

# FAYETTE LEGAL JOURNAL

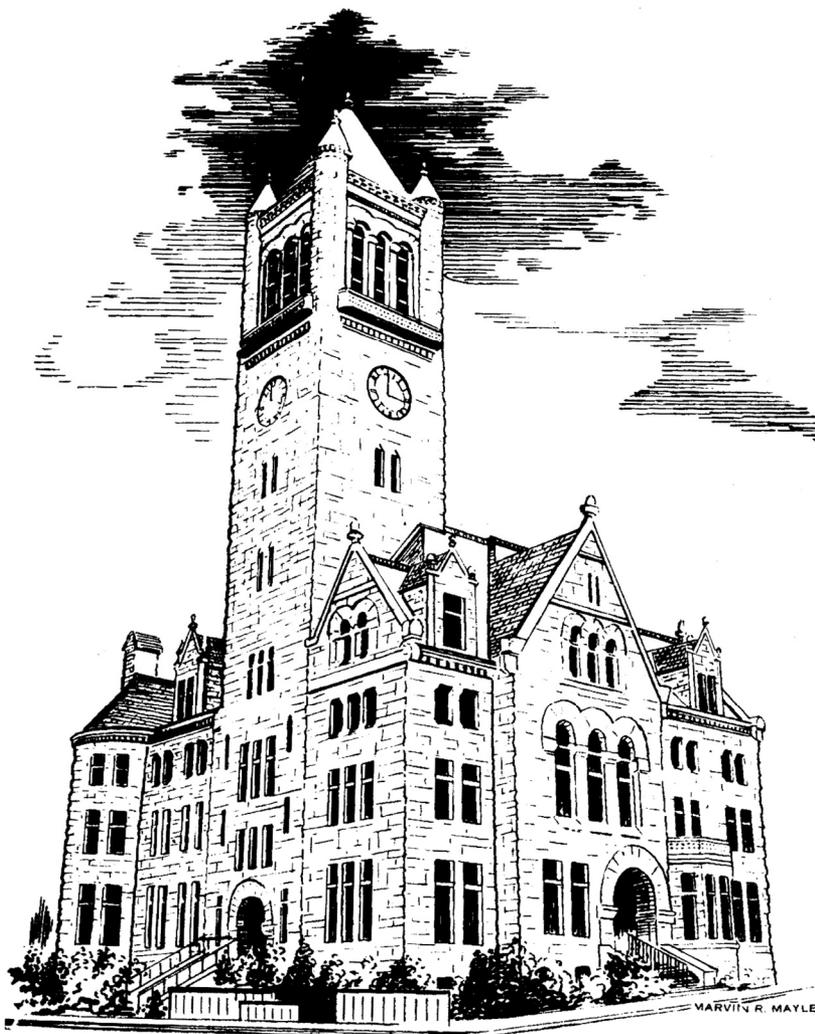
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## FAYETTE LEGAL JOURNAL

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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

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## Second Publication

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## First Publication

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Hiller, PA 15444  
*Attorney:* Herbert G. Mitchell, Jr.

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## LEGAL NOTICES

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**JUDICIAL OPINION**

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
v.	:	
DJAMAR RODGERS,	:	No. 9 of 2019
Defendant.	:	Honorable Judge Steve P. Leskinen

**OPINION**

Leskinen, J.

July 29, 2020

AND NOW, this 29th day of July, 2020, before this Court is Defendant's Amended Omnibus Pretrial Motion in the nature of a Petition for Writ of Habeas Corpus, Motion to Suppress Statements, Motion to Suppress Search Warrant, and Motion to Suppress Use of Nickname.

**BACKGROUND**

Defendant is charged with one count each of (1) Criminal Homicide {1}, (2) Conspiracy to Commit Criminal Homicide, (3) Robbery, (4) Conspiracy to Commit Robbery, and (5) Attempted Robbery {2}. The incident giving rise to these charges occurred on August 17, 2018. Pennsylvania State Police responded to a report of shots fired and a man's body in the middle of the street. When police arrived at the scene, they found the victim, Tywain James Reid, dead from a gunshot wound. The Preliminary Hearing Transcript was admitted as evidence (Exhibit 2, 12/06/2019). According to that testimony, the events that led up to this incident are as follows: During the afternoon of August 17, 2018, Defendant, Peaches Logan, Roy Aller, and Sjon-Luc Bochnak discussed plans to rob the victim, Tywain Reid, at the victim's residence, 738 Main Street, Vanderbilt Borough. Bochnak provided information that the victim, who was a drug dealer, had just "re-upped" on heroin (1,477 bags of which were found after his death), and that he had "bags of money" (that was not found). During the planning, Logan, Aller, and Bochnak picked up the Defendant, Djaminar Rodgers (aka "Bloody") from his home in Duquesne at 1018 Lincoln Street, Duquesne, Pennsylvania, plus another as yet unidentified younger black male. The vehicle used was Logan's Jeep Grand Cherokee, bearing PA Registration: KLR-3696. They returned to Logan's home at 1801 Banning Road, Dawson, Pennsylvania. There the five finalized the plan to commit an armed robbery of the victim, Tywain Reid, and they agreed to share the proceeds of the robbery.

