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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

MARGARET E. DALANSKY, late of Bullskin Township, Fayette County, PA (3)

Co-Executors:

Charles T. Freda, Jr. 5581 Thomas Lane Stanfield, NC 28163 Christine R. Beaver 4346 Valencia Court Erie, PA 16506

Attorney: William C. Stillwagon 319 South Maple Avenue Greensburg, Pa 15601

DINO M. PALERMO, A/K/A MARTIN **DINO PALERMO**. late of North Union

Township, Fayette County, PA (3) Executrix: Ruth Palermo c/o 96 East Main Street Uniontown, PA 15401 Attorney: Simon B. John

MATTHEW J. SWITALSKY, late of Menallen Township, Fayette County, PA (3) Personal Representative: Deborah Wojcik c/o 2 West Main Street, Suite 110 Uniontown, PA 15401 Attornev: Ricardo J. Cicconi

Second Publication

JANET E. BRASUK, late of North Union Township, Fayette County, PA (2) Executor: John H. Brasuk 1143 Monumental Road,

Fairmont, WV 26554 Attorney: Glenn H. Gillette Thomson Rhodes & Cowie, P.C. 1010 Two Chatham Center Pittsburgh, PA 15219

EDWARD N. CARLETON, late of Bullskin Township, Fayette County, PA (2) Administratrix: Charlene Carleton

> c/o 312, 2nd Avenue Carnegie, PA 15106

Attorney: Philip H. Rubenstein

FRANCES GRIFFITH, A/K/A FRANCES D. **GRIFFITH**, late of Bullskin Township, Fayette

County, PA (2)

Executor: Richard D. Griffith Attorney: David G. Petonic 314 C Porter Avenue Scottdale, PA 15683

HELEN FRANCES KOVACIC, late of

Redstone Township, Fayette County, PA (2) Executrix: Rose Ann Kovacic c/o 2 West Main Street, Suite 501 Uniontown, PA 15401 Attorney: Bernadette K. Tummons

NORMA C. RIEFER, A/K/A NORMA CECELIA RIEFER, late of Redstone

Township, Fayette County, PA (2) Personal Representative: James T. Davis c/o Davis & Davis 107 East Main Street Uniontown, PA 15401 Attorney: James T. Davis

MARTHA YOCUM, A/K/A MARTHA G.

YOCUM, late of North Union Township, Fayette County, PA (2)

Co-Executors: James R. Yocum and Harriet E. Michniak c/o HIGINBOTHAM LAW OFFICES 45 East Main Street, Suite 500 Uniontown, PA 15401 Attorney: James E. Higinbotham, Jr.

First Publication

REGINA D. CARLETTO, late of

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Rockville, MD 20852

Attorney: Emilie J. Cupp, Esquire 2 West Main Street, Suite 517

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Canonsburg, PA 15317

Attorney: George E. Anthou

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Canonsburg, PA 15317

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Township, Fayette County, PA (1)

Administratrix: Shauna DiPietro

c/o Fitzsimmons and Barclay

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Attorney: Ralph K. Barclay, Jr.

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Administrator: Thomas S. Dunay

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Belle Vernon, PA 15012

Attorney: Emilie J. Cupp, Esquire

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Uniontown, PA 15401-3403

ANNA S. FISHER, A/K/A ANN S. FISHER,

late of Menallen Township, Fayette County, Pa

Executor: Keith Allen Fisher (1)

c/o 96 East Main Street

Uniontown, PA 15401

Attorney: Simon B. John

ALVIN H. GUYNN, late of Dunbar Township,

Favette County, PA (1)

Executrix: Nardella J. Groomes

468 Narrows Road

Connellsville, PA 15425 Attorney: Milton V. Munk, Jr. 450 West Main Street

Mount Pleasant, PA 15666

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of Connellsville, Fayette County, PA (1)

Personal Representative: Earl B. Johnson c/o Watson Mundorff Brooks & Sepic, LLP

720 Vanderbilt Road

Connellsville, PA 15425

Attorney: Charles W. Watson

BETTY J. MCGEE, A/K/A BETTY JEAN MCGEE, late of North Union Township,

Fayette County, PA (1)

Personal Representative: Teri R. Cornish

Attorney: Charles W. Watson

Watson Mundorff Brooks & Sepic, LLP

720 Vanderbilt Road

Connellsville, PA 15425

ROBERT C. PASTORIUS, JR., A/K/A ROBERT CHARLES PASTORIUS, JR., late

of Uniontown, Fayette County, PA (1)

