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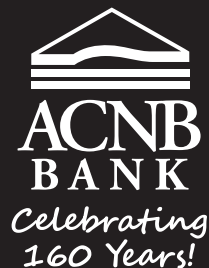
## IN THIS ISSUE

COMMONWEALTH OF PENNSYLVANIA  
VS. JOHN L. SANDERS

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NOTICE BY THE ADAMS COUNTY CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Thursday, October 3, 2019 at 8:30 a.m.

**PENTLICKI**—Orphans' Court Action Number OC-97-2019. The First and Final Account of Stephen J. Pentlicki, Executor of the Chester J. Pentlicki, late of Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

9/20 & 9/27

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on August 8, 2019, 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, Milliana Hennesey Smith, a minor. The Court has affixed October 3, 2019 at 1:30 p.m. 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.

9/20

COMMONWEALTH OF PENNSYLVANIA VS.  
JOHN L. SANDERS

1. Defendant attacks the sufficiency and, in the alternative, weight of the evidence concerning the DUI convictions and alleges that the Commonwealth presented insufficient evidence that Defendant drove under the influence of alcohol to a degree that rendered him incapable of safely driving, as well as insufficient evidence that Defendant's blood alcohol concentration was .16% or above.

2. The standard of review on a sufficiency of the evidence claim is "whether the evidence at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict-winner, are sufficient to establish all elements of the offence beyond a reasonable doubt."

3. A verdict is against the weight of the evidence only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice. A determination of whether a jury's verdict is against the weight of the evidence is generally committed to the discretion of the trial court.

4. A review of the evidence, in the light most favorable to the Commonwealth as verdict-winner, shows Defendant's sufficiency of the evidence claim is meritless. In addition, the verdict does not shock one's sense of justice and therefore, Defendant's claim that the verdict is against the weight of the evidence is also meritless.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CP-01-CR-868-2018, COMMONWEALTH OF  
PENNSYLVANIA VS. JOHN L. SANDERS

Kelly Margetas, Esquire, Attorney for Commonwealth

Jason M. Jefferis, Esquire, Attorney for Defendant

Wagner, J., August 14, 2019

OPINION ON POST-SENTENCE MOTION

John L. Sanders (Hereinafter "Defendant") filed his Post-Sentence Motion on May 31, 2019 following his Sentence on May 21, 2019 and his convictions for driving under the influence of alcohol ("DUI") general impairment,<sup>1</sup> and DUI highest rate of alcohol.<sup>2</sup> For the reasons set forth below, Defendant's Post-Sentence Motion is Denied.

FACTUAL BACKGROUND

Testimony developed at the jury trial held on April 2, 2019 revealed the following events occurred. On May 18, 2018, Officer Kyle Freeman with the McSherrystown Borough Police Department was on duty in uniform in a marked patrol vehicle in the area of Main

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<sup>1</sup> Count one: 75 Pa.C.S.A. § 3802(a)(1).

<sup>2</sup> Count two: 75 Pa.C.S.A. § 3802(c).

Street and North Sixth Street, McSherrystown Borough, Adams County, Pennsylvania.

Officer Freeman has completed the municipal police academy and the Standardized Field Sobriety Testing (“SFST”) class and Advanced Roadside Identification Drug Enforcement (“ARIDE”) class.

While Officer Freeman’s vehicle was parked on North Sixth Street, Officer Freeman observed a Chevrolet Avalanche pull out onto Sixth Street with screeching tires. Officer Freeman followed the Avalanche onto Ridge Avenue, where Officer Freeman observed the Avalanche abruptly swerve to avoid a parked vehicle and cross over the double yellow line for approximately 30 yards. Officer Freeman observed the Avalanche come to a screeching halt at a stop sign. Officer Freeman activated his vehicle’s lights and siren and initiated a traffic stop at approximately 1:45AM.<sup>3</sup>

Officer Freeman approached the Avalanche and identified Defendant as the operator of the Avalanche. Officer Freeman observed Defendant to have glassy, bloodshot eyes and slurred speech. Officer Freeman asked the Defendant to exit the vehicle several times before Defendant complied. Once Defendant was outside of his vehicle, Officer Freeman observed Defendant to have a staggered gait and the strong odor of an alcoholic beverage emitting from his person. Defendant had difficulty obtaining identification from his wallet and dropped his ID card.

