

Adams County Legal Journal

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IN THIS ISSUE

COMMONWEALTH OF PENNSYLVANIA VS.
\$7,300.00 U.S. CURRENCY

2016 ADAMS COUNTY BENCH-BAR CONFERENCE

DATE: Friday, October 28, 2016

PLACE: Gettysburg Hotel, Lincoln Square,
Gettysburg, Pennsylvania

TIME: Registration and breakfast begin at
8:00 a.m.

CLE: This program has been approved by the
Pennsylvania Continuing Legal Education
Board for up to 4.0 hours of substantive
law, practice and procedure CLE credit
and 1.0 hour of ethics, professional or
substance abuse CLE credit.

CLE Speakers:

Superior Court Judge Victor P. Stabile – *Ethics Session*

Ellen Freedman – *Getting Paid Combo and Records Management and Retention*

Judge Shawn C. Wagner, Miranda Blazek, Esq. & John Perry, Esq. – *PFAs*

Melissa Tanguay-Laney, Esq. & Sean Lazarus – *Family Engagement*

Mark Bergstrom, M.P.A. – *Risk Assessment Tool for Sentencing*

Arnold T. Shienvold, Ph.D. – *Family Counseling*

Michael Lee, Esq. – *Expungements*

Scott A. Gould, Esq. – *Environmental Law Issues*

Cost for Adams County Bar Association members is \$35.00 for the Conference. Cost for non-members is \$300.00 for the Conference or \$60.00 per credit hour. Full conference registration fee includes a light breakfast and lunch in addition to CLE credit. Registration form and payment must be received by Friday, October 14, 2016. Space is limited, so register early!

For registration inquiries and to make requests for reduced tuition due to economic hardship, please contact:

Cecelia Brown, 117 Baltimore Street, Room 305, Gettysburg, PA 17325 | 717-337-9812 | cbrown@adamscounty.us

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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on August 29, 2016, a petition for name change was filed in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of Petitioner, Helen Catherine LeClair-Hess to Kathy Leclair-Hess.

The Court has affixed the 8th day of November, 2016 at 10:00am in courtroom #4, third floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petitioner should not be granted.

10/14

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL DIVISION
NO. 16-SU-604

NOTICE OF ACTION IN
MORTGAGE FORECLOSURE

NEW PENN FINANCIAL, LLC D/B/A
SHELLPOINT MORTGAGE SERVICING,
Plaintiff,

vs.

JANIE L. ZIMMER, SURVIVING HEIR OF
FRANCIS R. HUTTINGER, DECEASED
AND UNKNOWN SURVIVING HEIRS OF
FRANCIS R. HUTTINGER, DECEASED,
Defendants

NOTICE

TO DEFENDANTS:

You are hereby notified New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, has filed a Complaint in Mortgage Foreclosure with regard to 303 Matthew Drive, New Oxford, PA 17350, endorsed with a Notice to Defend, against you at No. 16-SU-604 in the Civil Division of the Court of Common Pleas of Adams County, Pennsylvania, wherein plaintiff seeks to foreclose on the mortgage encumbering said property, which foreclosure would lead to a public sale by the Adams County Sheriff.

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 PAPER 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.

ADAMS COUNTY COURT
ADMINISTRATOR

Adams County Courthouse
Gettysburg, PA 17325
(717) 337-9846

LAWYER REFERRAL SERVICE
Pennsylvania Bar Association

P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Stephen M. Hladik, Esq.

Plaintiff's Attorney
298 Wissahickon Avenue,
North Wales, PA 19454
215-855-9521

10/14

COMMONWEALTH OF PENNSYLVANIA VS.
\$7,300.00 U.S. CURRENCY

1. In a forfeiture proceeding involving money, the Commonwealth bears the initial burden of proving by a preponderance of the evidence that a nexus exists between the money and a violation of the Controlled Substance Act. In this context a preponderance of the evidence is tantamount to a "more likely than not" standard.

2. Importantly, the Commonwealth is not required to directly link the seized property to illegal activity in order to establish the requisite nexus between the seized property and the unlawful activity. Circumstantial evidence may suffice to establish a party's involvement in drug activity.

3. If the Commonwealth proves by a preponderance of the evidence that a nexus exists between the money and illegal activity, the burden shifts to the claimant to establish that he owns the money, that he lawfully acquired it, and that it was not unlawfully used or possessed by him.

