

Adams County Legal Journal

Vol. 38

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No. 37, pp. 207-212

CONTINUING LEGAL EDUCATION PROGRAM

1. *Equitable Distribution Update*

Thursday, February 13, 1997—9:00 a.m. – 1:30 p.m.

Room 307B, Adams County Courthouse—Substantive Law—4 credits.
Ethics—0 credits. Registration through P.B.I. 800-932-4637.

CHANGE OF NAME COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

NOTICE IS HEREBY GIVEN that on the 27th day of January, 1997, the Petition of Shawn Michael Colehouse was filed in the Court of Common Pleas of Adams County, Pennsylvania praying for Decree to change the name of the Petitioner from Shawn Michael Colehouse to Shawn Michael Free.

The Court has fixed the 24th day of March, 1997 at 10:30 A.M. in Court Room No. 1 of the Adams County Courthouse as the time and place for Hearing on said Petition. Any lawful objection should be advanced at that time.

John M. Crabbs
Crabbs & Crabbs
Attorney for Petitioner
202 Broadway
Hanover, PA 17331

2/7

EXECUTIVE DIRECTOR - PA LAWYERS FUND

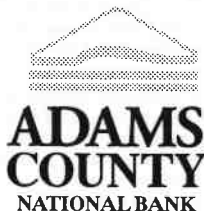
Diverse position available for individual with Paralegal Certificate from certified ABA institution plus 5 yrs. experience in litigation and/or trusts and estates. Computer literate and skilled in database application and WP6.1; Experience in office administration, simple bookkeeping and understanding of simple financial statements; Ability to deal with public, claims processing, meeting and event planning. Salary commensurate with experience. Resumes should be mailed to: PA Lawyers Fund for Client Security, 5035 Ritter Road, Suite 900, Mechanicsburg, PA 17055. Only applications received by 2/20/97 can be considered. No telephone calls accepted.

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 144, No. 177, as amended. The name of the corporation is CONEWAGO CREEK FORKS, INC.

2/7

In times like these,
you and your clients need
the experience and expertise
provided by a trust professional.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-721 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN tract of land situate in the Township of Menallen, County of Adams, and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to wit:

BEGINNING at a rebar set in the centerline of Opossum Hill Road (T-393), said rebar marking the common point of adjoiner of Lots #2 and #3 on the hereinafter mentioned plan with the centerline of Opossum Hill Road; thence departing from the centerline of Opossum Hill Road, and extending along Lot #2, North zero (00) degrees zero (00) minutes zero (00) second West, through a rebar set on the northernmost dedicated right-of-way of Opossum Hill Road, a distance of twenty-five and no hundredths (25.00) feet from the origin of this call, for a total distance of two hundred twenty-five and no hundredths (225.00) feet to a rebar at lands now or formerly of James Schulteis; thence extending along lands now or formerly of James Schulteis, South eighty-six (86) degrees forty-nine (49) minutes twenty-five (25) seconds East, for a distance of two hundred ten and no hundredths (210.00) feet to a rebar at Lot #4 on the hereinafter mentioned plan; thence extending along Lot #4, South zero (00) degrees zero (00) minutes zero (00) seconds East, through a rebar set on the northernmost dedicated right-of-way line of Opossum Hill Road, a distance of twenty-five and no hundredths (25.00) feet from the terminus of this call, for a total distance of two hundred twenty-five and no hundredths (225.00) feet to a rebar set in the centerline of Opossum Hill Road; thence extending in and through the centerline of Opossum Hill Road, North eighty-six (86) degrees forty-nine (49) minutes twenty-five (25) seconds West, for a distance of two hundred ten and no hundredths (210.00) feet to a rebar set in the centerline of Opossum Hill Road, at Lot #2 on the hereinafter mentioned plan, said rebar marking the place of BEGINNING.

CONTAINING 1.083 acres, and being designated as Lot #3 on a plan of subdivision prepared for Pitzer Bros. Fruit Farms, Inc. by Mark A. Kuntz, Registered Surveyor, dated April 16, 1991,

and recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 60, at page 75.

SAID PARCEL BEING CREATED by resubdivision of Lot #9 of a Plan of Subdivision of Pitzer Bros. Fruit Farms, Inc. found in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania in Plat Book 55, at page 46A.

BEING THE SAME PREMISES which Pitzer Bros. Fruit Farm, Inc. by deed dated August 4, 1994 and recorded August 15, 1994 in the Office of Deeds in and for Adams County, Pennsylvania in Deed Book 0925, at page 0246, granted and conveyed unto Kenneth L. Hoover and Julie A. Hoover, husband and wife.

Tax Parcel No.: Map F-5, Parcel 142.

SEIZED and taken into execution as the property of **Kenneth L. Hoover and Julie A. Hoover** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 7, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-906 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 28th day of February, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT CERTAIN lot of land.

SITUATE in Reading Township, Adams County, Pennsylvania, being more particularly described as Lot No. 965 on a plan of lots of Lake Meade Subdivision, duly entered and appearing of record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat

Book 1 at Page 6, and subject to all legal highways, easements, rights of way and restrictions of record.

TAX PARCEL NUMBER: 12-57

TITLE TO SAID PREMISES IS VESTED IN Mark D. Garrett and Deborah A. Garrett, husband and wife by Deed from Eric W. Wallen and Deborah M. Wallen, h/w, and Wallen Construction, Inc., a Pa. Corp. dated 11/24/93 recorded 11/29/93 in Record Book 812 Page 272.

SEIZED and taken into execution as the property of **Deborah A. Garrett and Mark D. Garrett** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 2, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 24, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on December 26, 1996, for the purpose of obtaining a Certificate of Incorporation of a business Corporation organized under the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444, No. 177.

The name of the corporation is **LEATHERMAN HAULING, INC.**

The purpose for which the corporation has been organized is: The corporation shall have unlimited power to engage in and do any law act concerning any or all lawful business for which corporations may be organized under the Pennsylvania Business Corporation Law.

Leatherman Hauling, Inc.
819 Brickcrafters Road
New Oxford, PA 17350

COMMONWEALTH VS. STINE

1. The extent to which a witness may be rehabilitated, after his credibility is attacked by the showing that he has a conviction, is a matter within the discretion of the trial court.

2. Generally, only the name, time and place of the prior conviction is to be used to attack a witnesses' credibility but it is not entirely inappropriate to temper the attack on credibility if in the process one is not also attempting to promote another character trait.

Michael A. George, Esq., District Attorney

Robert Chester, Esq., for Defendant

OPINION PURSUANT TO PA. R.APP.P. 1925(A)

Kuhn, J., May 17, 1996.

Defendant, John Stine, a 32 year old white male, was charged by Gettysburg Borough Police with assaulting two black males on separate occasions—Nathaniel Tyler (April 1, 1995; CC-457-95) and Nathaniel Tyler, Jr. (April 13, 1995; CC-456-95). The cases were consolidated for trial. On January 26, 1996, a jury found Defendant guilty of Simple Assault, 18 Pa. C.S.A. 2701(a)(1), and not guilty of Ethnic Intimidation, 18 Pa. C.S.A. §2701(a), as to the incident with Nathaniel Tyler and guilty of Simple Assault, 18 Pa. C.S.A. §2701(a)(3), as to the incident with Nathaniel Tyler, Jr.

On February 27, 1996, the Court sentenced Defendant in CC-456-95 to a period of incarceration of 3-12 months, a \$300.00 fine, costs, fees, and restitution of \$499.60. The sentence in CC-457-96 was imprisonment of 1-12 minimum sentence in CC-456-95.

On appeal Defendant raises the following issues:

I. Whether the Court abused its discretion in sentencing Defendant to consecutive minimum terms of imprisonment.

The reasoning used by the Court is set forth in a Memorandum Opinion and Order dated March 19, 1996, which denied Defendant's Motion To Modify and Reduce Sentence.

II. Whether the trial court erred in allowing Commonwealth witness, Nathaniel Tyler, Jr., to offer any explanation of the circumstances of a prior conviction used by the Defendant to impeach the witness' credibility.

Commonwealth witness, Nathaniel Tyler, Jr., age 29, was cross-examined regarding a November 17, 1986, conviction for forgery. On redirect the Commonwealth asked Mr. Tyler how old he was when he was so convicted (answer - age 19) and whether he had been convicted of any crime of dishonesty since that time (answer - no). Defendant went on to explain, over defense objection, that the forgery charge was

for endorsing and cashing checks which had been forged by someone else.

There are very few cases which discuss in detail the amount of latitude given the proponent of a witness who is impeached by a *crimen falsi* conviction. Most cases involve the defendant as the witness. For example, in *Commonwealth v. Jones*, 250 Pa. Super. 98, 378 A.2d 471 (1977), the defendant's attorney stipulated that his conviction for aggravated robbery would be introduced to the jury but not the fact that he used an alias at the time. Nevertheless, the court's recitation of the stipulation was embellished with numerous details. Because these details could have prejudiced the jury against the defendant by revealing more than an element of dishonesty the Superior Court reversed the conviction and held that "evidence of a prior conviction, if introduced solely to impeach a defendant's credibility, should . . . be limited to the name, time and place and punishment received in the prior offense, in order to minimize the potential prejudice and distraction of issues inherent in the mention of prior offenses." 250 Pa. Super. at 108, 378 A.2d at 477. In *Commonwealth v. Washington*, 274 Pa. Super. 560, 418 A.2d 548 (1980) a defendant attempted to temper the impact upon his credibility of his recent conviction for robbery by showing that the conviction was as a result of a plea rather than a trial. He hoped to show he was a person who acknowledged wrongdoing. The Superior Court rejected the defendant's proffer.

There is also a countervailing rule which holds that the extent to which a witness may be rehabilitated, after his credibility is attacked by the showing that he has a conviction, is a matter within the discretion of the trial court. *Commonwealth v. Ford*, 199 Pa. Super. 102, 109, 184 A.2d 401, 404-5 (1962). There after a defense witness's credibility was attacked by prior burglary and robbery convictions the trial court allowed the defendant to show that his witness was granted a pardon but was denied the opportunity to introduce reputation evidence for veracity. The Superior Court affirmed.

From these cases the undersigned draws the conclusion that generally only the name, time and place of the prior conviction is to be used to attack a witnesses' credibility but it is not entirely inappropriate to temper the attack on credibility if in the process one is not also attempting to promote another character trait. Here the Commonwealth was trying to temper the impact of a 9 year old forgery conviction by explaining that the witness was not involved in any theft related to the check. Under the circumstances this balancing seemed reasonable. Furthermore, Defendant's only objection was that he was not able to substantiate the witness's comment [T-56].

