

FAYETTE LEGAL JOURNAL

VOL. 82

NOVEMBER 9, 2019

NO. 45



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.

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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.

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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

BETTY ANN BARKLEY, late of Uniontown, Fayette County, PA (3)

Co-Executrix: Marcia Lynn Ross
Co-Executrix: Linda Susan Garcia
 c/o 11 Pittsburgh Street
 Uniontown, PA 15401
Attorney: Thomas W. Shaffer

ALBERTA BYERS, late of Uniontown, Fayette County, PA (3)

Administratrix: Mary M. Rushin
 c/o Higinbotham Law Offices
 45 East Main Street, Suite 500
 Uniontown, PA 15401
Attorney: James Higinbotham

PATRICIA A. CHECK, late of Dunbar Township, Fayette County, PA (3)

Executor: Mary Shubert
 c/o P.O. Box 760
 Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

ELSIE M. DOMONKOS, late of Perryopolis, Fayette County, PA (3)

Executor: Eric J. Domonkos
 126 Harding Drive
 Fayette City, PA 15438
 c/o Vanderman Law Offices
 142 Fallowfield Avenue
 Charleroi, PA 15022
Attorney: Kris A. Vanderman

ARLENE JOHNSON, late of Uniontown, Fayette County, PA (3)

Administration: Harry Johnson
 c/o Rosen Louik & Perry, P.C.
 The Frick Building, Suite 200
 437 Grant Street
 Pittsburgh, PA 15219
Attorney: Andrew G. Rothey

WILLIAM JOSEPH KIEL, late of Georges Township, Fayette County, PA (3)

Executor: Michael R. Kiel
 c/o 9 Court Street
 Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

ALICE LEWANDOWSKI, late of Everson, Fayette County, PA (3)

Executrix: Diane M. Lewandowski
 c/o 815A Memorial Boulevard
 Connellsville, PA 15425
Attorney: Margaret Zylka House

BETTY RUTH STEWART, late of South Union Township, Fayette County, PA (3)

Executor: Carol J. Glover
 1257 Woodstock Avenue
 Hopwood, PA 15445
 c/o Newcomer Law Offices
 4 North Beeson Boulevard
 Uniontown, PA 15401
Attorney: Ewing D. Newcomer

RALPH SWANTEK, a/k/a RALPH M. SWANTEK, late of Washington Township, Fayette County, PA (3)

Executor: Maryann Swantek
 45 Vreeland Avenue
 East Rutherford, NJ 07073
 c/o 823 Broad Avenue
 Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

JOHN J. TUCHOLSKI, late of Bullskin Township, Fayette County, PA (3)

Executor: James S. Tucholski
 113 Deer Creek Drive
 Mt. Pleasant, PA 15666
 c/o 749 North Church Street
 Mt. Pleasant, PA 15666
Attorney: Paul E. Toohy

Second Publication

JOANN CLINGAN, late of Redstone Township, Fayette County, PA (2)
Executor: Kimberly Ann Shinkle, a/k/a Kimberly Ann Wellington
 c/o Proden & O'Brien
 99 East Main Street
 Uniontown, PA 15401
Attorney: Wendy O'Brien

WENDELL L. GASKILL, a/k/a WENDELL LARRY GASKILL, late of Fayette County, PA
Administratrix: Nancy C. Chatlas (2)
 c/o DeHaas Law, LLC
 51 East South Street
 Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

THOMAS E. HOLLOMAN, JR., a/k/a THOMAS E. HOLLOMAN, late of Redstone Township, Fayette County, PA (2)
Executor: Ronald Holloman
 c/o Newcomer Law Offices
 4 North Beeson Boulevard
 Uniontown, PA 15401
Attorney: Ewing D. Newcomer

PAULA A. PETTY, late of Luzerne Township, Fayette County, PA (2)
Personal Representative: Travis P. Petty
 316 Adams Avenue
 Brownsville, PA 15417
 c/o Dellarose Law Office, PLLC
 99 East Main Street, Suite 101
 Uniontown, PA 15401
Attorney: Melinda Dellarose

STELLA SLOVAK, a/k/a STELLA MARIE SLOVAK, a/k/a STELLA M. SLOVAK, late of Georges Township, Fayette County, PA (2)
Personal Representatives: Susan Pinto and Anthony J. Sloak
 c/o Higinbotham Law Offices
 45 East Main Street, Suite 500
 Uniontown, PA 15401
Attorney: James Higinbotham

GARNET A. STULL, late of Connellsville, Fayette County, PA (2)
Executor: Susan M. Stull

c/o P.O. Box 760
 Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

JAMES E. WANDEL, late of Hopwood, Fayette County, PA (2)
Executor: Shawna K. Gardner
 c/o DeHaas Law, LLC
 51 East South Street
 Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

First Publication

BENJAMIN J. HAILE, late of Vanderbilt, Fayette County, PA (1)
Executrix: Robin O'Neil
 c/o Molinaro Law Offices
 141 West Peach Street
 P.O. Box 799
 Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

EDWARD FRANCIS HUNTER, a/k/a EDWARD F. HUNTER, late of Luzerne Township, Fayette County, PA (1)
Executrix: Roberta Hunter
 c/o Zebley Mehalov & White, P.C.
 18 Mill Street Square
 P.O. Box 2123
 Uniontown, PA 15401
Attorney: Mark M. Mehalov

LEGAL NOTICES

NOTICE OF ACTION IN MORTGAGE FORECLOSURE IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW

COURT OF COMMON PLEAS
 CIVIL DIVISION
 FAYETTE COUNTY
 No. 2019-02187

HOME POINT FINANCIAL CORPORATION
 Plaintiff
 vs.
 UNKNOWN HEIRS, SUCCESSORS,

ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JAMES A. SHOCKLEY, DECEASED

Defendant

NOTICE

To UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JAMES A. SHOCKLEY, DECEASED

You are hereby notified that on October 7, 2019, Plaintiff, HOME POINT FINANCIAL CORPORATION, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of FAYETTE County Pennsylvania, docketed to No. 2019-02187. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 461 BROWNSVILLE ROAD, FAYETTE CITY, PA 15438-1107 whereupon your property would be sold by the Sheriff of FAYETTE County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication 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 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.

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 FEE OR NO FEE.

