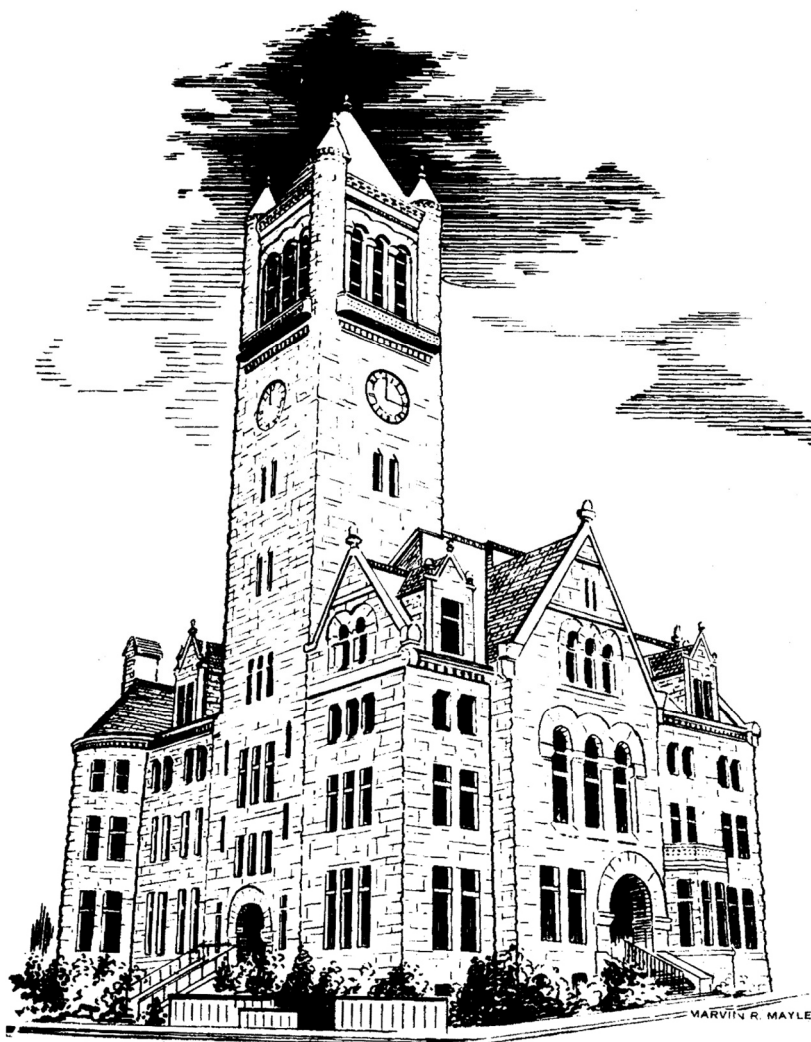


FAYETTE LEGAL JOURNAL

VOL. 85

MAY 28, 2022

NO. 22



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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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

DOUGLAS A. CINDRIC, late of North Union Township, Fayette County, PA (3)

Executors: Gregory J. Cindric and
Donna K. Mathianas
c/o DeHaas Law, LLC
51 East South Street
Uniontown, Pa 15401
Attorney: Ernest P. DeHaas, III

RUTH COMER, late of Uniontown, Fayette County, PA (3)

Administratrix: Denise Boley
c/o Anderson & Labovitz, LLC
429 Fourth Avenue, Suite 602
Pittsburgh, PA 15219
Attorney: Adam Anderson

ELVA E. CONROY, a/k/a ELVA EVELYNN CONROY, a/k/a ELVA CONROY, late of Uniontown, Fayette County, PA (3)

Personal Representative:
Tammie R. Pheasant
c/o Dellarose Law Office, PLLC
99 East Main Street, Suite 101
Uniontown, PA 15401
Attorney: Melinda Deal Dellarose

WILLIAM F. FARRELL, late of Connellsville, Fayette County, PA (3)

Personal Representative:
Melissa Ann Farrell
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Robert A. Gordon

IVY GARLETTS, late of Dunbar, Fayette County, PA (3)

Administrator: Ricky A. Garletts
229 Furnace Hill Road
Dunbar, PA 15431
c/o Snyder & Snyder
17 North Diamond Street
Mt. Pleasant, PA 15666
Attorney: Marvin Snyder

SUSAN LAIRD, a/k/a SUSAN MARY LAIRD, late of North Union Township, Fayette County, PA (3)

Executrix: Wendy Schiffbauer
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

ROBERT MARTIN, late of Saltlick Township, Fayette County, PA (3)

Administratrix: Veronica Martin
1164 Indian Creek Valley Road
Indian Head, PA 15446
c/o Schimizzi Law, LLC
35 West Pittsburgh Street
Greensburg, PA 15601
Attorney: Richard Schimizzi

ANTHONY LOUIS ROSSO, late of New Salem, Fayette County, PA (3)

Administrator: Anthony Louis Rosso, Jr.
c/o 11 Pittsburgh Street
Uniontown, PA 15401
Attorney: Thomas W. Shaffer

LARRY SERRATTA, SR., a/k/a LAWRENCE SERRATTA, late of Fayette County, PA (3)

Administratrix: Jayette Serratta
c/o Anderson & Labovitz, LLC
429 Fourth Avenue, Suite 602
Pittsburgh, PA 15219
Attorney: Caleb Dunn

LAWRENCE WALATKA, a/k/a LAWRENCE MILLER WALATKA, late of Newell, Fayette County, PA (3)

Executor: James Aglio, Jr.
P.O. Box 287
Newell, PA 15466
c/o 1747 Rostraver Road
Belle Vernon, PA 15012
Attorney: Megan A. Kerns

JILL M. WILSON, a/k/a JILL MARIE WILSON, late of Brownsville Township, Fayette County, PA (3)

Personal Representatives: Hayley Godfrey and Jordan Bohna
505 Weddell Drive
Rostraver Township, PA 15012
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

KENNETH M. WILSON, late of Brownsville Township, Fayette County, PA (3)

Personal Representatives: Hayley Godfrey and Jordan Bohna
505 Weddell Drive
Rostraver Township, PA 15012
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. T. Davis

DANIEL ANDREW ZAVORA, late of Uniontown, Fayette County, PA (3)

Administratrix: Roberta Z. Neubauer
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

JOHN ZIAK, JR., late of Wickhaven, Fayette County, PA (3)

Executrix: Kathleen Lowe
15 Oyster Point
Warren, Rhode Island 02885
c/o 231 South Main Street, Suite 406
Greensburg, PA 15601
Attorney: William Wiker

Second Publication

MARGARET K. CONN, late of Uniontown, Fayette County, PA (2)

Personal Representative:
James Harold Moody
c/o P.O. Box 953
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

LINDA DELEONIBUS, late of South Union Township, Fayette County, PA (2)

Personal Representative:
Donald W. Santore
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

VINCENT FRANGIPANI, a/k/a VINCENT T. FRANGIPANI, late of North Union Township, Fayette County, PA (2)

Executrix: Anna M. Coleman
c/o Weisel, Xides & Foerster, LLP
429 Fourth Avenue, Suite 1201
Pittsburgh, PA 15219
Attorney: Charles E. Foerster

LARRY W. HAWKINS, SR., late of Redstone Township, Fayette County, PA (2)

Personal Representative:
Dorothy Kay Polivka
1255 Gary Boulevard
Brunswick, Ohio 44212
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Samuel J. Davis

JEAN T. LILLEY, a/k/a JEAN LILLEY, late of Masontown, Fayette County, PA (2)

