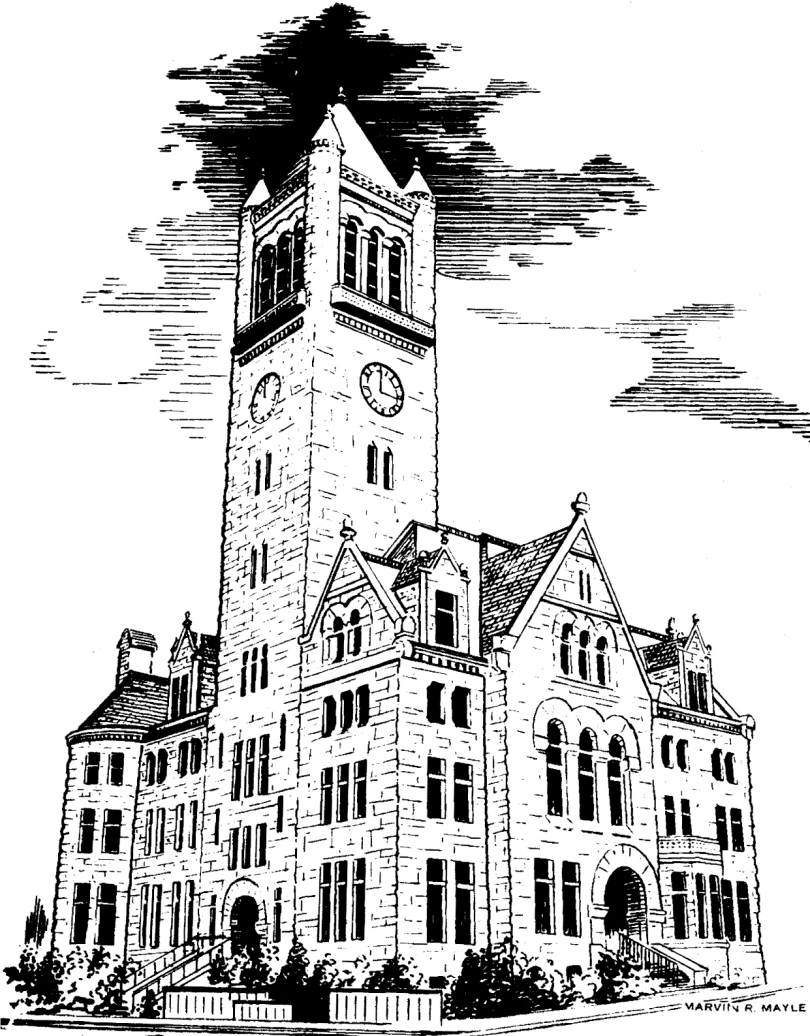


FAYETTE LEGAL JOURNAL

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FAYETTE LEGAL JOURNAL

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

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ESTATE NOTICES

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

Third Publication

CLARENCE W. GEORGE, JR., late of South Union Township, Fayette County, PA (3)

Personal Representative: Carol George
307 Laura Lane
Uniontown, PA 15401
c/o 84 Connor Street
Uniontown, PA 15401
Attorney: Nicholas J. Cook

JACQUELINE JOHNSON, late of Luzerne Township, Fayette County, PA (3)

Executor: Robert Lee
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

JOANN MALIK, late of North Union Township, Fayette County, PA (3)

Administrator: Robert W. Malik
c/o Adams & Adams
55 E. Church St., Ste. 101
Uniontown, PA 15401
Attorney: Jason F. Adams

PAULINE MANGAN, A/K/A PAULINE B. MANGAN, late of Connellsville, Fayette County, PA (3)

Executor: Thomas Vanorsdale
c/o Donald McCue Law Firm, P.C.
Colonial Law Building
813 Blackstone Road
Connellsville, PA 15425
Attorney: Donald J. McCue

AGNES Y. OSLER, A/K/A AGNES YVONNE OSLER, late of South Connellsville, Fayette County, PA (3)

Executrix: Amy Sue Kremposky
120 Beech Street
Connellsville PA 15425
c/o P.O. Box 760
Connellsville PA 15425
Attorney: Carolyn W. Maricondi

CHERYL MARIE WELC, late of Bullskin Township, Fayette County, PA (3)

Personal Representative: Mark A. Stafford
c/o Watson Mundorff Brooks & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA
Attorney: Charles W. Watson

Second Publication

JOANN KOVACH, late of Redstone Township, Fayette County, PA (2)

Executrix: Heather Guibault
c/o 206 Derrick Avenue
Uniontown, PA 15401
Attorney: Gary N. Altman

JOHN S. KRAMARSKI, late of Upper Tyrone Township, Fayette, County, PA (2)

Executor: Stanley J. Kramarski
1000 Broadford Road
Everson, PA 15631
c/o 231 South Main Street, Suite 402
Greensburg, PA 15601
Attorney: Marilyn M. Gaut

KENNETH G. LEHMAN, late of Bullskin Township, Fayette County, PA (2)

Executor: George Kenneth Lehman, III
4224 Expressway Apt. 6
Missoula, MT 59808
c/o 749 North Church Street
Mt. Pleasant, PA 15666
Attorney: Paul E. Toohy

LUELLA B. MCCRACKEN, A/K/A

LUELLA MCCRACKEN, late of Vanderbilt,
Fayette County, PA (2)