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

SHERIFF'S SALE

Date of Sale: January 16, 2020

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, January 16, 2020, at 2:00 p.m. in Courtroom Number One at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (1 of 3)

James Custer
Sheriff Of Fayette County

No. 620 of 2019 GD
No. 320 of 2019 ED

**THE UNITED FEDERAL CREDIT UNION,
Plaintiff,
vs.
B & T INVESTMENTS, LLC, Defendant and
ELIG, LLC, Garnishee**

ALL those two certain lots located in South Union Township, Fayette County, Pennsylvania, described as Tax Parcel No. 34-38-0014 and more particularly described in deeds recorded in the Office of the Recorder of Deeds for Fayette County in Record Book 3371, page 1989 and Record Book 3407, page 1306.

The street address of the property is 1214 National Pike, Hopwood, South Union Township, Fayette County, Pennsylvania 15445.

Seized and taken in execution as the property formerly of B & T Investments, LLC, defendant and now owned by the garnishee, ELIG, LLC, at the suit of The United Federal Credit Union, in the Court of Common Pleas of Fayette County, Pennsylvania at No. 620 of 2019, G.D.

KML LAW GROUP, P.C.
Suite 5000
701 Market Street
Philadelphia, PA 19106 -1532
(215) 627-1322

No. 1442 of 2019 GD
No. 289 of 2019 ED

**PNC BANK, NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO
NATIONAL CITY BANK
3232 Newmark Drive
Miamisburg, OH 45342**

Plaintiff

vs.

**ANNA L. BARREIRO aka ANNA
BARREIRO**

Mortgagor(s) and Record Owner(s)

**4022 Pittsburgh Road
Belle Vernon, PA 15012**

Defendant(s)

ALL THAT CERTAIN LOT OF LAND SITUATE IN TOWNSHIP OF PERRY, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 4022 PITTSBURGH ROAD, BELLE VERNON, PA 15012

TAX PARCEL #27-01-0023

IMPROVEMENTS: A RESIDENTIAL DWELLING
SOLD AS THE PROPERTY OF: ANNA L. BARREIRO aka ANNA BARREIRO

RAS Citron, LLC
Attorneys for Plaintiff
Robert Crawley, Esq. ID No. 319712
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
855-225-6906

No. 64 of 2019 GD
No. 315 of 2019 ED

**U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR RESIDENTIAL ASSET
MORTGAGE PRODUCTS, INC.,
MORTGAGE ASSET-BACKED PASS-
THROUGH CERTIFICATES, SERIES
2005-EFCS**

Plaintiff

v.

**RAECYNE BECHTOLD A/K/A RAECYNE
W. BECHTOLD; TIMOTHY BECHTOLD
A/K/A TIMOTHY J. BECHTOLD**

Defendant(s)

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN CITY OF CONNELLSVILLE FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 504 SOUTH PITTSBURGH STREET, CONNELLSVILLE PA 15425

BEING PARCEL NUMBER: 05-07-0209
IMPROVEMENTS: RESIDENTIAL PROPERTY

RAS Citron, LLC
Attorneys for Plaintiff
Robert Crawley, Esq. ID No. 319712
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
855-225-6906

No. 255 of 2019 GD
No. 337 of 2019 ED

REVERSE MORTGAGE SOLUTIONS INC.

Plaintiff

v.

**JOSEPH EDWARD BOLLIBON, JR., IN
HIS CAPACITY AS HEIR OF JOSEPH E.
BOLLIBON A/K/A JOSEPH BOLLIBON,
SR.; KAREN TURNER, IN HER**

CAPACITY AS HEIR OF JOSEPH E. BOLLIBON A/K/A JOSEPH BOLLIBON, SR.; UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JOSEPH E. BOLLIBON A/K/A JOSEPH BOLLIBON, SR.

Defendant(s)

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN FRANKLIN AND DUNBAR TOWNSHIPS, FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 151 ELM GROVE RD DUNBAR, PA 15431

BEING PARCEL NUMBER: 13-18-0017 IMPROVEMENTS: RESIDENTIAL PROPERTY

No. 1614 of 2019 GD
No. 325 of 2019 ED

PNC Bank, National Association
Plaintiff,

vs.

Lester Cottom, Jr., AKA Lester A. Cottom, Jr.

Defendant.

ALL that certain parcel of land lying and being situate in the Borough of Everson, County of Fayette, and Commonwealth of Pennsylvania, known as 516 Brown Street, Everson, PA 15631 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 10-03-0155

BEING the same premises which Lester A. Cottom and Gloria Cottom, his wife, by Deed dated February 28, 2006 and recorded in and for Fayette County, Pennsylvania in Instrument Number 200600003023 Deed Book 2978, Page 2039, granted and conveyed unto Lester A. Cottom, Jr., unmarried.

KML LAW GROUP, P.C.
Suite 5000
701 Market Street
Philadelphia, PA 19106 -1532
(215) 627-1322

No. 2623 of 2018 GD
No. 288 of 2019 ED

USAA FEDERAL SAVINGS BANK
c/o Nationstar Mortgage LLC dba Mr. Cooper 8950 Cypress Waters Boulevard

Coppell, TX 75019
Plaintiff

vs.

EILEEN FELKER Solely in her Capacity as Heir of Michael Joseph Felker Deceased
WILLIAM FELKER Solely in his Capacity as Heir of Michael Joseph Felker Deceased
The Unknown Heirs of Michael Joseph Felker Deceased

249 McConnell Road
Mount Pleasant, PA 15666
Defendant(s)

ALL THAT CERTAIN LOT OF LAND SITUATE IN TOWNSHIP OF BULLSKIN, COUNTY OF FAYEITE AND COMMONWEAL TH OF PENNSYLVANIA.

BEING KNOWN AS: 249 MCCONNELL ROAD, MOUNT PLEASANT, PA 15666

TAX PARCEL #04-03-0154 & 04-03-0153-02

IMPROVEMENTS: A RESIDENTIAL DWELLING

SOLD AS THE PROPERTY OF: EILEEN FELKER Solely in her Capacity as Heir of Michael Joseph Felker Deceased, WILLIAM FELKER Solely in his Capacity as Heir of Michael Joseph Felker Deceased and The Unknown Heirs of Michael Joseph Felker Deceased

McCABE, WEISBERG & CONWAY, LLC
123 South Broad Street, Suite 1400
Philadelphia, PA 19109
(215) 790-1010

No. 1625 of 2019 GD
No. 340 of 2019 ED

Lakeview Loan Servicing, LLC
Plaintiff

v.