Executor: Robin Lilley
346 West Church Avenue, Ext.
Masontown, PA 15461
c/o 76 East Main Street
Uniontown, PA 15401
Attorney: Douglas S. Sholtis

MARTHA A. MEGO, late of North Union Township, Fayette County, PA (2)

Administrator: Marguerite Phelan DeHanis
281 Bethelboro Road
Uniontown, PA 15401
c/o 3950 William Penn Highway, Suite 5
Murrysville, PA 15668
Attorney: John W. Ament

ANGELO F. PILLA, a/k/a ANGELO PILLA, a/k/a FRANK PILLA, late of Connellsville, Fayette County, PA (2)

Executor: Shawn M. Pilla
c/o Donald McCue Law Firm, P.C.
Colonial Law Building

813 Blackstone Road
Connellsville, PA 15425
Attorney: Donald J. McCue

SUSAN FAYE ROUNTREE, late of Fayette
City, Fayette County, PA (2)
Personal Representative: Joshua T. Weaver
211 Municipal Drive
Rostraver TWP, PA 15012
c/o P.O. Box 488
California, PA 15419
Attorney: Lisa J. Buday

JAMES R. SILEO, late of Uniontown, Fayette
County, PA (2)
Executor: James J. Sileo
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

INA DELL TEETS, late of Uniontown, Fayette
County, PA (2)
Personal Representative:
Linda G. McDuffie
c/o P.O. Box 953
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

**EDWARD S. WILCOX, a/k/a EDWARD
SAMUEL WILCOX**, late of Uniontown,
Fayette County, PA (2)
Personal Representative: Nancy J. Wilcox
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

First Publication

**REGINA BALABAN, a/k/a REGINA ANN
BALABAN**, late of North Union Township,
Fayette County, PA (1)
Administrator: Regis F. Balaban
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

VERNA B. CABLE, late of Springfield
Township, Fayette County, PA (1)
Executrix: Joy D. Cable
c/o Adams Law Offices, PC
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

EDNA MAE COOPER, late of Lemont
Furnace, Fayette County, PA (1)
Executor: James Irvin Cooper
c/o John and John
96 East Main Street
Uniontown, PA 15401
Attorney: Anne N. John

**ROSINA C. ENDSLEY, a/k/a ROSINA
CAROLINE ENDSLEY**, late of Brownsville,
Fayette County, PA (1)
Executrix: Renee Kolessar
c/o John and John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

**ANDRE ETHERIDGE, a/k/a ANDRE
WILLIAM ETHERIDGE**, late of South Union
Township, Fayette County, PA (1)
Personal Representative:
Twanna L. Etheridge
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

NANCY C. FARRIER, late of Masontown,
Fayette County, PA (1)

Administratrix: Diana Farrier
c/o Radcliffe Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: Robert R. Harper, Jr.

DONALD D. FRANKHOUSER, late of North
Union Township, Fayette County, PA (1)

Personal Representative:
Dawn Marie Shaw
171 Turkeyfoot Road
Lemont Furnace, PA 15456
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

LORRAINE ABRAHAM HERBERT, late of
Vanderbilt Borough, Fayette County, PA (1)

Executor: Randall S. Herbert, Jr.
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

**WILLIAM MOORE, a/k/a WILLIAM O.
MOORE, JR.**, late of Farmington, Fayette
County, PA (1)

Executrix: Wanda L. Anker
P.O. Box 184
Farmington, Pa 15437
c/o Kopas Law Office
556 Morgantown Road
Uniontown, Pa 15401
Attorney: John Kopas

**DONALD B. SIMPSON, a/k/a DONALD
BLAKE SIMPSON**, late of North Union
Township, Fayette County, PA (1)

Executor: Donald M. Simpson
PO Box 61
Hopwood, PA 15445
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

**JAMES STICKLES, a/k/a JAMES LEE
STICKLES**, late of Springhill Township,
Fayette County, PA (1)

Personal Representative:
Robert L. Stickles
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

**DORIS WAGNER, a/k/a DORIS JEAN
WAGNER**, late of Menallen Township, Fayette
County, PA (1)

Co-Executrix: Sharon Hixenbaugh and
Colleen Fitzpatrick
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

LEGAL NOTICES

NOTICE

Notice is hereby given that Articles of Dissolution were filed with the Pa. Dept of State - Bureau of Corporations and Charitable Organizations on May 19, 2022 dissolving the domestic for-profit business corporation known as Mechanical Contracting Company, Inc., that has conducted business at 118 Wiggins Lane, South Union Township, Fayette County, Pennsylvania since October 2, 1981 pursuant to the Business Corporation Law of 1988.

Robert L. Webster, Jr.
Webster & Webster
51 East South Street
Uniontown, PA 15401
(724) 438-1131

ASSUMED NAME NOTICE

NOTICE IS HEREBY GIVEN that an application for registration of the assumed name Penn Highlands Connellsville Hospital Foundation for the conduct of business in Fayette County, Pennsylvania, with the principal place of business being 401 East Murphy Avenue, Connellsville, PA 15426 was made to the Department of State of Pennsylvania at Harrisburg, Pennsylvania, on the 1st day of April 2022, pursuant to 54 Pa.C.S. §311. The name of the entity owning or interested in the said business is Highlands Hospital.

McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

SHERIFF'S SALE

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, July 21, 2022, at 2:00 p.m. in Courtroom Number Four 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. (3 of 3)

James Custer
Sheriff Of Fayette County

Richard M. Squire & Associates, LLC
M. Troy Freedman, Esquire
ID. Nos. 85165

One Jenkintown Station, Suite 104

115 West Avenue

Jenkintown, PA 19046

Telephone: 215-886-8790

Fax: 215-886-8791

No. 2228 of 2020, G.D.

No. 70 of 2022 E.D.

PMIT REI 2021-A LLC

PLAINTIFF

v.

**Yolanda Cooper aka Yolanda DiMatteo aka
Yolanda Burke**

DEFENDANT

TAX PARCEL NO.: 25-16-0131-01

PROPERTY ADDRESS: 116 Hill Street,
Lemont Furnace, PA 15456

IMPROVEMENTS: Single Family
Dwelling

SEIZED AND TAKEN in execution as the
property of Yolanda Cooper aka Yolanda
DiMatteo aka Yolanda Burke

PARCEL NO. 25-16-0131-01

BEING Known As 116 Hill Street, Lemont
Furnace, PA 15456

BEING the same James Dimatteo and
Yolanda Diamatteo, his wife, n/k/a Yolanda
Burke dated 07/10/2006 and recorded
07/11/2006 in the Office of Recorder of Deeds
in the County of Fayette, Commonwealth of
Pennsylvania in Deed Book 2993, Page 113
granted and conveyed Yolanda Burke.

ROMANO, GARUBO & ARGENTIERI

Counselors at Law LLC

52 Newton Avenue, P.O. Box 456

Woodbury, NJ 08096

(856) 384-1515

No. 890 of 2021, G.D.

No. 67 of 2022 E.D.

**TO THE SHERIFF OF FAYETTE
COUNTY:**

As the attorney for the Plaintiff, in the
matter of **U.S. Bank National Association, not
in its individual capacity but solely as trustee
for the RMAC Trust, Series 2016-CTT vs.
Estate of George E. Novotny, deceased, last
record owner/ mortgagor; Unknown heirs,
devisees and personal representatives of
George E. Novotny, deceased and his, her,**

their or any of their successors in right, title and interest; Debra Novotny, known heir of George E. Novotny; Michael Novotny, known heir of George E. Novotny; The United States of America, I submit the following information with the request that it be used FOR ADVERTISEMENT PURPOSES.

