

Adams County Legal Journal

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IN THIS ISSUE

COMMONWEALTH VS. ORNER

This opinion continued from last issue (4/1/2010)

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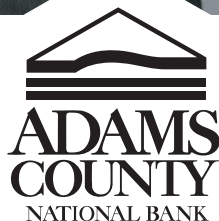
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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 09-S-266 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of May, 2010, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the centerline of Chambersburg Road at corner of Lot No. 3 on the hereinafter referred to Plan of Lots, thence by said Lot No. 3 and passing through a reference steel rod set back 25.01 feet from the last mentioned point, and also passing through a point set back 117.10 feet from the next mentioned point, North 36 degrees 39 minutes 25 seconds East 304, 10 feet to a steel rod on the Southern edge of the Sun Gas Line right of way at corner of other land now or formerly of Allen W. Beckett, thence by said other land of Allen W. Beckett, South 62 degrees 18 minutes 25 seconds East 192.35 feet to a steel rod, thence continuing by said land of Allen W. Beckett and passing through a reference steel rod set back 25.00 feet from the next mentioned point, South 36 degrees 39 minutes 25 seconds West 334.07 feet to a point in the centerline of said Chambersburg Road, thence in said Chambersburg Road and passing through a point set back 90.00 feet from the last mentioned point North 53 degrees 20 minutes 35 seconds West, 190.00 feet to a point in the centerline of Chambersburg Road, the point and place of BEGINNING.

CONTAINING 1.301 acres, more or less.

The above description was taken from a Plan of Lots prepared by Adams County Surveyors, dated June 21, 2003, recorded in Plat Book 85 at page 58 (erroneously designated as page 85 in the prior Deed), designating the above as Record Book 3000 at page 46 and Lot A Addition.

Tax ID #: D11-103

SEIZED and taken into execution as the property of **Heather Ann Thomas & Richard Howard Thomas** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 28, 2010, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

4/9, 16 & 22

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 09-S-2026 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of May, 2010, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land, situate, lying and being in Reading Township, Adams County, Pennsylvania, bounded, limited and described as follows, to wit:

BEGINNING at a stake for a corner at Lot No. 42 and a 20 feet wide driveway; thence by said driveway North 1 degrees 22 minutes East 100 feet to a stake at Lot No. 45; thence by said Lot No. 45 South 83 degrees 43 minutes East 244.8 feet through a stake on the bank of the Conewago Creek to a point in said Creek; thence by said Creek South 15 degrees 40 minutes West 100 feet to a point in said Conewago Creek at Lot No. 42 North 83 degrees 58 minutes West, through a stake on the bank of said creek 219.8 feet to a stake and the place of BEGINNING.

It being known as Lots Nos. 43 and 44, Block No. 1A, on the plan of lots surveyed September 3, 1960, by George M. Wildasin for Harry A. Lauchman and Gertie R. Lauchman.

Parcel No. 36 L08-8

Property Address: 120 Conewago Drive, East Berlin, PA 17316

BEING the same premises which Debris A. Hunt, and Unmarried Widow, by her Deed dated May 3, 2006 and recorded on May 26, 2006 in the Office of the Recorder of Deeds in and for Adams County, in Deed Book 4431, Page 41, granted and conveyed unto Joseph Miller a/k/a Joseph L. Miller, a single man.

SEIZED and taken into execution as the property of **Joseph L. Miller a/k/a Joseph Miller** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 28, 2010, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

