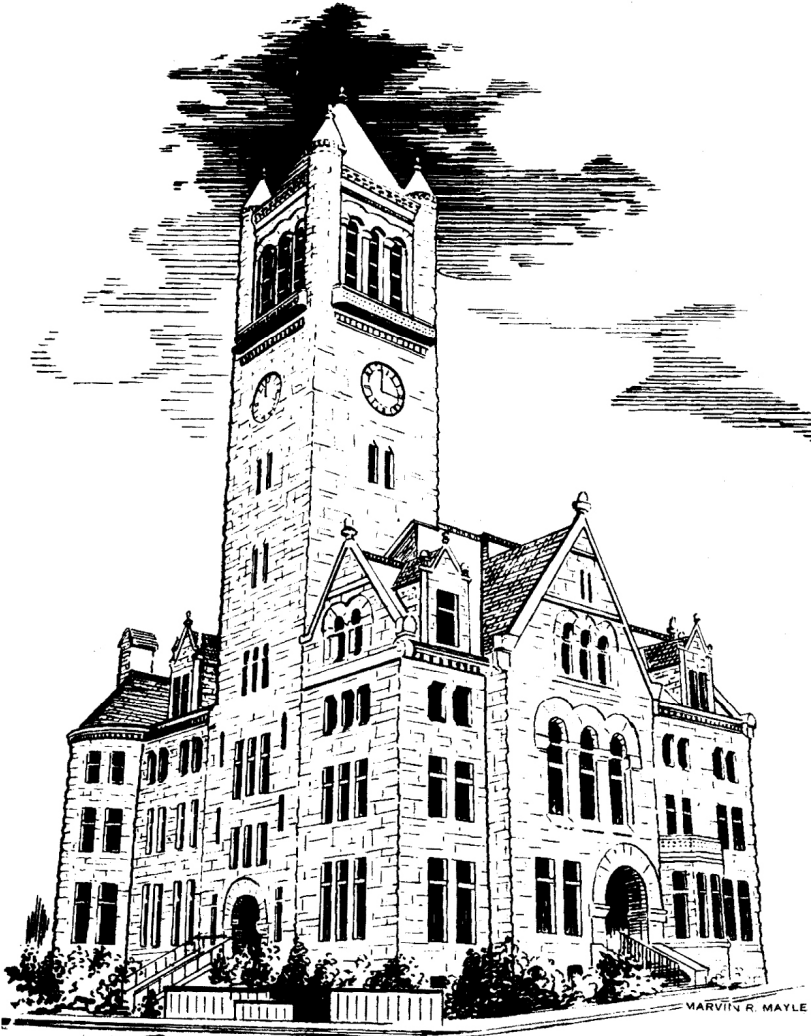


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The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the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

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ESTATE NOTICES

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

Third Publication

ESTHER EDITH CORRADO, a/k/a ESTHER E. CORRADO, late of Uniontown, Fayette County, PA (3)

Personal Representative:

William L. Dorotinsky
c/o 2 West Main Street, Suite 110
Uniontown, PA 15401

Attorney: Ricardo J. Cicconi

WILLIAM KOLLAR, a/k/a WILLIAM J. KOLLAR, late of South Union Township, Fayette County, PA (3)

Administrator: Katherine Kollar
59 7th. Street
Uniontown, PA 15401

c/o Houston Harbaugh, P.C.
Three Gateway Center
401 Liberty Avenue, 22nd Floor
Pittsburgh, PA 15222-1005
Attorney: Heidi Rai Stewart

EILEEN O'TOOLE, a/k/a EILEEN H. O'TOOLE, late of Fayette City, Fayette County, PA (3)

Co-Executors: Daniel L. O'Toole and
Maureen A. O'Toole
1087 Creek Road
Smithton, PA 15479 and
100 Virginia Drive
New Stanton, PA 15672
c/o 123 South Second Street
West Newton, PA 15089
Attorney: Zachary I. Meshner

MICHAEL J. POPSON, a/k/a MICHAEL JEFFERY POPSON, late of German Township, Fayette County, PA (3)

Administrator: Steven R. Popson
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401

Attorney: James E. Higinbotham, Jr.