Executrix: Kathleen Lint
c/o 96 East Main Street
Uniontown, PA 15401
Attorney: Bernard C. John

DAVID RICHTER, late of Bullsken Township,
Fayette County, PA (2)

Administrator: Lori Richter
138 Keefer Road
Connellsville, PA 15425
c/o 813 Blackstone Road
Connellsville, PA 15425
Attorney: Donald McCue

PATRICK A. WICK, late of Wharton
Township, Fayette County, PA (2)

Executor: Robert W. Toyce
c/o 206 Derrick Avenue
Uniontown, PA 15401
Attorney: Gary N. Altman

LOUIS WILSON, A/K/A LOUIS I. WILSON,
late of Washington Township, Fayette County,
PA (2)

Co-Executors: Betty Davis and
Robin Rodriguez
c/o 142 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Kris A. Vanderman

First Publication

**WILLIAM BURKHOLDER, A/K/A
WILLIAM L. BURKHOLDER**, late of
German Township, Fayette County, PA (1)

Executor: Deana Marie Wilson
c/o 556 Morgantown Road
Uniontown, PA 15401
Attorney: John A. Kopas, III

CHARLES C. CASTOR, late of Uniontown,
Fayette County, PA (1)

Executrix: Charlanne C. Makarun
c/o 39 Francis Street
Uniontown, PA 15401
Attorney: Jack R. Heneks

JOANN CASTOR, late of Uniontown, Fayette
County, PA (1)

Executrix: Charlanne C. Makarun
c/o 39 Francis Street
Uniontown, PA 15401
Attorney: Jack R. Heneks

JOSEPH DORAZIO, late of South Union
Township, Fayette County, PA (1)

Personal Representative: Mark Rowan
c/o 45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

SARA M. GLISAN, late of Menallen
Township, Fayette County, PA (1)

Executrix: Karen L. Sloan
a/k/a Karen G. Sloan
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Jeremy J. Davis

**HELEN OVERDORFF, A/K/A HELEN
JANE OVERDORFF, A/K/A HELEN J.
OVERDORFF**, late of Menallen Township,
Fayette County, PA (1)

Executor: Robert W. Cahn
c/o 45 East Main Street
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

**WOODROW D. PAULL, JR. A/K/A
WOODROW D. PAULL, A/K/A
WOODROW PAULL**, late of North Union
Township, Fayette County, PA (1)

Administrator: Denise R. Paull
c/o 39 Francis Street
Uniontown, PA 15401
Attorney: Jack R. Heneks

MARGARET L. ROHLF, late of Uniontown,
Fayette County, PA (1)

Executor: Mark A. Rohlf
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
No. 2413 of 2016 GD
EMINENT DOMAIN PROCEEDING IN REM

IN RE: CONDEMNATION BY THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION, OF
THE RIGHT-OF-WAY FOR STATE ROUTE
1001, SECTION 000 IN THE TOWNSHIP OF
SPRINGFIELD

NOTICE OF CONDEMNATION AND DEPOSIT OF ESTIMATED JUST COMPENSATION

Notice is hereby given that the Commonwealth of Pennsylvania, by the Secretary of Transportation, whose address is the Commonwealth of Pennsylvania, Department of Transportation, Office of Chief Counsel, Real Property Division, Commonwealth Keystone Building, Harrisburg, Pennsylvania 17120, pursuant to the provisions of Section 2003(e) of the Administrative Code of 1929, P.L. 177, 71 P.S. 513(e), as amended, has filed on 12/7/16 (a Declaration of Taking to the above term and number, condemning the property shown on the plans of the parcels listed on the Schedule of Property Condemned which have been recorded in the Recorder's Office of the above county at the places indicated on the said schedule. The name(s) of the owner(s) of the property interest(s) condemned is (are) also shown on the aforesaid Schedule. The Secretary of Transportation, on behalf of himself/herself and the Governor has approved the within condemnation by signing on 11/8/2016 a plan entitled Commonwealth of Pennsylvania, Department of Transportation, Drawings Authorizing Acquisition of Right-of-Way for State Route 1001, Section 000 R/W in Fayette County, a copy of which plan was recorded in the Recorder's Office of the aforesaid county on 11/10/16, in HP Book 15, Page 87.

The purpose of the condemnation is to acquire property for the completion of the Bridge Replacement Project.

Plans showing the property condemned from the parcels listed on the Schedule of

EMUL P. SKORICH, late of Luzerne Township, Fayette County, PA (1)
Executor: Frank Simyak
c/o France, Lint & Associates, P.C.
308 Fallowfield Avenue
Charleroi, PA 15022
Attorney: David N. Lint

EDNA M. SWANEY, late of Uniontown, Fayette County, PA (1)
Executrix: Betty J. Phillips
311 Rohrer Street
Greensburg, PA 15601
c/o 229 South Maple Avenue
Greensburg, PA 15601
Attorney: Bernard T. McArdle

THELMA M. UPHOLD, A/K/A THELMA MAE UPHOLD, late of Luzerne Township, Fayette County, PA (1)
Executrix: Linda D. Bogol
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

LORRAINE J. VANDERNITTE, late of Washington Township, Fayette County, PA (1)
Executor: Timothy M. Kissell
c/o L. Christian DeDiana, Esquire
533 Rugh Street
Suite Three
Greensburg, PA 15601
Attorney: L. Christian DeDiana

ROBERT WALKER, III, A/K/A ROBERT A. WALKER, III, late of Uniontown, Fayette County, PA (1)
Administratrix: Marcy Young
50 Cycle Avenue
Uniontown, PA 15401
c/o Mary Chmura Conn
Tershel & Associates
55 South Main Street
Washington, PA 15301
Attorney: Mary Chmura Conn

Property Condemned have been recorded in the aforesaid Recorder's Office at the places indicated on the Schedule, where they are available for inspection. The Property Interest thereby condemned is designated on the Declaration of Taking heretofore filed. The Commonwealth of Pennsylvania is not required to post security, inasmuch as it has the power of taxation.

