.

Susan F. Fisher, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF SAMUEL A. GINGRICH, late of North Londonderry Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Timothy D. Gingrich & Robert S. Gingrich,
Co-Executors
c/o Gerald J. Brinser
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF BETTY J. WERT, late of South Londonderry Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Deborah Varner, Executrix
c/o Gerald J. Brinser
P. O. Box 323
Palmyra, PA 17078
Attorney

SECOND PUBLICATION

ESTATE OF MARCUS W. GAINER, late of the County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Steven M. Gainer, Executor
816 Sheridan Drive
Sault Sainte Marie MI 49783

Daryl J. Gerber, Esq.
The Law Office of Daryl J. Gerber
46 E. Main Street
Palmyra PA 17078

ESTATE OF ALLEN G. LIGHT, late of Lebanon City, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrices.

Anna Sullivan, Co-Executrix
Joan Hirons, Co-Executrix
c/o Weiss Burkett
802 Walnut Street
Lebanon, PA 17042

Samuel G. Weiss, Jr., Esquire
Attorney

ESTATE OF DONALD E. SCHLEGEL, SR., late of the City of Lebanon, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Donald E. Schlegel, Jr., Executor
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

THIRD PUBLICATION

ESTATE OF JOYCE L. BORDLEMAY, late of North Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Beverley Stefonich, Executrix
c/o Patrick M. Reb, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-6620

ESTATE OF VIVIAN D. FORREST a/k/a Vivian Dell Forrest, late of South Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Cindy M. Shannon, Executrix
c/o Edward P. Seeber, Esq.
JSDC Law Offices
Suite C-400
555 Gettysburg Pike
Mechanicsburg PA 17055
717-533-3280

ESTATE OF STELLA V. FORTNA, late of the Township of North Cornwall, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Fulton Bank, N.A.
555 Willow Street
Lebanon, PA 17046

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF DONALD V. SNYDER, late of Jackson Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executrices.

Lois J. Keeney, Co-Executrix
Laurie A. Ober, Co-Executrix

Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF ROBERT J. STEINBAUER, late of Palmyra, Lebanon County, Pennsylvania, deceased September 12, 2018. Letters testamentary have been granted to the undersigned Executor.

Shelby D. Lenker, Executor
7 Main Trail
Fairfield, PA 17320

ESTATE OF ARTHUR J. WALBORN, late of the County of Lebanon, Commonwealth of Pennsylvania, deceased. Grant of Letters has been granted to the undersigned Executor.

Pamela Bohr, Executor

George E. Christianson
Attorney
Lebanon, PA

NOTICE OF SUMMONS

State of Wisconsin Circuit Court
Milwaukee County
Case No. 18-CV-007199
Hon. Stephanie Rothstein
Case Code: 30404

The Woodlands Condominium
Homeowners Association, Inc., Plaintiff
vs.

Cheniqua Johnson, Defendant

Summons by publication

THE STATE OF WISCONSIN

TO: Cheniqua Johnson
8 Werni Drive
Lebanon, PA 17042

YOU ARE HEREBY notified that the plaintiff named above has filed a lawsuit or other legal action against you.

Within forty (40) days after November 28, 2018, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or

disregard an answer that does not follow the requirements of the statutes. That answer must be sent or delivered to the Clerk of Court, whose address is Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233, and to the plaintiff's attorney, whose address is: MAYHEW LAW OFFICE, 12750 West North Avenue, #B, Brookfield, Wisconsin 53005. You may have an attorney help or represent you.

If you do not provide a proper answer within forty (40) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now, or in the future, and may also be enforced by garnishment or seizure of property.

DATED this 13th day of November, 2018.

MAYHEW LAW OFFICE

Attorneys for Plaintiff

BY: GERALD J. MAYHEW

State Bar No. 1018988

Mayhew Law Office

12750 West North Avenue, #B

Brookfield, WI 53005

Phone: 262-432-1274 Fax: 262-432-1280

Email: jerry@mayhewlawoffice.com

OUR FIRM IS A DEBT COLLECTOR.
THIS IS AN ATTEMPT TO COLLECT
A DEBT. ANY INFORMATION
OBTAINED WILL BE USED FOR THAT
PURPOSE.

NOTICE OF PURGE OF INACTIVE PROCEEDINGS

NOTICE IS HEREBY GIVEN to all parties, to, and persons having any interest in, any cases, actions and proceedings of any nature pending in the Court of Common Pleas of Lebanon County, Pennsylvania, Civil Action Division, and to their respective counsel, that all said cases, actions and proceedings in which no steps or proceedings have been taken for two years or more will be terminated with prejudice on December 7, 2018, in Courtroom No. 1, and no further proceedings therein shall be allowed without prior approval of said Court for cause shown.