4/1, 9 & 16

Issue D: Constitutional Claim

Defendant next moves this Court to declare 18 Pa.C.S.A. § 3123(a)(7), and/or each of the laws that govern the direct and collateral consequences of such crime, unconstitutional as violating the Equal Protection Clause of the United States and Pennsylvania Constitutions and Defendant's substantive due process rights. The bulk of Defendant's motion focuses on the potential sentence and other consequences a defendant is subject to upon conviction of Involuntary Deviate Sexual Intercourse as opposed to a conviction for Statutory Sexual Assault.¹² The Court wrote to Defendant on May 28, 2009, requesting that he address whether his challenge was ripe for determination at this time in light of the fact that he has not been convicted of Involuntary Deviate Sexual Intercourse. In a brief filed June 1, 2009, Defendant alleged that his challenge was not based solely on the sentencing aspects; rather he was challenging: 1) the offense; 2) the direct consequences, and/or 3) the collateral consequences. Defendant alleged that a challenge to the offense itself was ripe at the present time, however, a challenge to the "direct and/or collateral consequences...may arguably not be ripe for review unless Defendant is convicted." (**Defendant's Brief, pg. 3**). Defendant further states that "the challenge to 18 Pa.C.S.A. § 3123(a)(7) is ripe for review. If the Court rejects such challenge, the challenge to the remaining parts of the legal scheme will not be ripe for review." *Id.* at 4.

As noted, § 3123(a)(7) provides "A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:...(7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other." The alleged deviate sexual intercourse for our purposes is oral sex. Defendant contrasts this to the crime of Statutory Sexual Assault. That offense provides "...a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is four or more years older than the complainant and the complainant and the person are not married to each other." **18 Pa.C.S.A. § 3122.1**. "Sexual Intercourse" encompasses both vaginal and oral sex. **18 Pa.C.S.A. § 3101**.

¹² 18 Pa.C.S.A. § 3122.1.

A conviction of Involuntary Deviate Sexual Intercourse under Section 3123(a)(7) carries a stricter sentence than a conviction for Statutory Sexual Assault under Section 3122.1. Involuntary Deviate Sexual Intercourse is a first degree felony, **18 Pa.C.S.A. § 3123**, and the defendant would be subject to a mandatory minimum sentence of 10 years incarceration, **42 Pa.C.S.A. § 9718**, with a maximum of 20 years. **18 Pa.C.S.A. § 1103**. On the other hand, Statutory Sexual Assault is a felony of the second degree, **18 Pa.C.S.A. § 3122.1**, carrying no minimum sentence and a maximum sentence of 10 years. **18 Pa.C.S.A. 1103**. Furthermore, a conviction of Involuntary Deviate Sexual Intercourse carries other consequences that are not applicable when a defendant is convicted of Statutory Sexual Assault.¹³

Although Defendant asserts in his brief that the threshold challenge is to the offense itself, not the sentencing scheme, it is difficult to separate the two. Defendant's entire claim is based on the fact that a conviction of oral sex with a complainant under the age of 16 carries a much higher penalty than if the crime involves vaginal sex with a complainant under the age of 16. Defendant alleges there is no rational basis for this classification based on type of sex and, therefore, it violates both equal protection and substantive due process. In fact, Defendant's own motion indicates "[t]he challenge here addresses only the different treatment based on the type of sex involved." (**Defendant's Motion, pg. 13, fn. 5**).

The Supreme Court has unequivocally found that Section 3123(a)(7) is a constitutional exercise of the state's police power. *Com. v. Albert*, 758 A.2d 1149 (Pa. 2000). In *Albert*, the Supreme Court found that the age classification found in Section 3123(a)(7) and others that classified a defendant by age were subject to a rational basis test and did not violate equal protection. *Id.* at 1152 & 1155. "In applying the rational basis test, we have adopted a two-step analysis. First, we must determine whether the challenged statute seeks to promote any legitimate state interest or public value. If so,

¹³ Under the Standard Guidelines, a Defendant convicted of Involuntary Deviate Sexual Intercourse is, depending on the prior record score, subject to a sentencing range anywhere from 48 to 114 months and four prior record score points. **204 Pa. Code § 303.15 & 303.16**. In contrast, a conviction of Statutory Sexual Assault carries, depending on the prior record score, a sentencing range from 6 to 45 months and two prior record score points. *Id.* Furthermore, there are other consequences relating to Megan's Law registration; **42 Pa.C.S.A. § 9795**, Boot Camp, **18 Pa.C.S.A. 1123**, and future possession of firearms, **18 Pa.C.S.A. § 6105**.

we must next determine whether the classification adopted in the legislation is reasonably related to accomplishing that articulated state interest or interests.” *Id.* at 1152. Defendant acknowledges the state’s interest in protecting children from adults. (**Defendant’s Motion, pg. 14, fn. 8**). Furthermore, the *Albert* Court held that the provision served the state’s proper role in protecting minors from being sexually abused by adults. *Albert*, 758 A.2d at 1154.