No. 890 of 2021 GD

ALL THAT CERTAIN tract of land situate in Redstone Township, Fayette County, Pennsylvania

BEING Tax ID No: 30-04-0205

BEING Known As: 118 Simpson Road, Brownsville, PA 15417

TITLE TO SAID PREMISES IS VESTED IN George E. Novotny and Jean K. Novotny, his wife, from Ora Mae Edwards, widow, by Deed dated October 23, 1957, and recorded on October 23, 1957 in Book 888, Page 483.

Sold as the property of Estate of George E. Novotny, deceased, last record owner/mortgagor

KML LAW GROUP, P.C.

Suite 5000

701 Market Street

Philadelphia, PA 19106-1532

(215) 627-1322

No. 95 of 2020, G.D.

No. 68 of 2022 E.D.

LAKEVIEW LOAN SERVICING, LLC

4425 Ponce DeLeon Blvd

Mail Stop Ms5/251

Coral Gables, FL 33146

Plaintiff

vs.

GEORGE E. GASTER

Mortgagor(s) and Record Owner(s)

138 Woodside Oldframe Road

Smithfield, PA 15478

Defendant(s)

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

BEING KNOWN AS: 138 WOODSIDE OLDFRAME ROAD, SMITHFIELD, PA 15478

TAX PARCEL #24-12-008701

IMPROVEMENTS: A RESIDENTIAL DWELLING

SOLD AS THE PROPERTY OF: GEORGE E. GASTER

ATTORNEY: KML LAW GROUP, P.C.

Attorneys for Plaintiff

Brock & Scott, PLLC

No. 166 of 2020, G.D.

No. 35 of 2022 E.D.

FREEDOM MORTGAGE CORPORATION

v.

JUSTIN A. HIMES A/K/A JUSTIN HIMES

By virtue of a Writ of Execution No. 166 OF 2020 GD FREEDOM MORTGAGE CORPORATION v. JUSTIN A. HIMES AIKJA JUSTIN HIMES owner(s) of property situate in the TOWNSHIP OF BULLSKIN, FAYETTE County, Pennsylvania, being 622 ENGLISHMAN HILL, CONNELLSVILLE, PA 15425

Tax ID No. 04-29-0170

Improvements thereon: RESIDENTIAL DWELLING Judgment Amount: \$153,194.91

ANNE N. JOHN Esq.

ATTORNEY AT LAW

No. 404 of 2022, G.D.

No. 91 of 2022 E.D.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF GREENE COUNTY, a corporation,

Plaintiff

vs.

TONYA M. HIXON,

Defendant

ALL that certain lot or parcel of land situated and lying in the Borough of Smithfield, Fayette County, Pennsylvania, CONTAINING six thousand(6,000) square feet, more or less.

FOR prior title see Record Book 2759, page 199

Tax Parcel No.: 32-06-0033

Upon which is erected an aluminum/vinyl dwelling known as 5 Moser Way, Smithfield, PA 15478.

Hladik, Onorato & Federman, LLP
298 Wissahickon Avenue
North Wales, PA 19454

No. 178 of 2016, G.D.
No. 43 of 2022 E.D.

**NewRez LLC d/b/a Shellpoint Mortgage
Servicing
(Plaintiff)
vs.
Timothy R. Jennings,
(Defendant)**

By virtue of Writ of Execution No. 2016-00178

NewRez LLC d/b/a Shellpoint Mortgage
Servicing (Plaintiff) vs. Timothy R. Jennings,
(Defendant)

Property Address 162 North 10th Street.
Connellsville, PA 15425

Parcel I.D. No. 05-08-0082

Improvements thereon consist of a
residential dwelling.

Judgment Amount: \$78,614.58

STERN & EISENBERG PC
JESSICA N. MANIS, ESQUIRE

No. 1980 of 2020, G.D.
No. 42 of 2022 E.D.

**Deutsche Bank National Trust Company, as
Trustee for Ameriquest Mortgage Securities
Inc., Asset-Backed Pass-Through Certificates,
Series 2005-R3
Plaintiff**

v.

**Clair Kistner and Lennette Kistner
Defendant(s)**

SITUATE IN THE TOWNSHIP OF
SALTICK, FAYETTE COUNTY,
PENNSYLVANIA, BEING KNOWN AS 289
MELCROFT ROAD, MELCROFT, PA 15462-
1017

PARCEL NO. 31-09-0005

IMPROVEMENTS - RESIDENTIAL
REAL ESTATE

SOLD AS THE PROPERTY OF - CLAIR
KISTNER AND LENNETTE KISTNER

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

No. 2827 of 2019, G.D.
No. 42 of 2022 E.D.

**PNC BANK, NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO
NATIONAL CITY MORTGAGE, A
DIVISION OF NATIONAL CITY BANK
3232 Newmark Drive
Miamisburg, OH 45342
Plaintiff**

v.

**SEAN LALLY AKA SEAN P. LALLY
Mortgagor(s) and Record Owner(s)
21 Cleveland Avenue
Uniontown, PA 15401
Defendant(s)**

ALL THAT CERTAIN LOT OF LAND
SITUATE IN CITY OF UNIONTOWN,
COUNTY OF FAYETTE AND
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 21 CLEVELAND
AVENUE, UNIONTOWN, PA 15401

TAX PARCEL #38-12-0362

IMPROVEMENTS: A RESIDENTIAL
DWELLING

SOLD AS THE PROPERTY OF: SEAN
LALLY AKA SEAN P. LALLY

ATTORNEY: KML LAW GROUP, P.C.

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

No. 142 of 2020, G.D.
No. 58 of 2022 E.D.

**Lakeview Loan Servicing, LLC
Plaintiff**

v.

**Eric T. Michels, Administrator of the Estate
of Donald T. Michels
Defendant**

All that certain piece or parcel or Tract of
land situate in Fairchance Borough and Georges
Township, Fayette County, Pennsylvania, and
being known as 9 Hazel Street, Fairchance,
Pennsylvania 15436.

Being known as: 9 Hazel Street,
Fairchance, Pennsylvania 15436

Title vesting in Donald T. Michels by deed from WILLIAM J. WILSON and SANDRA L. WILSON, husband and wife, dated April 29, 2016 and recorded June 10, 2016 in Deed Book 3310, Page 2067 Instrument Number 201600006047. The said Donald T. Michels died on May 30, 2017. On September 7, 2017, Letters of Administration were granted to Eric T. Michels, nominating and appointing him as the Administrator of the Estate of Donald T. Michels. The said Elsie M. Michels died on January 27, 2017 thereby vesting title in her surviving spouse Donald T. Michels by operation of law.

Tax Parcel Number: 11-11-0030

No. 229 of 2022, G.D.
No. 77 of 2022 E.D.

F.N.B. PROPERTIES COMPANY, INC.,
Plaintiff,
vs.
DAVID J. MULL,
Defendant.

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING SITUATE AND LAYING IN THE TOWNSHIP OF GERMAN, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, AS MORE FULLY DESCRIBED IN DEED VOLUME 3137, PAGE 1538, AT INSTRUMENT NO.: 201000012356, AND PARCEL I.D. NOS. 15-23-0013 AND 15-23-0028-01.

BEING COMMONLY KNOWN AS 138 PENN STREET/37 SKILES LANE, McCLELLANDTOWN, PA 15458.