Officer Freeman asked Defendant to submit to standardized field sobriety tests, which the Defendant repeatedly refused to perform. Defendant told Officer Freeman he had too much to drink. Officer Freeman testified that based on his education, training, and experience, Defendant was under the influence of alcohol and was incapable of safely operating a motor vehicle.

Based on his observations of Defendant’s driving, personal observations of Defendant, and Defendant’s refusal to perform any standardized field sobriety tests<sup>4</sup>, Officer Freeman placed Defendant under arrest for DUI. Officer Freeman transported Defendant to Hanover Hospital for a blood draw. Defendant consented to have his

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<sup>3</sup> An MVR from Officer Freeman’s patrol vehicle was admitted as Commonwealth’s Exhibit 1 and was played for the jury.

<sup>4</sup> See **Commonwealth v. Angel**, 946 A.2d 115, (Pa.Super. 2008)

blood drawn. Officer Freeman observed phlebotomist Michelle Ruppert draw two vials of Defendant's blood at 2:19AM.

Donna Papsun is a toxicologist with NMS Laboratories and has been a toxicologist for over six (6) years. Ms. Papsun was qualified as an expert witness in forensic toxicology. Ms. Papsun has authored or coauthored at least twelve articles concerning the field of forensic toxicology. Ms. Papsun had previously been qualified as an expert in forensic toxicology approximately eighty (80) times. Ms. Papsun testified she reviews all the results of the whole blood alcohol testing done by technicians at NMS Laboratories. Ms. Papsun is responsible for reviewing all the analysis of the blood samples, interpreting the results, and authoring the blood alcohol reports. Ms. Papsun testified she issued the NMS Laboratory report for Defendant's blood in this case on May 27, 2018 and Defendant's blood alcohol concentration was .245%.

The jury found Defendant guilty of both counts one<sup>5</sup> and two<sup>6</sup>. On May 21, 2019, this Court sentenced Defendant to twelve months to sixty months total confinement at a state correctional institution.<sup>7</sup> On May 31, 2019, Defendant timely filed his Post-Sentence Motion.

### LEGAL STANDARD

The standard of review on a sufficiency of the evidence claim is “whether the evidence at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict [-] winner, are sufficient to establish all elements of the offense beyond a reasonable doubt.” **Commonwealth v. Jones**, 904 A.2d 24, 26 (Pa. Super. 2006) (citation omitted) (internal quotations omitted). “[T]he facts and circumstances established by the Commonwealth need not preclude every possibility of innocence.” **Commonwealth v. Hartzell**, 988 A.2d 141, 143 (Pa. Super. 2009) (quoting **Commonwealth v. McClendon**, 874 A.2d 1223, 1228-1229 (Pa. Super. 2005)). “Any doubts regarding a defendant’s guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances . . . .” **Id.**

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<sup>5</sup> 75 Pa.C.S.A. § 3802(a)(1).

<sup>6</sup> 75 Pa.C.S.A. § 3802(c).

<sup>7</sup> Count one merged with count two for sentencing purposes.

“The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.” **Commonwealth v. Bowen**, 55 A.3d 1254, 1260 (Pa. Super. 2012) (quoting **Commonwealth v. Muniz**, 5 A.3d 345, 348 (Pa. Super. 2010)). “Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.” **Id.** “In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder.” **Hartzell**, 988 A.2d at 143 (internal quotations omitted).