Additionally, the court charged the jury on the proper application of the evidence relating to the witness's prior conviction [T-187-8].

Finally, if there was any error it was harmless. Nathaniel Tyler, Jr. testified that when he was departing a local restaurant/bar that Defendant pulled a knife on him. This evidence was corroborated by others who saw Defendant with the knife.

COMMONWEALTH VS. STOUTER

1. The purpose of the Rape Shield Law is to protect the victim, not the Defendant.
2. Rule 1119 does not require written requests for jury instructions, it merely states a preference for such.
3. Review by the Supreme Court is purely discretionary and will be granted only where there exists both special and important reasons.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-475-92, COMMONWEALTH OF PENNSYLVANIA VS. JEFFREY LYNN STOUTER.

Martha Duvall, Esq., Assistant District Attorney
Katrina Luedtke, Esq., for Defendant

OPINION ON P.C.R.A. PETITION

Spicer, P.J., May 21, 1996.

On February 3, 1993, a jury found defendant guilty of rape and other sexual assault crimes. After post verdict motions were overruled, defendant was sentenced, on September 23, 1993, to a term of not less than six nor more than twelve years in a state correctional institution. The sentence was affirmed by Superior Court on April 12, 1994.

Defendant is presently before this court on a P.C.R.A. petition, which was amended February 21, 1996. After presiding over a hearing on April 9, 1996, the undersigned gave counsel leave to file briefs after a transcript was filed of record. That has now been done, and the lawyers have favored us with their arguments.

Defendant claims that trial counsel was ineffective. Three reasons are advanced, which will be listed and discussed.

1. Failure to object and/or move to strike testimony of Dr. Deborah Marie McMillan.

Dr. McMillan, a physician who conducted a physical examination of the victim in this case, was called as a Commonwealth witness to discuss her findings. She said, (N.T. 73), that extensive widening or stretching of the victim's vaginal opening was "most likely" caused by sexual intercourse, but that she could not testify to a reasonable degree of medical certainty that the victim had sexual intercourse prior to the

examination (N.T. 74). The doctor also said that the condition was not inconsistent with sexual intercourse, but could have been caused by a straddle type injury, or insertion of a blunt instrument. When asked if physical findings were consistent with sexual intercourse, she testified, "I believe they are, yes."

Defendant argues that trial counsel should have objected to this last statement because the doctor impermissibly bolstered the victim's testimony.

Viewed out of context, the statement might seem objectionable. However, there is no real difference between the doctor's statement that her findings were not inconsistent with sexual intercourse and testimony that those findings were consistent with sexual intercourse. Dr. McMillan had already said that the most likely explanation for the victim's condition was sexual activity, even though she could not rule out other causes. All the doctor did was to rephrase something said earlier. It would strain reasonableness to interpret "believe" as referring to the victim's testimony, as opposed to the doctor's observations and conclusions.

2. Failure to follow procedures established in the Rape Shield Law, 18 Pa. C.S.A § 3104.

Since testimony subject to the law was allowed at trial, it is difficult to understand how defendant may have been prejudiced by any failure to request an in camera hearing and findings concerning the admissibility of the proffered evidence. The purpose of the law is not to protect the defendant. Indeed, the legislation significantly curtails inquiry into a rape victim's sexual history. Limiting instructions are designed to protect the victim, not the defendant. Furthermore, as the Commonwealth points out, the proceedings and findings envisioned by §3104(b) are made outside the hearing and presence of the jury.

This judge commented, at the P.C.R.A. hearing, that defendant's complaint cannot logically be connected with the Rape Shield law at all. Rather, it focuses on trial counsel's failure to request jury instructions. He argues that trial counsel should have presented written requests to the judge prior to closings, and that specific rulings should have been made.

The rules certainly allow, perhaps even prefer, written requests. Counsel are well advised to seek clarification of questionable points of law before presenting final arguments to the jury. Submitting written requests accomplishes this, but this is not the only way to avoid improper arguments and to insure awareness of what the court will tell the jury so that arguments may be tailored in accordance with instructions. We do not know what the practice is in other counties, but

locally, counsel in criminal cases generally rely on the court to correctly summarize the law and do not present written requests. Few are the times when juries are told to disregard something that a lawyer has said, and it did not occur in the case before us.

Superior Court has made the following comment concerning the practice:

First, Rule 1119 does not require written requests for jury instructions, it merely states a preference for such. (citation omitted). Regardless of whether or when a request for a specific instruction is made by a party, the trial court must charge the jury appropriately, that is, in a manner supported by the evidence.

Commonwealth v. Harper, 442 Pa.Super. 553, 557, 660 A.2d 596, 598 (1995).

Counsel may request instructions after the court has completed its general instructions. *id.*

We, therefore, reject the technical argument based on the failure to file written requests for instructions.

We also reject attacks on the verdict based upon failure by trial counsel to request an instruction concerning the testimony of Jeffrey Lynn Stouter, Jr. We do not, as a rule, comment on testimony and the younger Stouter's description of his digital penetration of the victim's vagina, prior to Dr. McMillan's examination, clearly was understood as a possible cause or explanation of vaginal enlargement or stretching.

3. Failure by trial counsel to seek allocatur.

Superior Court has said:

Appellant contends that defense counsel was ineffective for failing to petition for allowance of appeal to the Supreme Court on all of the substantive issues raised by Appellant in his appeal to the Superior Court. (footnote omitted). An appeal to our Supreme Court is not a matter of right, but of sound judicial discretion. (citations omitted) Review by the Supreme Court is "purely discretionary and will be granted only where there exist both special and important reasons. Pa. R.A.P. 1114. It would be illogical to conclude that a miscarriage of justice occurred by counsel's failure to seek Supreme Court review unless it is established that the issue was such that review would have been granted by the Supreme Court." Commonwealth v. Gilbert, 407 Pa.Super. 491, 595 A.2d 1254 (1991), appeal denied, 529 Pa. 640, 600 A.2d 1258 (1991).

Commonwealth v. Byrd, 441 Pa.Super. 351, 354, 657 A.2d 961, 962 (1995).

The only issue presented on direct appeal related to the sufficiency of evidence. It is difficult to imagine allocatur being granted, and defendant has not presented any reasons to think otherwise.

The attached order is entered.

ORDER OF COURT

AND NOW, this 21st day of May, 1996, defendant's P.C.R.A. petition is dismissed. He is notified that he may appeal to Superior Court within thirty days of this order. Counsel who has represented him in the P.C.R.A. proceedings will perfect and litigate the appeal if, but only if, defendant requests her to do so in a timely manner.

The Clerk of Courts is directed to provide a copy of this order and its accompanying opinion to defendant and also to his court appointed P.C.R.A. counsel. The Clerk will mail copies to defendant at the state correctional institution at Cresson, Pennsylvania, or at such other institution where defendant is housed, by certified mail, return receipt requested.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of 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 BESSIE J. KUMP, DEC'D
Late of Franklin Township, Adams County, Pennsylvania

Executors: June K. Garretson, P.O. Box 3037, Gettysburg, PA 17325; Ronald F. Kump, Box 146, Fairfield, PA 17320; Marilyn L. Shank Aust, 61 Greenfield Drive, Carlisle, PA 17013

Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF PAUL M. ROHRBAUGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrators d.b.n.c.t.a.: Donald W. Rohrbaugh, 21 East Myrtle Street, Littlestown, PA 17340; Clyde A. Rohrbaugh, P.O. Box 420, Fairfield, PA 17320

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ADA B. SNYDER, DEC'D
Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Roy C. Snyder; Kathryn A. Leatherman, 75 North Queen Street, Littlestown, PA 17340

ESTATE OF PAUL L. STRAUSBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: David H. Stepp, P.O. Box 413, Manchester, MD 21102; Dorothy L. Allison, R.D. #1, Box 58, Glen Rock, PA 17327

Attorney: Donald E. Albright, Esquire, 515 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF ELVIN E. FAIR, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Administrators: Larry D. Fair, 965 Old Harrisburg Road, Gettysburg, PA 17325; Raymond L. Fair, 2545 Biglerville Road, Gettysburg, PA 17325
Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF CHESTER W. HOKE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MYRTLE PLUMTON LIVINGSTON, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executrix: Carolyn Stapish Adamiak, 2431 Hartfell Road, Timonium, MD 21093

Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ISABELLE H. LONGENECKER, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrixes: Dorothy S. Reinecker, 487 Heckenluber Road, Biglerville, PA 17307; Martha Jane Grim, P.O. Box 208, Arendtsville, PA 17303

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOSEPH J. STAUB, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Philip Victor Staub, 230 S. Fifth St., McSherrystown, PA 17344; Maxine Theresa Staub, 122 N. Second St., McSherrystown, PA 17344
Attorney: John W. Phillips, Esq., 101 W. Middle Street, Gettysburg, PA 17325

ESTATE OF ORA E. TAYLOR, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Sandra M. Wenschof, 3778 Rogers Cove, Duluth, Georgia 30136
Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIE E. WEAVER, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Co-Executors: Richard J. Weaver, 42 Maple Street, Gettysburg, PA 17325; Roger R. Weaver, 8W. Hanover Street, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVELYN ELEANOR WILLIAMS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Adams County National Bank, P.O. Box 3129, Gettysburg, PA 17325
Attorney: Chester G. Schultz, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF ANNA CLAPSADDLE a/k/a ANNA B. CLAPSADDLE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Edith M. Funt, P.O. Box 183, 121 W. York Street, Biglerville, PA 17307

Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VIOLA C. FISSEL, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: E. Virginia Milhimes, 240 W. Gay St., Red Lion, PA 17356

Attorney: Walton V. Davis, 116 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHAROLLET R. HARNISH, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Carol A. Banks, R.R. 1, Box 24A, Huntingdon, PA 16652

Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF MAGGIE MAE MILLAR, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executors: Nancy Mae Sipe, 101 E. High Street, New Oxford, PA 17350; Robert Henry Millar, 30 Oak Drive, New Oxford, PA 17350

Attorney: G. Steven McKorly, Attorney, 119 Baltimore Street, Hanover, PA 17331

ESTATE OF LOUISE G. WEAVER, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executor: Byron L. Groft, 440 West Hanover Street, Hanover, PA 17331
Attorney: Stonesifer and Kelley, 209 Broadway, Hanover, Pennsylvania 17331