IMPROVEMENT THEREON:
RESIDENTIAL DWELLING

TAX PARCEL NUMBERS: 15-23-0013 and 15-23-0028-01

BEING THE SAME PREMISES GRANTED AND CONVEYED FROM REGENCY FINANCE CO., D/B/A FNB CONSUMER DISCOUNT COMPANY TO DAVID J. MULL BY SPECIAL WARRANTY DEED - CORPORATION DATED OCTOBER 27, 2010, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF FAYETTE COUNTY ON OCTOBER 27, 2010, IN DEED BOOK 3137, PAGE 1538, INSTRUMENT NO. 201000012356.

No. 219 of 2022, G.D.
No. 76 of 2022 E.D.

FIRST NATIONAL BANK OF
PENNSYLVANIA,
Plaintiff,
vs.
ANNELIESE M. RICHARD,
Defendant.

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF ANNELIESE M. RICHARD, OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN REAL ESTATE SITUATED IN SOUTH CONNELLSVILLE BOROUGH, FAYETTE COUNTY, PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AS 1815 2ND STREET, CONNELLSVILLE, PA 15425. DEED BOOK VOLUME 3386, PAGE 2423 AND PARCEL NUMBER 33-08-0059.

No. 136 of 2022, G.D.
No. 69 of 2022 E.D.

FIRST NATIONAL BANK OF
PENNSYLVANIA,
Plaintiff,
vs.
FRANK L. RUDZIENSKI AND TARA A.
RUDZIENSKI,
Defendants,

at Execution Number 136 of 2022 GD

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING SITUATE AND LAYING IN THE TOWNSHIP OF NORTH UNION, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, AS MORE FULLY DESCRIBED IN DEED BOOK 2905 PAGE 1980 AND PARCEL # 25-21-0038.

BEING COMMONLY KNOWN AS 24 Fairview Street, Uniontown, PA 15401.
IMPROVEMENT THEREON:

RESIDENTIAL DWELLING

TAX PARCEL NUMBER: 25-21-0038

BEING THE SAME PREMISES GRANTED AND CONVEYED TO FRANK L. RUDZIENSKI AND TARA A. RUDZIENSKI, HIS WIFE, BY A CERTAIN DEED DATED MAY 24, 2004 AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF FAYETTE COUNTY ON MAY 24, 2004, IN DEED BOOK VOLUME 2905, PAGE 1980.

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

No. 2186 of 2019, G.D.
No. 64 of 2022 E.D.

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

No. 1412 of 2021, G.D.
No. 61 of 2022 E.D.

PNC BANK, NATIONAL ASSOCIATION
3232 Newmark Drive
Miamisburg, OH 45342
Plaintiff
vs.
JOSEPH A. SHAY
Mortgagor(s) and Record Owner(s)
170 Easy Street
Uniontown, PA 15401
Defendant(s)

ALL THAT CERTAIN LOT OF LAND
SITUATE IN CITY OF UNIONTOW,
COUNTY OF FAYETTE AND
COMMONWEALTH OF PENNSYLVANIA.
BEING KNOWN AS: 170 EASY
STREET, UNIONTOWN, PA 15401 TAX
PARCEL #38-10-0066
IMPROVEMENTS: A RESIDENTIAL
DWELLING SOLD AS THE PROPERTY
OF: JOSEPH A. SHAY
ATTORNEY: KMLLAWGROUP,P.C.

Wilmington Savings Fund Society, FSB, as
trustee of Upland Mortgage Loan Trust B
Plaintiff
v.
Delmar P. Smith and Loraine Smith
Defendant

By virtue of a writ of execution case
number: 2021-1412
Plaintiff: Wilmington Savings Fund
Society, FSB, as trustee of Upland Mortgage
Loan Trust B v. Defendant: Delmar P. Smith
and Loraine Smith owners of property situate in
the Perry Township, Fayette County,
Pennsylvania, being pin number 27-4-62
Property being known as: 98 Happy Valley
Road, Perryopolis, PA 15473
Improvements thereon: Residential
Property

*** END SHERIFF SALES ***

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, June 6, 2022, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2621-0352	CAROL L. SHULTZ	Georgina V. Shultz Herilla, Executrix
2620-0416	ELMER M. SEMENTA	Patricia D. David and John W. David, Co-Executors

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

Monday, June 20, 2022, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, Third Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans’ Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans’ Court Division of Fayette County on

Monday, June 6, 2022, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2615-0526	SAUNDRA G. CHIDESTER	Lawrence Baker, Executor
2621-0276	CARL E. HERSHBERGER	Alfred P. Tofani, Executor

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

Monday, June 20, 2022, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, Second Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

WARMAN ABSTRACT & RESEARCH LLC

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COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE

E&O INSURED

WILL TRAVEL

ACCEPTING NEW CLIENTS

JUDICIAL OPINION

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

COMMONWEALTH OF :
PENNSYLVANIA, :
 :
vs. :
 :
TIMOTHY ALLAN FROST, :
Defendant/Appellant. : No. 2709 of 2019

OPINION IN SUPPORT OF JURY VERDICT

VERNON, J. May 11, 2022

Following a trial by jury, Appellant, Timothy Allan Frost, was found guilty of all charges including Rape of a Child [Counts 1 and 2 – 18 Pa.C.S.A. §3121], Statutory Sexual Assault [Counts 3 and 4 – 18 Pa.C.S.A. §3122.1(B)], Unlawful Contact with Minor [Counts 5 and 6 – 18 Pa.C.S.A. §6318(A)(1)], Aggravated Indecent Assault [Counts 7 and 8 – 18 Pa.C.S.A. §3125(A)(7)], Corruption of Minors [Counts 9 and 10 – 18 Pa.C.S.A. §6301(A)(1)(ii)], Indecent Assault [Counts 11 and 12 – 18 Pa.C.S.A. §3126(A)(7)], and Sexual Assault [Counts 13 and 14 – 18 Pa.C.S.A. §3124.1].

Appellant was sentenced to a term of incarceration of twenty-five to fifty years at Count 1 and no further penalty was imposed for the remaining convictions. Appellant has appealed to the Superior Court and this Opinion is in support of the jury verdict and sentence imposed.

On appeal, Appellant raises the following issues:

1. The Court erred in denying Defendant’s Motion in Limine to preclude evidence of Defendant’s prior criminal conviction in South Carolina.
2. The Court erred in failing to declare a mistrial based on the prosecution’s improper closing argument.
3. The verdict was against the weight of the evidence.
4. The Commonwealth failed to present sufficient evidence to prove beyond a reasonable doubt that Defendant improperly touched A.S. or sexually assaulted A.S.
5. The Court erred in permitting the Commonwealth to introduce hearsay testimony that was prejudicial to Defendant.

STATEMENT OF THE CASE

Mary Lancaster Close testified that Appellant was a long-time family friend. N.T., 10/6/2021, at 17-21. Mary resides in New Salem, Fayette County, Pennsylvania with her husband, John, her daughter, and two grandchildren, including the victim, A.S. Id. at 17-18. A.S. was born on May 5, 2011. Id. at 18.

Appellant was an over-the-road truck driver and for a period of about six months he would spend weekends at the home of J.S., A.S.'s mother. Id. at 21-22, 25. Some weekends A.S. would be at her mother's home and some weekends she would go to her father's house. Id. at 23. J.S.'s house in Searights, Fayette County included her children, A.S. and M.S., her boyfriend, Bobby Cline, and on the weekends, Appellant would stay there. Id. at 22-26. J.S. was unable to maintain the rent on her home when Appellant offered to rent a house next door to Mary Lancaster Close for J.S., her children, and Bobby in July 2017. Id. at 27.