Administratrix: Rachel P. Medlock

537 Green Street

Brownsville, PA 15417

Attorney: Emilie J. Cupp, Esquire

2 West Main Street, Suite 517

Uniontown, PA 15401-3403

JEANA MARIE SCOTT, late of Grindstone,

Favette County, PA (1)

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P.O. Box 114

Newell, PA 15466

Attorney: James T. Tallman

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Sewickley, PA 15143

ERIK YANNITELLI, late of Farmington,

Fayette County, PA (1)

Administrator: James Yannitelli

944 Rose Street

Irvona, PA 16656

Attorney: Virginia Shenkan

2712 Carlisle Street

New Castle, PA 16105

Registers' Notice

Notice by DONALD D. 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

Monday, December 7, 2015 at 9:30 A.M.

2614-0568 MARGARET WILLIS SHERRI EICHER, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on Monday, December 21, 2015 at 9:30 A.M.

In Court Room No. 1 of the Honorable STEVE P. LESKINEN, 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.

Notice is also 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

Monday, December 7, 2015 at 9:30 A.M.

2614-0807 JEFFREY A. BRANTHOOVER ROBIN G. BRANTHOOVER,

Administratrix

2614-0019 PHYLLIS J. NOSCHESE JOHN R. NOSCHESE,

Administrator CTA

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on Monday, December 21, 2015 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.

(2) DONALD D. REDMAN Register of Wills and Ex-Officio Clerk of the Orphans' Court Division

JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA,

·_____

MICHAEL JACOB RUMBLE, : NO. 1299 OF 2014

Appellant. : JUDGE JOSEPH M. GEORGE, JR.

ATTORNEYS AND LAW FIRMS

Anthony S. Iannamorelli, Esquire, Assistant District Attorney, For the Commonwealth Brian V. Manchester, Esquire, Manchester & Associates, Trial Counsel, For the Appellant Douglas S. Sholtis, Esquire, Appellate Counsel, For the Appellant

OPINION

GEORGE, J. November 19, 2015

Following a trial by jury, Appellant, Michael Jacob Rumble, was found guilty of Driving Under the Influence-General Impairment/Incapable of Safely Driving {1}, Driving Under the Influence-Highest Rate of Alcohol {2}, Duties at Stop Signs {3}, and Turning Movements and Required Signals {4}. On August 19, 2015, Appellant was sentenced to a term of imprisonment of not less than four (4) months nor more than twenty-three (23) months {5}. Appellant filed a direct appeal to the Superior Court of Pennsylvania. This Opinion is in support of the verdict of the jury.

CONCISE ISSUES

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

- 1. Whether the Court was correct in denying Trial Counsel's Motion in Limine to preclude testimony that the Defendant's passenger had a partially opened case of beer in the passenger side of Defendant's vehicle and that the passenger was holding an open beer car.
- 2. Whether the Court was correct in denying Trial Counsel's motion that the Commonwealth's Forensic witness should be deemed only a fact witness and not an expert witness.
 - 3. Whether the trial evidence met the criteria for adequate weight to convict the Defendant.
- 4. Whether the trial evidence was sufficient to meet the criteria to convict the Defendant on all counts

FACTS

On April 13, 2014, Sergeant Pocsatko of the Southwest Regional Police Department was monitoring traffic in Point Marion, Fayette County, Pennsylvania. (T.T. p. 22). At approximately 2:30 in the morning, Sergeant Pocsatko observed a white Chevy Silverado, driven by Appellant, approach a stop sign at the end of the Greene County bridge. (T.T. p. 22).

^{{1} 75} Pa. C.S. § 3802(a)(1).

^{{2} 75} Pa. C.S. § 3802(c).

^{{3} 75} Pa. C.S. § 3323(b).

^{{4} 75} Pa. C.S. § 3334(a).

^{5} The applicable mandatory minimum sentence is ninety (90) days of incarceration.

Appellant made his way to the stop sign, failed to stop, and made a right turn onto Main Street without using his turn signal. (T.T. p. 22). Appellant then made it to another stop sign; again he failed to stop, made a left turn, and did not use his turn signal. (T.T. p. 22). While the actual physical movements of the turns were proper, Sergeant Pocsatko observed Appellant's traffic violations. (T.T. pp. 34-35). At that point, he initiated a traffic stop on Morgantown Street. (T.T. p. 23). Appellant used his turn signal, pulled over promptly, and parked parallel to the curb. (T.T. pp. 36-37).