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 144, No. 177, as amended. The name of the corporation is LEE'S LIFT TRUCK, INC.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-430 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a spike in the centerline of Hoffman Home Road (L.R. 01027) at its point of Intersection with Basehoar-Roth Road (T-415) and at the Southeastern corner of Lot No. 13 on the hereinafter described plan of lots; thence by a curve to the left the radius of which is 970.76 feet with an arc distance of 660.94 feet and a chord bearing of South 29 degrees 05 minutes 35 seconds West and a chord length of 648.25 feet to a spike in the centerline of Hoffman Home Road; thence in the center of Hoffman Home Road South 10 degrees 27 minutes 15 seconds West 33.70 feet to a P.K. nail in the centerline of said road at the Northeastern corner of Lot No. 8 on the hereinafter described plan of lots; thence through a reference steel rod set back 25 feet from the start of this course and by Lot No. 8 North 86 degrees 54 minutes 25 seconds West 400 feet to a pipe; thence by the same, through a pipe at the corners of Lots 8 and 7 on the hereinafter described plan of lots and by Lots 8 and 7 South 10 degrees 27 minutes 15 seconds West 500 feet to a pipe on line of land now or formerly of Esther M. Shultz; thence by land now or formerly of Esther M. Shultz North 86 degrees 54 minutes 25 seconds West 358.29 feet to an existing pipe on line of land now or formerly of H. Earl Basehoar; thence by land now or formerly of H. Earl Basehoar, through a post on the line 557.75 feet from the start of this course and running in a 10-foot private gravel drive used and maintained solely by H. E. Basehoar North 13 degrees 15 minutes 10 seconds West 852.55 feet to a steel rod at the Southwestern corner of Lot No. 11 on the hereinafter described plan of lots; thence by Lot No. 11, through a steel rod at the corners of Lots 11 and 10 and by Lot No. 10 South 82 degrees 21 minutes 35 seconds East 479.14 feet to a steel rod; thence by Lot No. 10 and through a reference steel rod set back 25 feet from the end of this course North 07 degrees 38 minutes 25 seconds East 400 feet to a railroad spike in Basehoar-Roth Road (T-415); thence running in Basehoar-Roth Road and through a railroad spike in the road at the common corners of Lots 12 and 13 on the hereinafter described plan of lots South 82 degrees 21 minutes 35 seconds East 844.11 feet to a spike in the centerline of Hoffman Home Road (L.R. 01027) the

point and place of **BEGINNING**. **CONTAINING** 18.469 Acres.

The description was taken from a draft of survey of J. Riley Redding, P.S., dated November 11, 1987, and recorded in Adams County Plat Book 49 at Page 19. The tract described is Lot No. 9 on said Plan of Lots.

IT BEING THE SAME PREMISES WHICH James C. Hunt, Jr. and Margaret C. Hunt, his wife, and Elizabeth Cook Cavanaugh and David T. Cavanaugh, her husband, by their Deed, dated May 26, 1988, and recorded June 10, 1988, in the Office of Recorder of Deeds in and for Adams County, Pennsylvania, at Deed Book Volume 491, Page 504, granted and conveyed unto David L. Showers and Bonnie J. Showers, his wife.

PARCEL MAP #G-18-4C.

SEIZED and taken into execution as the property of **David L. Showers and Bonnie J. Showers** and to be sold by me Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 10, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 7, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/31, 2/7 & 14

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-600 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain tract or lot of ground situate in Mount Joy Township, Adams County, Pennsylvania, being more particularly described and known as follows:

Lot No. 99 on a Plan of Lots of Lake Heritage Subdivision, said Plan duly entered and appearing of Record in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Miscellaneous Deed Book 4, Page 233.

Being the same real estate conveyed to James P. Walsh and Elizabeth J. Walsh, husband and wife, by deed of James F. Miskel and Mary Ann Miskel, husband and wife, dated July 7, 1983 and recorded in Adams County Record Book 369, Page 245.

Improved with a one and one half story dwelling and having a street address of 99 Meade Drive, Gettysburg, Pennsylvania 17325.

SEIZED and taken into execution as the property of **James P. Walsh and Elizabeth J. Walsh** and to be sold by me Bernard V. Miller.

Sheriff
Sheriff's Office, Gettysburg, PA
January 9, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 7, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/24, 31 & 2/7

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of a Fictitious Name will be filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about the 29th of January, 1997, pursuant to the Fictitious Name Act of 1982, as amended, setting forth that Allen Hartzell, 225 Old U.S. Route 15, York Springs, Pennsylvania, 17372, is an individual engaged in a business, the character of which is the sale of feed, home supplies, hardware, propane sales and that such business will be conducted under the name of **LEHMAN'S FEED STORE** and have a principal office or location at 241 Old U.S. Route 15, York Springs, Pennsylvania, 17372.

Wilcox, James and Cook
234 Baltimore St.
Gettysburg, PA 17325

2/7

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by **GETTYSBURG INTERNATIONAL BALLET ACADEMY, INC.** with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988.

Countess Gilbert Andrews
Sharon E. Myers, Esq.
Solicitors
29 North Duke Street
York, PA 17401

2/7

Adams County Legal Journal

ol. 38

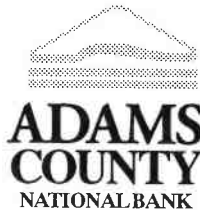
February 14, 1997

No. 38, pp. 213-216

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Dependable.
Branching Into The Future.
Our Commitment Is You.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published every Friday by Adams County Bar Association, Donald G. Oylar, Esq., Editor and Business Manager.

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Business Office - 112 Baltimore Street, Gettysburg, PA 17325. Telephone: (717) 334-1193

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-430 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in Mt. Joy Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a spike in the centerline of Hoffman Home Road (L.R. 01027) at its point of Intersection with Basehoar-Roth Road (T-415) and at the Southeastern corner of Lot No. 13 on the hereinafter described plan of lots; thence by a curve to the left the radius of which is 970.76 feet with an arc distance of 660.94 feet and a chord bearing of South 29 degrees 05 minutes 35 seconds West and a chord length of 648.25 feet to a spike in the centerline of Hoffman Home Road; thence in the center of Hoffman Home Road South 10 degrees 27 minutes 15 seconds West 33.70 feet to a P.K. nail in the centerline of said road at the Northeastern corner of Lot No. 8 on the hereinafter described plan of lots; thence through a reference steel rod set back 25 feet from the start of this course and by Lot No. 8 North 86 degrees 54 minutes 25 seconds West 400 feet to a pipe; thence by the same, through a pipe at the corners of Lots 8 and 7 on the hereinafter described plan of lots and by Lots 8 and 7 South 10 degrees 27 minutes 15 seconds West 500 feet to a pipe on line of land now or formerly of Esther M. Shultz; thence by land now or formerly of Esther M. Shultz North 86 degrees 54 minutes 25 seconds West 358.29 feet to an existing pipe on line of land now or formerly of H. Earl Basehoar; thence by land now or formerly of H. Earl Basehoar, through a post on the line 557.75 feet from the start of this course and running in a 10-foot private gravel drive used and maintained solely by H. E. Basehoar North 13 degrees 15 minutes 10 seconds West 852.55 feet to a steel rod at the Southwestern corner of Lot No. 11 on the hereinafter described plan of lots; thence by Lot No. 11, through a steel rod at the corners of Lots 11 and 10 and by Lot No. 10 South 82 degrees 21 minutes 35 seconds East 479.14 feet to a steel rod; thence by Lot No. 10 and through a reference steel rod set back 25 feet from the end of this course North 07 degrees

38 minutes 25 seconds East 400 feet to a railroad spike in Basehoar-Roth Road (T-415); thence running in Basehoar-Roth Road and through a railroad spike in the road at the common corners of Lots 12 and 13 on the hereinafter described plan of lots South 82 degrees 21 minutes 35 seconds East 844.11 feet to a spike in the centerline of Hoffman Home Road (L.R. 01027) the point and place of BEGINNING. CONTAINING 18.469 Acres.

The description was taken from a draft of survey of J. Riley Redding, P.S., dated November 11, 1987, and recorded in Adams County Plat Book 49 at Page 19. The tract described is Lot No. 9 on said Plan of Lots.

IT BEING THE SAME PREMISES WHICH James C. Hunt, Jr. and Margaret C. Hunt, his wife, and Elizabeth Cook Cavanaugh and David T. Cavanaugh, her husband, by their Deed, dated May 26, 1988, and recorded June 10, 1988, in the Office of Recorder of Deeds in and for Adams County, Pennsylvania, at Deed Book Volume 491, Page 504, granted and conveyed unto David L. Showers and Bonnie J. Showers, his wife.

PARCEL MAP #G-18-4C.

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Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 10, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 7, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/31, 2/7 & 14

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about January 16, 1997, for the purpose of obtaining a Certificate of Incorporation for a proposed business corporation to be organized under the Pennsylvania Business Corporation Law of 1988. The name of the corporation is SURGICAL INNOVATIONS, INC., and the purpose for which it is being organized is for the retail sales of surgical equipment, and the corporation shall have unlimited powers to engage in and to do any lawful act concerning any and all business for which corporations may be incorporated under the Pennsylvania Business Corporation Law of 1988, and for these purposes to have, possess, and enjoy all the rights, benefits and privileges of said Act of Assembly and its supplements and amendments.

The initial registered office of the corporation is 11 Jackson Road, Gettysburg, Pennsylvania, 17325.

Wilcox, James and Cook
Attorneys at Law
234 Baltimore Street
Gettysburg, PA 17325

2/14

**J & J RECYCLING OF PA, INC. VS. MT. PLEASANT TWP.
BOARD OF SUPERVISORS**

Where the Township Junkyard Ordinance allows the government to consider nebulous factors such as aesthetic and economic effects on the township in considering whether to grant a license, and allows it to impose regulations deemed necessary to carry out an unexpressed spirit and intent of the ordinance, it is invalid as being too vague and indefinite.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-1126, J & J RECYCLING OF PA, INC. VS. MT. PLEASANT TOWNSHIP BOARD OF SUPERVISORS.

Victor A. Neubaum, Esq., for Plaintiff
Henry O. Heiser, III, Esq., for Defendant

OPINION ON AGENCY APPEAL

Spicer, P.J., June 3, 1996.

Appellant (J&J) filed its application for a junk yard license with appellee (Township) on or about July 27, 1995. Ultimately, the application was denied and this appeal followed.