Because the identity or the whereabouts of the condemnee(s) listed below is (are) unknown or for other reasons he (they) cannot be served, this notice is hereby published in accordance with Section 305(b) of the Eminent Domain Code (26 Pa.C.S. §305(b)).

Claim No.	2600494000
Parcel No.	5
Name	Jennie N. Prinkey, a/k/a Jennie Ruth Prinkey, deceased
Address	Kooser Road Mill Run, PA 15464

The power or right of the Secretary of Transportation of the Commonwealth of Pennsylvania to appropriate the property condemned, the procedure followed by the Secretary of Transportation or the Declaration of Taking may be challenged by filing preliminary objections within thirty (30) days of the date of this notice.

FURTHERMORE, NOTICE IS GIVEN THAT the Commonwealth of Pennsylvania, Department of Transportation, pursuant to Section 522 of the Eminent Domain Code (26 Pa.C.S. §522), will, at the end of the above-referenced thirty (30) day time period within which to file preliminary objections to the Declaration of Taking, present a petition to the Court of Common Pleas of the above county to deposit into court the just compensation estimated by the Commonwealth to be due all parties in interest for damages sustained as the result of the condemnation of the property herein involved.

The petition to deposit estimated just compensation may not be presented to the court if the owner(s) of the property herein involved inform the District Right-of-Way Administrator of the District noted below of their existence and/or whereabouts prior to the expiration of the noted period. After estimated just compensation has been deposited into court, the said monies may be withdrawn by the persons entitled

thereto only upon petition to the court. If no petition is presented within a period of six years of the date of payment into court, the court shall order the fund or any balance remaining to be paid to the Commonwealth without escheat.

District Right-of-Way Administrator
Engineering District
Pennsylvania Department of Transportation

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION
NO. 40 ADOPT 2016

IN RE: ADOPTION OF
CHARLEE LEICHLITER

NOTICE

TO: Kelly Leichliter

A petition has been filed asking the Court to put an end to all rights you have to your child, Charlee Leichliter. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 3 of the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, on Tuesday, January 24, 2017 at 11:00 a.m. You are warned that even if you fail to appear at the scheduled hearing the hearing will go on without you and your rights to your child may be ended by the court without your being there.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PENNSYLVANIA BAR ASSOCIATION
100 SOUTH STREET
PO BOX 186
HARRISBURG, PA 17108
(800) 932-0313

IN RE: Stephen E. Kezmarsky, III
d/b/a Kezmarsky Funeral Home and
Nancy L. Kezmarsky
Case No. 15-23073-GLT
Chapter 7

Real Property:

71 Pennsylvania Avenue
Uniontown, PA 15401
Parcel ID #38-12-0509

Personal Property: All property used in the
business of Kezmarsky Funeral Home

Date of Sale: 1/5/2017 @ 10:30 a.m.
Courtroom A, 54th Floor
600 Grant Street
Pittsburgh, PA 15219

Objections due by: 12/27/2016

Initial Offer: \$425,000.00

Higher and better offers will be considered
at the hearing

Hand money required: \$50,000.00
(Cash or Certified Funds)

Contact: Robert H. Slone

223 South Maple Avenue
Greensburg, PA 15601
Ph #(724) 834-2990

E-mail: robertslone223@gmail.com

For More Information:

www.pawb.uscourts.gov/easi.htm

Robert H. Slone, Esquire
Bankruptcy Trustee
223 South Maple Avenue
Greensburg, PA 15601
Ph #(724) 834-2990

SHERIFF'S SALE

Date of Sale: February 16, 2017

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, February 16, 2017, at 2:00 p.m. in Courtroom Number One at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2 of 3)

James Custer
Sheriff Of Fayette County

GRENE & BIRSIC, P.C.
Kristen M. Anthou, Esquire

No. 1812 of 2016 GD
No. 351 of 2016 ED

**FIRST NATIONAL BANK OF
PENNSYLVANIA, successor to PARKVALE
SAVINOS BANK,**

Plaintiff,

vs.

**RODNEY R. BOLEN and AVA B. BOLEN,
Defendants.**

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF RODNEY R. BOLEN AND AVA B. BOLEN, OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN REAL ESTATE SITUATED IN WHARTON TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA. HAVING ERRECTED THEREON A TWO STORY FRAME DWELLING WITH TWO-CAR ATTACHED GARAGE KNOWN AS 146 CHALK HILL OHIOPYLE ROAD, OHIOPYLE, PENNSYLVANIA 15470. DEED BOOK VOLUME 3052, PAGE 205, TAX PARCEL NO. 42-06-0025.

No. 1880 of 2016 GD
No. 359 of 2016 ED

**U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,
PLAINTIFF,**

vs.