JEANNE M. RYAN, late of Wharton Township, Fayette County, PA (3)

Personal Representative:
Gwendolyn Renae Friend
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401

Attorney: Joseph M. George

Second Publication

ANGELINE B. AUGUSTINE, a/k/a ANGELA B. COLATCH, late of Connellsville, Fayette County, PA (2)

Executor: Joseph J. Augustine
1008 Broad Street
Connellsville, PA 15425
c/o 120 South Third Street
Connellsville, PA 15425
Attorney: David B. Reiss

NICOLINA BAKER, late of North Union Township, Fayette County, PA (2)

Personal Representative: Robert T. Baker
c/o 2 West Main Street, Suite 110
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

EDWIN P. HAINES, a/k/a EDWIN PAUL HAINES, late of Wharton Township, Fayette County, PA (2)

Executor: Linda Tissue
c/o Radcliffe Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William M. Martin

EVELYN A. LANZI, late of Luzerne Township, Fayette County, PA (2)
Executrix: Marlene Sawayda
 c/o Andrew H. Dohan, Lentz, Cantor & Massey, Ltd.
 460 East King Road
 Malvern, PA 193555
Attorney: Andrew H. Dohan

NANCY L. STEWART, late of Bullskin Township, Fayette County, PA (2)
Executor: James George
 107 Cottonwood Court
 Moon Township, PA 15108
 c/o 944 Beaver Grade Road
 Moon Township, PA 15108
Attorney: Mark V. Aletto

VIOLA MAY WIGGINS, late of Uniontown, Fayette County, PA (2)
Executor: James L. DeSellems
 c/o Adams & Adams
 55 East Church Street, Suite 101
 Uniontown, PA 15401
Attorney: Jason F. Adams

ANNIE RUTH WOODBERRY, late of Belle Vernon, Fayette County, PA (2)
Administratrix: Sylvia J. McCollum
 14 Fiddler Drive
 Beaufort, SC 29907
 c/o Robert Freedenberg, Skarlatos Zonarich, LLC
 17 South 2nd. Street, 6th. Floor
 Harrisburg, PA 17101-2039
Attorney: Robert Freedenberg

First Publication

BRANDON BRINKER, late of Connellsville, Fayette County, PA (1)
Administrator: Brandon Brinker, Jr.
 c/o P.O. Box 760
 Connellsville, Pa 15425
Attorney: Carolyn W. Maricondi

RICHARD BROWN, a/k/a RICHARD S. BROWN, late of Connellsville, Fayette County, PA (1)
Administratrix: Cheryl Detwiler
 c/o 120 South Third Street
 Connellsville, PA 15425
Attorney: David B. Reiss

MARK L. CINDRIC, a/k/a MARK LOUIS CINDRIC, a/k/a MARK CINDRIC, late of South Union Township, Fayette County, PA (1)
Executrix: Cristen Ann Cindric
 c/o John & John
 96 East Main Street
 Uniontown, Pa 15401
Attorney: Simon B. John

BETTY JANE EANS, late of Dunbar, Fayette County, PA (1)
Personal Representative: Robert Harold Eans & Janice Lynn Provance
 c/o Watson Mundorff & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Charles W. Watson

JOSEPH J. HORVAT, late of German Township, Fayette County, PA (1)
Executrix: Frances Minshew
 c/o 51 East South Street
 Uniontown, PA 15401
Attorney: Webster & Webster

DONNA FAYE HALFHILL, a/k/a DONNA F. HALFHILL, a/k/a DONNA HALFHILL, late of Connellsville, Fayette County, PA (1)
Administrator: Todd Halfhill
 205B North Chestnut Street
 Scottdale, PA 15683
 c/o 201 North Chestnut Street
 P.O. Box 342
 Scottdale, PA 15683
Attorney: James S. Lederach

JOHN A. LEONI, a/k/a JOHN ANTHONY LEONI, a/k/a JOHN LEONI, late of Uniontown, Fayette County, PA (1)

Executor: Fred Ciarochi
c/o John & John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

JANET L. MCCUNE, late of Dunbar Township, Fayette County, PA (1)

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

TERRY MILLER, a/k/a TERRY LEE MILLER, late of South Union Township, Fayette County, PA (1)

Administratrix: Stacey Crabtree
c/o Goodwin Como, P.C.
92 East Main Street, Suite 20
Uniontown, PA 15401
Attorney: Amanda M. Como