Christopher L. Fouch
Defendant

All that certain piece or parcel or Tract of land situate in Perry Township, Fayette County, Pennsylvania, and being known as 47 Old Route 51, Perryopolis, Pennsylvania 15473.

Being known as: 47 Old Route 51, Perryopolis, Pennsylvania 15473

Title vesting in Christopher L. Fouch by deed from Timothy Ray Sleasman, unmarried dated October 7, 2005 and recorded October 7, 2005 in Deed Book 2963, Page 685.

Tax Parcel Number: 27040014

Phelan Hallinan Diamond & Jones, LLP

No. 1401 of 2015 GD
No. 273 of 2019 ED

The Bank of New York Mellon, fka The Bank of New York as Successor in Interest to JP Morgan Chase Bank, NA as Trustee for Bear Stearns Asset Backed Securities Trust 2005-SD2, Asset-Backed Certificates, Series 2005-SD2

Plaintiff

v.

**April L. Franks
Defendant(s)**

By virtue of a Writ of Execution No. 1401-OF - 2015 - GD

The Bank of New York Mellon, fka The Bank of New York as Successor in Interest to JP Morgan Chase Bank, NA as Trustee for Bear Stearns Asset Backed Securities Trust 2005-SD2, Asset-Backed Certificates, Series 2005-SD2 v. April L. Franks

owner (s) of property situate in the UNIONTOWN CITY, 4TH, Fayette County, Pennsylvania, being 44 Carson Street. Uniontown, PA 15401-3826

Parcel No.: 38180023

Improvements thereon: RESIDENTIAL DWELLING

Leon P. Haller, Esquire
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17104
(717) 234-4178

No. 1984 of 2019 GD
No. 345 of 2019 ED

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF

vs.

**RODNEY L. GALLAGHER,
DEFENDANT**

By virtue of a Writ of Execution No. 2019-01984

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR THE PENNSYLVANIAHOUSING FINANCE AGENCY

Plaintiff

vs

RODNEY L. GALLAGHER

Defendant

Real Estate: 241 S. MT VERNON AVENUE, UNIONTOWN, PA 15401

Municipality: SOUTH UNION TOWNSHIP

Dimensions: 77.00 X 175.00 X 45.50 X 253.80 X 43.30

See Instrument: 201200001263

Tax Parcel #: 34-14-0040

Control #: 344020

Improvement thereon: a residential dwelling house as identified above

Phelan Hallinan Diamond & Jones, LLP

No. 202 of 2018 GD
No. 278 of 2019 ED

Pennymac Loan Services, LLC

Plaintiff

v.

**Vincent B. Griglack
Defendant(s)**

By virtue of a Writ of Execution o. 202-OF -2018-GD

Pennymac Loan Services, LLC

v.

Vincent B. Griglack

owner(s) of property situate in the MENALLEN TOWNSHIP, Fayette County, Pennsylvania, being 161 Dearth Road, Uniontown, PA 15401-5153.

Parcel No.: 22-17-0179

Improvements thereon: RESIDENTIAL DWELLING

McCABE, WEISBERG & CONWAY, LLC
123 South Broad Street, Suite 1400

Philadelphia, PA 19109
(215) 790-1010

No. 1316 of 2019 GD
No. 316 of 2019 ED

Lakeview Loan Servicing, LLC

Plaintiff

v.

**Erika Harris
Defendant**

All that certain piece or parcel or Tract of land situate in the city of Uniontown, Fayette County, Pennsylvania, and being known as 352 Morgantown Street, Uniontown, Pennsylvania 15401.

Being known as: 352 Morgantown Street,
Uniontown, Pennsylvania 15401

Being the same premises conveyed to
Ericka Harris, unmarried from Geralyn A.
Rydquist and Peter Rydquist, wife and husband
and Matthew J. Fazio, unmarried by deed dated
6/29/2018 and recorded 7/30/2018 in book 3379
page 1334.

Tax Parcel Number: 38110122

McCABE, WEISBERG & CONWAY, LLC
123 South Broad Street, Suite 1400
Philadelphia, PA 19109
(215) 790-1010

No. 1389 of 2019 GD
No. 335 of 2019 ED

American Advisors Group
Plaintiff
v.

**Sara Hriscisce Executrix of the Estate of
Peter Casini,**
Defendant

ALL THAT CERTAIN PIECE OR
PARCEL OR TRACT OF LAND SITUATE IN
THE SOUTH CONNELLSVILLE, FAYETTE
COUNTY, PENNSYLVANIA, AND BEING
KNOWN AS 2020 4TH STREET, SOUTH
CONNELLSVILLE, PENNSYLVANIA 15425.

BEING KNOWN AS: 2020 4TH STREET,
SOUTH CONNELLSVILLE,
PENNSYLVANIA 15425

TITLE VESTING IN PETER CASINI
AKA PETER M. CASINI BY DEED FROM
LONNIE CASINI, DECEASED AND PETER
CASINI, HER HUSBAND DATED OCTOBER
17, 2017 AND RECORDED NOVEMBER 15,
2017 IN DEED BOOK 3356, PAGE 2333
INSTRUMENT NUMBER 201700012393.
THE SAID PETER CASINI AKA PETER M.
CASINI DIED ON OCTOBER 24, 2018. ON
NOVEMBER 8, 2018, LETTERS OF
TESTAMENTARY WERE GRANTED TO
SARA HRISCI SCE, NOMINATING AND
APPOINTING HER AS THE EXECUTRIX OF
THE ESTATE OF PETER CASINI AKA
PETER M. CASINI.

TAX PARCEL NUMBER: 33-09-0030

STERN & EISENBERG PC
DANIEL JONES, ESQUIRE

No. 1224 of 2019 GD
No. 294 of 2019 ED

**Bayview Loan Servicing, LLC, a Delaware
Limited Liability Company**
Plaintiff

v.