**MICHAEL A. CORELLA,
DEFENDANT(S).**

ALL those certain lots of ground in the Township of North Union, County of Fayette, Pennsylvania, being Lot Nos. 198, 199, 200, 201 and 202, Edgewood Plan of Lots, Fayette County Plan Book 4, page 62. HAVING THEREON ERRECTED DWELLING KNOWN AS 202 WILBUR AVENUE UNIONTOWN, PA 15401.

Parcel No. 25-24-0017.

Fayette County Deed Book 3107, page 1032.

TO BE SOLD AS THE PROPERTY OF
MICHAEL A. CORELLA UNDER
JUDGMENT NO. 1880 OF 2016-GD.

McCABE, WEISBERG & CONWAY, P.C.

No. 1554 of 2016 GD
No. 352 of 2016 ED

**Beneficial Consumer Discount Company d/b/
a Beneficial Mortgage Co. of Pennsylvania,
Plaintiff,**
vs.
**Alfred E. Gossett and Henrietta Gossett,
Defendants.**

All that certain piece or parcel or Tract of land situate Luzerne Township, Fayette County, Pennsylvania, and being known as 136 River Road, Box 29, East Millsboro, Pennsylvania 15433.

Being known as: 136 River Road, Box 29, East Millsboro, Pennsylvania 15433

Title vesting in Alfred E. Gossett and Henrietta Gossett, husband and wife, by deed from Alfred E. Gossett dated March 16, 1987 and recorded March 16, 1987 in Deed Book 261, Page 21.

Tax Parcel Number: 19-15-0017

No. 1021 of 2016 GD
No. 350 of 2016 ED

**U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,
PLAINTIFF,**
vs.
**MICHELLE M. MARTIN, THE
SECRETARY OF HOUSING AND URBAN
DEVELOPMENT AND THE UNITED
STATES OF AMERICA,
DEFENDANT(S).**

ALL that certain lot situate in the City of Uniontown, County of Fayette, Pennsylvania, numbered Lot No. 4 in Gallatin Park Addition to Uniontown plan of lots, Fayette County Plan Book 2, page 4, and HAVING THEREON ERECTED DWELLING KNOWN AS 100 BAILEY AVENUE UNIONTOWN, PA 15401.

Tax Parcel # 38-04-0588.

Fayette County Deed Book 1691, page 278.

No. 1193 of 2016 GD
No. 358 of 2016 ED

**U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,
PLAINTIFF,**
vs.
**TIFFANY S. MATEOSKY AND THE
SECRETARY OF HOUSING AND URBAN
DEVELOPMENT,
DEFENDANT(S).**

ALL that certain lot of ground in the Borough of Masontown, Fayette County, Pennsylvania, being Lot No. 44, revised Cloverdale Plan of Lots, Fayette County Plan Book 8, page 31, and HAVING THEREON ERECTED A DWELLING KNOWN AND NUMBERED AS 130 SANGSTON AVENUE, MASONTOWN, PA 15461.

PARCEL ID# 21-03-0089

SEE Deed Book 3020, page 2155.

TO BE TO BE SOLD AS THE PROPERTY OF TIFFANY S. MATEOSKY UNDER JUDGMENT NO. 1193 OF 2016 GD.

Phelan Hallinan Diamond & Jones, LLP

No. 1953 of 2015 GD
No. 357 of 2016 ED

**Lakeview Loan Servicing, LLC,
Plaintiff,**
vs.
**Brandon G. Poole
Desiree R. Poole,
Defendant(s).**

By virtue of a Writ of Execution No. 1953 OF 2015 GD, Lakeview Loan Servicing, LLC v. Brandon G. Poole Desiree R. Poole, owner(s) of property situate in the Fayette County, Pennsylvania, being 382 Pearl Street, Brownsville, PA 15417-2148.

Parcel No.: 02-10-0130, 0210013001

Improvements thereon: RESIDENTIAL DWELLING

No. 671 of 2016 GD
No. 243 of 2016 ED

KML Law Group, P.C.
Suite 5000 - BNY Independence Center 701
Market Street
Philadelphia, PA 19106
215-627-1322

**VALLEY 1st COMMUNITY FEDERAL
CREDIT UNION,**
Plaintiff,
vs.
**TODD A. REPERT and LAURA L.
REPERT, Husband and Wife,**
Defendants.

No. 1879 of 2016 GD
No. 353 of 2016 ED

**JP MORGAN CHASE BANK, NATIONAL
ASSOCIATION,**
c/o 3415 Vision Drive
Columbus, OH 43219,
Plaintiff,
vs.
ERIC R. WEAVER,
Mortgagor(s) and Record Owner(s)
170 Horseshoe Bend Road
Acme, PA 15610,
Defendant(s).

DEBT: \$86,446 .28
NAME OF ATTORNEY(S)
Jeffrey A. Golvash, Esquire
ADDRESS OF ATTORNEY(S)
BRENNAN, ROBINS & DALEY, P.C.
445 Fort Pitt Blvd. Ste. 200
Pittsburgh, PA 15219
ATTORNEY TELEPHONE NUMBER:
(412) 281-0776

ALL THE RIGHT, TITLE, INTEREST
AND CLAIM OF TODD A. REPERT AND
LAURA L. REPERT, HUSBAND AND
WIFE, OF, IN, AND TO THE FOLLOWING
DESCRIBED PROPERTY:

ALL THE FOLLOWING DESCRIBED
REAL ESTATE SITUATED IN THE
COMMONWEALTH OF PENNSYLVANIA ,
COUNTY OF FAYETTE, TOWNSHIP OF
WASHINGTON:

HAVING ERECTED THEREON A
DWELLING KNOWN AND NUMBERED AS
715 FAYETTE AVENUE, BELLE VERNON,
PA 15012. DEED BOOK 2818, PAGE 657.
PARCEL NO.: 41-05-0029.

