

# FAYETTE LEGAL JOURNAL

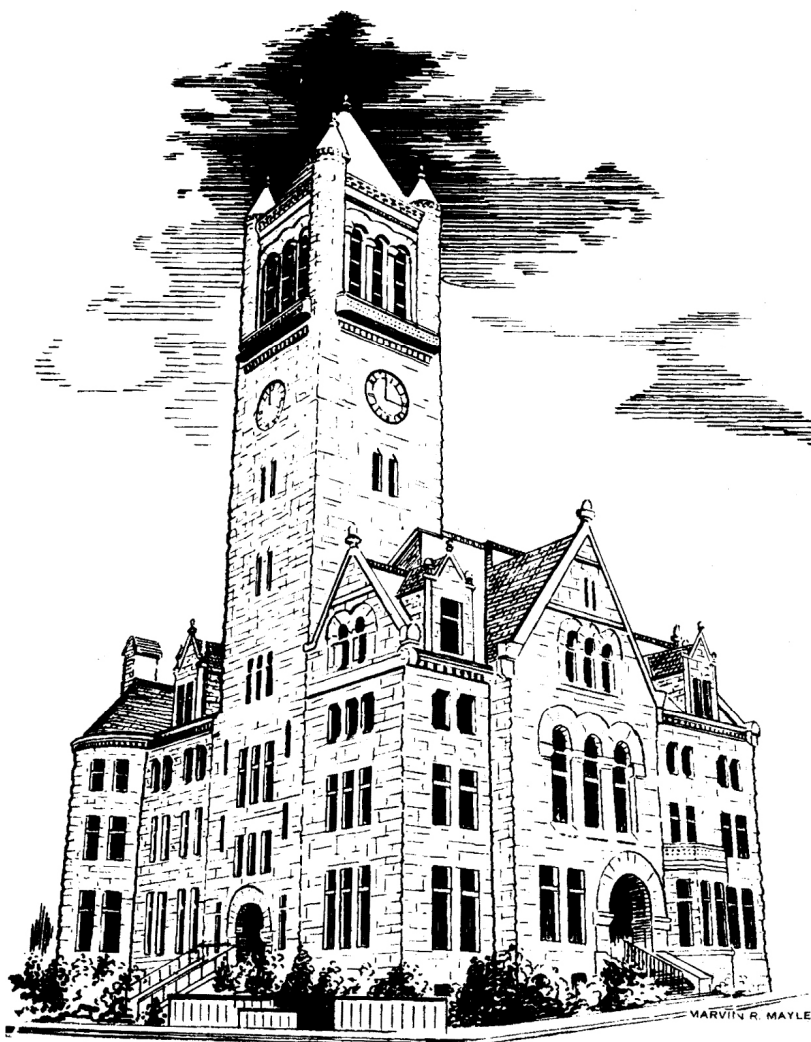
---

VOL. 82

OCTOBER 26, 2019

NO. 43

---



## 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](http://www.fcbar.org) no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

**Co-Editors:** Garnet L. Crossland and Melinda Deal Dellarose

*Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA*

## FAYETTE COUNTY BAR ASSOCIATION Board of Directors

**President:** James E. Higinbotham, Jr.  
**President Elect:** Louise D. Monaghan  
**Vice-President:** Gretchen A. Mundorff  
**Secretary:** Timothy J. Witt  
**Treasurer:** Vincent J. Roskovensky, II  
**Past President:** Gary N. Altman

**Executive Director:** Garnet L. Crossland

Jennifer M. Casini  
Jeremy J. Davis  
Benjamin F. Goodwin  
Robert A. Gordon  
Sheryl R. Heid  
Margaret Zylka House  
Wendy L. O'Brien  
Douglas S. Sholtis  
Charles O. Zebley, Jr.