Around 11 o'clock at night on March 27, 2018, J.S. called her mother, Mary Lancaster Close asking for her to take A.S. and M.S. because Children and Youth Services required them to be removed from J.S.'s house. Id. at 28. Since that time, A.S. and M.S. have resided with their grandmother, Mary Lancaster Close. Id. at 28.

In November 2017, Appellant arrived barefoot and drunk at Mary's house asking to speak with her. Id. at 29-30. At the time, Appellant was living nearby with J.S., A.S., and M.S., and Bobby Cline. Id. at 29-30. Appellant asked Mary to buy a pregnancy test for her granddaughter A.S., who was six years old at the time. Id. at 30. Appellant explained that he had "been reading up and [...] looking at things and six year olds can get pregnant." Id. at 30. When Mary asked what he was talking about, Appellant explained that A.S. was "getting a little thick around the middle", that he was A.S.'s "protector", and that he was "not sure about some of the going ons [...] at the house." Id. at 31. Appellant told Mary he would administer the pregnancy test as he was qualified by his EMT training and that he "learn[ed] how to talk to kids to get them to trust you." Id. at 31. Around this time Appellant was between jobs and did not work for a period of four to six weeks. Id. at 33.

Mary addressed her conversation with Tim about A.S. with A.S.'s mother, J.S., and they worked out that A.S. would go to her father's house every weekend or Mary's house when Tim would be home. Id. at 34. Yet, in March 2018, A.S. was not permitted to go to her father's home for the weekend. Id. at 35.

On March 27, 2018, A.S. was brought to her grandmother Mary's house in the middle of the night by CYS and together they were sent to Uniontown Hospital. Id. at 36-37. From there, Mary and A.S. were transported to Children's Hospital for an examination. Id. at 38. The following week A.S. underwent a forensic interview. Id. at 39.

Mary testified as to A.S.'s medical history that she has a low IQ and "is like a child so many years younger than her actual years." Id. at 42-43. Mary described A.S. as "very trusting" that she "wants acceptance" and she "loves unconditionally." Id. at 43.

Mary described A.S.'s relationship with Appellant as a "closeness" that Appellant

would hold her on his lap and buy her extra gifts that he did not get for her brother. Id. at 44-45. Mary relayed that A.S. would travel with Appellant on the road in his truck in the fall of 2017. Id. at 45.

The Court declared A.S. competent to testify as a witness. N.T., 10/7/2021, at 6-12. A.S. testified that she is currently ten years old with a date of birth of May 5, 2011. Id. at 13. When asked how she knows Appellant, A.S. responded, "He used to do bad stuff to me." Id. at 18. A.S. first testified to a time she was preparing to take a bath at her home and Appellant entered the bathroom. Id. at 18-19. Appellant told A.S. to lay on the toilet seat, "[h]e unzipped his jeans and he put his private part in [her] private part." Id. at 19. When questioned what "private part" meant, A.S. stated that it's where "[y]ucky stuff comes out." Id. at 20. The prosecutor asked A.S. if she saw "yucky stuff come out of [Appellant's] private part?" Id. at 20. A.S. denied seeing, but testified she knew "yucky stuff" comes out because "I can usually feel it." Id. at 20. She denied feeling the "yucky stuff" when she was on the toilet seat, but said she felt the "yucky stuff" another time when "[h]e had me on the truck." Id. at 21.

A.S. testified that she was alone on a very big truck with Appellant so they could "spend time with each other." Id. at 21. On the truck Appellant would use a jug to go to the bathroom and A.S. would "always look away." Id. at 22.

A.S. testified to a time that she was with Appellant in the basement talking with the washing machine running. Id. at 23-24. A.S. asked Appellant if he could help her get on top of the washer when it was vibrating. Id. at 23-24. Appellant "unzipped his jeans and had his private part out" and A.S. watched Appellant put his "white" "yucky stuff" in the sink. Id. at 23-24. A.S. denied that Appellant touched her or had her touch him in the basement. Id. at 23-24.

A.S. testified to "this place [...] like a gas station that has showers in there." Id. at 25. She said that she and Appellant went into the showers together without any clothes on and that "[Appellant] asked me to clean his private parts." Id. at 25. When asked what she did in the shower, A.S. testified, "There was rags and soap in there. I got the rag wet, put the soap on the rag and started cleaning him. He knows how to clean himself." Id. at 26. The prosecutor asked A.S. to point to where Appellant's private parts are on a body and she pointed to the prosecutor's crotch area describing it as located in the front of the person and being used to "go to the bathroom." Id. at 27.

When asked if Appellant ever told her anything about these incidents, A.S. testified that Appellant said, "don't tell anybody." Id. at 29. The prosecutor asked A.S. if she ever told anyone that Bobby, her mother's boyfriend, did this to her? Id. at 30. A.S. testified that she told that to her mother because "[Appellant] told me to tell somebody, but I am not listening to him anymore." Id. at 30. Under further questioning, A.S. testified that Appellant told her to tell somebody that "Bobby did this. But he didn't do this to me." Id. at 30.

The prosecution played a clip of a video that A.S. identified as herself and the lady she used to talk to. Id. at 34; Exhibit 1. A.S. told the interviewer that "Bobby" touched her "there" with his "wiener." Id. at 51. A.S. stated, "I was in my room sleeping. He came into my room and he pulled my pants down and he stuck his wiener in my pee

spot. [...] He said don't tell anyone." Id. at 51. When asked if anybody saw this happen, A.S. said, "My uncle" and that her uncle is "Tim." Id. at 53. The interviewer utilized dolls for A.S. to show what happened. Id. at 57. A.S. said Bobby "pulled my pants down and did this. And I didn't even feel it and he pulled his pants back up and he sneaked out of the room. And my uncle was back in the room and he told me when I waked up." Id. at 57. The interviewer asked, "So your uncle told you that Bobby stuck his wiener in your pee spot?" and A.S. responded in the affirmative, "Uh-huh." Id. at 57. A.S. denied seeing this happen as she was "sleeping" and it was her "uncle" who said "Bobby was the one that did that." Id. at 62.

The prosecution played another video of a second forensic interview of A.S.. Id. at 64; Exhibit 2. The interviewer asked A.S. what she was scared to talk about and she replied, "Tim" that "[h]e is supposed to by my uncle. Not do bad stuff." Id. at 74-75. When asked what bad stuff, A.S. responded, "He stuck his wiener in my pee pee." Id. at 75. Again, A.S. told the interviewer that Appellant put his "wiener" in her "pee pee hole" "by accident." Id. at 77. A.S. told the interviewer that Appellant cleans out his wiener, she gestured her hand, and then said "yucky stuff" comes out. Id. at 78-79. A.S. said she "was going to the bathtub and he just told me to lay on the toilet and stuff came out." Id. at 80. A.S. said she was asleep one time and Appellant put his wiener in her pee pee hole, that she could feel it and it felt weird, and that he told her not to tell anyone or he will cry. Id. at 81. On a different day he wanted A.S. to "do lotion on his bad spot." Id. at 83. She put lotion on his "wiener" when they were in his room in their house. Id. at 83-84. When asked to draw the "wiener", A.S. talked about Appellant putting the "yucky stuff" that was white in her "pee pee hole." Id. at 87. A.S. told the interviewer about laying on the toilet seat, that her clothes were not on because she was preparing to bath and "[h]e put it in my pee pee hole." Id. at 87-89. A.S. told the interviewer one time Appellant showed her his truck and they went up the mountains. Id. at 91-92. She said they went to a store to shower and she was "helping him clean [...] his butt and wiener." Id. at 93-94.