BARBARA A. SMITH

Prothonotary

Of the Court of Common Pleas

Of Lebanon County, Pennsylvania

**COMMONWEALTH OF PA VS. ANTHONY GAMBLES
NO. CP-38-CR-0002075-2017**

Criminal Action-Law-Sentencing-Guilty Plea-Discretion of the Court-Hearsay Information-Affidavit of Probable Cause

Defendant, who pled guilty to two (2) counts of Simple Assault relating to his assault of his significant other and her two (2) year old toddler son pursuant to a plea agreement calling for the imposition of a probationary sentence, filed a Post Sentence Motion to Modify Sentence, asserting that the probationary sentence imposed for two (2) years less one (1) day is unduly excessive because the Court erred in reading and considering the Affidavit of Probable Cause appended to the Criminal Complaint in imposing sentence.

1. The court is not required to provide a detailed explanation of all factors considered in imposing sentence when the sentence imposed is within the standard range of suggested sentences by the Pennsylvania Sentencing Guidelines.
2. In determining the duration of a sentence, the court is required to consider the nature and circumstances of the crime committed by the defendant.
3. When a defendant pleads guilty to an offense, a sentencing court is not bound by the strict rules of evidence in determining the nature of the act underlying the crime to which the defendant pled guilty.
4. Consideration of hearsay information at sentencing is consistent with the notions of due process as long as there is a sufficient indicia of reliability of the information.
5. When hearsay information is considered by the court at sentencing, the hearsay information must be part of the record and the defendant must have the opportunity to disprove its accuracy.
6. Material alleged in an affidavit of probable cause appended to the criminal complaint properly is considered by the court to define the circumstances underlying an alleged offense at sentencing unless a defendant or his or her attorney specifically challenges some aspect of the affidavit of probable cause before sentencing.
7. In light of the fact that Defendant never challenged any aspect of the Affidavit of Probable Cause or the Criminal Information and acknowledged committing the crimes alleged based upon that information when he pled guilty to the offenses, the Court properly considered the Affidavit of Probable Cause in determining and imposing an appropriate sentence.

L.C.C.C.P. No. CP-38-CR-0002075-2017, Opinion by Bradford H. Charles, Judge, October 10, 2018.

COMMONWEALTH OF PA VS. ANTHONY GAMBLES
NO. CP-38-CR-0002075-2017

IN THE COURT OF COMMON PLEAS LEBANON COUNTY

PENNSYLVANIA

CRIMINAL DIVISION NO. CP-38-CR-2075-2017

COMMONWEALTH OF PENNSYLVANIA

v.

ANTHONY GAMBLES

ORDER OF COURT

AND NOW, this 10th day of October, 2018, upon consideration of the Motion to Modify Sentence filed by the DEFENDANT, and in accordance with the attached Opinion, said Motion to Modify Sentence is denied.

The Defendant is advised that he has thirty (30) days from today's date in which to file an appeal of this decision with the Pennsylvania Superior Court.

BY THE COURT:

BRADFORD H. CHARLES, J.

APPEARANCES

Robert Harding, Esquire For Commonwealth of Pennsylvania
DISTRICT ATTORNEY'S OFFICE

Elliott Katz, Esquire For Anthony Gambles
PUBLIC DEFENDER'S OFFICE

**COMMONWEALTH OF PA VS. ANTHONY GAMBLES
NO. CP-38-CR-0002075-2017**

OPINION BY CHARLES, J., October 10, 2018

Displaying an almost unfathomable amount of chutzpah, the DEFENDANT has appealed his Judgment of Sentence, claiming that the length of his probation is too long. The DEFENDANT's primary argument is that the Court erred by reading and considering the Affidavit of Probable Cause appended to the Criminal Complaint. We author this Opinion to re-emphasize how fortunate the DEFENDANT is to not be in prison. At the same time, we also will take the opportunity provided by the DEFENDANT's arguments to reaffirm the ability of a sentencing Judge to read and consider what is included in an Affidavit of Probable Cause.

I. FACTUAL BACKGROUND

On November 12, 2017, Lebanon City Police Officer Ryan Adams was dispatched to a domestic dispute at 109 North Twelfth Street in the city. According to the Affidavit of Probable Cause appended to the Criminal Complaint, a domestic violence victim called 911 to indicate that she was in immediate need of police assistance. The phone call was then disconnected. The Affidavit chronicled that when Officer Adams arrived on scene, he encountered the victim and her two-year old son covered in blood. The officer noted lacerations to the cheek of the adult victim and the corner of the mouth of the two-year old toddler.

