

Lebanon County Legal Journal

The official legal periodical for Lebanon County
containing the decisions rendered in the 52nd Judicial District

Vol. 55

Lebanon, Pennsylvania, February 21, 2018

No. 30

Public Notices

DECEDENTS' ESTATES
ORPHANS COURT DIVISION NOTICES
ARTICLES OF INCORPORATION
NAME CHANGE
FICTITIOUS NAME REGISTRATION

Opinion

Commonwealth v. Michael Allen Wilkinson No. CP-38-CR-0000895-2016

Published every Wednesday. Advertisements must be sent to
LCBA, 547 South 10th Street, Lebanon PA 17042
or emailed to lebcoar@verizon.net
by 11 a.m. of preceding Monday.

Lebanon County Legal Journal, per bound volume.....\$95.00
Advance Sheets, per year.....\$97.75
Single copy, advance sheets.....\$4.00

717-273-3113; www.lebanoncountylegaljournal.org

Owned and published by the Lebanon County Bar Association

Paul W. Kilgore, Esq., Chair
Stephanie Axarlis, Esq., Editor
Jennifer Wentzel, Esq., Editor

DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF JOHN A. BANEY, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Susan B. Potter, Executrix
John E. Feather, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

ESTATE OF DUANE M. PERKINS, late of West Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Linda M. Boyd-Jones, Executor
13334 East Coast Highway, Suite 603
Corona Del Mar, CA 92625
Thomas S. Long, Attorney

ESTATE OF LLOYD R. SONNON, late of North Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Richard L. Sonnon, Executor
913 Miller Street
Lebanon, PA 17046

Edward J. Coyle, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF JOAN L. SMITH, late of the City of Lebanon, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Lois A. Smith, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF JANE L. STEVENS, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Douglas G. Stevens
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF CORNELIA M. WHITTLE, late of the County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Executor: Daryl J. Gerber
46 E. Main Street
Palmyra, PA 17078

Daryl J. Gerber, Esquire,
The Law Office of Daryl J. Gerber
46 E. Main Street
Palmyra, PA 17078

SECOND PUBLICATION

ESTATE OF GALEN S. BOLLINGER, late of Bethel Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Galen L. Bollinger, Executor
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

ESTATE OF THERESA FERRETTI, late of the Borough of Myerstown, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

Contina Ferretti, Executor
Louis Ferretti, Executor
107 S. Cherry Street
Myerstown, PA 17067

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF LINDA S. HIBSHMAN, late of Myerstown, Lebanon County, PA, deceased. Letters of Administration have been granted to the undersigned Administrator.

Warren J. Hibshman, Administrator
35 East Main Avenue
Myerstown PA 17067

Ann H. Kline, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-2184

ESTATE OF EUGENE D. LONGENECKER, late of Lebanon City, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Donna Kreiser, Executrix
c/o Jon Arnold, Esq.
Ehrgood and Arnold
410 Chestnut Street
Lebanon PA 17042

ESTATE OF RUSSELL E. LYONS, late of Union Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrators.

Danielle L. Bender and Corey M. Lyons –
Administrators
c/o Keith D. Wagner
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF JOSEPH W. PETRY, late of South Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administratrix.

Jennifer Swanson, Administratrix
123 South 5th Avenue
Lebanon, PA 17042

Jason J. Schibinger, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF CAROLYN L. MARIANI, late of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Bernadette Huey, Executrix
16 Cambridge Drive
Hershey PA 17033

Ann H. Kline, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-2184

ESTATE OF LEROY A. MEASE, late of the Township of West Lebanon, County of Lebanon, and Commonwealth of Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Beverly A. Stuckey, Administrator
111 N. Ramona Rd., Lot 61
Myerstown, PA 17067

William H. Sturm, Jr., Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ALBERT W. MOSSER, JR., late of Annville, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Gail E. Forbes, Executrix
2163 Gelder Park Drive
Hummelstown PA 17036

Deborah L. Packer, Esq., Attorney
1135 E. Chocolate Ave.
Hershey PA 17033

THIRD PUBLICATION

ESTATE OF DOROTHY S. BATCHELOR, late of Annville Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

S. James Batchelor, Executor
Keith D. Wagner
P.O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF WENDEL STAHLER BECKMAN, late of Jonestown, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administratrix.