**Rebecca Ann Keefer, solely as Beneficiary of
the Estate of Nancy J. Myers, deceased
and
Patricia Ann King, solely as Beneficiary of
the Estate of Nancy J. Myers, deceased
and
Evelyn Kay Mitchell, solely as Beneficiary of
the Estate of Nancy J. Myers, deceased
and
John Earl Myers, Jr., solely as Beneficiary of
the Estate of Nancy J. Myers, deceased
and
Michael Steven Myers, solely as Beneficiary
of the Estate of Nancy J. Myers, deceased
and
Brenda Lee Obenstine, solely as Beneficiary
of the Estate of Nancy J. Myers, deceased
and
Cynthia Rae Patton, solely as Beneficiary of
the Estate of Nancy J. Myers, deceased
and
Tammy Lynn Pedro, solely as Beneficiary of
the Estate of Nancy J. Myers, deceased
and
Norma Jean McFarland**
Defendants

SITUATE IN THE TOWNSHIP OF
SOUTH UNION, FAYETTE COUNTY,
COMMONWEALTH OF PENNSYLVANIA,
BEING KNOWN AS 463 MORGANTOWN
STREET, UNIONTOWN, PA 15401

PARCEL NO. 34-23-0020

IMPROVEMENTS - RESIDENTIAL
REAL ESTATE

SOLD AS THE PROPERTY OF-
REBECCA ANN KEEFER, SOLELY AS
BENEFICIARY OF THE ESTATE OF NANCY
J. MYERS, DECEASED, PATRICIA ANN
KING, SOLELY AS BENEFICIARY OF THE
ESTATE OF NANCY J. MYERS, DECEASED,
EVELYN KAY MITCHELL, SOLELY AS
BENEFICIARY OF THE ESTATE OF NANCY
J. MYERS, DECEASED, JOHN EARL
MYERS, JR., SOLELY AS BENEFICIARY OF
THE ESTATE OF NANCY J. MYERS,
DECEASED, MICHAEL STEVEN MYERS,
SOLELY AS BENEFICIARY OF THE
ESTATE OF NANCY. I. MYERS,
DECEASED, BRENDA LEE OBENSTINE,
SOLELY AS BENEFICIARY OF THE
ESTATE OF NANCY J. MYERS, DECEASED,
CYNTHIA RAE PATTON, SOLELY AS
BENEFICIARY OF THE ESTATE OF NANCY

J. MYERS, DECEASED, TAMMY LYNN PEDRO, SOLELY AS BENEFICIARY OF THE ESTATE OF NANCY J. MYERS, DECEASED AND NORMA JEAN MCFARLAND

KML LAW GROUP, P.C.
Suite 5000
701 Market Street
Philadelphia, PA 19106-1532
(215) 627-1322

No. 1390 of 2019 GD
No. 287 of 2019 ED

KEY BANK, NA S/B/M TO FIRST NIAGARA BANK, NA
4224 Ridge Lea Road
Amherst, NY 14226
Plaintiff
vs.

BETTY LOUISE MARTIN
Mortgagor(s) and Record Owner(s)
4 Mayflower Drive
Uniontown, PA 15401
Defendant(s)

ALL THAT CERTAIN LOT OF LAND SITUATE IN SOUTH UNION TOWNSHIP, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA. BEING KNOWN AS: 4 MAYFLOWER DRIVE, UNIONTOWN, PA 15401 TAX PARCEL #34-24-0244 IMPROVEMENTS: A RESIDENTIAL DWELLING
SOLD AS THE PROPERTY OF: BETTY LOUISE MARTIN

Phelan Hallinan Diamond & Jones, LLP

No. 1378 of 2019 GD
No. 275 of 2019 ED

CitiMortgage, Inc. s/b/m to Abn Amro Mortgage Group, Inc.
Plaintiff
v.

Donna K. Mcdougale, Individually and in Her Capacity as Executrix of The Estate of Richard G. Mcdougale a/k/a Richard Gene Mcdougale
Defendant(s)

By virtue of a Writ of Execution No. 2019-01378
CitiMortgage, Inc. s/b/m to Abn Amro

Mortgage Group, Inc.
v.

Donna K. Mcdougale, Individually and in Her Capacity as Executrix of The Estate of Richard G. Mcdougale a/k/a Richard Gene Mcdougale
owner(s) of property situate in the SOUTH CONNELLSVILLE BOROUG H, Fayette County, Pennsylvania, being 1625 South Pittsburg Street, a/k/a 1625 South Pittsburg Street Connellsville, PA 15425-4845
Parcel No.: 33-06-0116
Improvements thereon: RESIDENTIAL DWELLING

STERN AND EISENBERG, PC
Jessica N. Manis, ESQ.

No. 2307 of 2018 GD
No. 296 of 2019 ED

Bayview Loan Servicing, LLC, a Delaware Limited Liability Company
Plaintiff
v.
Crystal K. Miller and Timothy B. Miller
Defendant(s)

SITUATE IN THE THIRD WARD OF THE BULLSKIN TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 814 Breakneck Road, Connellsville, PA 15425
PARCEL NO. 04-36-0125
IMPROVEMENTS - RESIDENTIAL REAL ESTATE
SOLD AS THE PROPERTY OF - Crystal K. Miller and Timothy B. Miller

STERN & EISENBERG PC
EDWARD J. MCKEE, ESQUIRE

No. 1108 of 2019 GD
No. 276 of 2019 ED

Plaza Home Mortgage Inc. c/o PHH Mortgage Corporation
Plaintiff
v.

Todd A. Morrison, Jr. a/k/a Todd A. Morrison a/k/a Todd Morrison and Kamry L. Morrison
Defendants

SITUATE IN THE TOWNSHIP OF

CONNELLSVILLE, FAYETTE COUNTY, COMMONWEALTH OF PENNSYLVANIA, BEING KNOWN AS 202 E. GEORGIA AVENUE, CONNELLSVILLE, PA 15425

PARCELNO. 06-04-0046
IMPROVEMENTS - RESIDENTIAL REAL ESTATE

SOLD AS THE PROPERTY OF - TODD A. MORRISON, JR. A/K/A TODD A. MORRISON A/K/A TODD MORRISON AND KAMRY L. MORRISON

McCABE, WEISBERG & CONWAY, LLC
123 South Broad Street, Suite 1400
Philadelphia, PA 19109
(215) 790-1010

No. 1604 of 2019 GD
No. 317 of 2019 ED

Citizens Bank, N.A. f/k/a RBS Citizens, N.A.
Plaintiff
v.

Danielle Palermo
Defendant

All that certain piece or parcel or Tract of land situate in the CITY OF UNIONTOWN, Fayette County, Pennsylvania, and being known as 74 Downer Avenue, Uniontown, Pennsylvania 15401.