“A verdict is against the weight of the evidence only when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice.” **Commonwealth v. Rivera**, 983 A.2d 1211, 1225 (Pa. 2009) (quoting **Commonwealth v. VanDivner**, 962 A.2d 1170, 1177 (Pa. 2009)). “[A] determination [of whether a jury’s verdict is against the weight of the evidence] is generally committed to the discretion of the trial court.” **Commonwealth v. Bellini**, 482 A.2d 997, 999 (Pa. Super. 1984). “A new trial should not be granted because of a mere conflict in testimony or because a judge on the same facts would have arrived at a different conclusion.” **Rivera**, 983 A.2d at 1225 (internal quotations omitted). The critical question is whether or not “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.” **Id.**

## DISCUSSION

### **1. Sufficiency and Weight of the Evidence**

Defendant attacks the sufficiency and, in the alternative, weight of the evidence concerning the DUI convictions and alleges that the Commonwealth presented insufficient evidence that Defendant drove under the influence of alcohol to a degree that rendered him incapable of safely driving, as well as insufficient evidence that Defendant’s blood alcohol concentration was .16% or above.

Under **75 Pa.C.S.A. § 3802(a)(1)** “[a]n individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.”

Under **75 Pa.C.S.A. § 3802(c)** “[a]n individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual’s blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.”

Officer Freeman testified Defendant had to abruptly swerve his vehicle to avoid striking a parked vehicle, crossed over the double yellow line and remained over the double yellow line for about 30 yards, and brought his vehicle to a screeching halt at a stop sign. Officer Freeman testified that after stopping Defendant’s vehicle he observed Defendant to have glassy and bloodshot eyes, slurred speech, staggered gait, and the strong odor of an alcoholic beverage emitting from his person. Defendant was reluctant to listen to Officer Freeman’s commands to exit his vehicle, had difficulty obtaining his identification from his wallet, and refused to perform any standardized field sobriety testing. Defendant told Officer Freeman that he had too much to drink. Based on Officer Freeman’s education, training, and experience, his observations of Defendant’s driving and personal observations and interactions with Defendant, Officer Freeman testified that Defendant was under the influence of alcohol and incapable of safely driving. Officer Freeman transported Defendant to Hanover Hospital, where Officer Freeman observed phlebotomist Michelle Ruppert draw two vials of Defendant’s Blood at 2:19AM.

Donna Papsun testified she was the forensic toxicologist who reviewed all of the data generated by other laboratory personnel, prepared and signed Defendant’s toxicology report, and concluded Defendant’s blood alcohol concentration was .245%.

The Pennsylvania Supreme Court has held that a forensic analyst who reviewed the underlying data and prepared and signed the challenged report constituted “the analyst whom [a]ppellant had a right to confront.” **Commonwealth v. Yohe**, 79 A.3d 520, 540 (Pa. 2013). In reaching its conclusion, the Court reasoned:

Although Dr. Blum did not handle [a]ppellant’s blood sample, prepare portions for testing, place the prepared portions in the machines, or retrieve the portions after testing, these facts are not dispositive, and do not account

for Dr. Blum's involvement in utilizing the information provided by his subordinates, legitimately relying on their work and that of other employees in the lab who logged receipt of the sample, checked the integrity of the sample, ensured proper storage, and of the phlebotomist who drew [a]ppellant's blood at the hospital. The Commonwealth complied with [**Melendez-Dias v. Massachusetts**, 557 U.S. 305 (2009)] by introducing the Toxicology Report with a witness competent to testify to the truth of the statements made in the report, and complied with *Bullcoming* by assuring [a]ppellant's right to be confronted with the in-court testimony of the scientist who evaluated the raw data in the case file and signed the certification.

**Yohe**, 79 A.3d 540-541.

A review of the evidence, in the light most favorable to the Commonwealth as verdict-winner, shows Defendant's sufficiency of the evidence claim is meritless. In addition, the verdict does not shock one's sense of justice and therefore, Defendant's claim that the verdict is against the weight of the evidence is also meritless. The Commonwealth established Defendant was driving, operating, or in actual physical control of his motor vehicle while under the influence of alcohol to a degree that rendered him capable of safe driving and after imbibing a sufficient amount of alcohol such that the alcohol concentration in his blood or breath is .16% or higher within two hours after he had driven. Therefore, Defendant's Post-Sentence Motion is denied.