Roberta A. Beckman, Administratrix
c/o Weiss Burkett
802 Walnut Street
Lebanon, PA 17042

Samuel G. Weiss Jr., Esquire
Attorney

ESTATE OF GEORGE P. FISHEL, III, late of South Lebanon Township, Lebanon County, PA. Letters Testamentary have been granted to the undersigned Executor.

J. Mattson Fishel, Executor
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF STEVEN LEE FORTI, late of Palmyra, Lebanon County, PA, deceased. Letters of Administration have been granted to the undersigned Administrator.

Roland F. Forti, Jr., Administrator
123 S. Prince Street
Palmyra PA 17078
Hillary N. Snyder, Esq., Attorney

ESTATE OF SALLY ANN GETTLE-SIMMONS, late of Lebanon, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Gregory Gettle, Executor
c/o Weiss Burkett
802 Walnut Street
Lebanon, PA 17042

Loreen M. Burkett, Esquire
Attorney

ESTATE OF BRUCE V. KEENEY, late of Jonestown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Fred T. Keeney, Executor
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

John M. Zimmerman, Esquire
Attorney for the Estate

ESTATE OF DOROTHY V. KRALL, late of Annville, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Ernest Krall, Executor
c/o Weiss Burkett
802 Walnut Street
Lebanon, PA 17042

Loreen M. Burkett, Esquire
Attorney

ESTATE OF LEONARD L. QUICK, late of Millcreek Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Maureen Q. Leshar, Executrix
1925 Garfield Avenue
Reading PA 19609

Elizabeth Roberts Fiorini, Esquire
Fiorini Law, P.C.
1150 West Penn Avenue
Womelsdorf, Pennsylvania 19567
Attorney

ESTATE OF IDA M. RESSLER, late of Millcreek Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Kelly R. Weidman, Executrix
319 E. Main Street
Newmanstown PA 17073

Elizabeth Roberts Fiorini, Esquire
Fiorini Law, P.C.
1150 West Penn Avenue
Womelsdorf, Pennsylvania 19567
Attorney

ESTATE OF GLORIA P. SHIRK, late of West Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Marilyn R. Galebach, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

**ORPHANS' COURT DIVISION
NOTICES**

Court of Common Pleas of Lebanon
County

Notice is hereby given that the following accounts in decedent's estates, guardianships and trusts have been filed in the Office of the Register of Wills and Clerk of Orphans' Court of Lebanon County, and that the same will be presented of the Court of Common Pleas-Orphans' Court Division of said County for confirmation NISI on Monday, March 5, 2018 at 10:00 A.M. in Courtroom No. 1, Municipal Building, City of Lebanon.

**FIRST AND FINAL ACCOUNTS
WITH PROPOSED SCHEDULE
OF DISTRIBUTION FILED BY
EXECUTORS OR ADMINISTRATORS**

1. Albright, Donna M., dec'd., Dennis Firestone, Admr., Horace M. Ehrgood, Atty.

All of the aforesaid accounts and statements of Proposed Distribution will be confirmed ABSOLUTELY as of course by the said Orphans' Court except those to which exemptions are filed within twenty (20) days after the same are confirmed NISI.

BRIAN CRAIG
REGISTER OF WILLS AND CLERK OF
ORPHANS' COURT
LEBANON COUNTY, PENNSYLVANIA

NOTICE OF NAME CHANGE

NOTICE IS HEREBY GIVEN that a Petition has been filed in the Court of Common Pleas of Lebanon County, Pennsylvania, seeking to change the name of **Bailey Lou Perry-McClintic to Bailey Lou Perry**. A hearing on the Petition will be held on Friday, March 9, 2018, at 10:30 a.m. in Courtroom No. 3, of the Lebanon County Courthouse, 400 South 8th Street, Lebanon, Pennsylvania, at which time any persons interested may attend and show cause, if any, why the Petition should not be granted.