ALL THAT CERTAIN piece, parcel or lot
of ground situate in the Township of Bullsken,
County of Fayette and Commonwealth of
Pennsylvania.

TAX PARCEL #04-14-0198
PROPERTY ADDRESS: 170 Horseshoe
Bend Road Acme, PA 15610
IMPROVEMENTS: A residential
dwelling.
SOLD AS THE PROPERTY OF: ERIC R.
WEAVER ATTORNEY

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Tuesday, January 3, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2614-0037	VIOLET O. SNYDER also known as VIOLET O. KUHNS	Homer Kuhns, Executor

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

Tuesday, January 3, 2017 at 9:30 A.M.

in Court Room No. 2 of the Honorable JOHN F. WAGNER or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (1 of 2)

LOCAL RULE**RULE 571
ARRAIGNMENT**

(A) Arraignment shall be held on the third Thursday of each month before an assigned Judge.

(B) At the arraignment, the defendant shall be advised of:

- (1) The right to be represented by counsel;
- (2) The nature of the charges contained in the information; and
- (3) The right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, a motion requesting Transfer from Criminal Proceedings to Juvenile Proceedings and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed.
- (4) If the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including trial, that the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.

If the defendant or counsel has not received a copy of the Information(s) pursuant to Pa.R.Crim. 562, a copy thereof shall be provided.

(C) A defendant may waive appearance at arraignment if the following requirements are met:

- (1) The defendant is represented by counsel of record and counsel concurs in the waiver; and
- (2) The defendant and counsel sign and file with the Clerk of Courts a waiver of appearance at arraignment, which acknowledges that the defendant:
 - (a) Understands the nature of the charges;
 - (b) Understands the rights and requirements set forth in Pa.R.Crim.P. 571(C) and
 - (c) Waives his or her right to appear for arraignment.

(D) The waiver of appearance at arraignment shall be in substantially the following form:

YOU MUST BE REPRESENTED BY COUNSEL TO WAIVE THE APPEARANCE AT ARRAIGNMENT
(Pa. Rule of Criminal Procedure 571 (D))

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,
v.

No. _____ of 20 ____

OTN: _____

Defendant.

Arraignment Date: _____

ENTRY OF APPEARANCE

Enter my appearance for the above-named Defendant. **INTERPRETER NEEDED**

Attorney for Defendant [PRINTED] Date _____ Attorney I.D. # _____

Address of Attorney Attorney Phone # _____

Email Address of Attorney Attorney's SIGNATURE _____

WAIVER OF APPEARANCE AT ARRAIGNMENT

I hereby waive my appearance at arraignment and I stand mute with respect to my plea. I have been advised by my attorney of the charges against me and that my attorney will receive copies of the Criminal Information filed in this case. I know I have the right:

1. to file a request in writing for a Bill of Particulars with the Clerk of Courts and a copy to be served on the District Attorney within seven (7) days following the above listed arraignment date (Pa. Rule of Criminal Procedure 572);
2. to file a motion with the Court in writing, requesting pretrial Discovery and Inspection and a copy to be served on the District Attorney within fourteen (14) days after the above listed arraignment date (Pa. Rule of Criminal Procedure 573);
3. to file an Omnibus motion with the Court in writing requesting all other kinds of pretrial relief and a copy to be served on the District Attorney within thirty (30) days after the above listed arraignment date (Pa. Rules of Criminal Procedure 578 & 579).

THE TIME LIMITS SET FORTH TO EXERCISE THESE RIGHTS WILL BE STRICTLY ENFORCED!

4. If I fail to appear without cause at any proceeding for which my presence is required, including trial, my absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in my absence. (Pa. Rule of Criminal Procedure 571).

I am hereby notified that, as a condition of bail, I am required to notify in writing the Clerk of Courts' office, the District Attorney's office, and my bondsman of any change of address and/or telephone number within forty-eight (48) hours after any change by mail or delivering in person said notice to each of the above (Pa. Rule of Criminal Procedure 117).

IF I FAIL TO APPEAR FOR ANY SCHEDULED COURT DATE, THE HEARING OR TRIAL WILL CONTINUE IN MY ABSENCE AND A BENCH WARRANT WILL BE ISSUED FOR MY ARREST, WITH AN ADDED CONTEMPT PENALTY OF UP TO SIX MONTHS INCARCERATION.

Signature of Defendant Date _____ Signature of Attorney _____

JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA, :

v. :

EMMANUEL HOWARD, : NO. 1069 OF 2016

Appellant. : JUDGE JOSEPH M. GEORGE, JR.

ATTORNEYS AND LAW FIRMS

William M. Martin, Esquire, Assistant District Attorney, For the Commonwealth

Robert R. Harper, Jr., Esquire, Assistant Public Defender, For the Appellant

OPINION AND ORDER

GEORGE, J.