We deal with a cold record case. In proceedings, which occurred October 23, 1995, John A. Stull, Jr., J&J's president, gave sworn testimony. All other information presented to Township came via unsworn statements or photographs. Mr. Stull described a business conducted at 4445 Hanover Road, Hanover, Pennsylvania, which received, crushed and bailed glass and plastic items, and then sent them to recycling firms. The operation was entirely enclosed within a building. Either J&J or Mr. Stull also operated a produce market, called Farmer John's Market, on the same premises.

J&J complains that Township's decision lacks the support of substantial evidence. Its argument rests on the fact that the only sworn testimony came from Mr. Stull. Other considerations make it unnecessary for the court to address this issue, but it would seem that a combination of a food vending business with recycling operations could justify a rejection of J&J's application. Since that arrangement was described by Mr. Stull, we would probably reject the appeal if that were all we considered.

The ordinance, unfortunately, suffers from terminal illness. It appears to be one of many mass produced somewhere and distributed or enacted with only slight variation in many parts of the country. Wording and deficiencies stricken by other courts are prominently present.

The operative section of the ordinance reads as follows:

Section 5. Issuance of License. Upon receipt of an application by the Board, the Board shall issue a license or shall refuse to issue a license to the person applying

therefor after an examination of the application and taking into consideration the suitability of the property proposed to be used for the purposes of the license, the character of the properties located nearby, and the effect of the proposed use upon the township, both economic and aesthetic.

In the event the Board shall issue a license, it may impose upon the license and the person applying therefor such terms and conditions in addition to the regulations herein contained and adopted pursuant to this ordinance as may be deemed necessary to carry out the spirit and intent of this ordinance.

The ordinance, like the one involved in *Township of Upper Milford v. Beck*, 32 Lehigh L.J. 420 (1967) contains no purpose clause.

Much of the exact language used in Township's ordinance has been invalidated as being too vague and indefinite. *Orwell Township Supervisors v. Jewett*, 132 Pa.Cmwlth 30, 571 A.2d 1100 (1990); *Township of Union v. Hostetter Farms, et al.*, 35 A.C.L.J. 179 (1993); *Township of Upper Milford v. Beck*, supra.

Township concedes the holdings just cited, but argues that Commonwealth Court's decision in *Orwell* was based on a misapprehension of Supreme Court's ruling in *Price v. Smith*, 416 Pa. 560, 207 A.2d 887 (1965). This is an argument that should be addressed to a court higher than ours.

Even so, we believe a few comments are in order.

Since the issue has not been raised nor argued, we cannot address whether a completely enclosed business operation can be classified as a junk yard. Legislating bodies are, of course, given leeway in defining activities which they choose to regulate. However, the common meaning of yard is a tract of land, in which buildings may be located. The dictionary definition does not include the buildings. Use of yard with other words to connote an activity, such as rail yard, ship yard and junk yard, normally refers to an open area. Not only do definitions in Township's ordinance go beyond this usage, section 5 allows the government to consider nebulous factors such as aesthetic and economic effects on the township, and allows it to impose regulations deemed necessary to carry out an unexpressed spirit and intent of the ordinance. While appearing to establish standards, the ordinance in reality invites ad hoc decisions based upon arbitrary considerations.

The attached order is entered.

ORDER

AND NOW, this 3rd day of June, 1996, Mt. Pleasant Township Junkyard and Refuse Ordinance is declared void and unenforceable.

COMMONWEALTH VS. CANAPP

Where the Court is not convinced that Defendant's conduct was the type of conduct the Legislature intended to proscribe, the charge will be dismissed as a de minimus infraction.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-307-96, COMMONWEALTH VS. DONALD LEE CANAPP.

Bernard A. Yannetti, Jr., Esq., Asst. D.A.
Daniel M. Pell, Esq., for Defendant

MEMORANDUM OPINION PURSUANT TO 18 PA. C.S.A. §312

Kuhn, J., June 24, 1996.

Defendant was charged with a violation of Section 6501(a)(1) of the Crimes Code, 18 Pa. C.S.A. §6501(a)(1), for an incident occurring on February 19, 1996.

Defendant is a resident of the Borough of Littlestown. At approximately 7:00 a.m. on the day in question Defendant drove to the Sheetz Store in Littlestown, parked his car on the west side of the store, and removed two plastic bags containing trash from the trunk. He placed one bag in a large dumpster located on the west side of the building. This dumpster is marked for "Cardboard Only" and is not for public use. Defendant then fell on the icy sidewalk and injured his leg before the second bag could be deposited. Emergency and police personnel responded.

The second bag of trash was found next to Defendant's car. Defendant is a regular customer of the store. He admitted depositing the first bag in the dumpster and offered that he was about to enter the store to get coffee and to notify store personnel of his actions when he fell.

Section 6501. Scattering rubbish

(a) Offense defined. - A person is guilty of an offense if he:

(1) causes any waste paper, sweepings, ashes, household waste, glass, metal, refuse or rubbish, or any dangerous or detrimental substance to be deposited into or upon any road, street, highway, alley or railroad right-of-way, or upon land of another or into the waters of this Commonwealth.

This section is contained within the subchapter titled "Nuisances." Unfortunately, the court has been unable to locate any authority regarding what the Legislature intended when it prohibited one from causing rubbish to be deposited upon land of another. Considering the

rules of statutory construction, however, our sense is that §6501 was intended to prohibit what is more commonly referred to as littering or the unsightly and open scattering of trash upon another's property. Read literally, Defendant's conduct could be construed to fit the letter of the statute. We are not convinced, however, that Defendant's conduct of putting a closed bag of trash in a dumpster outside a public building during daytime hours is the type of conduct the Legislature intended to proscribe anymore than the depositing of a McDonald's bag into the trash receptacles at the front of the store is what was contemplated. The difference between the two acts is a matter of volume.

Rather than setting precedent we believe the circumstances of this case call for disposition under 18 Pa. C.S.A. §312 as a de minimus infraction. That section provides

§312. De minimus infractions

(a) General rule - The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the conduct of the defendant:

...

(2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction . . .

Had Defendant deposited the trash bags any place outside the dumpster or scattered it about we would not hesitate to impose a contrary result. Lest the reader be confused that the Court would tolerate this type of behavior it should be made clear that we consider Defendant's actions deplorable and morally unethical if not otherwise criminal (i.e. theft of services.) Defendant should be ashamed of even believing that the dumping of a sizable portion of his personal trash in another's receptacle to appearingly avoid the minimal cost and inconvenience of depositing it through regular curb side services would be acceptable to Sheetz regardless of how regularly he patronized the store. I doubt that Defendant would consider it appropriate if his neighbors decided to deposit their trash in his receptacles. However, the court is not dealing within those realms of personal conduct but with a specific criminal provision.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 24th day of June, 1996, the charge against the Defendant for allegedly violating 18 Pa. C.S.A. §6501(a)(1) as set forth in Citation #250292 is dismissed pursuant to 18 Pa. C.S.A. 312 as a de minimus infraction. Costs to be paid by the County of Adams.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of 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 LEROY G. DEGROFT, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania
 Executors: Ralph Richard DeGroot, 361 Flatbush Road, Littlestown, PA 17340; Charlotte Naomi Rhoads, 501 West King Street, Abbottstown, PA 17301; Elsie Belle Riebling, 795 Whitehall Road, Littlestown, PA 17340
 Attorney: David K. James, III, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF JAMES D. NELSON, DEC'D

Late of Butler Township, Adams County, Pennsylvania
 Executor: James D. Nelson II, 85 Horsehoe Avenue, Manchester, PA 17345
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HELEN L. REBERT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Executors: Susan C. Miller, 883 Blingaman Road, Orrtanna, PA 17353; James D. Rebert, 702 Wright Ave., Gettysburg, PA 17325
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGARET E. RIGGAL, DEC'D

Late of the Franklin Township, Adams County, Pennsylvania
 Executrix: Peggy Jo Abraham, 585 Iron Springs Road, Fairfield, PA 17320
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHARLOTTE R. SHETTER, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania
 Co-Executors: Phyllis M. Trimmer, 200 Creek Road, New Oxford, PA 17350; Robert W. Trimmer, 200 Creek Road, New Oxford, PA 17350
 Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF EMILY J. TREAS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executrix: Lou Anne Callahan, 218 Ewell Avenue, Gettysburg, PA 17325
 Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF BESSIE J. KUMP, DEC'D

Late of Franklin Township, Adams County, Pennsylvania
 Executors: June K. Garretson, P.O. Box 3037, Gettysburg, PA 17325; Ronald F. Kump, Box 146, Fairfield, PA 17320; Marilyn L. Shank Aust, 61 Greenfield Drive, Carlisle, PA 17013

Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF PAUL M. ROHRBAUGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Administrators d.b.n.c.t.a.: Donald W. Rohrbach, 21 East Myrtle Street, Littlestown, PA 17340; Clyde A. Rohrbach, P.O. Box 420, Fairfield, PA 17320

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ADA B. SNYDER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania
 Co-Executors: Roy C. Snyder; Kathryn A. Leatherman, 75 North Queen Street, Littlestown, PA 17340

ESTATE OF PAUL L. STRAUSBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
 Executors: David H. Stepp, P.O. Box 413, Manchester, MD 21102; Dorothy L. Allison, R.D. #1, Box 58, Glen Rock, PA 17327

Attorney: Donald E. Albright, Esquire, 515 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF ELVIN E. FAIR, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania
 Administrators: Larry D. Fair, 965 Old Harrisburg Road, Gettysburg, PA 17325; Raymond L. Fair, 2545 Biglerville Road, Gettysburg, PA 17325
 Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF CHESTER W. HOKE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
 Executor: Adams County National Bank, 675 Old Harrisburg Road, Gettysburg, PA 17325
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MYRTLE PLUMTON LIVINGSTON, DEC'D

Late of Germany Township, Adams County, Pennsylvania
 Executrix: Carolyn Stapish Adamiak, 2431 Hartfell Road, Timonium, MD 21093
 Attorney: Bigham & Puhl, Attorneys at Law, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ISABELLE H. LONGENECKER, DEC'D

Late of Butler Township, Adams County, Pennsylvania
 Executrices: Dorothy S. Reinecker, 487 Heckenluber Road, Biglerville, PA 17307; Martha Jane Grim, P.O. Box 208, Arendtsville, PA 17303
 Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOSEPH J. STAUB, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania
 Executors: Philip Victor Staub, 230 S. Fifth St., McSherrystown, PA 17344; Maxine Theresa Staub, 122 N. Second St., McSherrystown, PA 17344
 Attorney: John W. Phillips, Esq., 101 W. Middle Street, Gettysburg, PA 17325

ESTATE OF ORA E. TAYLOR, DEC'D

Late of Menallen Township, Adams County, Pennsylvania
 Executrix: Sandra M. Wenschof, 3778 Rogers Cove, Duluth, Georgia 30136
 Attorney: Robert E. Campbell, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARIE E. WEAVER, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania
 Co-Executors: Richard J. Weaver, 42 Maple Street, Gettysburg, PA 17325; Roger R. Weaver, 8 W. Hanover Street, Gettysburg, PA 17325
 Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EVELYN ELEANOR WILLIAMS, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
 Executor: Adams County National Bank, P.O. Box 3129, Gettysburg, PA 17325
 Attorney: Chester G. Schultz, Esq., Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 96-S-866
ACTION TO QUIET TITLE

JAMIE M. ESPY, A/K/A JAMIE M.
MCGLAUGHLIN, Plaintiff,

vs.