Matthew S. Kopecki
Attorney for Petitioner, Baily Lou Perry-
McClintic
1118 Penn Avenue
Wyomissing, PA 19610
(610) 685-8000

FICTITIOUS NAME REGISTRATION

In compliance with the requirements of 54 Pa.C.S. § 311, Susan Lehman of 959 E Maple Street, Palmyra, PA, is advertising the following fictitious name under 54 Pa.C.S. Ch. 3: **Sun, Moon and All the Stars**. The address for the business is 959 E Maple St, Palmyra, PA, and the purpose is the sale of small household and entertainment items. An application for registration of a fictitious name will be filed under the Fictitious Names Act, and Susan Lehman is the sole party to the registration.

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State at Harrisburg, Pennsylvania on February 8, 2018, incorporating **Lucky Produce Inc.** as a business corporation under the provisions of the Business Corporation Law of 1988.

Frederick S. Wolfson, Esquire
REILLY WOLFSON
1601 Cornwall Road
Lebanon, PA 17042

NOTICE IS HEREBY GIVEN that the Articles of Incorporation were filed with the Pennsylvania Department of State on or about January 22, 2018, for a nonprofit corporation organized under the Nonprofit Corporation Law of 1988 for the Commonwealth of Pennsylvania, as amended. The name of the Corporation is the **Alpha Strategies Group, Inc.** The Corporation is organized as a private foundation exclusively for charitable, scientific, literary, educational, and religious purposes, including providing financial education to underprivileged individuals, permitted within the scope of Section 501(c)(3) and 509 of the Internal Revenue Code of the Internal Revenue Code of 1986, as amended, or corresponding section of any future federal tax code.

Buzgon Davis Law Offices
Bret M. Wiest, Esquire
525 South Eighth Street
Lebanon, P A 17042
Attorney for Alpha Strategies Group, Inc.

**COMMONWEALTH OF PA VS. MICHAEL ALLEN WILKINSON
NO. CP-38-CR-0000895-2016**

Criminal Action-Law-Post Conviction Collateral Relief-Ineffective Assistance of Counsel-Driving Under the Influence-Discovery-Search Warrant-Blood Draw

Defendant, who pled guilty to Driving Under the Influence Charges resulting from a motor vehicle accident and was sentenced to ninety (90) days to three (3) years' imprisonment, filed a Petition for Post Conviction Collateral Relief alleging that trial counsel rendered ineffective assistance by failing to seek relief pursuant to the holding in *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016). Defendant filed a Motion to Compel Discovery seeking disclosure of the pretrial discovery packet. At the hearing on the Motion to Compel Discovery, the Commonwealth disclosed that a search warrant had been issued for Defendant's blood while he was at the hospital receiving treatment for injuries sustained during the motor vehicle accident, and that search warrant did not appear of record in the official court file.

1. Discovery during the Post Conviction Relief Act ("PCRA") stage of the proceedings shall be permitted only upon leave of court after a showing of exceptional circumstances. Pa.R.Crim.P. Rule 902(E)(1).
2. The Pennsylvania Superior Court will not disturb a trial court's determination regarding the existence of exceptional circumstances warranting post conviction discovery unless the trial court has abused its discretion.
3. Proceedings under the PCRA are not fishing expeditions for any possible evidence that may support some speculative claim of ineffectiveness.
4. Since the timing of the events giving rise to Defendant's convictions is well documented in the official court file, PCRA counsel has information available to him independent of the material sought in discovery from which counsel can discern whether the *Birchfield* holding affected Defendant's convictions. However, since the search warrant for Defendant's blood is not part of the official court file, PCRA counsel will need to review the search warrant to prepare any *Birchfield* argument such that the Commonwealth will be directed to disclose a copy of the search warrant to PCRA counsel.

L.C.C.C.P. No. CP-38-CR-0000895-2016, Opinion by Bradford H. Charles, Judge, August 29, 2017.

COMMONWEALTH OF PA VS. MICHAEL ALLEN WILKINSON
NO. CP-38-CR-0000895-2016

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY PENNSYLVANIA
CRIMINAL DIVISION NO. CP-38-CR-0895-2016

COMMONWEALTH OF PENNSYLVANIA

v.

