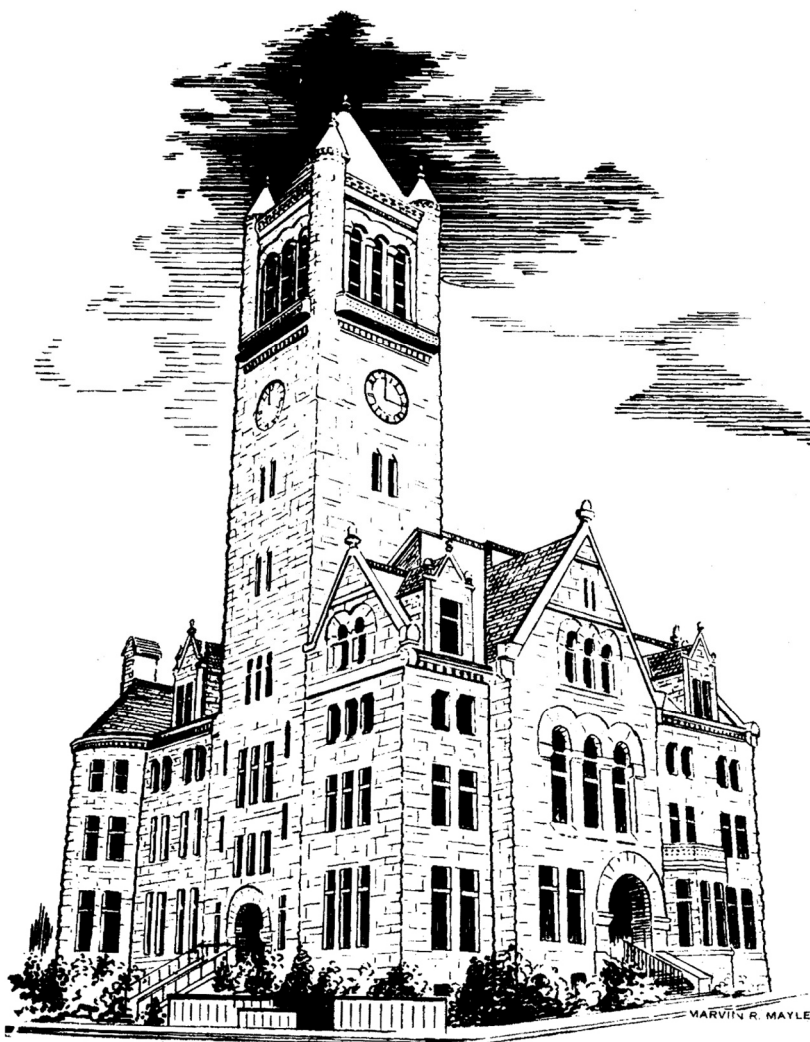


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Third Publication

WILLIAM GATES BROWN, JR., a/k/a

WILLIAM G. BROWN, late of German Township, Fayette County, PA (3)

Co-Executor: James W. Brown and Donald R. Brown
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55 East Church Street, Suite 101
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MARTIN COSIMATTO, a/k/a MARTIN A. COSIMATTO, late of Redstone Township, Fayette County, PA (3)

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GEORGE E. KOLESSAR, JR., late of

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Executrix: Lynne Palankey May, a/k/a Lynne E. May
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Second Publication

HAZEL C. BAKER, a/k/a HAZEL L. BAKER, a/k/a HAZEL BAKER, late of North Union Township, Fayette County, PA (2)

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First Publication

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Uniontown, PA 15401
Attorney: Joseph M. George, Sr.

EDWARD POLITO, a/k/a EDWARD J. POLITO, SR., a/k/a EDWARD JOHN POLITO, SR., late of North Union Township, Fayette County, PA (1)

Executrix: Deborah A. Allen
c/o Higinbotham Law Office
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Attorney: James Higinbotham

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Executrix: Frances Rafter
P.O. Box 209
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c/o 92 East Main Street, Suite 24
Uniontown, PA 15401
Attorney: Michelle Kelley

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Fax 215-579-9248
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

NO. 1990 of 2022 GD

COMPLAINT IN MORTGAGE
FORECLOSURE

PLANET HOME LENDING, LLC

Plaintiff,

vs.