KENNETH ROSE, a/k/a KENNETH E. ROSE, a/k/a KENNETH EARL ROSE, late of Springhill Township, Fayette County, PA (1)

Executrix: Deborah Bella
c/o 556 Morgantown Road
Uniontown, PA 15401
Attorney: John A. Kopas, III

JAMES SANTELLO, a/k/a JAMES SANTELLO, SR., late of Menallen Township, Fayette County, PA (1)

Administrators: Deborah S. Santello and John D. Santello
c/o John & John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

LEGAL NOTICES

NOTICE OF VOLUNTARY DISSOLUTION OF PERRYOPOLIS AREA HERITAGE SOCIETY

Notice is hereby given that the Officers and Members of the Perryopolis Area Heritage Society, a Pennsylvania nonprofit corporation with an address at 403 liberty Street, PO Box 303, Perryopolis, Pennsylvania 15473, property parcel number 28-08- 0070 has approved a proposal that the nonprofit voluntarily dissolve and that the Officer and Members are now engaged in winding up and settling the affairs of the nonprofit corporation under provisions of the Pennsylvania Corporation Law of 1988 as amended pursuant to section 5975 of the Title 15 Pennsylvania Consolidated Statutes Annotated.

NOTICE

Notice is hereby given that Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on June 29, 2018, for a limited liability company known as RMD Construction LLC.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: General Construction and any other lawful purpose related thereto for which limited liability company may be organized under the Business Corporation Law.

DAVIS & DAVIS
BY: Gary J. Frankhouser, Esquire
107 East Main Street
Uniontown, PA 15401

NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization, Domestic Limited Liability Company has been approved and filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on July 12, 2018, for a Limited Liability Company known as Mario Clark, LLC.

Said Limited Liability Company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the Limited Liability Company is operation of a bar/restaurant and any other lawful purpose related thereto for which Limited Liability Companies may be organized under the Business Corporation Law.

DAVIS & DAVIS

BY: Gary J. Frankhouser, Esquire
107 East Main Street
Uniontown, PA 15401

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about July 12, 2018 to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Fox's Tavern, with the principal place of business at 205 W. Wine Street, S. Connellsville, PA 15425. The name or names and addresses of persons owning and interested are Mario Clark, LLC, 1310 Sycamore Street, Connellsville, PA 15425.

DAVIS & DAVIS

BY: Gary J. Frankhouser, Esquire
107 East Main Street
Uniontown, PA 15401

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about June 27, 2018 to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Lakeside Venues, with the principal place of business at 400 Old Route 21, McClellandtown, Fayette County, Pennsylvania, 15458. The name or names and addresses of persons owning and interested are Lakeside Party Center, Inc. 400 Old Route 21, McClellandtown, PA 15458.

Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, Pennsylvania 15425

NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Corporation Bureau of the Department of State of the Commonwealth of Pennsylvania on April 30, 2018 for Ferguson – Brownfield Funeral Home & Crematory, Inc., with its registered office at 80 Morgantown Street, Uniontown, Pennsylvania 15401. The purpose for which the corporation is organized is to engage in funeral directing and the operation of a funeral home and crematory.

Ernest P. DeHaas, III, Esquire
DEHAAS LAW, LLC
51 East South Street
Uniontown, Pennsylvania 15401
epd@dehaaslaw.com
(724) 438-3510

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY,
PENNSYLVANIA
No. 1295 of 2018

**ESTATE OF NORA J. CHEARNEY, by
SHARON E. BROWN and EDWARD J.
CHEARNEY, Co-Executors,
Plaintiff**

v.

**COMMERCIAL CREDIT SAVINGS AND
LOAN ASSOCIATION,
Defendant**

**TO: Commercial Credit Savings and
Loan Association
232A Liberty Avenue
Connellsville, PA 15425**

DATE OF NOTICE: July 16, 2018

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE . IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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.

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ASSOCIATION
P. O. BOX 565
GREENSBURG, PA 15601
Telephone: (724) 834-8490
<http://rs.westbar.org>**

By: Scott A. Walker, Esq.
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
ACTION TO QUIET TITLE
No. 1341 of 2018 G.D.
PRESIDENT JUDGE WAGNER

**MARGARITA KHACHATURYAN,
Plaintiff,**

v.