MICHAEL ALLEN WILKINSON

ORDER OF COURT

AND NOW, this 29th day of August, 2017, upon consideration of the Defendant's Motion to Compel Discovery, the testimony adduced at the hearing, the parties' Briefs, and in accordance with the attached Opinion, the Motion is DENIED in part, and GRANTED in part.

1. The Commonwealth shall provide Defendant's counsel with a copy of the Search Warrant and accompanying Affidavit of Probable Cause used to obtain the Defendant's blood within 20 days.

2. No other PCRA discovery is permitted beyond what is outlined in the paragraph above.

3. Defense counsel is granted leave of Court to file an Amended PCRA, within thirty (30) days after receipt of the Search Warrant and accompanying affidavit.

4. This Court determines that a hearing is necessary on Defendant's original PCRA Petition. Therefore, a hearing is to be conducted on the ~~11~~20th of November, 2017 at 1:30 o'clock pm in Court Room # 3. Two hours shall be allotted for this hearing.

5. A copy of this Order is to be provided to the District Attorney of Lebanon County, to Attorney Brian L. Deiderick and to the Defendant by Certified Mail, Return Receipt Requested.

6. On or before October 10, 2017, the Defendant is to advise this Court of whether he wishes to appear in person at the PCRA hearing or whether he wishes to appear via videoconference. This notice shall be provided in writing.

BY THE COURT:

BRADFORD H. CHARLES, J.

**COMMONWEALTH OF PA VS. MICHAEL ALLEN WILKINSON
NO. CP-38-CR-0000895-2016**

APPEARANCES:

Nichole Eisenhart, Esquire for Commonwealth of Pennsylvania

DISTRICT ATTORNEY'S OFFICE

Brian L. Deiderick, Esquire for Michael Allen Wilkinson

PUBLIC DEFENDER'S OFFICE

OPINION BY CHARLES, J., August 29, 2017

Before us is Michael Allen Wilkinson's (hereafter "DEFENDANT") Motion to Compel Discovery. The Defendant filed a pro se Post-Conviction Relief Act (PCRA) Petition and his appointed PCRA counsel now seeks "discovery" from the Commonwealth. Because this Court will not open a veritable Pandora's Box for discovery in PCRA cases, we will generally deny the DEFENDANT's Motion. However, the Commonwealth will be instructed to forward a copy of a Search Warrant and accompanying Affidavit of Probable Cause that were used to procure the DEFENDANT's blood to DEFENDANT's PCRA counsel. Our reasons for this decision will follow.

I. FACTS & PROCEDURAL HISTORY

The Defendant is charged with four (4) counts of Driving Under the Influence as well as a summary offense of Careless Driving ¹. On August 7, 2015, DEFENDANT unlawfully drove a vehicle after consuming an amount of alcohol, sufficient to render him incapable of safe driving, and caused an accident.

The Defendant hired Attorney Edwin Pfursich to represent him. The Commonwealth provided Attorney Pfursich with discovery pursuant to Pennsylvania Rule of Criminal Procedure 573 ("Pretrial Discovery and Inspection"). On November 22, 2016, DEFENDANT pled guilty to all charges. DEFENDANT's sentencing took place on February 22, 2017. On Count I, the judge set a minimum of ninety (90) days incarceration at the Lebanon County Correctional Facility, with a maximum of three (3) years.

Thereafter, on April 5, 2017, DEFENDANT filed a Petition for Post-Conviction Relief,

¹ Count 1 – Driving Under the Influence of Alcohol – 75 § 3802 §§ C; Count 2 - Driving Under the Influence of Alcohol – 75 § 3802 §§ A1; Summaries – Carless Driving – Section 3714(a).

**COMMONWEALTH OF PA VS. MICHAEL ALLEN WILKINSON
NO. CP-38-CR-0000895-2016**

claiming ineffective assistance of counsel. Specifically, DEFENDANT asserted that counsel failed to seek the relief offered under the precepts of *Birchfield v. North Dakota*, 136 S.Ct. 2160, 2173 (U.S. 2016). This Court appointed PCRA counsel and directed that the Commonwealth respond to the DEFENDANT’S Motion. Such response was filed, and this Court determined that a PCRA hearing is necessary.