#### AMENDED ORDER OF COURT

AND NOW, this 5th day of September 2019, this Court's Opinion on Post-Sentence Motion, filed August 14, 2019 is amended on page 7, paragraph 1, line 10. "Capable" shall be changed to "incapable".



**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 REGINA M. LOBINGIER, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

James S. Dillman, 53 Meadow Lane, Gettysburg, PA 17325

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

**ESTATE OF EDWIN H. MYERS, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executors: Mary L. Borger, 134 Crooked Creek Road, Gettysburg, PA 17325; Rose M. Gebhart, 893 White Hall Road, Littlestown, PA 17340; Robert E. Myers, 1271 Storms Store Road, Gettysburg, PA 17325

Attorney: Keith R. Nonemaker, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

**ESTATE OF CLIFFORD W. RICE, DEC'D**

Late of the Borough of Bendersville, Adams County, Pennsylvania

Co-Executors: David C. Rice, P.O. Box 219, 170 Rampike Hill Road, Bendersville, PA 17306; Victor L. Rice, 729 Stouffer Avenue, Chambersburg, PA 17201

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

**ESTATE OF MARY CHRISTINE RICE, a/k/a CHRISTINE M. RICE, DEC'D**

Late of the Borough of Bendersville, Adams County, Pennsylvania

Co-Executors: David C. Rice, P.O. Box 219, 170 Rampike Hill Road, Bendersville, PA 17306; Victor L. Rice, 729 Stouffer Avenue, Chambersburg, PA 17201

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

**SECOND PUBLICATION****ESTATE OF DOROTHY T. BURKHARDT, a/k/a DOROTHY THERESA BURKHARDT, DEC'D**

Late of Sykesville, Carroll County, Maryland

Frances Ann Starlings, 2248 Bollinger Mill Road, Finksburg, MD 21048; Mary T. Unglesbee, 2250 Bollinger Mill Road, Finksburg, MD 21048

Attorney: Ann C. Shultis, Esq., Salzmann Hughes, P.C., 1147 Eichelberger Street, Suite F, Hanover, PA 17331

**ESTATE OF CYPRIAN N. GEBHART, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

**ESTATE OF ARTHUR EARL GLAZIER, JR., DEC'D**

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

Julia Glazier, 206 East King Street, East Berlin, PA 17316

Attorney: Thomas R. Nell, Esq., 130 W. King Street, P.O. Box 1019, East Berlin, PA 17316

**ESTATE OF EDWARD HARBAUGH, SR., a/k/a EDWARD LESTER HARBAUGH, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Geneva Harbaugh, c/o Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

**ESTATE OF THEODORE EUGENE KREITZ, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Christina M. Bowers, 11 Berkey Road, East Berlin, PA 17316

Attorney: Arthur J. Becker, Jr., Esq., Becker Law Group, P.C., 529 Carlisle Street, Hanover, PA 17331

**THIRD PUBLICATION****ESTATE OF CLAIR E. GOLDEN, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Paula Elaine Lecrone, 756 Brough Road, Abbottstown, PA 17301

Attorney: Thomas R. Nell, Esq., 130 W. King Street, P.O. Box 1019, East Berlin, PA 17316

**ESTATE OF ROSELLA V. HARTLAUB, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executors: Samuel T. Hartlaub, 931 Beck Road, Gettysburg, PA 17325; Lucy M. Knight, 3443 Hanover Road, Gettysburg, PA 17325; Victoria L. Martin, 1981 Whitehall Road, Littlestown, PA 17340; Linda S. Morrison, 1 Cherry Court, New Oxford, PA 17350

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

**ESTATE OF FRANCES M. LEIDY, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Penny L. Mohlenrich, c/o Genevieve E. Barr, Esq., 11 Carlisle Street, Hanover, PA 17331

Attorney: Genevieve E. Barr, Esq., 11 Carlisle Street, Hanover, PA 17331



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