**RONALD D. FULLEM and ROBERT A.
FULLEM, their successors, heirs, personal
representative, and assigns, generally.
Defendants.**

**TO: RONALD D. FULLEM and
ROBERT A. FULLEM, their heirs,
successors and assigns, generally,**

You are hereby notified that Margarita Khachaturyan, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that he is the owner in possession of that certain lot of land situate in City of Uniontown, Fayette County, Pennsylvania having a mailing address of 82 Chaffee Street, Uniontown, Pennsylvania, 15401.

Title to the above described property was conveyed to Ronald D. Fullem by a deed from Pamela J. Fullem and Ronald D. Fullem, dated September 12, 2003 being recorded at the Recorder of Deeds Office at Record Book 2877, Page 2319.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may entered against

you by the court without further notice or any money claimed in the complaint, or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

**PENNSYLVANIA BAR ASSOCIATION
PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-932-0311**

By Jason F. Adams, Esq.
Adams & Adams
55 E. Church Street
Uniontown, PA 15401
(724) 437-2711

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
ACTION TO QUIET TITLE
No. 1033 of 2018 G.D.
JUDGE LESKINEN

**JOSEPH CHOLOCK,
Plaintiff,
v.**

**NATIONAL CITY BANK., their successors,
heirs, personal representatives, and assigns,
and MARION G. VARDELL, n/k/a
MARION G. DEKOWSKI, and JOSEPH
S. DEKOWSKI, her husband, their
successors, heirs, personal representatives,
and assigns, generally.**

Defendants.

**TO: MARION G. VARDELL, n/k/a
MARION G. DEKOWSKI and JOSEPH S.
DEKOWSKI, their heirs, successors and
assigns, generally,**

You are hereby notified that Joseph Cholock, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged

that he is the owner in possession of that certain lot of land situate in North Union Township, Fayette County, Pennsylvania having a mailing address of 528 Jumonville Road, Hopwood, Pennsylvania, 15445.

Title to the above described property was conveyed to Marion G. Varndell, n/k/a Marion G. Dekowski and Joseph S. Dekowski, her husband by a deed from Willis Barnes and Lavenia E. Barnes, his wife, dated July 20, 1973, being recorded at the Recorder of Deeds Office at Deed Book 1149, Page 250.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

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

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

**PENNSYLVANIA BAR ASSOCIATION
PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-932-0311**

By Jason F. Adams, Esq.
Adams & Adams
55 E. Church Street
Uniontown, PA 15401
(724) 437-2711

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
ACTION TO QUIET TITLE
No. 326 of 2018 G.D.
PRESIDENT JUDGE WAGNER

JOSEPH A. CHOLOCK,
Plaintiff,
v.

**CHARLES H. HEWITT and CAROL L
HEWITT, their successors, heirs, personal
representatives, and assigns, generally,
generally,**
Defendants.

**TO: CHARLES H. HEWITT and
CAROL L. HEWITT, their heirs, successors
and assigns, generally,**

You are hereby notified that Joseph Cholock, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that he is the owner in possession of that certain lot of land situate in Washington Township, Fayette County, Pennsylvania having a mailing address of 136 Dinsmore Street, Belle Vernon, Pennsylvania, 15012.

Title to the above described property was conveyed to Charles H. Hewitt and Carol L. Hewitt, his wife, by a deed from J.R. Rygiel, Executor for the Estate of Alexander Koslaskie, dated July 29, 1966, being recorded at the Recorder of Deeds Office at Deed Book 1029, Page 186.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that

if you fail to do so, the case may proceed without you and a judgment may entered against you by the court without further notice or any money claimed in the complaint, or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

**PENNSYLVANIA BAR ASSOCIATION
PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-932-0311**

By Jason F. Adams, Esq.
Adams & Adams
55 E. Church Street
Uniontown, PA 15401
(724) 437-2711

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, August 6, 2018 at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2616-0750	HENRY SHIROCKY	John Joseph, Administrator

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

Monday, August 20, 2018 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, August 6, 2018 at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2616-0899	RICHARD D. LEASHER	Vincent Leasher, Administrator
2616-0751	LUCILLE SHIROCKY	John Joseph, Administrator

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

Monday, August 20, 2018 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	:	
V.	:	
PATRICK LOUIS HILEMAN,	:	No. 663 of 2017
DEFENDANT.	:	Judge Nancy D. Vernon

OPINION PURSUANT TO Pa.R.A.P. 1925

VERNON, J.