Therefore, Section 3123(a)(7) is clearly a constitutional exercise of the state’s police powers and Defendant’s facial challenge to the provision is rejected.

However, Defendant claims that his challenge is different than that in *Albert* because he is not challenging the age-based classification, rather he is challenging the different treatment based on the type of sex involved. (**Defendant’s Motion, pg. 13, fn. 5**). This relates to sentencing and other consequences. As Defendant admits, this matter is not ripe for consideration at this point and will not be unless he is convicted.

Defendant does make one exception to his acknowledgment that the sentencing scheme is not ripe for determination at this point. He alleges that the challenge to the maximum penalty, which goes to the legitimacy of the offense gradation in the Information, is appropriately raised at this time. The Information does indicate that the charge for Involuntary Deviate Sexual Intercourse is a “Felony 1.”¹⁴ Because this actually relates to the sentencing aspects, the Court will not rule on this at this time.

Accordingly, Defendant’s challenge to Section 3123(a)(7) on its face is denied. The remaining challenges to its “direct and collateral” consequences will not be decided at this time because, as Defendant admits, it is not ripe for determination. However, the Court takes note of the fact that the matter has been raised by defense counsel and preserved for a later challenge should Defendant be convicted.

¹⁴ “...[T]he legitimacy of an information must be raised in a pre-trial motion to quash the information. Pa.R.Crim.P. 306. All grounds for the relief demanded must be set forth in the motion and failure to state a ground results in its waiver.” *Com. v. Kimble*, 470 A.2d 1369, 1375 (Pa. Super. 1984). It is noted that this matter has been raised by Defendant in a pre-trial motion.

Issue F: Motion to Admit Evidence of Complainant's Past Sexual Conduct

Defendant is seeking to admit certain evidence relating to past sexual conduct of the Complainant. Defendant alleges that the specific allegations made by the Complainant (improper touching, oral sex and the use of a vibrator) reflect substantial knowledge of sexual techniques and nomenclature. Defendant is seeking to admit the following evidence:

1. Evidence that the Complainant told her sister, Jessi O'Hanlon, that she engaged in vaginal intercourse and "everything but" on multiple occasions with another male if the Complainant denies such incidents or the circumstances of such incidents;
2. Evidence that Defendant found, in the Complainant's room, a sleeve to an x-rated pornographic movie depicting forms of sexual activity the same as or similar to those or part of those alleged in the case; and
3. Evidence that prior to July, 2007, Defendant and his wife found, in Complainant's room, the vibrator belonging to the wife and appearing to be the same as the one Complainant alleges was used on her.

Defendant alleges that the first two offers of proof are admissible to show Complainant gained sexual knowledge from an alternative source if she testifies that her knowledge of sexual techniques and nomenclature germane to the alleged incidents significantly came from her interactions with Defendant. Defendant alleges that the third offer is admissible because Complainant's possession of the vibrator offers an alternative explanation as to why she had knowledge of and could provide a description of it. Defendant further contends that this evidence would contradict testimony from the Complainant at the preliminary hearing that Defendant took the vibrator with him after leaving her bedroom and that she was unaware, prior to July, 2007, that her mother had the vibrator. [N.T. 44-45, October 27, 2008]. Defendant also alleges that the second two offers do not involve past sexual conduct and therefore are not protected by the Rape Shield statute.