**MARK MORRISON and KATHY
MORRISON**

Defendants.

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 a 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.

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Cameron Kimmell
2003 State Route 31
Ligonier, PA 15658

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

Monday, March 6, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2621-0887	JESSE L. DAYTON, deceased	Emily Dayton, Executor
2621-0513	LAIRD N. MAY, deceased	Audrey M. Cain, Executrix

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

Monday, March 20, 2023, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, Third 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 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

Monday, March 6, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2621-0268	DOLORES E. HAVANETS, a/k/a DOLORES HAVANETS, a/k/a DELORES E. HAVANETS, deceased	Rose M. Fantini, Executrix
26210-0700	WILLIAM R. HARDY, JR., deceased	Jennifer L. Maraugh, Administratrix

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

Monday, March 20, 2023, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, Second 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.

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JOHN F. WARMAN
518 Madison Drive
Smithfield, PA 15478
724-322-6529
johnfranciswarman@gmail.com

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JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA :
 :
v. :
 :
TREMAYNE JEREL SPILLMAN, : No. 1255 of 2021
Defendant/Appellant. : Honorable Joseph M. George, Jr.

OPINION

George, J. January 10, 2023

A jury trial began on June 6, 2022, with Appellant present, however Appellant left trial after opening statements and never returned nor could he be contacted. The trial continued in his absence. The jury found Appellant guilty of one count of Possession of Firearm Prohibited {1} and one count of Receiving Stolen Property {2}. Appellant was finally located on October 3, 2022, and on October 5, 2022, Appellant was sentenced on his conviction of Possession of a Firearm Prohibited to a period of incarceration not less than eighty-four (84) months nor more than 18 years. Subsequently, Appellant filed this Appeal with the Pennsylvania Superior Court. This Opinion is in support of the jury verdict.

CONCISE ISSUES

Appellant filed the following Statement of Concise Matters to be Raised on Appeal:

- 1. The Court erred by conducting a trial with Defendant in absentia;
- 2. Defendant was denied a fair trial in absentia;
- 3. The evidence was insufficient to sustain a conviction for receiving stolen property;
- 4.The Court erred Jury Instruction-failed to give In Court Identification; and
- 5.The Defendant's Sentence was Illegal- Recidivism Risk Reduction Incentive.

The Appellant's Statement of Concise Matters to be Raised on Appeal consists of eight (8) pages. We provided only the summary of each issue above.

{1} 18 Pa § 6105 §§ A1
{2} 18 Pa § 3925 §§ A

FACTS

On May 22, 2021, Pennsylvania State Troopers were dispatched to Adolph's Tavern, Masontown, Fayette County for a report of a man brandishing a gun inside the bar. David Cogar testified that the Appellant was at the bar that night with another man. (Trial Tr. 24-25.) Cogar, a bartender, approached the two men asking if they needed anything else when he heard a "clicking noise" as if a gun was ejecting the shell. (Trial Tr. 27:8-15) Appellant pointed a gun at Cogar then spun around in his seat and pointed it at the Disc Jockey booth. (Trial Tr. 28:17-24) An altercation ensued between the Disc Jockey, Appellant and David Cogar which led to Appellant being disarmed. (Trial Tr. 29-31). Cogar threw the firearm into a garbage can inside the bar where it was recovered by Troopers. Appellant was removed from the bar.

Troopers located the Appellant and detained him. Trooper Strini testified that Appellant was taken to the barracks and read his Miranda rights. When interviewed by Troopers Appellant told the Troopers that he possessed a gun on the night in question which he had purchased from an individual named "Quami" who sold it to him for Two Hundred Dollars (\$200.00). (Trial Tr. 74-75). During his interview, Appellant said he knew that Quami was going to report the firearm as stolen, and that he knew he was a felon who is not allowed to possess firearms. When Troopers ran an eTrace on the firearm it was reported stolen on May 22, 2021.