July 17, 2018

Following a trial by jury, Appellant, Patrick Louis Hileman, was found guilty of two counts Endangering the Welfare of Children {1}; Aggravated Assault by Vehicle {2}; and three counts Recklessly Endangering Another Person {3}. Appellant was acquitted of Aggravated Assault, Aggravated Assault of Unborn Child, and Simple Assault. The Court dismissed the charges related to the unborn child of Aggravated Assault By Vehicle, Simple Assault, and Recklessly Endangering Another Person.

Appellant was sentenced to a term of incarceration of nine months to eighteen months on the Aggravated Assault by Vehicle conviction and the Court imposed a consecutive sentence on two of the Recklessly Endangering convictions of two months to four months and one month to two months. Appellant has appealed to the Superior Court and this Opinion is in support of the jury verdict and sentence imposed.

On appeal, the Appellant raises the following issues:

1. The Honorable Trial Court erred and abused its discretion in failing to declare a mistrial upon learning that a juror(s) had drawn on and marked a picture admitted into evidence showing injuries sustained by the victim. Defendant was prejudiced by this juror(s) misconduct because the extraneous influence of its effect was emotional and inflammatory upon the remaining jurors thereby warranting a mistrial.

2. The Honorable Court erred and abused its discretion in denying Defense Counsel's request for a continuance based upon the unavailability of the prosecuting Pennsylvania State Trooper for trial. Counsel for the Defendant was deprived of the ability to exercise his client's Sixth Amendment right to confrontation of a material witness. This denial of the Defendant's right to confront the chief investigating officer in the case denied the Defendant his constitutional right to a fair and impartial trial in accordance with the Sixth Amendment.

{1} 18 Pa.C.S.A. §4304(a)(1)

{2} 18 Pa.C.S.A. §3732.1(a)

{3} 18 Pa.C.S.A. §2705

3. The Honorable Court erred in prohibiting Defense Counsel from using a prior inconsistent statement made by the victim contained in the probable cause affidavit of the arrest warrant to impeach the victim's trial testimony. A comparison of the victim's trial testimony with her statements contained in the probable cause affidavit and consideration of the circumstances under which the statement was taken and transcribed, leads to the conclusion that a jury could have reasonably doubted the victim's testimony on the basis of the available evidence of her prior statements contained in the probable cause affidavit.

STATEMENT OF THE CASE

Rachel Pletcher testified that in the early evening of July 2, 2016 she was home in Normalville, Pennsylvania, with her boyfriend, the Appellant Patrick Louis Hileman, and their two children, Patrick Hileman and Jace Hileman. N.T., 4/2-3/2018, at 19-20, 22. Rachel Pletcher was also 18 weeks pregnant with a third child. Id. at 21. Pletcher and Appellant planned to take their kids to watch fireworks and loaded the children into their car seats of the Appellant's Chevy Suburban. Id. at 22-24. Appellant attempted to start the car when they heard a knocking sound that indicated the car was out of oil and Appellant began screaming at Pletcher. Id. at 24.

Appellant filled the SUV with oil and "flew" out of the driveway, fishtailing in the gravel from driving so fast. Id. at 25-27. The children were crying from the erratic driving when Pletcher threatened Appellant to stop the car or she would call the police. Id. at 27-28. Pletcher leaned toward the floor to retrieve her cell phone in her purse when Appellant grabbed her hair and began banging her head on the radio console more than ten times. Id. at 29-30. Pletcher punched Appellant in the face in an attempt to "stun him" so that she could get out of the car with the kids. Id. at 31-32. Pletcher opened her door to exit, getting one leg outside of the car, when Appellant put the vehicle in drive and pressed the gas. Id. at 33-34. Pletcher was dangling from the vehicle with her knees scraping the road. Id. at 34. When the car stopped, Pletcher got back inside because her kids were in there. Id. at 35. Appellant reversed the vehicle to get Pletcher's shoes that had fallen off, when she attempted to exit the vehicle to retrieve the shoe, Appellant shoved her out of the car. Id. at 37. Pletcher fell out of the SUV with her arms and stomach impacting the road. Id. at 38. Appellant then ran over her leg with the vehicle. Id. at 39. The next she remembers, Pletcher woke up in the hospital talking to the investigating police officer. Id. at 38. Pletcher testified that she had two brain surgeries for an intracranial hemorrhage and for swelling and bleeding on her brain and two surgeries on her leg. Id. at 42-43, 48. Pletcher was hospitalized from July 2nd to August 2nd. Id. at 45. According to Pletcher, the right side of her head still shows an indentation from the assault; she suffers from headaches; and she lost her sense of smell and most of the ability to hear in her right ear. Id. at 48-50.