### *Directors*

### ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

### LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,  
non-judgmental, safe, and effective

To talk to a lawyer today, call:  
1-888-999-1941  
717-541-4360

## ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

### Third Publication

**JAMES BOYD, a/k/a JAMES S. BOYD**, late of North Union Township, Fayette County, PA (3)

*Administratrix:* Melanie L. Boyd  
c/o Kopas Law Office  
556 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* John Kopas

**LEOLA F. BRODERICK**, late of North Union Township, Fayette County, PA (3)

*Executor:* Robert J. Broderick  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

**ALICE W. JEFFERYS**, late of Uniontown, Fayette County, PA (3)

*Executor:* Lisa A. Jefferys  
7706 Cypress Walk  
Fort Myers, FL 33966  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Anthony Dedola

**ROBERT LOWE, a/k/a ROBERT STANTON LOWE, a/k/a R. STANTON LOWE**, late of Masontown Borough, Fayette County, PA (3)

*Executor:* Susan L. Kunkle  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**BETTY A. MCMANUS**, late of Fairchance, Fayette County, PA (3)

*Administrator:* Brian E. McManus  
93 Sutton Avenue, Ext.  
Hopwood, PA 15445  
c/o 76 East Main Street  
Uniontown, PA 15401  
*Attorney:* Douglas S. Sholtis

**CHARLES F. PORTER**, late of South Connellsville, Fayette County, PA (3)

*Executrix:* Michelle Pisarski  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

**DOROTHY M. YAKIMICK**, late of Connellsville, Fayette County, PA (3)

*Executrix:* Karen Y. Fish  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

### Second Publication

**THEODORE E. HART**, late of Bullskin Township, Fayette County, PA (2)

*Administratrix:* Teddie R. Watson  
2135 Oxley Drive  
Waterford, Michigan 48328  
c/o 231 South Main Street, Suite 402  
Greensburg, PA 15601  
*Attorney:* Marilyn N. Gaut

**ALLEN MONROE ARBOGAST**, late of Smithfield, Fayette County, PA (2)

*Administrator:* Scott A. Arbogast  
1 North Walnut Street  
Masontown, PA 15461  
c/o 76 East Main Street  
Uniontown, PA 15401  
*Attorney:* Douglas S. Sholtis

**CHRISTOPHER P. MORROW, a/k/a CHRISTOPHER PAUL MORROW**, late of Bullskin Township, Fayette County, PA (2)

*Executor:* Richard Morrow  
3220 Country Club Road  
Connellsville, PA 15245  
c/o Peacock Keller, LLP

70 East Beau Street  
Washington, PA 15301  
*Attorney:* Susan M. Key

---

### First Publication

---

**BETTY ANN BARKLEY**, late of Uniontown,  
Fayette County, PA (1)

*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 (1)

*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 (1)

*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 (1)

*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 (1)

*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 (1)

*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 (1)

*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 (1)

*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 (1)

*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 (1)

*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

---

## LEGAL NOTICES

### NOTICE

Notice is hereby given that Articles of Incorporation were filed on October 1, 2019 with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation of a domestic non-profit corporation which was organized under the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania, (15 Pa. C. S. A. Section 5306, et. sec.) as from time to time amended. The name of the Corporation is Duck Hollow Unit Owners Association, Inc., having its registered office at 374 Duck Hollow Road, Uniontown, Pennsylvania 15401.

James E. Higinbotham, Jr., Esq.  
HIGINBOTHAM LAW OFFICES  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
Telephone: 724-437-2800

### NOTICE OF CERTIFICATE OF ORGANIZATION - LIMITED LIABILITY COMPANY

Notice is hereby given that Certificate of Organization was filed and approved with the Department of State of the Commonwealth of Pennsylvania for a limited liability company formed under the Limited Liability Company Law of 1994 on the 26th day of September, 2019. The name of the company is Suzabella Bakes LLC.

Margaret Zylka House, Esq.  
815A Memorial Boulevard  
Connellsville PA 15425  
724-628-4955

NOTICE: On October 9th, 2019, the Fayette County Court of Common Pleas confirmed nisi the upset sale of properties for delinquent taxes, held on September 16th, 2019.