Being known as: 74 Downer Avenue, Uniontown, Pennsylvania 15401

Title vesting in Danielle Palermo by Deed from Ralph Regis Riggen Dated March 4, 2013, And Recorded On March 6, 2013, As Instrument Number: 201300002434 in Book: 3213, Page: 702.

Tax Parcel Number: 38-05-0106

RAS Citron, LLC
Walter Gouldsbury, Esq.
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
855-225-6906

No. 1202 of 2019 GD
No. 285 of 2019 ED

NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER
Plaintiff
v.

RICHARD J. PETUCK; ALISA H. PETUCK
Defendant(s)

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN JEFFERSON TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 359 BROWNSVILLE ROAD FAYETIE CITY, PA 15438

BEING PARCEL NUMBER: 17-02-0100
IMPROVEMENTS: RESIDENTIAL PROPERTY

No. 486 of 2019 GD
No. 305 of 2019 ED

Wells Fargo Bank, N.A.
Plaintiff,
vs.
Dan M. Sabatini
Defendant.

ALL that certain parcel of land lying and being situate in the Township of Washington, County of Fayette, and Commonwealth of Pennsylvania, known as 121 Lynnwood Avenue, Belle Vernon, PA 15012 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 41050039

BEING the same premises which Dan M. Sabatini and Melissa Sabatini, husband and wife, by Deed dated January 26, 2015 and recorded in and for Fayette County, Pennsylvania in Deed Book 3270, Page 119, granted and conveyed unto Dan M. Sabatini.

Jill M. Fein, Esquire
Hill Wallack LLP
777 Township Line Road, Suite 250
Yardley, PA 19067
(215) 579-7700

No. 2801 of 2018 GD
No. 338 of 2019 ED

Carrington Mortgage Services, LLC
Plaintiff
v.
Geraldine Saluga
Defendant

By virtue of a writ of execution case number: 2018-02801 Plaintiff: Carrington Mortgage Services, LLC

v.
Defendant: Geraldine Saluga
owners of property situate in the South Union

Township, Fayette County, Pennsylvania, being pin number 34-27-0203

Property being known as: 235 Mountain View Road, Uniontown, PA 15401
Improvements thereon: Residential Property

Phelan Hallinan Diamond & Jones, LLP

No. 241 of 2017 GD
No. 301 of 2019 ED

Deutsche Bank Trust Company Americas, as Trustee, f/k/a Bankers Trust Company, as Trustee of Ameresco Residential Securities Corporation Mortgage Loan Trust 1998-1, Under Pooling and Servicing Agreement Dated as February 1, 1998

Plaintiff

v.

**Steven Sandoval
Julie Sandoval N/K/A Julie Brown
Defendant (s)**

By virtue of a Writ or Execution No. 241-OF-2017 -GD

Deutsche Bank Trust Company Americas, as Trustee, f/k/a Hankers Trust Company, as Trustee of Ameresco Residential Securities Corporation Mortgage Loan Trust 1998-1, Under Pooling and Servicing Agreement Dated as February 1, 1998

v.

Steven Sandoval
Julie Sandoval N/K/A Julie Brown
owner(s) of properly situate in the EVERSON BOROUGH, Fayette County, Pennsylvania, being 200 Jones Street, Everson, PA 15631-1144

Parcel No.: 10-03-021101

Improvements thereon: RESIDENTIAL DWELLING

No. 1161 of 2019 GD
No. 279 of 2019 ED

Wells Fargo Bank, N.A.

Plaintiff,

vs.

**Tanja Shumar, AKA Tanja Breckenridge;
Claude W. Shumar
Defendants.**

ALL that certain parcel of land lying and being situate in the Township of Jefferson, County of Fayette, and Commonwealth of

Pennsylvania, known as 1017 West Third Street, Grindstone, PA 15442 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 17-11-0001

BEING the same premises which Shirley Wolfe, an unremarried widow, by Deed dated September 2, 2009 and recorded in and for Fayette County, Pennsylvania in Deed Book 3121, Page 1, granted and conveyed unto Tanja Breckenridge and Claude W. Shumar.

Phelan Hallinan Diamond & Jones, LLP

No. 1652 of 2019 GD
No. 318 of 2019 ED

The Bank of New York Mellon, f/k/a, The Bank of New York as Successor to JPMorgan Chase Bank, National Association as Indenture Trustee for Noteholders and The Note Insurer of Abfs Mortgage Loan Trust 2000-3

Plaintiff

v.

**Shyrl-An Stoots a/k/a Shyrlan Stoots
Harold B. Stoots a/k/a Harold B. Stoots, Sr
Defendant(s)**

By virtue of a Writ of Execution No. 2019-01652

The Bank of New York Mellon, f/k/a, The Bank of New York as Successor to JPMorgan Chase Bank, National Association as Indenture Trustee for Noteholders and The Note Insurer of Abfs Mortgage Loan Trust 2000-3

v.

Shyrl-An Stoots a/k/a Shyrlan Stoots Harold B. Stoot a/k/a Harold B. Stoots, Sr
owner(s) of property situate in the DAWSON BOROUGH, Fayette County, Pennsylvania. Being 207 Cochran Street, A/K/A PO Box 506, 207 Cochran Street, Dawson, PA 15428

Parcel No.: 07-03-0022

Improvements thereon: RESIDENTIAL DWELLING

No. 2679 of 2018 GD
No. 290 of 2019 ED

Wilmington Savings Fund Society, FSB, D/B/ A Christiana Trust, Not Individually but as Trustee for Pretium Mortgage Acquisition Trust,

Plaintiff,

Vs.

Fred W. Tate, Jr., Individually and as known

Heir of Fred W. Tate Sr., Deceased Michelle Tate

Unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under Fred W. Tate, Sr., Deceased,

Defendants

ALL THAT RIGHT, TITLE, INTEREST AND CLAIMS OF FRED W. TATE, JR., INDIVIDUALLY AND AS KNOWN HEIR OF FRED W. TATE SR., DECEASED, MICHELLE TATE, UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER FRED W. TATE, SR., DECEASED OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN LOT OR PARCEL OF LAND SITUATE IN UNIONTOWN CITY, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, BEING MORE FULLY DESCRIBED AT DBV 2567 PAGE 149

BEING KNOWN AS 228 LENOX STREET, UNIONTOWN, PA 15401
TAX MAP NO. 38-03-0194

No. 2785 of 2018 GD
No. 280 of 2019 ED

**PNC Bank, National Association
Plaintiff,**

vs.