The Rape Shield Statute provides:

§ 3104. Evidence of victim's sexual conduct

(a) General rule--Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of

the alleged victim's past sexual conduct and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

(b) Evidentiary proceedings--A defendant who proposes to offer evidence of the alleged victim's past sexual conduct pursuant to subsection (a) shall file a written motion and offer of proof at the time of trial. If, at the time of trial, the court determines that the motion and offer of proof are sufficient on their faces, the court shall order an in camera hearing and shall make findings on the record as to the relevance and admissibility of the proposed evidence pursuant to the standards set forth in subsection (a).

18 Pa.C.S.A. § 3104.

“The purpose of the Rape Shield statute is to prevent a trial from shifting its focus from the culpability of the accused towards the virtue and chastity of the victim. By so doing, the legislature hoped to end the practice of those defense attorneys who elected to try the victim instead of defend their client.” *Com. v. Allburn*, 721 A.2d 363, 366-67 (Pa. Super. 1998). There is an exception to the general prohibition of evidence regarding a victim's sexual conduct. Evidence of the victim's past sexual conduct with the defendant may be admitted where consent of the victim is an issue. Defendant acknowledges consent is not an issue in this matter.

Courts have found other exceptions to the Rape Shield statute. These exceptions exist in an effort to reconcile the effect of the statute in excluding evidence with the accused's Sixth Amendment right to confrontation and cross-examination. *Com. v. Guy*, 686 A.2d 397, 400 (Pa. Super. 1997). The law does not prohibit relevant evidence that directly negates the conduct defendant is charged with committing. *Allburn*, 721 A.2d at 367 (citation omitted). The statute may not be used to exclude relevant evidence a) showing a witness's bias or b) attacking credibility. *Id.* Evidence tending to exculpate a defendant by showing the alleged victim is biased and thus has a motive to lie, fabricate or seek retribution is admissible. *Id.*

Evidence that is highly probative of a victim's credibility is admissible to allow the jury to make a fair determination of guilt or innocence. *Com v. Fink*, 791 A.2d 1235, 1241 (Pa. Super. 2002) (citations omitted). "[T]o invoke one of the limited exceptions to the broad exclusions of the shield law, an adequate, specific offer of proof must be made and the absence thereof is fatal to a defendant's challenge to the rape shield law." *Com. v. Smith*, 599 A.2d 1340, 1343 (Pa. Super. 1991).

In *Fink*, Superior Court summarized the status of the Rape Shield statute.

- The Rape Shield Law bars prior instances of sexual conduct, except those with the defendant *where consent of the victim is at issue and the evidence is otherwise admissible*. 18 Pa.C.S.A. § 3104(a).
- If the prior sexual conduct was a prior sexual assault, then the Rape Shield Law does not apply and the evidence is evaluated under the general evidentiary rules. (citation omitted).
- If the prior sexual conduct does not involve defendant or involves the defendant but consent is not an issue, then it must be relevant to show bias against the defendant or to attack the credibility of the victim. (citation omitted). A three-part test for admissibility applies in such a case. (citation omitted) (emphasis added).¹⁵
- If the offer of proof shows only that others in addition to the defendant had sexual contact with the victim, but does not show how the evidence would exonerate the defendant, evidence of prior sexual activity is inadmissible under the Rape Shield Law. (citations omitted) (emphasis added).
- Evidence of prior sexual assault by another man is not admissible to show knowledge by the child victim of sexual techniques or nomenclature unless the evidence exonerates the defendant. (citations omitted) (emphasis added).

¹⁵ See three-part test below.

- Proffers under the Rape Shield Law can not (sic) by vague, conjectural or speculative. (citations omitted).

Id. at 1242-43.