DISCUSSION

The first and second issue asserted by the Appellant will be discussed together. The issues asserted are that the Court erred by conducting a trial with Defendant in absentia. Pursuant to Article 1, §9 of the Pennsylvania Constitution, and the Sixth Amendment of the federal Constitution that applies to the states via the Fourteenth Amendment due process clause, defendants have the right to be present during their criminal trial. *Commonwealth v. Wilson*, 551 Pa. 593, 598, 712 A.2d 735, 737 (1998). While a defendant has the right to be present at trial, that right is not absolute, and can be waived if a non-capital defendant either expressly or implicitly does so. *Id.*

One such way to implicitly wave the right to a jury trial is to absent oneself from the trial. *Commonwealth v. Kelly*, 78 A.3d 1136, 1143 (Pa.Super. 2013). Where the offense is not capital and the accused is not in custody, after the trial has begun in a defendant's presence, and he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial. Instead, this operates as a waiver of his right to be present and leaves the Court free to proceed with the trial as if he were present. *Com. v. Diehl*, 378 Pa. 214, 218, 107 A.2d 543, 545 (1954).

In the instant case the Appellant was present for the jury selection process and opening statements. Then Appellant failed to return after lunch. The Court gave defense counsel time to contact Appellant with no avail. Clearly, the Appellant had waived his right to be present at trial by voluntarily absenting himself after the beginning of his trial without cause.

The Appellant further argues that he was not afforded a fair trial in absentia. Specifically, Appellant raises two issues, (1) that the in-court identification by the witnesses

was unfair and (2) that the judge improperly commented on the absence of the Appellant during the trial.

The crux of Appellant's argument regarding in court identification is that "[t]rial unfairness exists if a defendant is identified at trial by a witness pointing to an empty chair due to defendant's absence from the trial."

However Appellant, who was at liberty on bail, absconded from the trial and is now trying to benefit from his voluntary absence on appeal. The Commonwealth witnesses who were present for the beginning of the trial were able to identify Appellant from the beginning of the trial and their experience with him on the night in question. Trooper Strini was not present for the beginning of trial, so the Commonwealth presented him with a photocopy of the Appellant's driver license photo for identification. Therefore, with the benefit of two of the witnesses and the jury seeing the Appellant before he absented himself the in-court identification was proper.

The Court did not comment on the Appellant's absence in front of the jury when he initially failed to return to the courtroom. However, as the jury could clearly notice the empty chair where the defendant previously sat as the trial resumed, we informed the jury that "in every criminal case he is presumed innocent whether he's here or not." (Trial Tr. 15:1-8). The Court asked defense counsel several times if he had contact with his client, but all of those comments were out of the presence of the jury as indicated repeatedly in the trial transcript. Therefore, the comments regarding the Appellant's absence did not infringe upon his right to a fair trial.

The Next issue Appellant has asserted is that the evidence was insufficient to sustain a conviction for receiving stolen property. The applicable standard of review for sufficiency of the evidence is listed below.

The standard of review for a challenge to the sufficiency of the evidence is to determine whether, when viewed in a light most favorable to the verdict winner, the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt. The Commonwealth may sustain its burden of proving every element beyond a reasonable doubt by means of wholly circumstantial evidence.

The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubt raised as to the accused's guilty is to be resolved by the fact-finder. [In this context, Courts] do not assess credibility nor... assign weight to any of the testimony of record. Therefore, we will not disturb the verdict unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.

Commonwealth v. Vogelsang, 90 A.3d 717, 719 (Pa. Super. 2014).

In the instant case, the Appellant has argued that the Commonwealth has not met its burden to sustain a conviction of receiving stolen property. The crime of receiving stolen property is defined as:

A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

18 Pa § 3925 §§ A.

The Commonwealth presented two (2) witnesses who stated that they saw the Appellant in the bar with the firearm, and one witness identified the firearm presented as evidence as the firearm they saw that night. Further the Commonwealth presented the testimony of Trooper Strini that the Appellant admitted to possessing the firearm on the night in question. It follows that a reasonable jury could conclude that the Appellant did possess the firearm.

As to whether the Defendant knew or should have known the firearm was stolen Trooper Strini testified that in his interview Appellant acknowledged possessing the firearm on the night in question, that he purchased the firearm from an individual named Quami for \$200.00, and that Quami was going to report the firearm as stolen. (Trial Tr. 75: 1-11). Given the information regarding the circumstances of the purchase of the firearm and the fact that it was stolen a reasonable trier of fact could conclude that the Appellant knew or should have known that the firearm was stolen. Therefore, viewing the evidence presented in a light most favorable to the verdict winner the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt.