Under questioning from the Court why A.S. told the first interviewer that it was "Bobby", she replied, "[Appellant] told me, said it was Bobby. But I don't really think that was Bobby. It was Tim. I don't really love him. I hate him." Id. at 132.

Debra Shane is a forensic nurse at UPMC Children's Hospital and was recognized as an expert in the field of forensic nursing. Id. at 136-138. On March 28, 2019, A.S. was brought to the clinic at UPMC Children's Hospital for a sexual assault examination. Id. at 142-143. The examination revealed labial adhesions and superficial tears by her anal phobes. Id. at 145. On cross-examination, Shane's notes reflect that maternal grandmother states that A.S. when asked by "CYS, Police, and Uniontown Emergency [...]" that Bobby, or Robert Cline, put his wiener in her butt and that he has been in her bed with her and pushed his wiener against her. After being asked by the above people, she stated this happens every day." Id. at 153-154. Shane opined there was no forensic findings of sexual assault. Id. at 160.

Christopher Johns, a forensic scientist in the crime laboratory of the Pennsylvania State Police, testified that the swabs collected from A.S.'s sexual assault kit did not detect any seminal material. Id. at 161-167. Chelsie Weaver, a forensic DNA scientist, testified that her testing of the swabs from A.S. did not have any male DNA present. Id.

at 173-179.

Paige Winters was A.S.'s therapist at Menallen Elementary School who would see A.S. weekly. Id. at 182-184. On November 30, 2018, in a session, A.S. told Paige Winters that she was not allowed to see Bobby and that "Bobby didn't do it, Tim did." Id. at 185-189. A.S. told Paige Winters that Appellant "likes to touch kids' butts" and that he put his wiener in her genital area. Id. at 189. A.S. said she can't say anything because when she does say something Appellant cries. Id. at 189-190. Paige Winters reported A.S.'s allegations to Children Youth Services through a Child Line Report. Id. at 190-194.

On March 27, 2018, George Mrosko was working as a criminal investigator with the Pennsylvania State Police when he received a Child Line Report and accompanied a CYS caseworker for a welfare check of A.S. Id. at 205-208. Corporal Mrosko read the Child Line Report to the jury reciting that A.S. reported someone "put his wiener inside [her] butt." Id. at 210-211. The reporting source included details that he suspects abuse occurring for nine months and that he examined A.S.'s anal area and could see fingerprints where he spread her butt cheeks. Id. The reporting source for the Child Line Report was Appellant, Timothy Frost. Id. at 213.

Corporal Mrosko arrived at A.S.'s house at 11:40 p.m. and was present with a CYS caseworker talking to A.S.. Id. at 214. Corporal Mrosko observed redness on A.S.'s buttocks and it looked irritated. Id. at 215. The decision was made to place A.S. and her brother with their grandmother, Mary Close. Id. at 215-216. Bobby Cline was transported to the police barracks for questioning. Id. at 219-220. Cline was cooperative and released without charges. Id. at 222. On April 20, 2018, Corporal Mrosko transferred out of his position in Criminal Investigations and the case was reassigned to Trooper Zangla. Id. at 224.

Brittany Locke, the forensic interviewer at A Child's Place, was recognized as an expert witness in the field of forensic interviewing. Id. at 232-234. Locke interviewed A.S. on April 11, 2018, and recounted the details of the interview to the jury. Id. at 235-239. Locke testified it was not typical for a child making a sexual abuse disclosure to place another adult in the room such as A.S. did for identifying Bobby as the perpetrator but saying Tim was present and telling her it was Bobby. Id. at 239.

Bobby Cline testified that he lived with his fiancé, J.S., her children M.S. and A.S., and with Appellant in a home that Appellant "got" for them in New Salem. Id. at 256-261. Cline described Appellant's relationship with A.S. as "too close", that he was "constantly around her, too much to me anyway. Didn't want to hang out with the boys, nothing like that. Always around her." Id. at 261-262. Cline denied any sexual contact with A.S. Id. at 263-265. The living arrangement was that Appellant would pay the rent and Cline and J.S. would help with the food and everything else. Id. at 265-266.

J.S., A.S.'s mother, testified that Appellant was a very old family friend of her mother and father. Id. at 284-285. J.S. described Appellant's relationship with A.S. as:

a very different relationship. A lot more close and intimate than it should have ever have been between a man and a child. More intimate than, it just, it never should have happened. In one instance he started rubbing her butt after Christmas. This

was right before, the Christmas before CYS was called. And he was rubbing her butt and saying how cute her pants looked on her.

Id. at 291. J.S. told Appellant to stop. Id. at 291. Appellant nicknamed A.S. “Tinkerbutt.” Id. at 291. J.S. testified Appellant favored A.S. over her son giving her gifts, spending more money on her, and giving more attention and affection towards her too. Id. at 291. J.S. testified that Appellant would bath A.S. Id. at 292. J.S. testified to a time that Appellant “begged” her to allow A.S. to spend the night on his tractor trailer truck. Id. at 292. Appellant paid for gas money, offered to feed the family, and give them money for A.S. to be brought to his truck in Bruceton Mills, West Virginia. Id. at 292.

The weekend before the CYS reporting, Appellant was home and A.S. remained in the home. Id. at 295. In the nighttime hours, J.S. observed Appellant go into A.S.’s room and she asked what he was doing, to which he replied he was checking on her. Id. at 297. Approximately a half hour to an hour later, Appellant again went to A.S.’s room and J.S. inquired to which Appellant responded, “mom is on the ball tonight.” Id. at 297.

J.S. testified that Appellant worked driving trucks over the road on Monday through Friday, and would be home on the weekends. When he lost that job, he worked driving a truck daily and would be home each night for a month or two in late 2017. Then after a few months off, he returned to over-the-road truck driving. Id. at 305-306.

Jessica Zangla, a criminal investigator with the Pennsylvania State Police, was assigned investigation of this matter upon transfer of Corporal Mrosko in April 2018. N.T., 10/8/2021, at 14-17. On May 3, 2018, a second Child Line Report was received from CYS Caseworker Ashley Lee identifying Appellant as the alleged perpetrator of abuse of A.S. Id. at 17-18. Trooper Zangla re-interviewed Bobby Cline on May 16, 2018, and testified that he was cooperative and no charges were filed against him. Id. at 19-20. Trooper Zangla scheduled an interview with Appellant for August 28, 2018, but Appellant did not show. Id. at 23-24.

A third Child Line Report was made on November 30, 2018, by Paige Winters, being disclosures A.S. made to her therapist. Id. at 24. Trooper Zangla explained the lengthy investigation and delays in charges were attributed to providing the child victim an opportunity to have her medication adjusted and begin therapy. Id. at 24-27. Another forensic interview of A.S. occurred on April 23, 2019, at Mercy Hospital. Id. at 28-29.

Trooper Zangla spoke to Appellant by telephone on May 21, 2019, attempting to schedule an interview but Appellant said he was driving a truck and did not have his schedule. Id. at 30. An interview was set for July 19, 2019, but Appellant did not show again. Id. at 30-31. The within charges were filed against Appellant on August 28, 2019. Id. at 31. Appellant surrendered himself at the Pennsylvania State Police Barracks on September 20, 2019, and following Miranda warnings, was interviewed. Id. at 34-36.

During the recorded interview, Appellant denied the accusations, stating instead that A.S. told him “Bobby was sticking his wiener in her butt.” Id. at 38-41. Upon that disclosure from A.S., Appellant stated he called Children Youth Services. Id. at 41-42.