Unknown Heirs and/or Administrators of the Estate of James L. Stephenson; James Carl Stephenson, as believed Heir and/or Administrator to the Estate of James L. Stephenson
Defendants.

ALL that certain parcel of land lying and being situate in the Borough of Brownsville, County of Fayette, and Commonwealth of Pennsylvania, known as 1015 Water Street, Brownsville, PA 15417 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 02070080

BEING the same premises which Curtis A. Nichols and Angela L. Nichols, his wife, by Deed dated February 15, 2010 and recorded in and for Fayette County, Pennsylvania in Deed Book 3116, Page 2309, granted and conveyed unto James L. Stephenson, single.

Phelan Hallinan Diamond & Jones, LLP

No. 1635 of 2019 GD
No. 308 of 2019 ED

**JPMorgan Chase Bank, National Association
Plaintiff**

v.

**Kenneth A. Yauger
Defendant(s)**

By virtue of a Writ of Execution No. 1635-OF-2019-GD

JPMorgan Chase Bank, National Association
v.

Kenneth A. Yauger
owner(s) of property situate in the NORTH UNION TOWNSHIP, Fayette County, Pennsylvania, being 120 Fernwood Road, Lemont Furnace, PA 15456-1202

Parcel No.: 25-27-0126-04

Improvements thereon: RESIDENTIAL DWELLING

*** END SHERIFF SALES***

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
vs.	:	
	:	
ROXANNE L. GUTY,	:	No. 491 of 2019
Defendant.	:	Honorable Linda R. Cordaro

OPINION

CORDARO, J.

October 10, 2019

SUMMARY

Defendant is charged with Attempted Homicide, Conspiracy to Commit Homicide, Solicitation to Commit Homicide, and Conspiracy to Commit Aggravated Assault. Before the Court is Defendant's Omnibus Pretrial Motion in the form of a Writ of Habeas Corpus and a Motion in Limine to admit a witness's crimen falsi convictions from more than 10 years ago. For the following reasons, both Motions are granted.

BACKGROUND

A Preliminary Hearing was held in this case on March 12, 2019. The Commonwealth called witness Norman Pennington, who testified to the following.

Defendant, Roxanne Guty, and her husband, Arthur Guty, own the Marathon gas station in Republic, Pennsylvania. Mr. Pennington is a frequent customer at the gas station and has known Ms. Guty for about one-and-a-half to two years. He also knows Ms. Guty's husband.

In September of 2018, Mr. Pennington and Ms. Guty were in the store talking when Ms. Guty began complaining about her husband. Ms. Guty asked Mr. Pennington about him being in jail for killing people and whether Mr. Pennington would "help [her] out and take care of Art?" Preliminary Hearing Proceedings at 7. Mr. Pennington testified that he had previously been charged with criminal homicide in 1984, but was found not guilty. Mr. Pennington also testified that he thought Ms. Guty was "joking around" and "just blowing off steam." Id. at 8.

After their conversation in September, Ms. Guty asked Mr. Pennington "what it would take to kill [her husband]." Id. at 9. Mr. Pennington told her a .22 caliber rifle, to which Ms. Guty asked how much one would cost. Mr. Pennington said about \$270-280. Ms. Guty came back the same day and handed Mr. Pennington \$300 in cash. At the time, Mr. Pennington believed Ms. Guty was joking around, and he put the money in the poker machine at the gas station.

Around Thanksgiving of 2018, Ms. Guty again approached Mr. Pennington and told him that she had a \$50,000 life insurance policy on her husband. She offered Mr. Pennington half of the policy if he killed her husband.

Mr. Pennington testified that "towards the end, [Ms. Guty] was calling [him] and she was like 'this has got to happen. I am fed up with all this. I can't take it no more. You got to do something.'" Id. at 10. Mr. Pennington said that this particular subject came up in conversation about ten times in a six-month span. Mr. Pennington "never took it serious[ly]" and "thought she was blowing off steam." Id. at 17.

Around February of 2019, Ms. Guty and her husband split up. Around the same time, Ms. Guty called Mr. Pennington and again told him that she was "fed up" and that he has to "take care of this." Id. at 11. Once Ms. Guty and her husband split up, Mr. Pennington became convinced that she was no longer joking about her requests to kill her husband.

Ms. Guty also told Mr. Pennington how he could shoot her husband, describing where her husband parks in the morning. She told Mr. Pennington that he could lay in the woods nearby and shoot her husband, as her husband always has his back turned when he gets his bag out of his vehicle after he parks. Ms. Guty told Mr. Pennington that her husband is there every morning at 2:20 AM.

Upon realizing that Ms. Guty was serious, Mr. Pennington told Arthur Guty, "Hey look, you know, your wife is trying to hire me to kill you." Id. at 13-14. Mr. Guty then contacted the police.

Ms. Guty was charged with Attempted Homicide and Conspiracy to Commit Homicide. The Information was later amended to add the charges of Solicitation to Commit Homicide and Solicitation to Commit Aggravated Assault.

On July 12, 2019, Defendant filed an Omnibus Pretrial Motion in the form of a Writ of Habeas Corpus and a Motion in Limine. A Hearing on the matter was held on September 6, 2019.

DISCUSSION

The first issue before the Court is Defendant's Writ of Habeas Corpus, in which Defendant argues that the Commonwealth failed to establish a prima facie case for the charge of Conspiracy to Commit Homicide. This Court agrees.

A petition for a writ of habeas corpus is the proper means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a prima facie case against a defendant. *Commonwealth v. Scott*, 578 A.2d 933, 936-37 (Pa. Super. Ct. 1990). The question of the evidentiary sufficiency of the Commonwealth's prima facie case is one of law. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1111-12 (Pa. Super. Ct. 2016) (citing *Commonwealth v. Huggins*, 836 A.2d 862, 865 (Pa. 2003)).