Affected parties may file objections or exceptions to the sale immediately but no later than thirty (30) days following the confirmation nisi of the return by the court on, October 9th, 2019 or the return will be confirmed absolutely. The last day to file objections is November 9th,

2019. The case number for this Nisi is 2177 of 2019 G.D.

If you have any questions please call your attorney, this tax claim bureau at the following telephone number 724-430-1208, or the Pennsylvania Lawyer Referral Service at 800-932-0311.

### NOTICE OF ACTION IN LAW

### IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA

### CIVIL ACTION – LAW

COURT OF COMMON PLEAS  
CIVIL DIVISION  
WESTMORELAND COUNTY  
NO. 3133 OF 2017

Donald L. Stahl & Beth A. Stahl, his wife,  
and  
Ronald S. Stahl & Annette M. Stahl, his wife,  
and  
Donald L. Stahl, Jr. and Ronald S. Stahl,  
individuals  
vs.  
Wineland-Gilmore Coal & Coke Co., its  
Successors, Assigns, and All Other Persons  
claiming Any Interest in the property described  
in this Action,  
Defendant

### NOTICE

To: WINELAND GILMORE COAL & COKE  
CO., UNKNOWN HEIRS, SUCCESSORS,  
ASSIGNS, AND ALL PERSONS, FIRMS OR  
ASSOCIATIONS CLAIMING RIGHT, TITLE  
OR INTEREST, FROM OR UNDER  
WINELAND GILMORE COAL & COKE CO.

You are hereby notified that on October 4, 2019, the above-named Plaintiffs filed a Complaint to Quiet Title endorsed with a Notice to Defend, against you in the Court of Common Pleas of WESTMORELAND County Pennsylvania, docketed to No. 4898 of 2019 wherein Plaintiffs seek to be awarded ownership of the oil and gas rights to lands situate in the Township of South Huntingdon, County of Westmoreland and Commonwealth of Pennsylvania, known and identified as follows:  
a. Donald L. Stahl & Beth A. Stahl, Tax Parcel

ID: 59-14-00-0-063, 6.82 acres of oil and gas under this tract consisting of 44.1 acres;

b. Ronald S. Stahl & Annette M. Stahl, Tax Parcel ID: 59-14-00-0-209 consisting of the oil and gas under this entire tract of 6.4141 acres;

c. Donald S. Stahl, Jr. and Ronald S. Stahl, Tax Parcel ID: 59-14-00-0-210 consisting of the oil and gas under this entire tract of 3.5594 acres.

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**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE  
WESTMORELAND BAR ASSOCIATION  
P.O. BOX 565 GREENSBURG, PA 15601  
(724) 834-8490  
<http://lrs.westbar.org>

---

## 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, November 4, 2019, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2616-0778	ANN MARIE GRUESER	Annette Frey, Executrix

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

**Monday, November 18, 2019, at 9:30 A.M.**

in Courtroom No. 1 of the **Honorable STEVE P. LESKINEN**, or his chambers, 2nd 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 also 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, November 4, 2019, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2666-0115	FLORENCE SHERBONDY BIGHAM a/k/a FLORENCE SHERBONDY BIGAM	Robert Bigham and L. Glen Shearer, Co-Administrators DBNCTA

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

**Monday, November 18, 2019, at 9:30 A.M.**

in Courtroom No. 5 of the **Honorable JOSEPH M. GEORGE, JR.**, or his chambers, 3rd 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.

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
vs.	:	
	:	
RONALD FITZGERLAND, JR.,	:	No. 1696 of 2018
Defendant.	:	Honorable Steve P. Leskinen

STATEMENT IN LIEU OF OPINION

LESKINEN, J

September 25, 2019

AND NOW, this 25th day of September 2019, this Court writes in response to Defendant Ronald Fitzgerald, Jr.'s "Concise Issues" filed on September 11, 2019. This matter came to the court after the defendant was found guilty by a jury of his peers for counts (1) Aggravated Assault, (2) Simple Assault, (3) Resisting Arrest, and (4) Disorderly Conduct. Furthermore, this Court found the defendant guilty of count (5) Harassment. On July 18th this Court sentenced Defendant to serve no less than thirty-six (36) months and no more than seventy-two (72) months in a State Correctional Institution. During the sentencing hearing, this Court also determined Defendant is not eligible for the RRR Program due to the nature of the offense. Furthermore, this Court credited Defendant time served for a total of forty-five (45) days from June 18th, 2018 to July 24th, 2018 and from July 11th, 2019 to July 18th, 2019.