Appellant told the Trooper that he “couldn’t have harmed the child” because he has “been gay since 1984” and “[w]omen are not [his] flavor.” Id. at 42. Appellant told Trooper Zangla the reason for his suspicions about Bobby Cline with A.S. including “Bobby would have to go shit” every time A.S. bathed and that Bobby made a comment, “Wouldn’t it be funny if Abby was pregnant?” Id. at 46-48. Appellant stated the reason he quit over-the-road truck driving was to be home when A.S. would be there during the week meaning otherwise A.S. was gone on the weekends with her father. Id. at 48-50. Appellant said it took “about nine months to learn her language” before he garnered enough information to call CYS. Id. at 51. Appellant told the troopers that A.S. would play on his truck and help him clean it and that one time she went to Marleysburg and back with him. Id. at 67-68. Appellant denied meeting A.S. at Bruceton Mills or ever taking her overnight on the truck. Id. at 68-70.

Sergeant Heather Clem-Johnston of the Pennsylvania State Police was recognized as an expert in the field of Child Sexual Assault Investigations. Id. at 98. Sergeant Clem-Johnston testified the pattern of wording of what was said to the child by Appellant indicates grooming. Id. at 105.

Sergeant Clem-Johnston interviewed A.S. and reviewed anatomically correct pictures with her. Id. at 116-120. When asked what the penis was on the boy drawing, A.S. responded, “it looks like Bobby.” Id. at 120. Sergeant Clem-Johnston asked A.S. whether anyone has touched places on her body that people were not supposed to touch, to which A.S. responded that “Bobby pulled his pants down and stuck this, and she pointed to the male penis on the drawing, and put it here, and she pointed to the buttocks on the girl drawing.” Id. at 120-121. A.S. told the Sergeant that “Uncle” lets her “shower with him to get the fleas off of him.” Id. at 121. A.S. said that her and her uncle’s clothes were off and that he washed her all over and that she showered with him two times. Id. at 122. When Sergeant Clem-Johnston asked A.S. if she ever saw the penis on Uncle in the shower, she said no, that Bobby stuck his penis in here and pointed to the vaginal drawing and that “Uncle recorded it. I didn’t feel it go in.” Id. at 122-123.

At the close of the evidence, the Court found the evidence lacked credible testimony that the actions which allegedly occurred on Appellant’s truck occurred within the Commonwealth of Pennsylvania and found this Court to lack jurisdiction over those allegations. Id. at 140.

DISCUSSION

In his first issue, Appellant alleges that the Court erred in denying his Motion in Limine to preclude evidence of his prior criminal conviction in South Carolina. The Motion also sought to preclude admission of Appellant’s status as a registered sex offender. The Indictment to which Appellant plead guilty alleged that he committed the crime of “Lewd Act upon a Child” being Sally A. Nestor, a minor under the age of sixteen, in York County, South Carolina, on or about October 2000. See, Exhibit to Motion in Limine.

The Commonwealth opposed Appellant’s Motion arguing that Appellant’s prior act was admissible pursuant to Pennsylvania Rule of Evidence 404(b) to establish Appellant’s identity and to establish a common plan, scheme, or design. N.T. 10/6/2021, at 10

-11.

As an exception to the general rule precluding the use of evidence of a defendant's other crimes, wrongs, or acts, such evidence may be introduced to establish the identity of the defendant as the person responsible for the crime on trial. *Commonwealth v. Seiders*, 614 A.2d 689 (Pa. 1992). Proof of identity is one of the recognized, legitimate exceptions to the prohibition against "other acts" evidence. See Pa. R.E. 404(b)(2). The pattern and characteristics of the crimes must be so unusual and distinctive as to be like a signature. *Commonwealth v. Ross*, 57 A.3d 85 (Pa. Super. 2012); *Commonwealth v. Shively*, 424 A.2d 1257, 1259 (Pa. 1981). Admitting evidence of another crime to prove identity as to the charged crime requires a high correlation in the details of the crimes. *Id.*

The nature of the crime and the evidence presented puts the identity of the perpetrator at issue. Appellant's prior conviction is unusual and distinctive, a trademark of sorts, by his touching the vaginal area of another minor, aged six or seven-year-old, female child. N.T. 10/6/2021, at 11.

This evidence shows identity—a purpose permitted under Pa.R.E. 404(b)(3)—through selection of a particular class of victim and use of idiosyncratic methods to carry out the crimes. *Commonwealth v. Weakley*, 972 A.2d 1182, 1188 (Pa. Super. 2009). The Court narrowed its ruling so that evidence of Appellant's prior conviction would only be admissible in rebuttal should Defendant testify that he did not perform these acts. The probative value of this strong identity evidence, moreover, outweighs its presumed potential for prejudice. Further, a cautionary instruction to the jury would have been issued as to the limited use of the prior act in this case. As such, we agree with the Commonwealth that the "other crimes" evidence meets criteria for admission under Rule 404(b).

Appellant next alleges that the Court erred in failing to declare a mistrial based on the prosecution's improper closing argument. In its closing argument, the Commonwealth argued:

I totally disagree with [defense counsel] when he tells you there was no forensic evidence that was relevant in this case. That is not at all what the [Shane] nurse told you. She noted at least two, at least two relevant abnormalities in A.S.'s exam. Now did she say that independently those are evidence of a sexual assault? No she didn't say that. But she quantified that with independently it is not evidence of sexual assault. However, in its entirety, you can assume that it was.

N.T., 10/8/2021, Criminal Jury Trial Closing Arguments, at 23.

Upon defense counsel's objection and following a side bar discussion, the Court sustained the objection and instructed the jury to "recall the facts as they determine them to be." *Id.* at 24. Thereafter, the Commonwealth continued arguing the testimony of Nurse Shane:

And you can recall the testimony of the [Shane] nurse. But her findings indicated two abnormalities, lesions on the vaginal area and two centimeter tear on this child's anus. They are documented in her report. She documents all abnormalities she said. You can draw whatever conclusion you want from that. That is not forensically unimportant information. It is important information. That's why I had it here. That's why I had her testify.

Id. at 26-27.

Following the closing arguments, Appellant objected again and asked for a "binding instruction" cautioning the jury that the "prosecutor is asking the jury to assume ... medical evidence that is not supported by the testimony." N.T., 10/8/2021, Criminal Jury Trial Day Three, at 143. Appellant continued arguing that the nurse did not testify that "any of her clinical findings, taken as a whole, singular or anything, that there was a sexual assault [...]. The record is silent on this. And she is arguing it to the jury. They can't speculate." Id. at 144.

The Court concluded that "[a]rguments of counsel are not evidence" and the jury has been "repeatedly told" that "it is up to the jury to determine [what the] evidence is in the case." Id. at 145. The Court ruled that the jury will be asked to use their own judgment and their own recollection of the testimony of the witnesses and that counsel's opinions are not evidence. Id. at 145.

The Notes of Testimony do not reflect that Appellant moved for a mistrial. Portions of the argument at side bar were not audible in the transcript. However, the Court's handwritten notes do not reflect that a Motion for Mistrial was made nor was a ruling made of record denying a mistrial.

Nonetheless, the Court instructed the jurors that the jury is to "recall the facts as they determine them to be" and that "[i]t is for you, and you alone, to determine the true facts concerning charges made against this Defendant. You, the Jury, are the sole and the only Judge of the facts." Id. at 145. The jurors were further instructed, "In determining the facts, you are to consider only the evidence which has been presented in Court, the logical inferences which have derived from the evidence. You are not to rely upon supposition or guess on any matters which are not in evidence." Id. The Court instructed, "it is your recollection and yours alone that governs. You are not bound by my recollection nor by the recollection of counsel in their arguments to you." Id. at 147. The Court concluded, "counsel's recollection of the events and their closing remarks are not considered evidence in the case." Id.