DISCUSSION

In Appellant's first issue, he alleged that the court erred in failing to grant his motion for a mistrial as a result of the jury marking the photograph exhibits during deliberations. The transcript reflects the following on this issue:

- The Court: We've been notified that the jury has arrived at verdicts in the case.
- Mr. Shaffer: May it please the Court, I have one issue before the jury is brought in. I've just been given the photographs from the jury deliberation room and I believe there's been jury misconduct because they all adulterated the photographs they were considering, so I'm asking for a mistrial coming in at 6:05.
- The Court: May I see what you're referring to? So they've made marking on the photographs?
- Mr. Shaffer: Yes.
- The Court: How is that prejudicial?
- Mr. Lementowski: Your Honor, I don't believe it's prejudicial.
- Mr. Shaffer: They're not taking the evidence as is. They are taking it in some other consideration as to what those letters mean in the particular areas that they mean. They are not going by the evidence before the Court, they are creating evidence.
- The Court: I don't think that we can interpret this to mean that. You're asking for a mistrial or something, Mr. Shaffer.
- Mr. Shaffer: I am, yes.
- The Court: That motion is denied. You may bring in the jury.

N.T., 4/2-3/2018, at 135.

The Record reveals that during deliberations the jury made markings on a photograph. The Court reviewed the exhibits including the markings and determined that the same was neither "misconduct" by the jurors nor prejudicial to Appellant. It is within the discretion of the trial court to determine whether a defendant has been prejudiced by misconduct or impropriety to the extent that a mistrial is warranted. *Commonwealth v. Cole*, 167 A.3d 49 (Pa.Super. 2017). Appellant makes vague assertions that the effect of the markings was "emotional and inflammatory" without any rationale as to how or why the same should result in the granting of a mistrial. The motion was properly denied, and is without merit in this appeal.

In his next issue, Appellant alleged the Court erred in failing to grant his request for a continuance "based upon the unavailability of the prosecuting Pennsylvania State Trooper for trial." Appellant described the prosecuting officer as a "material witness" and alleges that his absence deprived Appellant of his right to confront the chief investigating officer.

Appellant's issue to the Superior Court is the denial of the continuance "based upon the unavailability of the prosecuting Pennsylvania State Trooper for trial." Appellant does not cite the Record where he made the motion for continuance on this basis, and a thorough review of the trial transcript does not reveal that any such motion was made for the unavailability of a trooper.

In contemplation of this issue, we initially note that when the Assistant District Attorney called the case for trial, the Court inquired of Defense Counsel, to which he responded, "May it please the Court. We are also prepared to proceed on behalf of the defendant." N.T., 4/2-3/2018, at 4.

The Commonwealth did not call as a witness any police officer to testify at trial. Following the Commonwealth's evidence, Defense Counsel made a motion, off-the-record, for a continuance to secure an Affidavit. The substance of the motion was not of-record, but following the discussion, the Court memorialized the following:

The Court: And now that the jury is not here, also for purposes of the record, the Court did not permit the case to be continued for subpoenaing an Affidavit in a non-related case by a police officer. The Court has determined that the issue of falling versus pushed, one can certainly fall out the vehicle if they are pushed, and that's what she has testified to, so the Court feels that the relevancy of push or fall is of little importance in this case.

N.T., 4/2-3/2018, at 88.

The Court specifically refers to Defense Counsel requesting an "Affidavit" in a "non-related case." This motion for continuance was not made for the absence of the prosecuting officer. Having failed to cite the Record, and the Court unable to ascertain the same, the allegation of error is without merit.

In his third issue, Appellant alleged the Court erred in prohibiting him from impeaching Rachel Pletcher with a prior inconsistent statement that she was alleged to have made to the police in the Affidavit of Probable Cause. Again, Appellant does not cite the record for this alleged error. The transcript reflects two sustained objections of counsel's attempts to impeach using an Affidavit of Probable Cause.