Sergeant Pocsatko approached the vehicle and noticed Appellant in the driver's seat along with a passenger sitting in the front seat of the car. (T.T. p. 24). Appellant already had his documents ready and handed them to Sergeant Pocsatko. (T.T. p. 38). Sergeant Pocsatko detected Appellant had a severe odor of alcohol and red glassy bloodshot eyes. (T.T. p. 24). He asked Appellant if he had been drinking and Appellant admitted to having a few beers. (T.T. p. 24). Sergeant Pocsatko also noticed an open case of Bud Light beer on the floor of the front passenger side containing some cans in it and an open can of Bud Light beer between the passenger's legs. (T.T. p. 24).

Appellant was asked to exit the vehicle to perform several field sobriety tests (FST). Appellant exited the vehicle without any trouble. (T.T. p. 41). Prior to starting the FST, Sergeant Pocsatko asked Appellant if he had any medical conditions or injuries that might prevent him from performing the tests, which Appellant answered in the negative. (6) (T.T. pp. 25-26). Appellant first performed the nine step walk and turn test after Sergeant Pocsatko explained and demonstrated the test to Appellant. Sergeant Pocsatko determined Appellant failed this test by not walking heel to toe, he was off balanced, and he went past nine. (T.T. p. 27). Appellant then performed the one leg stand test. Sergeant Pocsatko again determined Appellant failed this test as he extended his arms to remain balanced, did not raise his heel six inches off the ground, and dropped his heel on a number of occasions. (T.T. p. 27). Based on his training and experience, Sergeant Pocsatko determined Appellant was incapable of safely operating a motor vehicle. (T.T. p. 28).

Appellant was escorted to Uniontown Hospital and at approximately 3:55 a.m., Billy Jo Cable, the phlebotomist on shift, drew his blood. (T.T. pp. 28-29). Ms. Cable sealed the vials containing the blood and gave the blood kit to Sergeant Pocsatko. (T.T. pp. 29, 76). Sergeant Pocsatko secured the blood kit in a locked refrigerator at the Belle Vernon Station. (T.T. p. 29). Steven Schwartz, a Lieutenant of Investigations with the Southwest Regional Police Department, handled the evidence once Sergeant Pocsatko secured it in the refrigerator. Three days later, on April 16, 2014, Lieutenant Schwartz transported the blood kit from the Belle Vernon Station to the Greensburg Crime Lab for testing. (T.T. pp. 86-87).

The blood kit was received at the Greensburg Crime Lab and tested by Robert Elsavage. (T.T. p. 102). Mr. Elsavage tested the blood using a gas chromatograph. He concluded, within a reasonable degree of scientific certainty, that Appellant's blood alcohol concentration (BAC) was 0.223 percent plus or minus .010 percent and that the analysis was done in accordance with the ASCLD Lab International accreditations and policies. (T.T. pp. 109, 118).

At trial, the Commonwealth offered Mr. Elsavage as an expert in gas chromatography. Appellant objected, arguing Mr. Elsavage was a technician who knew how a gas chromatograph worked but his qualifications did not give him the expertise in explaining the scientific principles of gas chromatography. (T.T. pp. 97-99). This Court recognized Mr. Elsavage as an expert in the field of gas chromatography after hearing Mr. Elsavage's qualifications. (T.T. pp. 91-101).

^{6}Appellant and the Commonwealth stipulated at trial that Appellant was diagnosed on June 29, 2010 with severe debilitating arthritis in both knees and was recommended to undergo bilateral total knee replacement with surgical intervention. Due to his condition, Appellant is unable to stand on either leg in isolation without having excruciating pain in both knees. At the date of trial, Appellant has not had either of his knee joints replaced. (T.T. pp. 43-44).

Appellant offered his own expert, Janine S. Arvizu, who testified at trial. Ms. Arvizu was recognized as an expert in the field of analytical chemistry, lab quality control, quality care auditor, and BAC testing. (T.T. p. 222). Ms. Arvizu testified that Ms. Cable erred in disinfecting the area where Appellant's blood was drawn and erred when inverting the blood once it entered the vial. (T.T. pp. 228-31). Ms. Arvizu also testified that the transportation of the blood from the Southwest Regional Police Department to the Greensburg Crime Lab in an unrefrigerated condition may have compromised the integrity of the blood sample. (T.T. pp. 235-36). Finally, Ms. Arvizu testified that Mr. Elsavage made several errors and did not take corrective actions. Specifically, Ms. Arvizu testified that Mr. Elsavage's testing did not comply with his validated methodology, some of the quality control samples used were not purchased from an accredited source, and Mr. Elsavage failed to use the same pipette when analyzing Appellant's blood. (T.T pp. 243-270). Ms. Arvizu thus concluded, within a reasonable degree of scientific certainty, that the data provided by the Commonwealth did not prove valid test results. (T.T. p. 270). At no time however did Ms. Arvizu offer an opinion on how or to what extent these alleged errors impacted the BAC results obtained by Mr. Elsavage.