December 5, 2016

Following a trial by jury, Appellant, Emmanuel Howard, was convicted of two (2) counts of Robbery, one (1) count of Theft by Unlawful Taking, one (1) count of Receiving Stolen Property and one (1) count of Simple Assault. {1} On September 14, 2016, Appellant was sentenced to a term of imprisonment of not less than seven (7) years nor more than twenty (20) years. Appellant filed a timely post-sentence motion for modification of sentence and the Court denied same. Subsequently, Appellant filed a direct appeal to the Pennsylvania Superior Court. This Opinion is in support of the verdict of the jury and the sentencing order.

CONCISE ISSUES

Appellant filed the following Statement of Errors Complained of on Appeal:

1. Whether the evidence presented at trial sufficiently established that during the course of a theft at the Canton Restaurant on Fayette Street in Uniontown, Fayette County, Pennsylvania, [Appellant] threatened the victim with serious bodily injury or that he used physical force when removing the money from the register, as required under both 18 Pa. C.S.A. § 3701(a)(1)(ii) and (v)[?]

2. Whether the evidence presented at trial sufficiently established that [Appellant's] conduct placed the victim in fear of imminent serious bodily injury, as required under 18 Pa. C.S.A. § 2701(a)(3)[?]

3. Whether the evidence presented at trial demonstrated that the individual who robbed the Canton Restaurant on December 29, 2016 [sic] was in fact the Defendant[?]

{1} 18 Pa. C.S.A. §§ 3701(a)(1)(ii), 3701(a)(1)(v), 3921(a), 3925(a) and 2701(a)(3), respectively.

4. Whether the Defendant's sentence calling for a term of incarceration of no less than seven (7) years to twenty (20) years was harsh, severe and excessive in light of the surrounding circumstances[?]

FACTS

On December 29, 2015, Christine Arthur (hereinafter "Victim") was employed as a waitress at the Canton Restaurant on Fayette Street in Uniontown, Fayette County, Pennsylvania. (N.T. p. 15). Approximately thirty minutes into her shift, a man described by Victim as a young black male, with facial hair, distinguished eyes and wearing a dark hooded sweatshirt came into the restaurant and placed an order. (N.T. pp. 18-19, 31-32, 40). The man grabbed a can of pop out of the refrigerator cooler and set it down on the counter where Victim was working. (N.T. p. 19). After Victim requested payment for the order, the man went around the counter, pointed an object that was covered up with a handkerchief into her side and demanded money from the cash register. (N.T. pp. 19-20). The assailant then ran off after taken approximately sixty dollars. (N.T. p. 22). Victim testified she complied with the demand because she "was afraid for my life." (N.T. p. 22).

About five minutes after the assailant fled the restaurant, Lieutenant Tom Kolencik with the Uniontown Police Department arrived on scene and spoke with Victim. (N.T. pp. 39-41). Lieutenant Kolencik also took into evidence the pop can that was handled by the assailant during the commission of the crime. (N.T. pp. 42-44). The conclusion of the lab results was that a set of fingerprints on the pop can belonged to Appellant. {2} (N.T. pp. 89-91).

Appellant briefly testified at trial. He testified that since he resided across the street from the restaurant, he frequented it numerous times. (N.T. pp. 105, 107). Finally, Appellant testified that he did not rob the Canton on December 29, 2015. (N.T. 110-113).

DISCUSSION

Appellant first claims that the evidence provided by the Commonwealth at trial was not sufficient to meet the elements of Robbery under 18 Pa. C.S.A. § 3701(a)(1)(ii) and (v).

The standard of review for a challenge to the sufficiency of the evidence is to determine whether, when viewed in a light most favorable to the verdict winner, the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt. The Commonwealth may sustain its burden of proving every element beyond a reasonable doubt by means of wholly circumstantial evidence.

The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubt raised as to the accused's guilt is to be resolved by the fact-finder. [In this context, appellate courts] do not assess credibility

{2} A more thorough review of the collection and analysis of the fingerprint evidence can be found in the testimony of Lieutenant Kolencik, Detective Donald Gmitter and Sergeant Anthony R. Delucio. (N.T. pp. 38-95).

nor . . . assign weight to any of the testimony of record. Therefore, [the verdict will not be disturbed] unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.

Commonwealth v. Vogel song, 90 A.3d 717, 719 (Pa. Super. 2014).

On Count 1, Appellant was charged with Robbery – Threat of Immediate Serious Bodily Injury. Appellant argues the Commonwealth lacked sufficient evidence that Appellant threatened the victim with serious bodily injury. A guilty verdict on this charge requires the Commonwealth to prove beyond a reasonable doubt that in the course of committing a theft, the defendant threatened another with or intentionally put him in fear of immediate serious bodily injury. 18 Pa. C.S.A. § 3701(a)(1)(ii).

Sufficient evidence is presented if the Commonwealth demonstrates aggressive actions that threaten serious bodily injury. *Commonwealth v. Davis*, 459 A.2d 1267, 1272 (Pa. Super. 1983). The court must focus on the nature of the threat posed by the defendant and whether he reasonably placed the victim in fear of immediate serious bodily injury. *Commonwealth v. Jannett*, 58 A.3d 818, 822 (Pa. Super. 2012).