According to the Affidavit of Probable Cause, the victim reported that the DEFENDANT had struck her in the face with a closed fist. He also pulled her hair and pushed her down on to a bed on top of the toddler who was sleeping at the time.

Based upon the facts set forth in the Criminal Affidavit, police filed charges of Endangering the Welfare of Children and two counts of Simple Assault. These charges were bound over to Court. On December 8, 2017, the Commonwealth filed a Criminal Information. Count One charged the DEFENDANT with Endangering the Welfare of Children and alleged that the DEFENDANT caused injury to the two-year old toddler by causing the adult female victim to fall on top of him. Count Two alleged Simple Assault relating to the toddler. Count Three alleged Simple Assault relating to the adult female.

On July 27, 2018, the DEFENDANT entered a plea of guilty. During the Guilty Plea colloquy, the DEFENDANT acknowledged receiving and reading the Criminal Complaint and the Criminal Information. Although the Commonwealth withdrew Count One, the DEFENDANT acknowledged that he was entering a Guilty Plea to Counts Two and Three

COMMONWEALTH OF PA VS. ANTHONY GAMBLES
NO. CP-38-CR-0002075-2017

because he did the things that were charged against him.

The DEFENDANT's case was presented to the Court for sentencing pursuant to a plea agreement that called for probation. ¹ This Court expressed some reluctance to impose a probationary sentence. At sentencing, the Court stated:

"I think you've earned prison time for that [the assault]. I don't feel strongly enough about it that I am going to reject the plea agreement, but here's what I did. In my form Order that I've prepared, I wrote "The Defendant received a huge break today. If he violates, he will receive at least 5 months in the Lebanon County Prison." So if you screw this probation up, you don't report, you test positive, you do anything else to mess up, then I'm going to give you the time in jail that I think you've earned as a result of this." (Sentencing N.T. 3-4).

This Court imposed a sentence upon the DEFENDANT of 2 years less one day probation. This sentence complied with the parties' plea agreement and it was within the standard range of the Sentencing Guidelines. No argument to the contrary was even proffered at or after sentencing.

On September 24, 2018, the DEFENDANT filed a Post-Sentence Motion. He sought a Modification of Sentence by claiming that 2 years less a day of probation "was unduly excessive." In his motion, the DEFENDANT further alleged that this jurist erred by taking into consideration facts that were included in the Affidavit of Probable Cause. We issue this Opinion to deny the DEFENDANT's Request to Modify Sentence and to reaffirm the ability of this Court to review and consider Affidavits of Probable Cause at the time of sentencing.

II. DISCUSSION

Initially, we wish to emphasize that the sentence imposed complied with the parties' plea agreement and was within the Standard Range of Pennsylvania's Sentencing Guidelines. As such, this Court was not required to provide a detailed explanation of all factors considered when imposing the sentence. See, e.g. *Commonwealth v. Boyer*, 856 A.2d 149 (Pa. Super. 2004); *Commonwealth v. Fowler*, 893 A.2d 758 (Pa. Super. 2006). Nevertheless, the Court did express to the DEFENDANT disdain about his conduct and about the fact that it resulted in injury to both a 2-year old child and the child's mother.

¹ Apparently, the adult victim reconciled with the DEFENDANT. She requested leniency.

COMMONWEALTH OF PA VS. ANTHONY GAMBLES
NO. CP-38-CR-0002075-2017

In exercising discretion concerning the duration of a sentence, Courts are required to consider the nature of the act committed by the Defendant. Pennsylvania's Sentencing Statute requires the Court to consider "the gravity of the offense". See, 42 Pa. C.S.A. § 9721. In assessing whether a prison sentence should be imposed, Pennsylvania's Judiciary Code requires a Court to consider "the nature and circumstances of the crime..." 42 Pa. C.S.A. § 9725. In the case of *Commonwealth v. Boyer*, 856 A.2d 149 (Pa. Super. 2004), Pennsylvania's Superior Court stated: "In imposing sentence, the Trial Court is *required* to consider the particular circumstances of the offense..." *Id* at page 154 (emphasis supplied).