“In an effort to ensure that evidence of a victim’s past sexual conduct is truly relevant and exculpatory...a defendant wishing to introduce such evidence must make a specific, written proffer to the court. Once this threshold is fulfilled, the trial judge is required to hold an *in camera* hearing to determine whether the evidence is relevant, exculpatory and necessary to the accused’s defense.” *Com. v. Guy*, 686 A.2d 397, 400 (Pa. Super. 1996). A three-part test must be met at that hearing. The court must determine: 1) whether the proposed evidence is relevant to show bias or motive or to attack credibility; 2) whether the probative value of the evidence outweighs its prejudicial effect; and 3) whether there are alternative means of proving bias or motive or to challenge credibility. *Com. v. Black*, 487 A.2d 396, 400-01 (Pa. Super. 1985); *Guy*, 686 A.2d at 400-01. “As applied to the Rape Shield Law, relevant evidence is that which may tend to directly exculpate the accused by showing, *inter alia*, bias, hostility, motive to lie or fabricate, evidence of a sexual encounter with another person on the date in question, or impeachment by use of a prior inconsistent statement.” *Guy*, 686 A.2d at 401.

Defendant has sought to introduce evidence that the Complainant has told a third person that she has had past vaginal sex with another male. Defendant seeks to introduce this evidence if the Complainant denies such incidents have occurred or if she testifies that her knowledge of sexual techniques and nomenclature germane to the alleged incidents came from Defendant.

The evidence is not admissible to show Complainant’s knowledge of sexual technique and nomenclature¹⁶ *Allburn*, 721 A.2d at 368.

¹⁶“In *Commonwealth v. Appenzeller*, 388 Pa.Super. 172, 565 A.2d 170 (1989), we held evidence of a prior sexual assault was irrelevant and not admissible to show knowledge by the child victim of sexual techniques or nomenclature. *Id.* at 175, 565 A.2d at 171....This case is similar; the evidence of the third party minor who allegedly had sexual contact with the victim does not exonerate appellee; the testimony at most shows the victim had sexual contact with someone in addition to appellee. Although the jury may regard the victim’s knowledge of sexual activity as more detailed and explicit than some young girls, this reason alone is not compelling. Given the explicit language heard nightly on network television, the now sixteen-year-old victim may be expected to have some familiarity with sexual terms. Further, sexual activity with another teen does not necessarily inject advanced terminology into her world-sexual activity with an elder might.” *Allburn*, 721 A.2d at 368.

Furthermore, as stated above, evidence of an alleged victim's prior sexual conduct with those other than Defendant is not admissible under the Rape Shield Law where the offer of proof shows only prior sexual conduct by the alleged victim but does not show how the evidence would exonerate defendant. *Id.* at 368.¹⁷ The offer is merely speculating that the Complainant may deny that she has had previous sexual intercourse. There is no indication that she has done so or even how that information would be relevant to the underlying charges against Defendant. Therefore, the offer is not valid on its face and no hearing is necessary.

It is true that the Rape Shield Law cannot be used to exclude relevant evidence attacking credibility or showing bias. *Black*, 487 A.2d at 401. However, that holding has been limited. *Com. v. Gaddis*, 639 A.2d 462, 466 (Pa. Super. 1994) (superseded on other grounds). That reasoning applies to situations "only where the victim's credibility was allegedly affected by bias against or hostility toward the defendant, or the victim had motive to seek retribution." *Com. v. Boyles*, 595 A.2d 1180, 1186 (Pa. Super. 1991). The offer of proof in matter subjudice does not suggest that the Complainant had any bias or hostility towards the Defendant or reason to seek retribution.¹⁸

Accordingly, Defendant's request to admit evidence of Complainant's prior sexual intercourse with another individual is denied.

Defendants second and third requests (the pornographic movie sleeve and vibrator use by Complainant) are not covered by the rape shield statute. Defendant admits this. These items may be relevant

¹⁷ "Inasmuch as Appellee's offer of proof tends only to show that others *in addition* to Appellee had sexual contact with the victim rather than showing how this testimony would exonerate him, Appellee has not satisfied his burden of showing that the absent testimony would have been helpful in establishing his innocence." *Allburn*, 721 A.2d at 368 (citing *Com. v. Durst*, 559 A.2d 504, 506 (Pa. 1989)).