CONRAD HIPKINS and KATHLEEN
HIPKINS, husband and wife, their heirs,
administrators, successors and assigns,
Defendants,

TO: Conrad Hipkins and Kathleen Hipkins,
husband and wife, their heirs, administra-
tors, successors and assigns:

You are notified that an Order has
been entered on January 22, 1997, di-
recting that within thirty (30) days after
this publication, you shall commence an
Action in Ejectment or other appropriate
action against the Plaintiff above to as-
sert any claim you may have in and to the
lands herein described or be forever
barred from asserting any right, lien, title
or interest inconsistent with the interest
or claim set forth in Plaintiff's Complaint
with respect to the land herein described:

ALL that certain tract of land situate,
lying and being in Carroll Valley, Adams
County, Pennsylvania, being more par-
ticularly described as Charnita Area Sec-
tion W, Lot No. 36, as shown on records
in the Adams County Mapping Depart-
ment and recorded in the Office of Re-
corder of Deeds of Adams County, Penn-
sylvania in Plat Book No. 1 at Page 66,
and subject to all legal highways, ease-
ments, rights of way and restrictions of
record.

BEING THE SAME which Charnita,
Inc., by deed dated December 2, 1971
and recorded in the Office of the Re-
corder of Deeds of Adams County, Penn-
sylvania, in Deed Book 300 at Page 304
on May 22, 1972, sold and conveyed
unto Conrad Hipkins and Kathleen
Hipkins, husband and wife; and BEING
THE SAME which the Adams County Tax
Claim Bureau, by their deed dated De-
cember 20, 1976, and recorded in the
aforementioned office in Record Book
328 at Page 955, sold and conveyed unto
Kanok Pranich and Yoopa Pranich, hus-
band and wife; and BEING THE SAME
which Kanok Pranich and Yoopa Pranich,
by deed dated September 13, 1994, and
recorded in the aforementioned office in
Record Book 939 at Page 205, sold and
conveyed unto Jamie M. Espy, a/k/a
Jamie M. McGlaughlin, Plaintiff herein.

Hartman & Yannetti
Gary E. Hartman, Esq.
Attorney for Plaintiff
126 Baltimore Street
Gettysburg, PA 17325

Adams County Legal Journal

Vol. 38

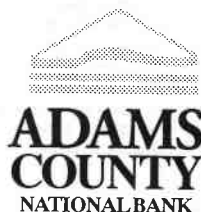
February 21, 1997

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IN THIS ISSUE

NEWOX, INC. VS. ARTRIP

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-471 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 5 in Section RH, bounded and described as follows:

BEGINNING at a point in the center of Mile Trail at Lot No. 6; thence by said lot North two (2) degrees thirty-seven (37) minutes twenty (20) seconds East, two hundred twenty-five (225.00) feet to lands now or formerly of Charnita, Inc; thence by said lands South eighty-seven (87) degrees twenty-two (22) minutes forty (40) seconds East, one hundred (100) feet to Lot No. 4; thence by said lot South two (2) degrees thirty-seven (37) minutes twenty (20) seconds West, two hundred twenty-five (225.00) feet to a point in the center of said Mile Trail; thence in said Mile Trail North eight-seven (87) degrees twenty-two (22) minutes forty (40) seconds West, one hundred (100) feet to the place of BEGINNING.

SEIZED and taken into execution as the property of **Timothy M. Friedel and Bart W. Bauerlien t/d/b/a B & T Custom Homes** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 28, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

2/21, 28 & 3/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-1009 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate on the East side of Township Road No. T-455, in Union Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of Township Road No. T-455 at lands now of Louis J. Small and Dawn M. Small; thence leaving said Township Road and through a steel pin set back twenty-five (25) feet from the beginning hereof, North fifty-six (56) degrees twenty-four (24) minutes East, three hundred twenty-two and eighty-one hundredths (322.81) feet to a steel pins at lands of Harry C. Worley; thence by lands of Harry C. Worley, South twenty-seven (27) degrees thirty (30) minutes East, one hundred eighty one and fifteen hundredths (181.15) feet to a point in Township Road No. T-455; thence in and along the center line of said Township Road No. T-455, South fifty-seven (57) degrees fifty-three (53) minutes forty (40) seconds West, three hundred three and sixty hundredths (303.60) feet to a point at or near the curve in said Township Road No. T-455; thence continuing in and along the center line of said Township Road T-455, North thirty-three (33) degrees thirty-six (36) minutes West one hundred seventy-two and twenty-six hundredths (172.26) feet to the place of BEGINNING. CONTAINING 1.2674 Acres.

HAVING ERECTED THEREON a dwelling known as 810 Barts Church Road, Hanover, PA 17331.

Parcel #K17-0079B.

BEING the same premises which Hughes-Patwil Homes, Inc., by its Deed dated May 1, 1989 and recorded in the Recorder's Office of Adams County, Pennsylvania on May 25, 1989 in Deed Book Volume 523, Page 297, granted and conveyed unto John J. Allen, Jr. and Donna M. Allen.

SEIZED and taken into execution as the property of **John J. Allen, Jr. and Donna M. Allen** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
January 24, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

2/21, 28 & 3/7

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg Pennsylvania on or about January 23, 1997, for the incorporation of a nonprofit corporation under the Pennsylvania Non-profit Corporation Law of 1988.

The name of the corporation is THE CARPENTER'S VILLAGE CONDOMINIUM ASSOCIATION.

The purpose for which it is to be organized is: the administration of and care for the common elements and the general business of the Condominium Unit Owners.

Gary E. Hartman, Esq.
Hartman & Yannetti
126 Baltimore Street
Gettysburg, PA 17325

2/21

NEWOX, INC. VS. ARTRIP

1. A demurrer does not admit conclusions of law and the Court is not compelled to accept averments which are in conflict with exhibits attached to the complaint.
2. A counter offer may act as a rejection offer and may be withdrawn prior to acceptance by the original offeror.
3. When the parties have settled on the terms of a contract, the mere fact they intend to later formalize the agreement with a writing does not prevent the formation of a contract.
4. Conversion is the deprivation of another's right of property in, or use or possession of a chattel, or other interference therewith, without the owner's consent and without lawful justification and although depriving another of such rights must be intentional, conversion does not rest upon proof of an intent to commit wrong.
5. The tort of Intentional Interference with Prospective Contractual Relation has been defined in Pennsylvania as including the following elements: (1) a prospective contractual relationship; (2) purpose or intent of harm by preventing the relationship to occur; (3) absence of privilege or justification, and; (4) actual damage.
6. A two-part test has been fashioned to determine whether a person qualifies as a third-party beneficiary to a contract: (1) the recognition of the beneficiary's right must be appropriate to effectuate the intention of the parties, and (2) the performance must satisfy an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.
7. There is no basis to conclude that an agreement by a sole shareholder to sell all outstanding shares in a corporation is intended to benefit the corporation.
8. An agency relationship does not arise out of marital status, absent special circumstances such as improvement of entireties property.
9. When someone other than the real party in interest verifies a complaint, the verification must explain that person's authority.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-838, NEWOX, INC. VS. CECIL ARTRIP AND MARY ANN ARTRIP.

Samuel A. Gates, Esq., for Plaintiff
Alan M. Cashman, Esq., for Defendants

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., June 7, 1996.

Plaintiff, which styles itself as a Maryland corporation registered to do business in Pennsylvania as a foreign corporation, filed a complaint February 21, 1996. Attached as exhibits were copies of two documents. Exhibit A purports to be a lease, dated January 22, 1990, between Mary Ann Artrip and PIN Enterprises Inc. of 6325 Erdman Road, Baltimore Maryland. Exhibit B is between PIN Enterprises, Inc. (PIN) and Cecil Artrip and Mary Ann Artrip, is dated June 23, 1995, and purports to be a purchase agreement for the outstanding shares of

capital stock in Newox, Inc., which is described as a Delaware corporation.

Neither exhibit seems to have been executed in the fashion in which corporate agreements are customarily signed. Exhibit A seems to bear the unwitnessed signature of an individual, possibly named M. Alan Stokes, without a corporate seal, or name of the corporation appearing at the signature line. Exhibit B is similarly signed, with the signature totally illegible. The unidentifiable signature appears to be witnessed by someone with an equally indecipherable signature.

According to the complaint, Ms. Artrip leased property known as 6335 York Road, New Oxford, Berwick Township to PIN on July 10, 1985. The lease was for 5 years and the premises were to be used as a "video store, adult books and coin operating vending and amusement machines." ¶15. Plaintiff alleges it conducted business under an unregistered fictitious name, International Video. ¶20. Exhibit A was executed to renew that arrangement for an additional term of 5 years. Both leases are said to have been negotiated by Mr. Artrip, on behalf of lessor, and by an individual named Jack Gresser (Gresser) for lessee. Gresser is described as being the sole shareholder of A.E. Holdings, Inc., a Maryland corporation, which is said to own all stock in both PIN and Newox, Inc. ¶14

The complaint identifies two other persons who were involved in the business dealings of the parties. Neale Deutsch (Deutsch) is described as the president of Newox, Inc., ¶15, and the person who delivered rental checks to Ms. Artrip. Paragraph 12 alleges that Newox, Inc. was the maker of those checks.

The other person is John Graves (Graves), who is said to have managed the video business for plaintiff.