In the case where a Defendant is found guilty at trial, the Trial Judge imposes sentence because he/she was present to hear all of the testimony presented to the jury. In a case involving a guilty plea, the Sentencing Judge does not have the benefit of being personally present to watch testimony as it unfolds. It part because of this, our Appellate Courts have ruled that sentencing Courts are not bound by strict rules of evidence. In *Commonwealth v. Orsino*, 178 A.2d 843 (Pa. Super. 1962), the Superior Court stated: "The Court in sentencing may receive any relevant information which will enable it to exercise its discretion in determining the proper sentence or penalty... A proceeding held to determine sentence is not a trial, and the Court is not bound by the restrictive Rules of Evidence properly applicable to trials." *Id* at page 847. See also, Fed.R.Ev. 1101(d)(3)(Rules of Evidence not applicable at Sentencing). Our nation's Highest Court has declared that use of hearsay information at sentencing is consistent with the notions of due process "as long as there is sufficient indicia of reliability." *Payne v. Tennessee*, 501 U.S. 808, 111 S.Ct. 2597, 115 L.Ed. 2d 720 (1991). When hearsay information is considered by a Court at sentencing, that hearsay must be part of the record and the Defendant must have the opportunity to disprove its accuracy. *Commonwealth v. Berrigan*, 535 A.2d 91 (Pa. Super. 1987).

In Lebanon County, information about the circumstances of an offense is presented to the Court through the Affidavit of Probable Cause appended to the Criminal Complaint. In each and every case, the Affidavit is presented to the Judge prior to sentencing. Until or unless a Defendant disputes the accuracy of the Affidavit, Lebanon County Judges will consider it as defining the circumstances of an offense. This is the sentencing process that has been employed in Lebanon County for decades.

This very issue was presented to this Court previously in the case of *Commonwealth v. Scott Byle*, C.P. Leb.Co., No. 2013-2005 (Charles, J. May 3, 2006). In *Byle*, we considered the Affidavit of Probable Cause as defining the nature of the Defendant's conduct. After receiving a sentence he did not like, the Defendant objected to the Court's consideration of

COMMONWEALTH OF PA VS. ANTHONY GAMBLES
NO. CP-38-CR-0002075-2017

the Probable Cause Affidavit. We rejected the Defendant's objection and stated:

“In this case, the Defendant was told that the charges were set forth in the Information and Criminal Complaint, which necessarily included the Affidavit of Probable Cause (Guilty Plea N.T. 2). He acknowledged that he understood the nature of the charges and ultimately admitted that he committed them. (Guilty Plea N.T. 2, 5). Prior to sentencing, the Sentencing Judge was provided with the very same Criminal Complaint that was used during the Guilty Plea process to define the charges. The Sentencing Judge reviewed the Complaint and considered it when imposing a sentence. By doing so, he did not err.”

In every case presented to this Court for sentencing, the Defendant has the opportunity to challenge what is in the Affidavit of Probable Cause. In many cases, defense attorneys do just that by stating something to the effect: “My client is pleading guilty because his conduct fits the elements of the offense, but he does not agree to everything set forth in the Affidavit of Probable Cause.” Invariably, when such a statement is made, we flesh out on the record what it is that the Defendant acknowledged doing and what it is that he disputes. In some cases, we even scheduled factual hearings to resolve disputes about the circumstances of the offense before we imposed sentence.

In this case, the DEFENDANT had the opportunity to dispute what was stated in the Affidavit of Probable Cause. When asked to provide comment, the DEFENDANT declined to do so. (N.T. 3). After being confronted by the Court's disdain about what he did, the DEFENDANT responded that he understood the Court's admonition but provided no additional comment.

Under the circumstances of this case, the Court was justified in sentencing the DEFENDANT based upon the premise that he assaulted an adult female and caused her injury. Moreover, the Court was justified in concluding that during the course of the assault, the DEFENDANT caused a 2-year old toddler to become injured. Our sentence of 2 years less a day probation was based upon our conclusions about the circumstances of the DEFENDANT's offense. We stand by those conclusions and by the sentence we imposed.

III. CONCLUSION

We have chosen to author an Opinion rather than a simple Court Order to deny the Motion to Modify Sentence. We have done so because it has been over twelve years since this Court has decided *Commonwealth v. Byle*, supra. and because we wish to reaffirm for

COMMONWEALTH OF PA VS. ANTHONY GAMBLES
NO. CP-38-CR-0002075-2017

the entire Lebanon County Defense bar that we will consider the Affidavit of Probable Cause as defining the circumstances of a Defendant's offense unless the Defendant or his attorney specifically challenges some aspect of the Affidavit at or before sentencing.

Here, the DEFENDANT never challenged any aspect of the Affidavit of Probable Cause or the Criminal Information. To the contrary, he acknowledged committing the crimes of Simple Assault as it relates to both the 2-year old toddler and the toddler's mother. Given these facts, it is disingenuous for the DEFENDANT to now claim that the Court acted inappropriately in sentencing him for what he admitted doing. With that being said, an Order will be entered today denying the DEFENDANT's Motion to Modify Sentence.