For a charge to go forward to trial, the Commonwealth "bears the burden of establishing at least a prima facie case that a crime has been committed and that the accused

is probably the one who committed it." *Commonwealth v. McBride*, 595 A.2d 589,591 (Pa. 1991) (citing *Commonwealth v. Prado*, 393 A.2d 8, 10 (Pa. 1978); Pa.R.Crim.P. 141(d)). In order to establish a prima facie case, the Commonwealth must present evidence with regard to each material element of the crimes charged and sufficient probable cause that the accused is the person who committed the offense. *McBride* at 591. (citing *Commonwealth v. Wojdak*, 466 A.2d 991, 996-97 (Pa. 1983). Further, "[i]t is not necessary for the Commonwealth to establish at this stage the accused's guilt beyond a reasonable doubt." *McBride* at 591 (citing *Commonwealth v. Rick*, 366 A.2d 302,303 (Pa. Super. Ct. 1976)). The weight and credibility of the evidence are not factors at this stage. *Wojdak* at 997. The Commonwealth may establish its burden by wholly circumstantial evidence. See, e.g., *Commonwealth v. De Petro*, 39 A.2d 838, 842 (Pa. 1944). However, circumstantial evidence must rise above mere suspicion and conjecture. *Prado* at 10.

Presently, Defendant argues that the Commonwealth failed to establish a prima facie case for Conspiracy to Commit Homicide. Conspiracy to commit a crime exists when, with the intent to promote or facilitate the commission of a crime, a person:

- 1) Agrees with another person that they will engage in conduct that constitutes the underlying crime or an attempt or solicitation to commit such a crime, or
- 2) Agrees to aid another person in the planning or commission of the underlying crime or of an attempt or solicitation to commit such crime.

See 18 Pa.C.S.A. §903.

In order to sustain a conviction for criminal conspiracy, "the Commonwealth must establish [that] a defendant entered into an agreement to commit or aid in an unlawful act with another person or persons... with a shared criminal intent, and [that] an overt act was done in the conspiracy's furtherance." *Commonwealth v. Weimer*, 977 A.2d 1103, 1105-06 (Pa. 2009) (citing 18 Pa.C.S. § 903; *Commonwealth v. Rios*, 684 A.2d 1025, 1030 (Pa. 1996)). Further, the overt act does not need to accomplish the crime-it only needs to be in furtherance of the underlying crime. *Id.* The underlying crime does not need to be accomplished for the conspiracy to be committed. *Id.*

Importantly, "[a]t the heart of every conspiracy lies the common understanding or agreement between the actors." *Commonwealth v. Chambers*, 188 A.3d 400,410 (Pa. 2018) (citing *Commonwealth v. Kennedy*, 453 A.2d 927, 929 (Pa. 1982)) (internal quotation marks omitted). The alleged conspiracy "cannot be based upon an agreement to complete a broad, undefined objective at some unknown point," but rather "the agreement must rest upon the mutual specific intent to carry out a particular criminal objective." *Chambers* at 410. A shared criminal intent is an absolutely necessary element of conspiracy. See *Id.* (citing *Commonwealth v. Weston*, 749 A.2d 458,463 (Pa. 2000)).

The testimony of Mr. Pennington at the Preliminary Hearing was insufficient to establish that Ms. Guty was involved in a conspiracy to commit homicide. According to Mr. Pennington, Ms. Guty approached him multiple times and made suggestive statements to him about killing her husband. However, it was also Mr. Pennington's testimony that each time Ms. Guty approached him about the subject, he thought she

was just "joking" or "letting off steam." It wasn't until Ms. Guty left her husband that Mr. Pennington said he believed she was not joking. Once Mr. Pennington believed Ms. Guty to be serious, he went and told Mr. Guty about the alleged plot.

Because Mr. Pennington did not believe Ms. Guty was serious about her requests for him to kill her husband, there was never any "shared criminal intent," which is necessary to establish a conspiracy. Further, as soon as Mr. Pennington believed that Ms. Guty was serious, he told Mr. Guty about the plot, signifying that he did not want to be a part of it. Mr. Pennington's testimony at the Preliminary Hearing clearly establishes a prima facie case for solicitation, but not for conspiracy.

The second issue before the Court is Defendant's Motion in Limine to allow Defendant to admit Mr. Pennington's prior *crimen falsi* convictions at trial. The *crimen falsi* convictions at issue are greater than 10 years old.

Pennsylvania Rule of Evidence 609 states:

(a) In General. For the purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime, whether by verdict or by plea of guilty or *nolo contendere*, must be admitted if it involved dishonesty or false statement.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) Its probative value substantially outweighs its prejudicial effect; and
- (2) The proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

Here, Defendant gave the Commonwealth reasonable written notice of an intent to use the prior convictions, and the Commonwealth had a fair opportunity to contest their use, which satisfies the requirement under Pa.R.E. 609(b)(2). Therefore, the only issue before the Court is whether the probative value of Mr. Pennington's prior convictions substantially outweighs their prejudicial effect.

The parties submitted a joint exhibit detailing Mr. Pennington's criminal history. The *crimen falsi* convictions that Defendant intends to use to impeach Mr. Pennington at trial are as follows:

- 1977-Theft by Unlawful Taking or Disposition;
- 1981-Burglary, Theft by Unlawful Taking, and Receiving Stolen Property;
- 1981-Receiving Stolen Property;
- 1984-Theft by Deception and Forgery; and
- 1985-False Reports to Law Enforcement.

According to the Exhibit, Mr. Pennington either pleaded guilty to or was found guilty of those charges.

"Questions concerning the admissibility of evidence lie within the sound discretion of the trial court... " *Commonwealth v. Harris*, 884 A.2d 920,924 (Pa. Super. Ct. 2005) (internal citations omitted). According to relevant Pennsylvania caselaw, there are five specific factors a trial court should consider when determining whether remote *crimen falsi* adjudications- i.e., those that are more than ten years old-are admissible as more probative than prejudicial. See *Commonwealth v. Hoover*, 107 A.3d 723, 726 (Pa. 2014); see also *Commonwealth v. Randall*, 528 A.2d 1326, 1328 (Pa. 1987). Those factors include:

- 1) The degree to which the commission of the prior offense reflects upon the veracity of the defendant -wit ness;
- 2) The likelihood, in view of the nature and extent of the prior record, that it would have a greater tendency to smear the character of the defendant and suggest a propensity to commit the crime for which [the defendant] stands charged, rather than provide a legitimate reason for discrediting [the defendant] as an untruthful person;
- 3) The age and circumstances of the defendant;
- 4) The strength of the prosecution's case and the prosecution's need to resort to this evidence as compared with the availability to the defense of other witnesses through which its version of the events surrounding the incident can be presented; and
- 5) The existence of alternative means of attacking the defendant's credibility.

Randall at 1328. The factors enumerated in *Randall* pertain specifically to the consideration of whether to admit the *crimen falsi* convictions of a defendant who is testifying at trial, rather than a non-defendant witness.