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{1} 18 Pa.C.S. § 2501(a)  
 {2} 18 Pa.C.S.A §3701(a)(1)(i)

At approximately 8:35 p.m. on August 17, 2018, the five individuals traveled to and parked at the intersection of Walnut and Center Street in Vanderbilt, Pennsylvania. Once parked, Logan, Aller, Rodgers, and the unidentified individual exited the vehicle and proceeded to the victim's residence while Bochnak remained in the vehicle to act as the lookout and getaway driver. After an unsuccessful attempt to enter the victim's residence, they started to return to the vehicle. At that point, the victim exited his house and confronted them. After some shouting back and forth, Rodgers and the unidentified individual began to discharge their firearms at the victim.

The autopsy report and death certificate were made part of the record. The victim died from one or more gun-shot wounds. The individuals then returned to the Jeep Grand Cherokee and fled the scene.

## DISCUSSION

Defendant filed four (4) motions collectively: a Petition for Writ of Habeas Corpus, a Motion to Suppress Statements, a Motion to Suppress Search Warrants, and a Motion to Suppress the Use of Defendant's Nickname. The Court will individually address each motion below:

### Writ of Habeas Corpus

When rendering a decision on a Writ of Habeas Corpus, the Court must be convinced that the Commonwealth presented sufficient evidence to prove each element of the crimes charged. The Pennsylvania Superior Court has defined a *prima facie* case as follows:

"The Commonwealth must show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury. When deciding whether a *prima facie* case was established, we must view the evidence in the light most favorable to the Commonwealth, and we are to consider all reasonable inferences based on that evidence which could support a guilty verdict. The standard... does not require that the Commonwealth prove the [defendant's] guilt beyond a reasonable doubt at this stage.

Commonwealth v. Patrick, 933 A.2d 1043, 1045 (Pa.Super. 2007), citing Commonwealth v. James, 863 A.2d 1179, 1182 (Pa.Super. 2004).

Under Pennsylvania law, "a person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being." 18 Pa.C.S.A. §2501(a).

The Pennsylvania Crimes Code states that a person is guilty of "robbery" if, in the course of committing a theft, he or she: (i) inflicts serious bodily injury upon another; (ii) threatens another with or intentionally puts him in fear of immediate serious bodily injury; (iii) commits or threatens immediately to commit any felony of the first or second degree; (iv) inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury; or (v) physically takes or removes

property from the person of another by force however slight. 18 Pa.C.S.A. § 3701(a)(1).

Any amount of force applied to a person while committing a theft brings that act within the scope of the robbery statute. This force may be actual or constructive. Actual force is applied to the body; constructive force is the use of threatening words or gestures and operates on the mind. The degree of actual force is immaterial, so long as it is sufficient to separate the victim from his property. *Commonwealth v. Bedell*, 2008 PA Super 168, 954 A.2d 1209 (Pa. Super. 2008).

"Serious bodily injury," as used for robbery under 18 Pa.C.S. § 3701(a)(1)(ii), is defined as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. 18 Pa.C.S. § 2301. When determining whether a victim has been placed in fear of serious bodily injury, courts use an objective standard; therefore, the victim's subjective state of mind during the robbery is not dispositive. *Commonwealth v. Valentine*, 101 A.3d 801 (Pa. Super. 2014).