4. Furthermore, the Forfeiture Act contains a rebuttable presumption providing that when money and negotiable instruments are found in close proximity to controlled substances that are possessed in violation of the Controlled Substance Drug Device and Cosmetic Act they are rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of that Act.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CP-01-CP-01-MD-1413-2015,
COMMONWEALTH OF PENNSYLVANIA VS. \$7,300.00 U.S.
CURRENCY.

John D. Bucolo, Esq., Attorney for Commonwealth
Campbell, J., August 22, 2016

OPINION

Before the Court is the Commonwealth's Petition for Forfeiture of cash seized from Mark Terry ("Terry") on March 11, 2015 which was found in Terry's possession as he was loading a box containing sixty pounds of marijuana into his vehicle. Terry was arrested and ultimately pled guilty to Manufacture, Delivery or Possession with Intent to Deliver Marijuana as an Ungraded Felony on March 21, 2016. Terry opposes the Petition asserting that the money seized on March 11, 2015 was from other sources of income available to him and not related to his illegal drug activity.

A hearing was held July 11, 2016 during which the Commonwealth offered the testimony of Trooper Kirk Perkins. Trooper Perkins testified that his duties with the Criminal Investigation Drug Interdiction Unit includes the seizure of packages of drugs being sent through UPS, FedEx and other similar sources of delivery. Trooper Perkins working at Harrisburg Airport identified three suspicious boxes each purporting to contain approximately sixty pounds of marijuana. Trooper Perkins then conducted a controlled delivery of approximately sixty pounds of marijuana to Terry on March 11, 2015. According to Trooper Perkins the marijuana was worth between \$72,000.00 and \$120,000.00 if it was being purchased by the pound and had a resale value of between \$312,000.00 and \$360,000.00 if sold by the ounce. Upon arrest, Terry told Trooper Perkins that he receives approximately \$3,000.00 for each delivery he makes and that he was in the process of making a second delivery.

During a search incident to arrest, Trooper Perkins found \$7,300.00, cash which was removed from Defendant's pockets. At the hearing Terry testified that the money in his pockets was from cash he and his wife kept on hand at the house and that the purpose of the money was to purchase a car for his son from a private owner in Germantown, Maryland. Terry provided no detail as to the identity of that private owner and the purported seller was not called as a witness in the case. Terry also provided no details as to when he was planning to make the purchase relative to making the delivery of the marijuana.

Terry's wife, Sybil Terry, also provided testimony with regard to the source of the funds and her testimony was inconsistent with that of Terry. Specifically, she testified that the \$7,300.00 cash at issue found on Terry at the time of his arrest was for automotive repairs,

never mentioning Terry's intention to purchase a car for his son. In an effort to establish Terry received the funds from an independent source, not related to his drug activity, Defense presented bank statements showing \$2,000.00 cash withdrawals on March 2, 2015 and February 18, 2015. No other bank statements or withdrawal slips or cancelled checks were presented to validate Terry's claims that the funds in his possession were from an independent source.

In a forfeiture proceeding involving money, the Commonwealth bears the initial burden of proving by a preponderance of the evidence that a nexus exists between the money and a violation of the Controlled Substance Act. *Commonwealth v. \$6,425.00 Seized from Esquilin*, 880 A.2d 523, 529 (Pa. 2005). In this context a preponderance of the evidence is tantamount to a "more likely than not" standard. *Commonwealth v. \$11,600 Cash, U.S. Currency*, 858 A.2d 160, 164 (Pa. Cmwlth. 2004). Importantly, the Commonwealth is not required to directly link the seized property to illegal activity in order to establish the requisite nexus between the seized property and the unlawful activity. *Esquilin*, 880 A.2d at 529-30. Circumstantial evidence may suffice to establish a party's involvement in drug activity. *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. 2002). If the Commonwealth proves by a preponderance of the evidence that a nexus exists between the money and illegal activity, the burden shifts to the claimant to establish that he owns the money, that he lawfully acquired it, and that it was not unlawfully used or possessed by him. *Commonwealth v. \$15,000 U.S. Currency*, 31 A.3d 768, 773 (Pa. Cmwlth. 2011).

Furthermore, the Forfeiture Act contains a rebuttable presumption providing that when money and negotiable instruments are found in close proximity to controlled substances that are possessed in violation of the Controlled Substance Drug Device and Cosmetic Act they are rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of that Act. *42 Pa. C.S. § 6801(a)(6)(ii)*.