¹⁸ "[E]vidence tending to directly exculpate the accused by showing that the alleged victim is biased and thus has a motive to lie, fabricate or seek retribution is admissible at trial." [citing *Guy*, 686 A.2d at 400]. As stated above, in order for proffered evidence to be introduced, it must be shown to be relevant to the accused's defense, non-cumulative of evidence otherwise admissible at trial, and more probative than prejudicial. We fail to see how evidence alleging a minor's sexual relationship with another minor, even if true, tends to show a motive to lie, fabricate or seek retribution against her stepfather. There is no apparent connection between the proffered activity and an inclination to falsely accuse her stepfather. Unless there is more, the logic of this argument is not there." *Allburn*, 721 A.2d at 368.

impeachment evidence, however, the Court will not make a ruling on their admissibility until they are actually offered for admission.

ORDER

AND NOW, this 13th day of August, 2009, in consideration of Defendant's Omnibus Pre-Trial Motion filed December 15, 2008, and in accordance with the attached Opinion:

1. The Motion For Production and Inspection of CYS Records was addressed by a separate Order dated March 4, 2009;
2. The Motion For Production of School Records is granted in part:
 - a. The alleged victim's school records from Bermudian Springs School District for the two years preceding January, 2007, shall be produced and forwarded to the Court. Counsel will be permitted to view the documents as designated by the Court. Requests, if any, for copies will be addressed at that time.
 - b. Counsel shall not disclose the contents of said records to other persons without approval of the Court.
3. The Motion to Quash Counts 1 – 3 is denied.
4. The Motion to Invalidate 18 Pa.C.S.A. § 3123(a)(7) is denied in part. To the extent Defendant challenges the direct and collateral consequences of conviction, the motion is premature and may be raised when the issue is ripe.
5. The Motion to Admit Evidence of the Complainant's Past Sexual Conduct is denied.
6. The Motion In Limine concerning Defendant's alleged overdose is denied. However, a hearing on the admissibility of Defendant's statements made to hospital personnel is set for September 29, 2009, at 1:00 p.m. in Courtroom No. 1.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 09-S-1534 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of May, 2010, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mount Pleasant Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pipe on the edge of a 50 foot wide right of way known as County Drive, at corner of Lot No. 75, as shown on the hereinafter identified survey; thence by Lot No. 75, South 70 degrees 35 minutes 46 seconds East, 200.00 feet to an iron pipe along line of other lands now or formerly of Thomas P. Gebhart; thence along said other lands now or formerly of Thomas P. Gebhart South 19 degrees 24 minutes 14 seconds West, 96.00 feet to an iron pipe at corner of Lot No. 77; thence by Lot No. 77, north 70 degrees 35 minutes 46 seconds West, 200.00 feet to an iron pipe on the edge of a 50 foot wide right of way known as Country Drive, at corner of Lot No. 76; thence continuing along the right of way of County Drive, North 19 degrees 24 minutes 14 seconds East, 96.00 feet to an iron pipe of the edge of a 50 foot wide right of way known as Country Drive, at corner of Lot No. 75, the point and place of BEGINNING. CONTAINING 19,200 square feet.

The above description for Lot No. 76 was taken from a subdivision plan entitled 'Wheatland Acres,' dated April 7, 1987, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 51 at page 15.

SUBJECT, NEVERTHELESS, to the following covenants, conditions and restrictions:

1. The lot hereby conveyed shall be used for residential purposes only.

2. No building shall be erected, built or maintained upon any part of the lot of the land hereby conveyed except a single family private dwelling house and private garage for the use of the owner, tenant and occupier of the same. The garage shall conform with the architectural design of the dwelling, and be attached to the dwelling.

3. No trailer or mobile home, tent, ham or garage other than item 2 above, or other outbuildings, except a dog house, shall be erected or permitted to remain on this lot, temporarily or permanently, nor shall any residence of a temporary character be permitted.

4. No dogs or cats shall be kept or maintained on the premises except as household pets and dogs shall be kept on the premises.

5. The lot hereby conveyed shall not be dedicated as, or permitted to be used or opened as a right of way for the purpose of ingress, egress or regress between other land and the proposed road or streets upon which the lot hereby conveyed fronts; and no utility rights of way other than those presently existing or for service to the dwelling on this lot shall be given or granted.