In the instant case, the Commonwealth presented evidence that Appellant, after appearing to be a patron of the restaurant, pointed an object to the side of Victim and demanded money from the cash register, causing Victim to fear for her life. The nature of Appellant’s actions was such that a reasonable person in Victim’s position would fear for his or her life. Therefore, sufficient evidence was presented that Appellant intentionally put Victim in fear of immediate serious bodily injury. See *Commonwealth v. Taylor*, 831 A.2d 661 (Pa. Super. 2003) (sufficient evidence defendant threatened or placed victim in fear of immediate seriously bodily injury when defendant entered the store, went around the counter, pushed a hard object in the side of the victim and demanded money from the cash register); see also *Jannett*, *supra* (sufficient evidence defendant placed victims in fear of immediate serious bodily injury when victims testified they were afraid for their safety after defendant entered three separate banks, handed the victims a note demanding money and stated he had a gun); see also *Commonwealth v. Bragg*, 133 A.3d 328 (Pa. Super. 2016) (sufficient evidence defendant placed victims in fear of immediate serious bodily injury after defendant entered a bank, disguised himself, pounded his fists on a counter and demanded money, even though defendant did not brandish a weapon or make a specific verbal threat).

On Count 3, Appellant was charged with Robbery – Taking Property from Another by Force. Appellant argues the Commonwealth lacked sufficient evidence that Appellant used physical force when removing money from the cash register. A guilty verdict on this charge requires the Commonwealth to prove beyond a reasonable doubt that in the course of committing a theft, the defendant physically took or removed property from the person of another by force however slight. 18 Pa. C.S.A. § 3701(a)(1)(v). On the issue of force, the appellate courts have held:

Any amount of force applied to a person while committing a theft brings the act within the scope of [the] robbery . . . statute. This force may be actual or constructive. Actual force is applied to the body; constructive force is use of

threatening words or gestures, and operates on the mind. The degree of actual force is immaterial, so long as it is sufficient to separate the victim from his property in, on or about his body.

Commonwealth v. Bedell, 954 A.2d 1209, 1213 (Pa. Super. 2008).

Instantly, the Commonwealth provided sufficient evidence that Appellant used force when taking money from the Canton restaurant. Although the evidence indicates that Appellant took the money directly from the cash register and not from Victim's person, Appellant still inflicted upon Victim a level of actual force by placing an object into her side. Even though the level of force may have been slight, the contact nevertheless posed a threat to Victim because Victim was aware of both the taking of the property and the force used to gain control of the property. See *Commonwealth v. Brown*, 506 Pa. 169, 484 A.2d 738 (1984) (a person has a right to be free from fear of attack and that right is violated when the person is aware of the taking and slight contact is used to achieve the taking). Appellant took these actions without any regard to the safety of Victim. Therefore, viewing the evidence in a light most favorable to the Commonwealth as the verdict winner, sufficient evidence established Appellant took money from Victim using force.

Appellant next contends that the Commonwealth failed to provide evidence beyond a reasonable doubt that Appellant's conduct placed Victim in fear of imminent serious bodily injury under Section 2701(a)(3) of the Crimes Code. A person is guilty of simple assault if he attempts by physical menace to put another in fear of imminent serious bodily injury. 18 Pa. C.S.A. § 2701(a)(3). The intent to place another in fear of imminent serious bodily injury by physical menace can be proven by circumstantial evidence and may be inferred from a defendant's conduct under the attendant circumstances. *Commonwealth v. Little*, 614 A.2d 1146, 1154 (Pa. Super. 1992).

In this case, the Commonwealth established evidence beyond a reasonable doubt that Appellant placed Victim in fear of imminent serious bodily injury. Victim stated multiple times during her testimony at trial that she feared for her life and she thought at that point her physical safety was in danger. Additionally, Victim testified that she complied with Appellant's demands because she was afraid for her life.

In addition to Victim's testimony that she was afraid for her life, it was reasonable for a jury to determine that in order for Appellant to gain possession of the money located in the cash register, he had to use conduct designed to place Victim in fear of serious bodily injury. Based on the evidence, the Commonwealth proved beyond a reasonable doubt that Appellant's conduct placed Victim in fear of imminent serious bodily injury. Thus, this issue is without merit.

Appellant next claims that the Commonwealth failed to present evidence that Appellant was the individual who robbed the restaurant on December 29, 2015. The record reveals that the Commonwealth not only presented testimony from Victim positively identifying Appellant as the assailant, but also circumstantial evidence in the form of Appellant's fingerprints that placed Appellant at the scene of the crime.

First, Victim's testimony established that during the commission of the crime, she saw assailant's face and that shortly after Lieutenant Kolencik arrived on scene, she described Appellant's appearance. At that point, the jury determines the Victim's credibility on identifying Appellant. See *Commonwealth v. Valentine*, 101 A.3d 801 (Pa. Super. 2014) (evidence was sufficient to establish identity of defendant as assailant who robbed the victim when the victim testified that she was able to see unconcealed portions of assailant's face and eyes during the commission of the crime, only a short amount of time elapsed between robbery and the victim's positive identification of the assailant, and the victim identified assailant at trial).

In addition to Victim's positive identification of Appellant, the police collected Appellant's fingerprints at the crime scene. The evidence demonstrates that immediately before stealing money from the cash register, Appellant retrieved a pop can from the refrigerator cooler and placed it on the counter. After this incident occurred, the police took the pop can into evidence and lifted four sets of fingerprints. Although only one set was identifiable, that set belonged to Appellant. This provided additional evidence, beyond Victim's testimony, of Appellant's presence at the scene. Therefore, the evidence presented by the Commonwealth was certainly sufficient to prove Appellant was the assailant. Appellant's third issue is meritless.