The courts have ruled a person is guilty of Conspiracy to Commit a crime when;

"First, that the defendant agreed with the other persons that one or more of them would engage in conduct for the planning and/or commission of a crime [here, homicide and robbery]; Second, that the defendant and the other persons intended to promote or facilitate the committing of the crime [here, homicide and robbery]. In other words, they shared the intention to bring about that crime or to make it easier to commit that crime; and Third, that the defendant or the other persons did the acts that are alleged to have been overt acts and did them in furtherance of their conspiracy. (See *Commonwealth v. Murphy*, 844 A.2d 1228 (Pa. 2004); *Commonwealth v. Davalos*, 779 A.2d 1190 (Pa. Super. 2001) (from Pennsylvania Suggested Standard Criminal Jury Instructions, Chapter 12, Section 903[B].)

Defendant argues that the Commonwealth has not established a prima facie case on the charges of Criminal Homicide and Robbery.

The Preliminary Hearing was held on January 3, 2019 before Magisterial District Judge Haggerty. The transcript of that proceeding was offered and admitted. The Commonwealth presented sufficient evidence using the testimony of co-conspirator, "Peaches" Logan. Logan was present during the agreement for the conspiracy to commit the crime of robbing the victim, the attempt to enter the victim's house, and she witnessed the shooting. When combined with the autopsy evidence that the victim's death was caused by gunshots inflicted by Rodgers, the unidentified fifth conspirator, or by both, the evidence is sufficient to establish all of the elements of all of the crimes charged. The Court finds that the Commonwealth met its burden, and a reasonable fact finder could render a guilty verdict on each of the charges contained in the Criminal Informations based on the evidence presented.

#### Motion to Suppress Statement

Under Pennsylvania precedent, "The law is clear that Miranda is not implicated unless the individual is in custody and subjected to interrogation." *Commonwealth v.*

Snyder, 60 A.3d 165, 170 (Pa.Super.2013), citing *Commonwealth v. Umstead*, 916 A.2d 1146, 1149-1152 (Pa.Super.2007) (citations omitted)(emphasis added); see *Rhode Island v. Innis*, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980).

Furthermore, police detentions only become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of formal arrest... [T]he test focuses on whether the individual being interrogated reasonably believes his freedom of action is being restricted. *Id.*, citing *Commonwealth v. Baker*, 963 A.2d 495, 501 (Pa.Super.2008).

Defendant argues that any statement made while in custody should be suppressed, however, (1) no basis for the suppression was given, and (2) there was no evidence that the Defendant made any inculpatory statement during his time in police custody.

Wherefore, for the reasons set forth herein, the Court finds the Motion to Suppress is without merit and must be DENIED.

#### Motion to Suppress Search Warrant[s]

Pursuant to the "totality of the circumstances" test set forth by the United States Supreme Court in *Gates*, the task of an issuing authority is "simply to make a practical, commonsense decision whether, given all of the circumstances set forth in the affidavit before him [or her], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Commonwealth v. Gray*, 509 Pa. 476,484,503 A.2d 921,925 (1985) (quoting *Gates*, 462 U.S. at 238-39, 103 S.Ct. at 2332). Thus, the totality of the circumstances test "permits a balanced assessment of the relative weights of all the various indicia of reliability (and unreliability)...." *Gates*, 462 U.S. at 234, 103 S.Ct. at 2330. *Id.* The Superior Court went on to hold:

A search warrant cannot be used as a general investigatory tool to uncover evidence of a crime. In *re Casale*, 512 Pa. 548, 517 A.2d 1260, 1263 (1986); *Commonwealth ex rel. Ensor v. Cummings*, 416 Pa. 510,207 A.2d 230,231 (1965). Nor may a warrant be so ambiguous as to allow the executing officers to pick and choose among an individual's possessions to find which items to seize, which would result in the general "rummaging" banned by the Fourth Amendment. See *Commonwealth v. Santner*, 308 Pa.Super. 67, 454 A.2d 24 (1982) (quoting *Marron v. United States*, 275 U.S. 192, 195, 48 S.Ct. 74, 72 L.Ed. 231 (1927)). Thus, Pa.R.Crim.P. 205 specifies the necessary components of a valid search warrant. The comment to Rule 205 provides, however, that even though general or exploratory searches are not permitted, search warrants should "be read in a commonsense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description will suffice." Pa.R.Crim.P. 205 (cmt.).... A warrant is defective when its explanatory narrative does not describe as clearly as possible those items for which there is probable cause to search. *Grossman*, 521 Pa. 290, 555 A.2d 896. In assessing the validity of a description contained in a warrant, a court must initially determine for what items there was probable cause to search. *Id.* at 900. *Commonwealth v. Rega*, 933 A.2d 997, 1011-12 (Pa.2007).