After a hearing was set on the issue raised by the DEFENDANT, his attorney requested “discovery” from the Lebanon County District Attorney’s Office. Said request was denied by the Office of the District Attorney, which cited that there is no entitlement to discovery under the Post-Conviction Relief Act. In response, the Defendant, through his PCRA counsel, filed a Motion to Compel Discovery on April 11, 2017, seeking access to the pre-trial discovery packet.

This Court held a hearing on the Motion to Compel Discovery on June 28, 2017. During the hearing, the Commonwealth made it known that a search warrant was issued for DEFENDANT’S blood draw while he was at the Hershey Medical Center being treated for injuries sustained during the course of the DUI event². The Court instructed counsel to file briefs or memorandums of law in support of their respective positions. Both counsel have done so. The Commonwealth argues that permitting broad PCRA discovery is akin to opening a veritable Pandora’s Box for discovery in PCRA cases. We agree. For reasons articulated in more detail below, we will allow PCRA counsel to receive some but not all of the information he seeks.

II. LEGAL PRINCIPLES AND DISCUSSION

A. DISCOVERY

Discovery shall only be permitted during the PCRA stage of proceedings upon leave of court after a showing of “exceptional circumstances”. Specifically, the Pennsylvania Rules of Criminal Procedure Rule 902(E) states,

(E) Requests for Discovery

(1) Except as provided in paragraph (E)(2), no discovery shall be permitted at any

² We note that in DEFENDANT’S Memorandum of Law in Support of his Motion, counsel states that the Court suggested during the Discovery Motion hearing that defense counsel could review the Clerk of Court’s file to locate a copy of said warrant. Counsel did so. Upon review, counsel states that there was no copy of said warrant in the file because the warrant was not filed for nor obtained in Lebanon County.

COMMONWEALTH OF PA VS. MICHAEL ALLEN WILKINSON
NO. CP-38-CR-0000895-2016

stage of the proceedings, except upon leave of court after a showing of exceptional circumstances.

(2) On the first counseled petition in a death penalty case, no discovery shall be permitted at any stage of the proceedings, except upon leave of court after a showing of good cause.

Pa. R. Crim. P. 902

Neither the Post-Conviction Relief Act nor the Pennsylvania Rules of Criminal Procedure define the term “exceptional circumstances.” See, e.g. *Commonwealth v. Frey*, 41 A.3d 605, 611 (Pa. Super. 2012). Our Superior Court has said that it will not disturb a Trial Court’s determination regarding the existence of exceptional circumstances warranting post-conviction discovery unless the Trial Court abused its discretion. See, e.g. *Commonwealth v. Watley*, 153 A.3d 1034, 1044 (Pa. Super. 2016); *Commonwealth v. Williams*, 732 A.2d 1167, 1175 (Pa. 1999).

In *Commonwealth v. Abu-Jamal*, 720 A.2d 79 (Pa. 1998), the Pennsylvania Superior Court considered an appellant’s claim that a PCRA court inappropriately denied a request for discovery due to both the overbreadth of the discovery request and the lack of specificity associated with the accompanying statement of necessity. There the appellant contended generally that production of the entire Commonwealth file related to his prosecution was necessary to the preparation of his post-conviction case. *Id.* at 91. The Superior Court refused to sanction such a broad discovery request and reasoned that the “[a]ppellant essentially requested wholesale discovery of whatever information he ‘believed’ to exist and/or of entire files so that he could discern whether his assertions were true”. *Id.*