6. No part of this lot or the structure erected thereon shall be used at any time for the carrying on of any trade or business and no shop or store shall be kept thereon.

7. No driveway of any other lot, thus forming a thruway from one to another.

8. This lot shall not be re-subdivided into lots or parts thereof.

9. If the grantees, their heirs, executors, administrators or assigns, shall violate or attempt to violate any of the covenants, restrictions or reservations herein contained, it shall be lawful for the grantors or any other person or persons claiming under them, residing in said neighborhood, to prosecute at law or in equity, against the person or persons violating or attempting to violate any such covenants or restrictions in order to prevent him, her or them from so doing, or to recover damages for such violation.

10. No junk of any sort, including junked automobiles, rubbish, trash, garbage or other waste, shall be placed on said lot or be permitted to accumulate thereon.

11. On the availability of municipal sewer and/or water service to the within described lot, owner of the lot must utilize said services.

12. A residence built on this tract must contain a minimum of 1,100 square feet of living space, exclusive of porches and garage, and must be finished with an outer surface which is at least one-half (1/2) brick or stone.

TITLE TO SAID PREMISES IS VESTED IN Timothy Rife and Kristina Krumrine, as joint tenants with the right of survivorship, by Deed from Thomas P. Gebhart and Mary L. Gebhart, h/w, dated 04/19/2007, recorded 04/25/2007 in Book 4816, Page 11.

Tax Parcel: (32) 4-105

Premises Being: 72 Country Drive, Gettysburg, PA 17325-7774

SEIZED and taken into execution as the property of **Timothy Rife a/k/a Timothy L. Rife & Kristina D. Rife a/k/a Kristina Krumrine** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 28, 2010, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

4/1, 9 & 16

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 09-S-1716 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of May, 2010, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate in the Borough of Biglerville, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin at the northern edge of Maple Avenue at land now or formerly of McDonnell and Gorman; thence along the northern edge of Maple Avenue North 89 degrees west, 80 feet to an iron pin at lands now or formerly of McDonnell and Gorman; thence by the same North 1 degrees 14 minutes West 18.19 feet to an iron pin at the southern edge of said 14 foot proposed alley, South 88 degrees 52 minutes East 80 feet to an iron pin along the southern edge of said 14 foot proposed alley at land now or formerly of McDonnell and Gorman; thence by the same South 1 degrees 14 minutes East 18137 feet to an iron pin at the northern edge of Maple Avenue, the place of BEGINNING.

TAX PARCEL NO: 5-3-20

BEING KNOWN AS: 23 Maple Avenue, Biglerville, PA 17307

SEIZED and taken into execution as the property of **Jeremy M. Pyers** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on May 28, 2010, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

4/1, 9 & 16

COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIANOTICE OF PETITION
TO CHANGE NAME

NOTICE IS HEREBY GIVEN that on March 9, 2010, the Petition of Toni L. Eller and Shawn I. Kemper on behalf of their minor son, Gavin Ryan Eller, was filed in the above-named court, requesting a decree to change his name from Gavin Ryan Eller to Gavin Ryan Kemper.

The Court has fixed June 4, 2010 at 8:30 a.m. in Courtroom #4, Adams County Courthouse, 111 Baltimore Street, Gettysburg, PA as the time and place for the hearing on said Petition, when and where all persons interested may appear and show cause if any they have, why the prayer of the said Petition should not be granted.

4/9

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 311, of the Act of Assembly of December 16, 1982, 54 PA C.S.A. 311, that an applicant for registration of a fictitious name was filed on March 19, 2010, with the Department of State of Pennsylvania in Harrisburg, for the conducting of a business under the fictitious name of STEVEN'S LAND SURVEYING & GEOMATICS with its principal office or place of business at 108 Longstreet Drive, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are Zlatko Steven Petrovich, residing at 108 Longstreet Drive, Gettysburg, PA 17325.