After review of the 15 search warrants and supporting affidavits as well as the two consents to obtain video footage (Exhibits 1 A-Q, 12/06/2019), they appear to contain no material defects or omissions. Moreover, counsel for the Defendant did not suggest any specific defects or omissions, and did not identify any specific evidence that should be suppressed. Therefore, the Motion to Suppress the Search Warrant[s] is DENIED.

#### Motion to Suppress Use of Nickname

"The admissibility of evidence is a matter of trial court discretion and a ruling thereon will only be reversed upon a showing that the trial court abused that discretion." *Commonwealth v. Malloy*, 579 Pa. 425, 856 A.2d 767, 775 (2004). "An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support as to be clearly erroneous." (citation omitted). *Commonwealth v. Brougher*, 2009 PA Super 131,978 A.2d 373, 376 (Pa. Super. 2009). *Commonwealth v. Barnett*, 2012 PA Super 157, 50 A.3d 176, 182 (Pa. Super. 2012).

"Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact." *Commonwealth v. Fransen*, 2012 PA Super 57, 42 A.3d 1100, 1106 (Pa. Super. 2012). However, even relevant evidence "may be excluded if its probative value is outweighed by the potential prejudice." *Id.*

The Commonwealth does not intend to use Defendant's nickname solely to suggest Defendant had a violent character but intends to use it to show that the witnesses recognized him and could identify him as one of the perpetrators even though the witnesses did not know his legal name. In Logan's first statement to police (Exhibit 1, 1/30/2020), she identified the shooter as "Bloody," did not know his real name, but thought his first name might have been "Dale." Nevertheless, she gave a detailed description of "Bloody," including ethnicity, height, weight, tattoos, hairstyle and absence of facial hair. She indicated that she had engaged in numerous drug transactions with him over the course of four or five months. In addition, she indicated his home address was 1018 Lincoln Avenue in Duquesne.

Police investigators contacted the Duquesne Police, where an officer immediately identified "Bloody" as Djamar Rodgers, and confirmed that he did frequent 1018 Lincoln Avenue. The probative value of the nickname in identifying Appellant thus outweighs the prejudice that may result from the use of his nickname. In a similar case, the trial court did not abuse its discretion in allowing the Commonwealth to refer to the Defendant by his nickname, "Killa." *Commonwealth v. Williams*, 58 A.3d 796, (Pa. Super. 2012).

The purpose presented to the Court of the use of the nickname by the Commonwealth is for identification. As indicated by the record, the co-conspirators and other members of the community know the Defendant as "Bloody." Therefore, the Commonwealth may use the nickname of Defendant during trial for the purpose of identification.

WHEREFORE, the Court enters the following Order:

ORDER

AND NOW, this 29th day of July, 2020 it is hereby ORDERED that Defendant's Petition for a Writ of Habeas Corpus, Motion to Suppress Statements, Motion to Suppress Search Warrant[s], and Motion to Suppress Use of Nickname are each DENIED.

The Commonwealth is directed to list this matter for trial, and in the absence of a continuance, the parties should be prepared for trial to begin on September 8, 2020.

BY THE COURT:  
STEVE P. LESKINEN, JUDGE

ATTEST:  
CLERK OF COURTS

## LUNCH & LEARN SERIES

The Fayette County Bar Association's final 2021 presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, December 1st** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **Workers' Comp. & Social Security Disability Claims - The Essentials**
- Presenters: **Mark M. Mehalov, Esquire, and Gary D. Monaghan, Esquire**

### CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2016

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**\*\* All fees to be paid at the door \*\***  
A light lunch will be provided.

While same day registrants are welcome, lunch will be served first to those who register in advance of the program day due to the difficulty in estimating the number of walk-ins.

### RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to [cindy@fcbar.org](mailto:cindy@fcbar.org) on or before Monday, November 29th.

## ANNUAL MEMBERSHIP MEETING

The Annual General Membership meeting of the Fayette County Bar Association shall be held on Wednesday, December 1, 2021, at 1:30 pm, following the Lunch & Learn CLE, in Courtroom One of the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401. Members are invited to present topics of concern or interest to the Association. A Special Meeting will be held at 1:30 to consider the proposed amended bylaws followed by the Annual Meeting.

### NOTICE

A motion to amend the Fayette County Bar Association By-Laws will be made at a Special Meeting on Wednesday, December 1, 2021, at 1:30 pm in the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401. The proposed revision will be sent to the membership via email and is available for review from the Bar Association Office.

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