The next concise issue that the Appellant asserts is that "The Court erred Jury Instruction-failed to Give-In Court Identification." In order to preserve a claim that jury instruction was erroneously given, there must have been an objection to the charge at trial. See *Commonwealth v. Spatz*, 84 A.3d 294, 318 18 (Pa.2014). The plain language of Pennsylvania Rules of Criminal Procedure Rule 647(B) requires a specific objection to assign error to a controverted aspect of or omission from a jury charge. The court has held that "absent a specific objection or exception to the charge or the trial court's ruling respecting the points" the issues regarding jury instructions are waived. *Commonwealth v. Pressley*, 584 Pa. 624, 632, 887 A.2d 220, 225 (2005).

Here, the Court requested proposed jury instructions from both sides. However, none were given. The Court asked Counsel if they had anything to add before the charge was given to the jury. Also, after charging the jury we asked if Counsel had anything they wished to include before the jury was dismissed to deliberate. Neither counsel requested to include any additional jury instruction or objected to any of the standard jury instructions given. Therefore, this issue has been waived.

Even if the issue had not been waived, the Appellant's suggested instruction given in his Concise Issue Statement is as follows:

It is your function to determine whether the witness's identification of the Defendant is reliable and believable, or whether it is based on a mistake or for any reason is not worthy of belief. You must decide whether it is sufficiently reliable evidence that this defendant is the person who committed the offense[s] charged.

United States v. Wade, 388 U.S. 218, 228, (1967).

This is an excerpt from a federal case. The Court utilized the Pennsylvania standard jury instructions regarding determining the credibility and reliability of witnesses who testify. Therefore, even if not waived, this issue is without merit.

The final issue Appellant has asserted is "The Defendant's Sentence was Illegal - Recidivism Risk Reduction Incentive." Under the RRRI statute an eligible person is

A defendant or inmate convicted of a criminal offense who will be committed to the custody of the department and who meets all of the following eligibility requirements: (1) Does not demonstrate a history of present or past violent behavior ... (3) Has not been found guilty of or previously convicted of or adjudicated delinquent for . . . a crime of violence as defined in 42 Pa.C.S. § 9714(g) (relating to sentences for second and subsequent offenses) or a personal injury crime as defined under section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

The Appellant was adjudicated delinquent on three burglaries and one aggravated assault. Also, Appellant was convicted of child neglect - abuse serious injury in North Carolina and burglary in Fayette County. He is therefore obviously disqualified from participation in the RRRI program.

Wherefore, it is respectfully submitted that this appeal is without merit and should be denied.

BY THE COURT:
JOSEPH M. GEORGE, JR., JUDGE

ATTEST:
Clerk of Courts

CRIMINAL COURT NOTICES

CRIMINAL TRIAL CONTINUANCES

Pursuant to Pennsylvania Rule of Criminal Procedure 106(D), a timely Motion for Continuance of trial must be heard on or before 4:30 p.m. on the Wednesday preceding Criminal Court Week. The Fayette County Court of Common Pleas will not entertain criminal trial continuances after that without a showing that “the *opportunity therefor did not previously exist, or the defendant was not aware of the grounds for the motion, or the interests of justice require it.*” See, Pa.R.Crim.P. Rule 106(D).

GENERAL PLEAS ONLY DURING CRIMINAL TRIAL WEEK

In addition, the purpose of the Criminal Pretrial Status Conferences held on the Monday preceding Criminal Court Week is to arrange for the orderly disposition of the cases listed. In pursuit of that purpose, *guilty pleas during trial week while jurors are present and available to start a trial will be restricted to general (open) pleas only as to all cases that expire before the end of the following Criminal Court Week.* As the sole exception, the Plea Judge may pre-schedule specific plea bargains during Criminal Court Week for the convenience of the parties.

The District Attorney and the Court do not want to inconvenience jurors who are compelled to be present because of matters that could have and should have been fully resolved the previous week. Therefore, all counsel and all defendants should be prepared to enter pleas pursuant to plea bargains (in cases that expire) before the end of the week preceding Criminal Trial Week, and Motions for Continuance should be scheduled before the end of the day on Wednesday preceding Criminal Trial Week. Counsel's inability to confer with the client ahead of time will not be accepted as an excuse, so contact information should be updated now.

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