4/9

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 WILLIAM C. GARDE a/k/a WILLIAM CRAIG GARDE, DEC'D**

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Barbara L. Garde, 14 Ski Run Trail, Fairfield, PA 17320

Attorney: Phillips & Phillips, 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF GERALD C. MCCARTHY, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executors: Joseph R. Zeigler and Marilyn W. Zeigler, 1030 Beecherstown Road, Biglerville, PA 17307

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF MARY J. MYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Judy Mae Myers-Moore & Patricia L. Myers a/k/a Patricia Lee Weitkamp, c/o Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF RICKY O. STALEY, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Scott C. Baker, 10942 Coral Ridge Road, Fayetteville, PA 17222

Attorney: Timothy W. Misner, Esq., 39 South Broad Street, Waynesboro, PA 17268-1610

ESTATE OF DOLORES M. STAMETS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Steven B. Stamets, 701 Smallwood Rd., Rockville, MD 20850

ESTATE OF KATHRYN L. SWISHER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Deborah Shockey, 1241 Iron Springs Road, Fairfield, PA 17320; Shirley Scott, 285 Cold Springs Road, Gettysburg, PA 17325

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF CHARLES PETER FRIEDEL, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administrator: Janice R. Friedel, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York Street, Hanover, PA 17331

ESTATE OF GERTRUDE D. HERMAN a/k/a GERTRUDE DAISY HERMAN, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Judy A. Day a/k/a Judy Ann Herman, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 106 Harrisburg St., P.O. Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 106 Harrisburg St., P.O. Box 606, East Berlin, PA 17316

ESTATE OF JOYCE P. HULL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: George F. Kimble, 704 Wright Ave., Gettysburg, PA 17325

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

ESTATE OF EVELYN G. JACOBY, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrices: Deborah D. Grim, 320 W. Guernsey Road, Biglerville, PA 17307; Naomi V. Warren, 4885 Old Harrisburg Road, Gettysburg, PA 17325

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

ESTATE OF RUTH O. NOBLE a/k/a RUTH TERESA NOBLE, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: David C. Noble, 266 Dicks Dam Road, New Oxford, PA 17350; Lori A. Noble a/k/a Laure A. Noble, 119 Vegas Drive, Hanover, PA 17331

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

ESTATE OF ROSA M. ROBINSON, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 4566, Gettysburg, PA 17325

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

ESTATE OF BETTY L. ROGERS, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Connie Healy, 341 Pegram Street, Gettysburg, PA 17325

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

ESTATE OF JOSEPH A. VECHINI, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Vanessa Baker, 805 Dick's Dam Rd., New Oxford, PA 17350

Attorney: Ralph D. Oyler, Esq., 31 S. Washington Street, Gettysburg, PA 17325

ESTATE OF PEGGY WOODFIELD WATKINS a/k/a PEGGY W. WATKINS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Steven E. Watkins, 475 Epping Forest Rd., Annapolis, MD 21401; Dennis W. Watkins, 529 Hessel Ct., Viera, FL 32955

THIRD PUBLICATION**ESTATE OF MARLIN R. DERR, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Ronald R. Derr, 3308 Rueckert Avenue, Baltimore, MD 21214; Patricia D. Johnson, 55 Casino Drive, Hanover, PA 17331

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore St., Gettysburg, PA 17325

(continued on page 6)

THIRD PUBLICATION (CONTINUED)

ESTATE OF EDGAR S. FISCLE, DEC'D

Late of Franklin Township, Adams
County, Pennsylvania

Executor: Roxey R. Sebastian, 385
Ridge Road, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108
W. Middle St., Gettysburg, PA 17325

ESTATE OF JOYCE E. KANE, DEC'D

Late of Straban Township, Adams
County, Pennsylvania

Executor: Leon B. Lentz, 872 Woodland
Drive, Chambersburg, PA 17201

Attorney: David W. Rahausser, Esq.,
157 E. Washington Street,
Chambersburg, PA 17201