Instantly, Terry was caught personally loading a box containing 60 pounds of marijuana into his motor vehicle and was subsequently convicted of a violation of the Controlled Substance Drug Device and Cosmetic Act as a result. While loading that marijuana into his vehicle he had in his possession \$7,300.00 in U.S. currency. Under

the Forfeiture Act Terry is rebuttably presumed to have been in possession of proceeds derived from the selling of the marijuana in violation of the Controlled Substance Drug Device and Cosmetic Act. The Commonwealth has accordingly met its burden of establishing by a preponderance of the evidence that a nexus existed between the \$7,300.00 seized and Terry's violation of the Controlled Substance Act.

Having met its initial burden, Terry must then rebut the Commonwealth's evidence by establishing that (1) he owned the money; (2) he lawfully acquired it; and (3) it was not unlawfully used or possessed by him. ***\$11,600 Cash, 858 A.2d at 167.***

As noted, the testimony offered by Terry and his wife is inconsistent and lacking in credibility. The evidence presented by Terry as to the source of the \$7,300.00 was not verified and due to contradictions between his testimony and that of his wife, the testimony as to the source of the income is not credible. His possession of \$7,300.00 U.S. currency is consistent with his drug trafficking activities, his statements to Trooper Perkins that he receives \$3,000.00 for each delivery made and that this was the second delivery. Furthermore, the currency on Terry's person was available to him should difficulties arise during his trip to and from Maryland. See, ***Commonwealth v. Tate***, 538 A.2d 903 (Pa. Super. 1988).

In short, this Court does not find the evidence presented by Terry to be credible. Terry has failed to rebut the Commonwealth's evidence. Accordingly, the forfeiture is appropriate.

For the foregoing reasons, the Order granting Commonwealth's Petition for Forfeiture and Condemnation will be entered.

ORDER OF COURT

AND NOW, this 22nd day of August, 2016, upon consideration of the foregoing petition and after hearing, it is Ordered and Decreed as follows:

The prayer of the Petition is granted.

All claims of right, title or interest of Mark Anthony Terry, and any other claimants in the defendant/properties are hereby declared to be terminated, revoked and rendered null and void. The \$7,300.00 U.S. currency is hereby condemned and forfeited to the Commonwealth of Pennsylvania, Office of Attorney General, pursu-

ant to the Judicial Code, Chapter 68, Controlled Substances Forfeiture, Sections 6801-6802, 42 Pa. C.S.A. Section 6801 et seq., for use or disposition in accordance with law.

Funds received from the sale of forfeited property and/or from forfeited cash shall be deposited into an interest-bearing account held by the Office of Attorney General and the interest generated there from shall be used in accordance with the Controlled Substance Forfeitures Act, 42 Pa. C.S.A. 6801 et seq.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF BURNS BRABHAM, DEC'D**

Late of the Borough of East Berlin, Adams County, Pennsylvania

Holland J. Brabham III, Linda M. Hall, Lance A. Sease, c/o Jennifer A. Galloway, Esq., Kearney Galloway, LLC, 2002 South Queen Street, York, PA 17403

Attorney: Jennifer A. Galloway, Esq., Kearney Galloway, LLC, 2002 South Queen Street, York, PA 17403

ESTATE OF GEORGE M. GILBERT, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Thomas M. Gilbert, 346-350 East Water Street, Gettysburg, PA 17325; Lloyd T. Gilbert, 785 Taneytown Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

SECOND PUBLICATION

(No Estate Notices Submitted)

THIRD PUBLICATION**ESTATE OF JAMES L. CAHOE, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Personal Representatives: Cynthia J. Shatzer, c/o Donald L. Kornfield, Esq., Kornfield and Benchoff, LLP, 100 Walnut Street, Waynesboro, PA 17268

Attorney: Donald L. Kornfield, Esq., Kornfield and Benchoff, LLP, 100 Walnut Street, Waynesboro, PA 17268

ESTATE OF ROBERT W. GREEN a/k/a ROBERT WAYNE GREEN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott A. Green, 52 Collins Circle, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF JANIS L. NEWMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administratrix: Nancy R. Newman, 124 Meade Drive, Gettysburg, PA 17325

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

ESTATE OF MARIANNE WHERLEY, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Peter Jurgen Leonhardt, 19524 Caladesi Dr., Ft. Myers, FL 33967; Hans Joachim Leonhardt, Jr., 19220 La Serena Dr., Ft. Myers, FL 33967

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