Plaintiff says that Gresser unsuccessfully attempted to negotiate another five year lease with Mr. Artrip, then directed Deutsch to try to sell International Video to Graves. Paragraph 62 alleges that negotiations for the purchase and sale of the business were instituted by Graves. A deal was struck, but fell through when Graves reported that he and his father were unable to obtain financing. Deutsch then contacted Mr. Artrip, who said that he and Graves were interested in purchasing the business. A tentative arrangement reflected the same terms as had been negotiated with Graves previously. Gresser is said to have agreed to the terms and to have instructed Deutsch to sell the business according to those terms.

Deutsch then presented a written contract to Mr. Artrip (Exhibit B). The seller was identified as PIN because Deutsch "was not familiar with actual owner of Newox, Inc." ¶29

Mr. Artrip signed the agreement, but added five conditions. The complaint states that, while plaintiff was attempting to comply with those conditions, Mr. Artrip backed out of the deal.

The complaint contains four counts, which can be summarized as follows:

I. Breach of stock purchase agreement.

Plaintiff alleges that all parties knew and understood that Newox, Inc. was the business being offered for sale and that the agreement was partially performed. Mr. Artrip is said to have reimbursed Deutsch for cash on hand in the business, to have taken control of the leased premises and to have sold "an undetermined amount of inventory of or formerly of Newox, Inc. and kept the proceeds therefrom." ¶134 Seven days were said to have remained on the lease term when Mr. Artrip took possession.

II. Breach of the lease's covenant of quiet enjoyment.

Plaintiff alleges that "[d]efendants and their agents entered upon the leased premises" prior to the expiration of the term established in Exhibit 1 and (a) had certain renovations accomplished, and (b) stored inventory. These actions apparently were done in contemplation of the sale of the business, which never occurred. Plaintiff claims that defendants' actions substantially interfered with plaintiff's business.

III. Conversion.

In the event the sales agreement might be found to be unenforceable, plaintiff claims damages for Mr. Artrip's selling and negligent storage of plaintiff's property, left on the leased premises in contemplation of the sale which never occurred.

IV. Interference with contractual relations.

The essence of this count is that Mr. Artrip employed Graves as his secret agent to pretend to be interested in purchasing the business, to negotiate with Deutsch and obtain the best bargain he could, then back off and allow Mr. Artrip to reap the benefit of the negotiations. Plaintiff alleges that Mr. Artrip intended to take advantage of Graves' "better relationship with Neale Deutsch" (¶170) in order to purchase Newox, Inc. "at the lowest price possible and terms favorable to Defendant." ¶172

Defendants filed preliminary objections to the complaint on March 18, 1996. Included were motions to strike, based upon: (a) failure of a corporate officer to verify the complaint; (b) lack of capacity to sue; and (c) failure to join PIN as a necessary party. Defendants also demur to the complaint, generally, and Count III specifically. We will consider the demurrers first.

In ruling on a demurrer, the court is required to accept, as true, all well pleaded facts as well as inferences which are fairly deducible therefrom. A demurrer does not, however, admit conclusions of law and we are not compelled to accept averments which are in conflict with exhibits attached to the complaint. A demurrer should be sustained only where the plaintiff has clearly failed to state a claim on which relief may be granted. *Philmar Mid-Atlantic, Inc. v. York Street Associates, II*, 389 Pa.Super. 397, 566 A.2d 1253 (1989).

Defendants' argument relating to their general demurrer incorporates many of the contentions applicable to their motions to strike. They also argue that the complaint clearly shows a failure of the parties to enter into a valid agreement for the sale and purchase of the business. This being true, they submit that plaintiff's vacation of the premises amounted to an abandonment of property left thereon.

It is true, as defendants argue, that a counter offer may act as a rejection offer and may be withdrawn prior to acceptance by the original offeror. However, it is also true that when the parties have settled on the terms of a contract, the mere fact they intend to later formalize the agreement with a writing does not prevent the formation of a contract. *Philmar Mid-Atlantic, Inc.*, supra. The contract alleges sufficient facts to justify finding that the parties agreed as to all essential terms of the contract and that Mr. Artrip began performance. Furthermore, conditions appended to Exhibit B can be said to relate to questions of authority on the part of PIN to sell what it agreed to sell and do not state a new or different contract. For example, condition 3 read "Subject to verification that Seller is authorized for use of fictitious name, International Video."

Conversion is the deprivation of another's right of property in, or use or possession of a chattel, or other interference therewith, without the owner's consent and without lawful justification. Although depriving another of such rights must be intentional, conversion does not rest upon proof of an intent to commit wrong. *Underhill Coal Mining Co. v. Hixon*, 438 Pa.Super. 219, 652 A.2d 343 (1994). The complaint states facts from which a jury could conclude that Mr. Artrip exercised control over inventory without the owner's consent and deprived the owner of that property.

The Restatement 2d of Torts §766B, reads as follows:

Intentional Interference with Prospective Contractual Relation

One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the

pecuniary harm resulting from loss of the benefit of the relation, whether the interference consists of:

(a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or

(b) preventing the other from acquiring or continuing the prospective relation.

Comments indicate that the intention of the defendant is important.

The section has been adopted in Pennsylvania, with courts defining the cause of action as including the following elements: (1) a prospective contractual relationship; (2) purpose or intent of harm by preventing the relationship to occur; (3) absence of privilege or justification, and; (4) actual damage. *Kelly-Springfield Tire Co. v. D'Ambro*, 408 Pa.Super. 301, 596 A.2d 867 (1991).

Even a liberal reading of averments fails to support a cause of action on this theory. According to the complaint, Graves never had any intention to enter into a contract with plaintiff and began negotiating only at the behest of Mr. Artrip. Plaintiff cannot be said to have suffered actual damage because there was no possibility that it would have made the sale to Graves.

The demurrer rests in part on an argument that Newox, Inc. was never a party to the agreements between the Artrips and PIN, and cannot be said to have an interest in this proceeding. Plaintiff responds, saying that even though Newox, Inc. may not have been a party to the agreements, it can still sue as a third party beneficiary.

Our courts have adopted the Restatement 2d of Contracts, §302, which reads:

(1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either

(a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary;
or

(b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

(2) An incidental beneficiary is a beneficiary who is not an intended beneficiary.

After quoting this section, our Superior Court said:

The supreme court then fashioned the following two-part test to determine whether a person qualifies as a third-party beneficiary to a contract:

(1) the recognition of the beneficiary's right must be 'appropriate to effectuate the intention of the parties,' and (2) the performance must 'satisfy an obligation of the promisee to pay money to the beneficiary' or 'the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.' The first part of the test sets forth a standing requirement. For any suit to be brought, the right of performance must be 'appropriate to effectuate the intention of the parties.' This general condition restricts the application of the second part of the test, which defines the intended beneficiary as either a creditor beneficiary (§302(1)(a)) or a donee beneficiary (§302(1)(b)).... Section 302(2) defines all beneficiaries who are not intentional beneficiaries as incidental beneficiaries. The standing requirement leaves discretion with the trial court to determine whether recognition of third party beneficiary status would be 'appropriate.' If the two steps of the test are met, the beneficiary is an intended beneficiary 'unless otherwise agreed between promisor and promisee.'

Fran and John's Doylestown Auto Center, Inc. v. Allstate Insurance Company, 432 Pa. Super. 449, 638 A.2d 1023, 1026 (1994), citing and quoting *Guy v. Liederbach*, 501 Pa. 47, 459 A.2d 744 (1983)

There is no language in either Exhibit A or B which indicates an intention on the part of the contracting parties to benefit Newox Inc. The only reason PIN was included on Exhibit B, according to the complaint, is that Newox's president didn't know who owned the company. There is no basis to conclude that an agreement by a sole shareholder to sell all outstanding shares in a corporation is intended to benefit the corporation.

Recognition of a right in Newox, Inc. at the time the lease agreement was drawn cannot be said to be appropriate to effectuate the intent of the parties.

Newox, Inc. also argues that it has standing to sue on the lease because it "orally and informally, subleased the premises from PIN Enterprises, Inc." An assignee may sue on a contract as the real party in interest. 6 Goodrich Amram 2d§2002(b);(1).

The lease, Exhibit A, provides in part: "Lessee shall not sublease, sublet, or assign the leased premises except by written permission and consent of Lessor."

A similar clause in an insurance policy was sufficient to defeat a third party beneficiary argument in *Fran and John's Doylestown Auto Center, Inc. v. Allstate Insurance Co.*, supra. Although the complaint alleges that Ms. Artrip knew that Newox, Inc. conducted the business, and that she accepted rental checks drafted by plaintiff, this would not support a finding that Newox, Inc. had rights under Exhibit A or that Ms. Artrip waived the provisions of the lease. The complaint also states that Graves managed the business, and no similar inference could be drawn as to him, either.

Neither side has argued the manner in which plaintiff has pleaded facts against one defendant, then asked damages against both. We still think a comment is in order, in case the issue becomes important in the future. An agency relationship does not arise out of marital status, absent special circumstances, such as improvement of entireties property. *News Printing Co., Inc. v. Roundy*, 409 Pa. Super. 64, 597 A.2d 662 (1991)

We sometimes find that entities involved in adult bookstore businesses use a rather complex system of ownership and management. Corporations must deal through agents and servants. Nothing in the complaint bestows standing on plaintiff.

Thus, we find that count IV fails to state a cause of action, even if plaintiff were the proper party to bring the action, and the complaint generally fails to state causes of action in favor of plaintiff. Demurrers are, therefor, sustained.

Many of these considerations are relevant to the motions to strike. It would appear that such motions are proper means to attack plaintiff's standing. See 2 *Goodrich Amram* 2d §1017(b):12.

Normally, verification must be made by a real party in interest, or by an agent of such party. Defendants argue that this was not done. If an agent verifies the contents of the complaint, the verification should state that the deponent is authorized to act on behalf of the real party in interest. Normally, when a corporation sues, an officer will verify the pleadings. *id.* §§ 1024(c):2 and 3. When someone other than the real party in interest verifies a complaint, the verification must explain that person's authority. *id.*, volume 6, §2002(d):3. Taken by itself, an incorrect verification is not critical. Often times, a court will allow a party to correct deficiencies of this sort without refileing a complaint. *id.*, volume 2, §1017(b):11. However, in the case, sub judice, the

deficiency is related to the more important question of how Newox, Inc. may claim an interest in this suit.

Pa. R.C.P. 2002 generally requires that any action be prosecuted in the name of and by a real party in interest. The purposes of the rule are to simplify the practice of law, to avoid legal fictions, to abolish technicalities, and to prevent a real party in interest from hiding behind a legal plaintiff. *Ham v. Sulek*, 422 Pa.Super. 615, 620 A.2d 5 (1993); 6 Goodrich Amram 2d §2002(a):1.