It is important to remember that the purpose of the Post-Conviction Relief Act “is to provide relief to the wrongfully convicted by ferreting out colorable claims of wrongful convictions.” *Commonwealth v. Cox*, 146 A.3d 221 (Pa. 2016). The purpose of the Act is not to afford a defendant with the means of re-litigating past issues. *Commonwealth v. Buehl*, 658 A.2d 771 (Pa. 1995). The Act is not intended as “an avenue to review ordinary rulings made during the conduct of a trial.” *Commonwealth v. Rightnour*, 364 A.2d 927 (Pa. 1976). No defendant is entitled to relief merely because imperfections exist in the record or his attorney could have possibly acted in another manner. Our Supreme Court has stated that a PCRA “is not...a fishing expedition for any possible evidence that may support some speculative claim of ineffectiveness.” *Commonwealth v. Wharton*, 811 A. 2d

**COMMONWEALTH OF PA VS. MICHAEL ALLEN WILKINSON
NO. CP-38-CR-0000895-2016**

978, 989 (Pa. 2002); *Commonwealth v. Keaton*, 45 A.3d 1050 (Pa. 2012). As noted by one commentator: “Post-Conviction Relief hearings are not discovery expeditions; rather, they are conducted when necessary to offer the Petitioner an opportunity to prove that which he already has asserted, and only when his proffer establishes a colorable claim about which there remains a material issue of fact.” 11 West’s Pennsylvania Practice, Trial Handbook §4:16 (3rd Ed).

We are well aware of the fact that discovery is a time-consuming process for the Commonwealth. Not only must the Commonwealth retrieve a file that could already be archived, but someone with legal training would have to cull through the file to determine what is and is not discoverable. Someone else would then have to make photocopies. If we were to declare as a matter of law that every PCRA Defendant is entitled to discovery as requested by this DEFENDANT, pretty soon boiler plate discovery requests would become the norm in every PCRA case. The cost in terms of administrative time and expense that this practice would engender cannot and will not be underestimated.

On the other hand, we are not blind to the fact that it may not always be feasible for PCRA counsel to obtain documentation from the Defendant’s prior attorney. In most PCRA cases, the Defendant is seeking to declare his prior attorney to be ineffective. Sometimes, Defendants use language to describe their prior counsel that is less than flattering. Attorneys are human beings. We cannot always expect that the Defendant’s prior counsel will be cooperative with respect to a claim that is designed to prove his/her own ineffectiveness. In some cases, discovery directed at the Commonwealth will therefore be necessary if the Defendant is going to be able to properly prepare a claim of ineffectiveness.

In this case, the DEFENDANT raised only one issue in his PCRA, namely, that his conviction was tainted due to the recent United States Supreme Court decision in *Birchfield v. North Dakota*, Supra. As we see it, the operative question that we must address is: “What does PCRA counsel realistically need to pursue his client’s claim based upon *Birchfield*?” A secondary question must also be asked: “Is there any way the Defendant can obtain the needed information other than through a discovery request?”

The date on which *Birchfield* was decided is a matter of public record. The holding and language of the *Birchfield* opinion are well-known to PCRA counsel. The timing of the events giving rise to the DEFENDANT’S conviction are well documented inside the DEFENDANT’S Court file, which is readily accessible to DEFENDANT’S counsel. In short, the DEFENDANT’S attorney has information available to him independent of

COMMONWEALTH OF PA VS. MICHAEL ALLEN WILKINSON
NO. CP-38-CR-0000895-2016

discovery from which he can discern whether *Birchfield* did or did not affect his client's DUI conviction.

Had it not been for one fact, we would have ended this Opinion with the preceding paragraph. However, in completing research regarding what is available to DEFENDANT'S PCRA counsel, the law clerk of the undersigned pulled the Court file and reviewed it. We were told during oral argument that the Commonwealth had used a search warrant to obtain blood from the Hershey Medical Center that was taken from the DEFENDANT while he was being treated for injuries sustained in the course of the DUI event. The search warrant was not contained in the Court's file. It is conceivable that DEFENDANT'S PCRA counsel could need to see the search warrant in order to prepare his client's *Birchfield* arguments. Therefore, we will direct that the Commonwealth provide DEFENDANT'S attorney with a copy of the search warrant that was issued to obtain the DEFENDANT'S blood draw. Beyond this, we will not require the Commonwealth to provide additional "discovery" regarding the DEFENDANT'S PCRA Petition.