At trial, Defense Counsel's strategy was that Pletcher jumped from the car, rather than having been pushed by Appellant. N.T., 4/2-3/2018, at 97. First, on cross-examination following her direct examination, Rachel Pletcher was questioned by Defense Counsel as follows:

Q: You would agree that you told the police under oath that you jumped out of the car, you would agree to that, correct?
A: No.

- Q: You would agree that you told Trooper Janosko that you fell from the car - -
- A: No.
- Q: - - that you were never pushed?
- A: (No audible response.)
- Q: What I have is an Affidavit of Probable Cause.
- The Court: Which is not admissible, Mr. Shaffer, for impeachment purposes.
- Mr. Shaffer: I'm sorry?
- The Court: It is not admissible for impeachment purposes, you would have to call the officer.
- Mr. Lementowski: Your Honor, may we approach?
- The Court: Sure.
- Q: So your testimony is that you never told Officer Janosko that you fell from the car?
- A: No.
- Q: You never said that?
- A: No.

N.T., 4/2-3/2018, at 72-73.

Later, Appellant testified that he and Pletcher were arguing over a Protection from Abuse Order that she had received against him when she jumped from the SUV. *Id.* at 94. Pletcher was then called again by the Commonwealth as a rebuttal witness. Defense Counsel cross-examined on rebuttal as follows:

- Q: And it's true that you told Officer Janosko that you fell from the car at the PFA we're speaking of.
- A: No.
- Mr. Lementowski: Your Honor, I'm going to object.
- The Court: What's the basis of your objection?
- Mr. Lementowski: It's outside the scope of the statements she gave to Trooper Janosko with respect to the PFA violation.
- Mr. Shaffer: It is not, it is the violation, it's right here.
- Mr. Lementowski: And that is based off the Affidavit of Probable Cause and that's Trooper Janosko's statements.
- The Court: Counsel, please approach.
(Off the record discussion was held at the bench by Court and counsel.)
- The Court: Objection sustained.

N.T., 4/2-3/2018, at 115.

With regard to both lines of questioning, it appears to the Court that Defense Counsel was referring to the Affidavit of Probable Cause in this criminal action. Pennsylvania Rules of Evidence provides for impeachment at Rule 607(b), "Evidence to Impeach a Witness. The credibility of a witness may be impeached by any evidence

relevant to that issue, except as otherwise provided by statute or these rules.”

A review of the Affidavit of Probable Cause on the issue of whether Pletcher was pushed out of the vehicle or whether she jumped was not distinguished by Trooper Joshua Janosko in the Affidavit. Rather, the only mention of Pletcher’s ejection from the vehicle stated, “This incident was described as a female falling from a pick-up truck.” Trooper Janosko’s use of the word “falling” does not indicate whether it was Pletcher who “jumped” or whether she was “pushed” by Appellant. Accordingly, the Affidavit of Probable Cause was not properly used for impeachment, first, because it is not relevant to the issue of whether or not Pletcher was “pushed” or “jumped” in accord with Defense Counsel’s line of questioning. Second, the Affidavit was not proper impeachment evidence because the Trooper did not recite who provided the statement to him that Pletcher fell out of the vehicle. Specifically, the statement was not attributed as having been said by Pletcher, and thus, cannot be used to impeach her credibility. Third, for proper impeachment, Appellant could have subpoenaed Trooper Janosko for trial testimony as to the statement received by him in support of the Affidavit of Probable Cause, but failed to do so. Trooper Janosko was not an essential witness for the Commonwealth as his testimony was not required for the Commonwealth to meet its burden of proof and he was not present at trial.

Wherefore, this issue is also without merit and the appeal should be denied.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Janice Snyder
CLERK OF COURTS

D'Andrea Collision Investigation and Reconstruction LLC**D'Andrea Collision Investigation and
Reconstruction LLC**

Pennsylvania State Police Lieutenant Joseph D'Andrea with over 30 years of experience and former collision Analysis and Reconstruction Specialist recently retired and is now conducting investigations. Investigations range from: obtain/review police crash report through collision reconstruction primarily for civil litigation. Criminal defense work done on case by case basis.

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SUMMER PICNIC



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Saturday, August 4, 2018, at 6:00 p.m.

Entertainment by the Cellar Dwellers

Catering by Stone House BBQ

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