In *Commonwealth v. Palo*, 24 A.3d 1050 (Pa. Super. Ct. 2005), the Superior Court cites the *Randall* factors in a decision regarding the admission of a prior *crimen falsi* conviction of a non-defendant witness. *Palo* at 1056. The Superior Court also states in its Opinion that those factors "should be considered." *Id.* However, the *Palo* Court never explicitly applies the *Randall* factors to the underlying case involving the non- defendant witness.

In *Palo*, the defendant was accused of burglarizing a pharmacy. *Id.* at 1052-54. At trial, the defendant called his mother as an alibi witness. *Id.* During rebuttal, the Commonwealth offered evidence of the defendant's mother 's 18-year old convictions for conspiracy to commit robbery, theft by unlawful taking, and receiving stolen property in order to impeach her credibility. *Id.* The trial court allowed the evidence pursuant to Pa.R.E. 609, and the Superior Court upheld that decision. *Id.* at 1054-58.

Rather than applying the *Randall* factors to the underlying case, the Superior Court in *Palo* stated, "the Commonwealth's need to introduce evidence of [the defendant's mother's] old *crimen falsi* conviction was high, for the jury would decide between the credibility of a single Commonwealth witness and that of a single defense witness in

order to reach a verdict." *Id.* at 1057.

The case at hand is similar to *Palo*, in that evidence of *crimen falsi* convictions is being offered to impeach a non-defendant witness. Like *Palo*, this case also depends on the credibility of a single Commonwealth witness-Mr. Pennington. Defendant's ability to attack Mr. Pennington's credibility is particularly important, given that the jury will be deciding between two differing, uncorroborated accounts of events in this case. As such, it is substantially more probative than prejudicial to permit evidence of Mr. Pennington's prior *crimen falsi* convictions for impeachment purposes.

Applying the Randall factors to the case at hand also leads to the same result. The first Randall factor-the degree to which the prior offenses reflect the veracity of the witness-favors Defendant. The fact that Mr. Pennington was convicted of *crimen falsi* crimes on five separate occasions is evidence bearing on his truthfulness as a witness, even if those crimes were committed long ago.

The second Randall factor-whether the admission of prior *crimen falsi* convictions could unduly suggest a defendant also committed the crime for which that defendant currently stands charged-does not appear to be relevant to non-defendant witnesses. Rather, this factor suggests that it is in place to protect the rights of a defendant who is accused of a crime and whose liberty is at risk. In that scenario, the admission of a defendant's prior *crimen falsi* crimes could improperly suggest to a jury that the defendant has a propensity to commit certain crimes, and is therefore guilty again. This factor is essential to protecting the right of a defendant to have a fair trial. Here, Mr. Pennington is not on trial; his liberty is not at risk. Therefore, there is no prejudice to Mr. Pennington if evidence of his prior *crimen falsi* convictions is admitted.

The third Randall factor-the age and circumstances of the witness-also favor the admission of the witness's prior *crimen falsi* convictions. Here, Mr. Pennington has five *crimen falsi* convictions over eight years, which suggests that it wasn't just a one-time mistake of a young adult. Rather, Mr. Pennington appears to have had a penchant for *crimen falsi* crimes during this lengthy time period. Whether Mr. Pennington has since developed a propensity for telling the truth will be something for the jury to decide based on his testimony at trial and on the time period since his last *crimen falsi* conviction.

The fourth Randall factor-the strength of the proponent's case and need to resort to this evidence-also favors the admission of Mr. Pennington's prior *crimen falsi* convictions. As stated above, this case comes down to whether the jury believes Mr. Pennington's testimony that Ms. Gutty solicited him in an attempt to murder her husband. Mr. Pennington's propensity for telling the truth is extremely important to a fair verdict on this matter.

The fifth Randall factor-the existence of alternative means to attack the witness's credibility- also favors the admission of the evidence. Mr. Pennington's testimony is essential to the Commonwealth's case. Because this case relies on Mr. Pennington's word against Ms. Gutty's, there is no corroborating evidence to support or disprove Mr. Pennington's testimony. It is therefore proper that Defendant should be able to present evidence of Mr. Pennington's propensity for telling the truth.

Of particular importance to this Court in permitting evidence of Mr. Pennington's prior *crimen falsi* convictions is: 1) that the Commonwealth's case rests solely on the testimony of Mr. Pennington; 2) that Mr. Pennington is not on trial, and the admission of his prior crimes at trial will not prejudice him personally; and 3) the number of *crimen falsi* crimes for which Mr. Pennington was convicted. Despite the over-30-year period since Mr. Pennington's last *crimen falsi* conviction, this Court finds that the probative value of the evidence substantially outweighs the prejudicial effects of its admission.

CONCLUSION

For the foregoing reasons, Defendant's Motion for Writ of Habeas Corpus and Motion in Limine are granted.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts



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Registration: <http://www.pbi.org/fayette-county>

- November 14 **A View From the Workers' Comp Bench**
9 a.m. to 11 a.m.
2 substantive
- November 19 **How to Close an Estate**
9 a.m. to 12 p.m.
3 substantive
- December 5 **Family Law 101 2019**
8:30 a.m. to 4 p.m.
5 substantive/1 ethics
- December 12 **Criminal Law Update 2019**
12 p.m. to 4:15 p.m.
3 substantive/1 ethics
- December 18 **The Year in Review for the General Practitioner 2019**
8:30 a.m. to 3:45 p.m.
5 substantive/1 ethics
- December 19 **Essential Ethics 2019**
9 a.m. to 4:15 p.m.
6 ethics



ANNUAL MEMBERSHIP MEETING

The regular annual meeting of the full membership of the Fayette County Bar Association shall be held on **Wednesday, December 4, 2019**, at 1:30 pm in Courtroom One, Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401.

Committees are invited to present topics of concern or interest to the Association.

RSVP to Cindy at cindy@fcbbar.org or 724-437-7994

LUNCH & LEARN SERIES

FCBA LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, December 4th from 12:00 p.m. to 1:30 p.m.**
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **Conviction Integrity and Related Issues**
Forms will be provided
- Presenter: Judge Steve P. Leskinen and Michael A. Aubele, Esquire

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2012

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$20 fee for attendance with CLE Credit

**** All fees to be paid at the door ****

A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Monday, December 2nd

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