Although assignees and third party beneficiaries may bring suit, *id.*, §2002(b):1, we have concluded that neither status may be claimed by plaintiff. If this suit is to proceed, plaintiff must justify standing with more than has been pleaded, or the real party in interest must act as plaintiff. Although we are unfamiliar with the status of PIN and A.E. Holdings, it would seem a simple matter to include either or both as parties plaintiff.

The attached order is entered.

ORDER OF COURT

AND NOW, this 7th day of June, 1996, preliminary objections are sustained as explained in the attached opinion. Plaintiff may file an amendment to the complaint or an amended complaint within twenty (20) days. If no such pleading is filed, the complaint shall be dismissed.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of 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 GARNETTE F. BAKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Ralph W. Baker, 242 Lane Avenue, Gettysburg, PA 17325; Mary B. Ryman, 1330 Old Carlisle Road, Aspers, PA 17034

Attorney: John R. White, Campbell and White, 122 Baltimore St., Gettysburg, PA 17325

ESTATE OF CATHRYN R. HOKE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Constance H. Shaner, 2755 Jefferson Street, Suite 200, Carlisbad, CA 92008

Attorney: Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF LEROY G. DEGROFT, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executors: Ralph Richard DeGroot, 361 Flatbush Road, Littlestown, PA 17340; Charlotte Naomi Rhoads, 501 West King Street, Abbottstown, PA 17301; Elsie Belle Riebling, 795 Whitehall Road, Littlestown, PA 17340

Attorney: David K. James, III, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF JAMES D. NELSON, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: James D. Nelson II, 85 Horsehoe Avenue, Manchester, PA 17345

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HELEN L. REBERT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executors: Susan C. Miller, 883 Bingaman Road, Orttanna, PA 17353; James D. Rebert, 702 Wright Ave., Gettysburg, PA 17325

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGARET E. RIGGEEAL, DEC'D

Late of the Franklin Township, Adams County, Pennsylvania

Executrix: Peggy Jo Abraham, 585 Iron Springs Road, Fairfield, PA 17320

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHARLOTTE R. SHETTER, DEC'D

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

Co-Executors: Phyllis M. Trimmer, 200 Creek Road, New Oxford, PA 17350; Robert W. Trimmer, 200 Creek Road, New Oxford, PA 17350

Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF EMILY J. TREAS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Lou Anne Callahan, 218 Ewell Avenue, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF BESSIE J. KUMP, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executors: June K. Garretson, P.O. Box 3037, Gettysburg, PA 17325;

Ronald F. Kump, Box 146, Fairfield, PA 17320; Marilyn L. Shank Aust, 61 Greenfield Drive, Carlisle, PA 17013

Attorney: Chester G. Schultz, Esquire, Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF PAUL M. ROHRBAUGH, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrators d.b.n.c.t.a.: Donald W. Rohrbaugh, 21 East Myrtle Street, Littlestown, PA 17340; Clyde A. Rohrbaugh, P.O. Box 420, Fairfield, PA 17320

Attorney: Bulleit, Schultz & Thrasher, 16 Lincoln Square, Gettysburg, PA 17325

ESTATE OF ADA B. SNYDER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Roy C. Snyder; Kathryn A. Leatherman, 75 North Queen Street, Littlestown, PA 17340

ESTATE OF PAUL L. STRAUSBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: David H. Stepp, P.O. Box 413, Manchester, MD 21102; Dorothy L. Allison, R.D. #1, Box 58, Glen Rock, PA 17327

Attorney: Donald E. Albright, Esquire, 515 Carlisle Street, Hanover, PA 17331

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, 54 Pa. C.S.A. §§301, et seq., that an Application to conduct business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of SCOTT'S ANTIQUES & CIVIL WAR RELICS was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, in Harrisburg, Pennsylvania, on January 22, 1997. The business is located at 121 Lincolnway East, New Oxford, PA. The name and address of the person who is party to the registration is Mildred R. Scott, 121 Lincolnway East, New Oxford, PA.

Robert E. Campbell
Campbell & White
122 Baltimore Street
Gettysburg, PA 17325
Attorneys for Applicant

2/21

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, of an application for registration under the Fictitious Name Act. The name of the business is ONXLP, with its principal place of business at 1496 Mountain Road, York Springs, PA. The owner of the business is Joseph F. Yontz of 1496 Mountain Road, York Springs, PA 17372.

Wm. D. Schrack, III, Esquire
124 West Harrisburg Street
Post Office Box 310
Dillsburg, PA 17019-0310

2/21

Adams County Legal Journal

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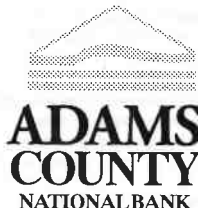
No. 40, pp. 225-228

Pennsylvania Bar Institute seminars are now being offered live by satellite at the Adams County Cooperative Extension office, 1135 Chambersburg Road, Gettysburg, across from Doersom's Airport. These presentations are intended to be interactive so that questions may be asked of the panelists from the satellite locations. Programs will allow attendees to obtain continuing legal education credits in the same manner as the video presentation. The video presentations are not being abandoned and the satellite offerings will be in addition to the video offerings. Only selected programs will be available by satellite at this point.

In the future, as you review your Pennsylvania Bar Institute Planner, please take note of the satellite location offerings. The current P.B.I. Planner for winter/spring 1997 shows the satellite offerings for Gettysburg on page 1. Programs are being offered on March 26, April 8, and June 11. If you desire to attend these or future satellite programs, you may do so for **free** if you are willing to serve as registrar. The registrar must be present at the site half an hour before the program begins, hand out materials, secure the registrations, and mail the registration forms back to the P.B.I. The duties are negligible.

If you are interested in serving as the registrar, you must notify me **no later than** three weeks in advance of the seminar.

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-471 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate, lying and being in the Borough of Carroll Valley, Adams County, Pennsylvania, being Lot No. 5 in Section RH, bounded and described as follows:

BEGINNING at a point in the center of Mile Trail at Lot No. 6; thence by said lot North two (2) degrees thirty-seven (37) minutes twenty (20) seconds East, two hundred twenty-five (225.00) feet to lands now or formerly of Charnita, Inc; thence by said lands South eighty-seven (87) degrees twenty-two (22) minutes forty (40) seconds East, one hundred (100) feet to Lot No. 4; thence by said lot South two (2) degrees thirty-seven (37) minutes twenty (20) seconds West, two hundred twenty-five (225.00) feet to a point in the center of said Mile Trail; thence in said Mile Trail North eight-seven (87) degrees twenty-two (22) minutes forty (40) seconds West, one hundred (100) feet to the place of BEGINNING.

SEIZED and taken into execution as the property of **Timothy M. Friedel and Bart W. Bauerlien t/d/b/a B & T Custom Homes** and to be sold by me

Bernard V. Miller
 Sheriff

Sheriff's Office, Gettysburg, PA
 January 28, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

2/21, 28 & 3/7

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-1009 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 21st day of March, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that tract of land situate on the East side of Township Road No. T-455, in Union Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point in the center of Township Road No. T-455 at lands now of Louis J. Small and Dawn M. Small; thence leaving said Township Road and through a steel pin set back twenty-five (25) feet from the beginning hereof, North fifty-six (56) degrees twenty-four (24) minutes East, three hundred twenty-two and eighty-one hundredths (322.81) feet to a steel pins at lands of Harry C. Worley; thence by lands of Harry C. Worley, South twenty-seven (27) degrees thirty (30) minutes East, one hundred eighty one and fifteen hundredths (181.15) feet to a point in Township Road No. T-455; thence in and along the center line of said Township Road No. T-455, South fifty-seven (57) degrees fifty-three (53) minutes forty (40) seconds West, three hundred three and sixty hundredths (303.60) feet to a point at or near the curve in said Township Road No. T-455; thence continuing in and along the center line of said Township Road T-455, North thirty-three (33) degrees thirty-six (36) minutes West one hundred seventy-two and twenty-six hundredths (172.26) feet to the place of BEGINNING. CONTAINING 1.2674 Acres.

HAVING ERECTED THEREON a dwelling known as 810 Barts Church Road, Hanover, PA 17331.

Parcel #K17-0079B.

BEING the same premises which Hughes-Patwil Homes, Inc., by its Deed dated May 1, 1989 and recorded in the Recorder's Office of Adams County, Pennsylvania on May 25, 1989 in Deed Book Volume 523, Page 297, granted and conveyed unto John J. Allen, Jr. and Donna M. Allen.

SEIZED and taken into execution as the property of **John J. Allen, Jr. and Donna M. Allen** and to be sold by me

Bernard V. Miller
 Sheriff

Sheriff's Office, Gettysburg, PA
 January 24, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on April 14, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

All claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

2/21, 28 & 3/7

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by R & R MARTIAL ARTS, LTD. with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania. The corporation is incorporated under the Pennsylvania Business Corporation Law of 1988.

Teeter, Teeter & Teeter
 Solicitor
 108 West Middle Street
 Gettysburg, PA 17325

2/28

COMMONWEALTH VS. BENNETT

1. While mere possession of stolen property is insufficient to prove guilt, other facts, such as unexplained possession of recently stolen property, flight from the police or other evidence indicating an attempt to avoid capture and the condition of the property indicating a theft, can make the inference of guilty knowledge reasonable, even compelling.

2. While flight plus acts of resistance will justify conviction on a charge of resisting arrest, mere flight to avoid arrest does not.

3. Our main concern in ruling on a motion to consolidate is whether proof of one crime would be admissible in a trial of another.

4. When crimes are part of a common scheme, plan or design, and so interrelated that proof of one necessarily involves proof of another, or where the crime is part of the chain of a sequence of events which are a part of the history and natural development of the facts, evidence of one crime is admissible in a trial of another.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal No. CC-222, 223, 225, 304-96, COMMONWEALTH OF PENNSYLVANIA VS. CHRISTOPHER WAYNE BENNETT.

Michael George, Esq., District Attorney
Samuel A. Gates, Esq., for Defendant

OPINION ON MOTION FOR CONSOLIDATION AND PETITION FOR WRIT OF HABEAS CORPUS

Spicer, P.J., June 24, 1996.

We deal with Commonwealth's request to consolidate all of the above cases, except CC-224-96, for trial, and defendant's petition for discharge through a writ of habeas corpus. Commonwealth argues that all cases involve common witnesses and similar issues of fact and law. Defendant, as might be expected, contends otherwise and further claims that Commonwealth failed to prove prima facie cases against him during his preliminary hearing. For reasons explained, we dismiss a charge of resisting arrest, deny defendant's petition in all other respects, and grant Commonwealth's motion for consolidation.