Since sentencing, Defendant filed a Motion, on July 26th, 2019 seeking a Post Sentence Modification of Sentence. Defendant asserted in his motion that this Court's sentence was harsh, severe, and excessive. Furthermore, Defendant asserted that a lighter sentence was sufficient for any rehabilitative needs. Defendant also asserted that this Court's sentence was above the aggravated range for the crime of aggravated assault and therefore was improper, unwarranted, and was an abuse of this Court's discretion. The Defendant's prior record score was five (5), the offense gravity score was six (6), yielding a standard sentence range of twenty-one (21) to twenty-seven (27) months, an aggravated range of twenty-seven (27) to thirty-three (33) months and a mitigated range of fifteen (15) to twenty-one (21) months.

This Court denied Defendant's Motion for sentence modification. The August 2nd, 2019 opinion of this Court denying the modification was as follows: (1) Defendant refused to accept responsibility for his actions, (2) Defendant showed no remorse for his actions, (3) Defendant has a substantial criminal history not reflected in his prior record score, and (4) Defendant had been previously convicted of related offenses. Furthermore, this Court noted the victim of the Defendant was a female police officer that was trying to save Defendant's life after an overdose and was not threatening him in any way.



Following this Court's decision, Defendant filed an appeal and, on August 6th, 2019, this Court, pursuant to Pa.R.A.P. 1 925(b), ordered Defendant to file a concise statement of errors complained of on appeal within twenty-one (21) days of the order. Defendant was also advised that any issue not properly included in the Statement timely filed shall be deemed waived. This Court received Defendant's Concise Issues statement on Sept 11th, 2019, forty-six (46) days after the Concise Statement Order was entered and twenty-five (25) days late.

Defendant raised five issues in his petition:

1. Whether the evidence was legally and factually sufficient to prove that defendant had the requisite intent to commit the crime of aggravated assault.
2. Whether the evidence was legally and factually sufficient to prove that defendant had the requisite intent to commit the crime of simple assault.
3. Whether the evidence was legally and factually sufficient to prove that defendant had the requisite intent to commit the crime of resisting arrest.
4. Whether the evidence was legally and factually sufficient to prove that defendant had the requisite intent to commit the crime of disorderly conduct.
5. Whether the trial court committed an abuse of discretion by sentencing defendant above the aggravated range.

The Commonwealth has met its burden, and the evidence presented will be sufficient to support a verdict when the evidence establishes every element of the crimes charged. *Commonwealth v. Karkaria*, 625 A.2d 1667 (1993). Pursuant to Rule 606 of the Pennsylvania Rules of Criminal Procedure, a defendant may raise a claim for insufficient evidence before, during, or after the trial. When a defendant raises the claim on appeal, the defendant must identify the elements of the crime(s) for which the evidence at trial was insufficient. The purpose is to allow the court reviewing the decision to focus on the evidence used to meet such element.

When reviewing a challenge for sufficiency of the evidence, the reviewing court must ask whether the evidence, and all reasonable inferences deducible therefrom, viewed in the light most favorable to the Commonwealth as the verdict winner, are sufficient to establish all the elements of the offense beyond a reasonable doubt. *Commonwealth v. Thomas*, 594 A.2d 300 (1991).

Constitutional due process requires that the government prove every fact necessary to constitute the crime beyond a reasonable doubt. In *re Winship*, 397 U.S. 358, (1970). The burden of proof never shifts but rests with the prosecution throughout. *Turner v. Commonwealth*, 86 Pa. 54, (1878). The never-shifting burden on the Commonwealth is to prove every essential element of the charge. *Commonwealth v. Bonomo*, 151 A.2d 441, 445 (1959).