Appellant last claims that his sentence was harsh, severe and excessive in light of the surrounding circumstances. Appellant's claim of error with regard to the sentence imposed by the court is a challenge to the discretionary aspects of the sentence.

Imposition of a sentence is vested in the discretion of the sentencing court and will not be disturbed absent a manifest abuse of discretion. *Commonwealth v. Vasquez*, 560 Pa. 381, 384-85, 744 A.2d 1280, 1282 (2000). An abuse of discretion is not shown merely by an error in judgment; rather, the Appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision. *Commonwealth v. Mastromarino*, 2 A.3d 581, 589 (Pa. Super. 2010). A sentence imposed is not excessive if it does not exceed statutory limits and the sentencing colloquy clearly demonstrates that the sentencing court carefully considered all evidence relevant to the determination of a proper sentence. *Commonwealth v. Burtner*, 453 A.2d 10, 12 (Pa. Super. 1982).

First, Appellant's sentence did not exceed the statutory maximum. Appellant was sentenced on Count 1 of his Robbery conviction of up to twenty years, falling within the maximum sentence. See 18 Pa. C.S. §§ 3701(b)(1), 1103(1). Second, Appellant was sentenced to a minimum of seven years, placing the sentence in the standard range under the Pennsylvania Sentencing Guidelines. {3}

{3} Appellant's offense gravity score: 10

Appellant's prior record score: RFEL

Standard range minimum: seventy-two (72) to eight-four (84) months.

In addition to reviewing the presentence investigation, this Court took into consideration the nature and seriousness of the offense. At the time of sentencing, Appellant requested to be sentenced in the mitigated range, claiming the identification of Appellant at the scene of the robbery was highly circumstantial. As mentioned above, the Commonwealth did present circumstantial evidence for identification purposes, but that was in addition to Victim's testimony identifying Appellant as the assailant. Moreover, as the Commonwealth stated, Appellant, a relatively young man, has already committed a number of crimes that categorizes him as a repeat felon under his prior record score. Thus, the protection of the community and Appellant's rehabilitative needs were also factored into his sentence. For these reasons, Appellant's sentence was not severe and his last issue is without merit.

BY THE COURT:
JOSEPH M. GEORGE, JR., JUDGE

ATTEST:
CLERK OF COURTS

CLERK OF COURTS FEE BILL

CLERK OF COURTS FEE BILL
42 PCS 1725.4
(Pursuant to Act 36-2000)

Effective January 1, 2017, the fees to be charged and collected by the Clerk of Courts in counties of the second class A and the third through eighth, or equivalent officer in home rule counties of the same class, shall be as listed on the attached Fee Bill.

The amount of any fee or charge increased pursuant to paragraph (1) of 42 PCS section may be increased every three years, provided that the amount of the increase may not be greater than the percentage of increase in the Consumer Price Index for Urban Workers for the immediate three years preceding the increase in the fee or charge.

In addition to any other fee authorized by law, an automation fee of not more than \$5.00 may be charged and collected by the Clerk of Courts of counties of the second class A and the third through eighth class, including home rule counties of the same class, for the initiation of any action or legal proceeding. The automation fee shall be deposited into a special Clerk of Courts automation fund established in each county. Monies in the special fund shall be used solely for the purpose of automation and continued automation updates of the Office of the Clerk of Courts.

Janice Snyder
Clerk of Courts

Approved:
John F. Wagner
President Judge

CLERK OF COURTS FEE BILL

FAYETTE COUNTY CLERK OF COURTS FEE BILL

Effective January 1, 2017

Criminal Case Filings

Felony, Misdemeanor	154.00
PFA Indirect Criminal Contempt	138.00
Non-Jury, Plea, ARD, PWOV	138.00
Summary	51.00
Out of County Courtesy Supervision	45.50
Summary Appeal	45.50

Bail Bonds

Percentage Cash Bail Administrative Fee 30% on amount paid	
Agent Qualifying Power of Attorney	52.00
Bail Piece (Application and Order)	16.50
Bail Forfeitures	28.50
Posting Property Bond	25.50

Filings

Appeals (Higher Court: state fee not included)	57.00
Issuance of Bench Warrants	19.00
Constable Bond/Oath/Card	22.00
Deputy Constable Appointment/Card	22.00
Expungement (Miscellaneous Cases)	52.00
ARD Motion and Expungement	67.00
Miscellaneous Matters	22.00
Municipal School Tax Report	18.00
Petitions/Motions generally (following dispositions)	22.00
Petitions for Parole/Release etc.	22.00
Private Detective (Individual) Bond/License - 2 years	227.00
Private Detective (Corporate) Bond/License - 2 years	327.00
Revocation of ARD, PWOV, Probation/Parole	22.00
Roads (Including Certification)	22.00
Summary Appeal (Non-refundable filing fee)	45.50
Tax Collector Bond/Oath	22.00
Tax Collector Report	18.00

Miscellaneous Fees

Certification	10.00
Copies (per page)	0.25
Clerk of Courts Automation Fee	5.00
Computer Printouts	1.00
Exemplification	22.00
Fax Fees (per page)	1.75
License Suspension/Reinstatement	22.00
Postage (per case)	15.25
Record Search	11.00
Subpoena (sign/seal)	5.50

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