When read as a whole, the instructions in their entirety properly set forth the law to the jurors and the manner in which the jury was to apply the law to the facts. *Commonwealth v. Collins*, 810 A.2d 698 (Pa. Super. 2002). As long as the law is clearly, adequately and accurately presented to the jury, a trial court has broad discretion in phrasing its instructions and can choose its own wording. *Commonwealth v. Davis*, 861 A.2d 310, 323 (Pa. Super. 2004).

In his third issue, Appellant argues that the verdict was against the weight of the evidence. A motion for a new trial alleging that the verdict was against the weight of the

evidence is addressed to the discretion of the trial court. *Commonwealth v. Cousar*, 928 A.2d 1025 (Pa. 2007). A motion for new trial on the grounds that verdict is contrary to weight of evidence should not be granted because of mere conflict in testimony or because the judge, on the same facts, would have arrived at a different conclusion. *Commonwealth v. Smith*, 853 A.2d 1020 (Pa.Super. 2004). The trial court, in the exercise of its discretion, may award a new trial on the basis that the verdict is against the weight of the evidence if the verdict is so contrary to the evidence as to shock one's sense of justice. *Commonwealth v. Washington*, 825 A.2d 1264, (Pa.Super. 2003).

With regard to a motion for a new trial on the ground that the verdict is contrary to the weight of the evidence, the trial judge does not sit as the 13th juror, but rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice. *Commonwealth v. Hunter*, 768 A.2d 1136 (Pa. Super. 2001). The jury, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence. *Id.* A new trial should not be granted because of a mere conflict in testimony or because the judge on the same facts would have arrived at a different conclusion. *Id.*

A Motion for New Trial on the grounds that the verdict is contrary to the weight of the evidence "concedes that there is sufficient evidence to sustain the verdict. Thus, the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner. An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court." *Commonwealth v. Widmer*, 744 A.2d 745, 751-52 (Pa. 2000). Stated differently, a court may award a new trial because the verdict is against the weight of the evidence only when the verdict rendered is so contrary to the evidence received as to shock one's sense of justice such that right must be given another opportunity to prevail. *Commonwealth v. Goodwine*, 692 A.2d 233, 236 (Pa. Super. 1997).

We have set forth the testimony offered at trial, *supra*. The verdict rendered by the jury, rape of a child, statutory sexual assault, unlawful contact with minor, aggravated indecent assault, corruption of minors, indecent assault, and sexual assault, is consistent with the evidence presented at trial. The testimony adduced at trial had no conflicts. The jury believed the testimony of A.S., finding her statements to be credible. The verdict rendered by the jury was not contrary to the evidence it received and does not shock one's sense of justice. As, the verdicts were not against the weight of the evidence, this issue is without merit.

At his fourth issue, Appellant alleges that the Commonwealth failed to present sufficient evidence to prove beyond a reasonable doubt that Defendant improperly touched or sexually assaulted the minor child. When a party challenges the sufficiency of the evidence, the critical inquiry on review does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. *Commonwealth v. McCurdy*, 943 A.2d 299, 301 (Pa.Super. 2008). Instead, it must determine simply whether the evidence believed by the fact-finder was sufficient to support the verdict. All of the evidence and any inferences drawn therefrom must be viewed in the light most favorable to the Commonwealth as the verdict winner. *Id.* at 301-302. While it is true that the Commonwealth must prove every essential element of a crime beyond

a reasonable doubt, it is well established that the Commonwealth may sustain this burden by means of wholly circumstantial evidence. *Commonwealth v. Richardson*, 357 A.2d 671, 673 (Pa.Super. 1976). The Commonwealth need not preclude every possibility of innocence or establish the Appellant's guilt to a mathematical certainty. *Commonwealth v. Williams*, 871 A.2d 254, 259 (Pa.Super. 2005).

Further, any doubts regarding an appellant's guilt may be resolved by the factfinder unless the evidence is so weak and inconclusive that no probability of fact may be drawn from the combined circumstances. The trier of fact while passing upon the credibility of the witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence. *Commonwealth v. Robertson-Dewar*, 829 A.2d 1207, 1211 (Pa.Super. 2003).

With the above principles in mind, we consider whether the Commonwealth presented enough evidence to sustain Appellant's conviction. A.S. testified to sexual assaults in the home she shared with Appellant, in her bedroom and in the bathroom, stating that Appellant "stuck his wiener in my pee pee." The minor child testified in details to the "yucky stuff" that comes out of Appellant's "wiener." The testimony of the child's mother and grandmother indicate that Appellant groomed A.S. by giving her attention and gifts. The discrepancies in A.S.'s prior statements accusing mother's boyfriend were explained by A.S., and believed by the jury, that Appellant told her to tell somebody that "Bobby did this. But he didn't do this to me." A.S.'s forensic interviews supported her testimony. Upon this sufficient evidence, Appellant was convicted and this issue is also without merit.

In his final issue, Appellant alleges that the Court erred in permitting the Commonwealth to introduce hearsay testimony that was prejudicial to Defendant citing the re-direct examination of Mary Close. N.T., 10/6/2021, at 69-72. On cross-examination, defense counsel asked:

Q. Have you told us everything today what A.S. related to you in these conversations that you have had with her?

A. I am sorry?

Q. Have you already told us everything she has told you about these conversations she has had with you?

A. Not today, not about all the content.

Id. at 58.

On re-direct examination, the prosecutor asked Ms. Close about the statements A.S. made to her and Appellant objected. The Court ruled that defense counsel opened the door for further inquiry having asked Ms. Close if she told the jury "everything today"? When the door to a subject is opened by counsel on cross-examination, opposing counsel may, on redirect, question the witness in order to clarify or explain matters brought out during previous cross-examination.

Appellant also challenges the Court's ruling that Sergeant Heather Clem-Johnston of the Pennsylvania State Police testified as to statements made to her from A.S. See, N.T., 10/8/2021, at 121-124. At trial, defense counsel objected to the testimony as hearsay. Id. at 121. The Commonwealth responded that it had filed a Notice that permitted it

to offer out of court statements of the minor child. Id. at 122. The Court, relying on the Commonwealth's representation, permitted the Sergeant to testify only as to statements made to her by the minor child. Id.

A review of the Record reveals that the Commonwealth issued two Notices of Intention to Offer Out-of-Court Statements made by a Child Witness, filed on February 7, 2020, as to the forensic interviews at A Child's Place with Brittany Locke and Sara L. Gluzman and on August 28, 2020, as to therapist Paige Winters. The Commonwealth did not file a Notice of Intention to Offer Out-of-Court Statements of A.S. made to Sergeant Heather Clem-Johnston.

Upon review of the entire Record in coordination with all other witnesses, any error in the trial court's ruling was harmless and this evidence was merely cumulative of other untainted evidence which was substantially similar to the admitted evidence. Harmless error exists where "the error did not prejudice the defendant or the prejudice was de minimus." *Commonwealth v. Hutchinson*, 811 A.2d 556, 561 (Pa. 2002),

Although this error, when viewed in the context of the trial, the admission is harmless as properly admitted evidence is substantially similar to this admitted evidence, namely the testimony of the minor child herself and that of the forensic interviewer, Locke, and therapist, Winters. The Court finds the admission of the child's statements through the Sergeant is harmless error and cumulative of other properly admitted evidence.

WHEREFORE, it is respectfully submitted that the appeal should be denied.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Clerk of Courts

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