The defense of involuntary intoxication has been recognized in other jurisdictions in four types of situations: (1) where the intoxication was caused by the fault of another (i.e., through force, duress, fraud, or contrivance); (2) where the intoxication was caused by an innocent mistake on the part of the defendant (i.e., defendant took hallucinogenic pill in reasonable belief it was aspirin or lawful tranquilizer); (3) where a defendant unknowingly suffers from a physiological or psychological condition that renders him

abnormally susceptible to a legal intoxicant (sometimes referred to as pathological intoxication); and (4) where unexpected intoxication results from a medically prescribed drug. *Commonwealth v. Smith*, 831 A.2d 636 (2003). It would appear that Pennsylvania law is consonant with the Model Penal Code's definition and would not characterize intoxication produced by the voluntary consumption of a prescription drug and alcohol as "involuntary" even if that consumption was without knowledge of a synergistic effect. *Id.*

Here, defendant tried to assert that he did not have the intent to commit the five (5) crimes charged because at the time he was involuntarily intoxicated, which would negate his ability to form the proper mental state required for the crimes. To prove a defense of involuntary intoxication, the burden is on the defendant to show such intoxication was involuntary by a preponderance of the evidence. *Commonwealth v. Collins*, 810 A.2d 698, 700 (Pa.Super.2002). If this defense is relied upon, Appellant must show that the combination is capable of causing the extreme intoxication which is alleged. *Smith*, supra.

The only evidence offered by the defendant was the self-serving statement that he partook in the consumption of marijuana that must have contained other drugs. The Jury was free to disbelieve that testimony, and it appears that they did just that. Furthermore, in Defendant's issue on appeal, there is no reference to the involuntary intoxication, or any other fact presented to establish that Defendant was involuntarily intoxicated during the time.

Therefore, it appears the Defendant has not come close to putting the integrity of his conviction into question. Because the Defendant has not been able to establish the factual foundation in proving the lack of intent due to involuntary intoxication, it does not bear upon the sufficiency of the evidence in this case.

BY THE COURT:  
LESKINEN, J.

ATTEST:  
Clerk of Courts



Pennsylvania Bar Institute

**UPCOMING CLE**For more information and to register: [www.pbi.org](http://www.pbi.org) | 1-800-932-4637

Upcoming live simulcast and video replay continuing legal education courses at the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown.

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

- |             |   |
|-------------|---|
| October 24  | <b>Auto Law Update 2019</b><br>12:30 p.m. to 4:45 p.m.<br>3 substantive/1 ethics                                |
| November 1  | <b>Elder Law Update 2019</b><br>9 a.m. to 12:15 p.m.<br>3 substantive   |
| November 14 | <b>A View From the Workers' Comp Bench</b><br>9 a.m. to 11 a.m.<br>2 substantive                                |
| November 19 | <b>How to Close an Estate</b><br>9 a.m. to 12 p.m.<br>3 substantive   |
| December 5  | <b>Family Law 101 2019</b><br>8:30 a.m. to 4 p.m.<br>5 substantive/1 ethics                                     |
| December 12 | <b>Criminal Law Update 2019</b><br>12 p.m. to 4:15 p.m.<br>3 substantive/1 ethics                               |
| December 18 | <b>The Year in Review for the General Practitioner 2019</b><br>8:30 a.m. to 3:45 p.m.<br>5 substantive/1 ethics |
| December 19 | <b>Essential Ethics 2019</b><br>9 a.m. to 4:15 p.m.<br>6 ethics   |



*Quality... Experience... Results...  
It's what your clients deserve.*

***Medical Malpractice • Auto Accidents • Personal Injury***



**GISMONDI**  
& ASSOCIATES

**412-281-2200**

**[www.gislaw.com](http://www.gislaw.com)**

**700 Grant Bldg., 310 Grant St., Pgh., PA 15219**