Focusing first on the habeas corpus, we must determine whether evidence at the preliminary hearing would warrant submission to a jury. *Lagana v. Office of Attorney General*, 443 Pa.Super 609, 662 A.2d 1127 (1995). Defendant argues that burglary, resisting arrest and public drunkenness must be dismissed. The last charge is a summary offense, which has been joined with court cases, and it is inappropriate to discuss the case in terms of either a prima facie case or submission to a jury. Therefore, we restrict our examination to burglary and resisting arrest.

Facts are mainly derived from a transcript of the preliminary hearing which was conducted March 7, 1996. Some gaps have been bridged by judicial notice and inferences drawn from the record. Otherwise, we have tried to be faithful to the script.

We entered an order on May 21, 1996 which misspelled defendant's last name and summarized the factual situation, based upon representations by counsel. We said:

the court may assume that, generally, the background is that on or about December 1, 1995, a burglary occurred at the home of Julie Tosh. Ms. Tosh would testify, if called, that on December 10, 1995, she called 911 after hearing someone ring her doorbell. Police responded and observed footprints in the snow around her home. These prints were later determined to be similar in patterns on sneakers worn by the defendant. On December 19, 1995, Ms. Tosh saw someone lurking in or about her building and bushes. She also heard a breaking noise. She again called the police who arrived, pursued and apprehended defendant.

These facts are somewhat fleshed out by the transcript, from which we learn that Ms. Tosh arrived home to discover the burglary. An unopened champagne bottle lay on the floor next to a window, which had been broken from the inside. Entry was apparently gained through a door, which was locked. Ms. Tosh was in the habit of keeping a key outside her home and the key has been moved an inch or two. Items stolen included a gift wrapped telephone and the victim's underwear.

Ms. Tosh said she bought the phone at an AT&T shop in the West Manchester Mall.

Shannon Kennedy, defendant's ex-girlfriend, testified that shortly after the burglary, defendant asked her to take him to the Kmart in Hanover and help him return a telephone. He explained that he had received the phone as a gift from his grandmother and had thrown it away. Together, they went to a dumpster, where defendant retrieved the item, still gift wrapped. He and Ms. Kennedy then traveled to the Hanover Kmart, where the phone was returned for its purchase price, which was around \$70.00. Ms. Kennedy gave the store her name and address, saying that defendant lacked identification, received the refund and turned it over to the defendant. She testified that she thought defendant's story was odd and that she worried about placing her name and address on the return ticket.

Kmart personnel were said to have checked the bar code and to have determined that the phone was purchased in York.

Commonwealth introduced sales slips and the return ticket at the trial. Unfortunately, they were returned to the prosecuting officer and not made a part of the record. There is no explicit connection between an AT&T shop in the West Manchester Mall with the York, Pennsylvania, Kmart store. However, discussion that occurred between the district justice, the prosecuting officer and counsel following the hearing indicates that the missing business records established the connection. Before returning the sales slips and return ticket to the police officer, the district justice said, "Again, Officer, how did you tie the defendant in with this case? Now, I realize the telephone; I heard testimony on that. And due to the fact it was the same phone, we do have the receiving charge." (Transcript, p. 88)

We know there is a West Manchester Mall in York and, based on the quoted statement, infer that the AT&T shop was part of the York Kmart. Therefore, for purposes of determining Mr. Bennett's request for dismissal, will assume that the Commonwealth proved that he was in possession of Ms. Tosh's phone, which was recently stolen property. Based upon defendant's bizarre explanation of how he came into possession and his employment of Ms. Kennedy to recover a refund, we believe a jury would be permitted to infer that defendant did not want to be identified as having returned the phone and wanted a woman to accomplish the act, since Kmart's records might indicate that a woman purchased the item.

While mere possession of stolen property is insufficient to prove guilt, "other facts can make the inference of guilty knowledge reasonable, even compelling. Such circumstances include but are not limited to the unexplained possession of recently stolen property, flight from the police or other evidence indicating an attempt to avoid capture and the conditions of the property indicating a theft." *Commonwealth v. Carson*, 405 Pa.Super. 492, 497, 592 A.2d 1318, 1321 (1991); *Commonwealth v. Calderini*, 416 Pa.Super. 258, 611 A.2d 206 (1992). Just as a false name can show consciousness of guilt, id, a false story may also.

Circumstances, viewed in toto, could indicate that defendant spent time lurking about Ms. Tosh's home. Surreptitious viewing could explain his knowledge of a concealed key, which provided access to the home. Given prowling and loitering, it is not surprising, that female underwear was stolen. The telephone was stolen during a burglary, which defendant was in a position to commit. We find the evidence sufficient.

On the last occasion when summoned, the police were required to run down the defendant in order to arrest him. He did not resist, once

caught. While flight plus acts of resistance will justify conviction on a charge of resisting arrest, *Commonwealth v. Lyons*, 382 Pa.Super. 438, 555 A.2d 920 (1989), mere flight to avoid arrest does not. In *Interest of Woodford*, 420 Pa.Super. 179, 616 A.2d 641 (1992).

Our main concern in ruling on the motion to consolidate is whether proof of one crime would be admissible in a trial of another. Ordinarily, such proof is not only inadmissible but prejudicial, but there are numerous exceptions. When crimes are part of a common scheme, plan or design, and so interrelated that proof of one necessarily involves proof of another, or where the crime is part of the chain of a sequence of events which are a part of the history and natural development of the facts, evidence is admissible. *Commonwealth v. Murphy*, 540 Pa. 318, 657 A.2d 927 (1995). Crimes are also admissible to prove identity, lack of mistake, knowledge or intent, with identity being subject to more stringent requirements than the others. *Commonwealth v. Bracey*, 541 Pa. 322, 662 A.2d 1062 (1995).

Our review of cases indicates that most cases deal with the common plan exception. For example, proof of other, similar murders and kidnappings was allowed in *Commonwealth v. Miller*, 541 Pa. 531, 664 A.2d 1310 (1995). As our previous discussion should indicate, we find the exception applicable under facts before us. We also point out that it was not until defendant was apprehended that Ms. Tosh had an opportunity to identify him.

Everything that occurred is also relevant to defendant's purpose and state of mind.

The attached order will be entered.

ORDER

AND NOW, this 24th day of June, 1996, the charge of resisting arrest is dismissed. Otherwise, defendant's petition for a writ of habeas corpus is denied. All cases except CC-224-96 are consolidated for purposes of trial.

The order entered May 21, 1996, is corrected to indicate the defendant's last name as Bennett.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of 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 ETHEL M. COOLEY, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Administratrix: Donna M. Cooley, 3595 Carlisle Pike, Gardners, PA 17324

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF LAURA M. CROUSE, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executors: Clyde W. Crouse, 1215 Frederick Pike, Littlestown, PA 17340; David F. Crouse, 15 Chapel Rd., Gettysburg, PA 17325

Attorney: John W. Phillips, Esq., 101 W. Middle St., Gettysburg, PA 17325

ESTATE OF GUY L. DEARDORFF, DEC'D

Late of 420 Tree Lane Road, Tyrone Township, Aspers, Adams County, Pennsylvania

Executor: Jeffrey L. Deardorff, 20754 Barbara Lane, Meadville, PA 16335
Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF PAULINE M. FRANKS, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executrix: Arlene M. Justice, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331

Attorney: Douglas H. Gent, Esquire, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

ESTATE OF ISAAC H. GROGG, JR., DEC'D

Late of 637 Blettner Ave., Hanover, PA 17331, Adams County, Pennsylvania

Executrix: Sally A. Roelke, 637 Blettner Ave., Hanover, PA 17331

ESTATE OF JULIA JANE O'BRIEN, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Executors: Robert F. O'Brien, 365 Bair Road, Abbottstown, PA 17301; Anne L. Kendrick, 2735 Carlisle Pike, New Oxford, PA 17350

Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF MARILYN L. OVERBAUGH a/k/a MARILYN LOUISE OVERBAUGH, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrices: Eileen Jane Day; Mary Anne Overbaugh (Topper)

Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17344

ESTATE OF ANNA MARY SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Louise A. Little, 1434 Honda Road, Hanover, PA 17331; James L. Smith, 33 Oak Lane, Hanover, PA 17331; Angela C. Smith, 2425 Logan Street, Harrisburg, PA 17110

ESTATE OF WILLIAM G. STAUB, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Co-Executors: Gloria J. Harbold; Donald A. Staub

Attorney: Douglas H. Gent, Esquire, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF GARNETTE F. BAKER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Ralph W. Baker, 242 Lane Avenue, Gettysburg, PA 17325; Mary B. Ryman, 1330 Old Carlisle Road, Aspers, PA 17034

Attorney: John R. White, Campbell and White, 122 Baltimore St., Gettysburg, PA 17325

ESTATE OF CATHRYN R. HOKE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Constance H. Shaner, 2755 Jefferson Street, Suite 200, Carlsbad, CA 92008

Attorney: Buchen, Wise & Dorr, 126 Carlisle Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF LEROY G. DEGROFT, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executors: Ralph Richard DeGroot, 361 Flatbush Road, Littlestown, PA 17340; Charlotte Naomi Rhoads, 501 West King Street, Abbottstown, PA 17301; Elsie Belle Riebling, 795 Whitehall Road, Littlestown, PA 17340

Attorney: David K. James, III, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF JAMES D. NELSON, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: James D. Nelson II, 85 Horse-shoe Avenue, Manchester, PA 17345
Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF HELEN L. REBERT, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executors: Susan C. Miller, 883 Bingaman Road, Orrtanna, PA 17353; James D. Rebert, 702 Wright Ave., Gettysburg, PA 17325

Attorney: Swope, Heiser & McQuaide, 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MARGARET E. RIGGEAL, DEC'D

Late of the Franklin Township, Adams County, Pennsylvania

Executrix: Peggy Jo Abraham, 585 Iron Springs Road, Fairfield, PA 17320

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF CHARLOTTE R. SHETTER, DEC'D

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

Co-Executors: Phyllis M. Trimmer, 200 Creek Road, New Oxford, PA 17350; Robert W. Trimmer, 200 Creek Road, New Oxford, PA 17350

Attorney: Sharon E. Myers, Esq., 29 North Duke Street, York, PA 17401

ESTATE OF EMILY J. TREAS, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Lou Anne Callahan, 218 Ewell Avenue, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

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