DISCUSSION

Appellant's first concise issue is whether this Court was correct in denying Appellant's Motion in Limine to preclude testimony of a partially open case of beer in the front passenger seat and that the passenger was holding an open beer can. This issue is related to the admission of evidence at trial and the standard of review is as such:

The admissibility of evidence is solely within the discretion of the trial court, and a trial court's evidentiary rulings will be reversed on appeal only upon abuse of discretion. An abuse of discretion will not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous. Moreover, an erroneous ruling by a trial court on an evidentiary issue does not necessitate relief where the error was harmless beyond a reasonable doubt.

Commonwealth, v. Travaglia, 611 Pa. 481, 28 A.3d 868, 873-74 (2011) (citation omitted).

"The court may exclude relevant evidence if its probative value is outweighed by a danger of ... unfair prejudice." Pa. R. Evid. 403. Unfair prejudice encompasses any "evidence so prejudicial that it would inflame the jury to make a decision based upon something other than the legal propositions relevant to the case." Commonwealth v. Page, 965 A.2d 1212, 1220 (Pa.Super.2009).

In the instant case, Sergeant Pocsatko testified to his observations of an open beer case in the front passenger area and an open beer can in the passenger's possession. While the evidence was harmful to Appellant, that cannot merely be a reason for exclusion. Commonwealth v. Dillon, 592 Pa. 351, 367, 925 A.2d 131, 141 (2007).

The evidence was probative and it is for the jury to decide its weight in reaching a verdict. Sergeant Pocsatko's testimony did not reach the level of prejudice that would have inflamed the jury. The scope of his testimony regarding this issue was merely what he observed and in the context of the charges against the Appellant its probative value outweighed any unfair prejudice. Therefore, Appellant's first concise issue is without merit.

Appellant's next concise issue is whether this Court erred in recognizing the Commonwealth's forensic witness as an expert witness. Recognizing a witness as an expert in a specific scientific field is an evidentiary matter for the trial court and shall not be disturbed on appeal unless the trial court abused its discretion. Commonwealth v. Szakal, 50 A.3d 210, 227 (Pa. Super. 2012).

The liberal standard a trial court must use in determining whether to qualify a witness as an expert witness is whether a witness has a reasonable pretension to specialized knowledge on a subject for which expert testimony is admissible. Commonwealth v. Doyen, 848 A.2d 1007,

1014 (Pa. Super. 2004). If he does, he may testify and his testimony may be in the form of an opinion if: (1) the expert's specialized knowledge is beyond that possessed by the average layperson; (2) the expert's specialized knowledge will assist the trier of fact to understand the evidence; and (3) the expert's methodology is generally accepted in the relevant field. Pa.R.E. 702. Once he is recognized as an expert, the weight to be given to his testimony is for the trier of fact to determine. Commonwealth v. Gonzalez, 519 Pa. 116, 128, 546 A.2d 26, 31 (1988).

In the instant case, this Court recognized the Commonwealth's witness, Mr. Elsavage, as an expert in the field of gas chromatography. Appellant objected at trial, arguing that Mr. Elsavage did not have the requisite knowledge to be recognized an expert in that particular field. Specifically, Appellant argued Mr. Elsavage knows the process of how a gas chromatograph works but not the scientific principles behind that process stating, "he's a technician who knows how to do it but he's not an expert in analytical chemistry nor is his studies given him that expertise." (T.T. p. 99).

Mr. Elsavage received training in gas chromatography at graduate school and on the job prior to working for the Pennsylvania State Police. He has been employed with the Greensburg Regional Crime Laboratory since 2000. He explained convincingly gas chromatography and how it analyzes the samples tested. Most importantly, Mr. Elsavage has performed over fourteen hundred tests using the gas chromatograph. Mr. Elsavage's training and qualifications were adequate to recognize him as an expert in the field of gas chromatography. Thus, Appellant's second concise issue is without merit.

Appellant's last two errors address the sufficiency and weight of the evidence presented at trial. The distinction between these two claims is significant.

A claim challenging the sufficiency of the evidence, if granted, would preclude retrial under the double jeopardy provisions of the Fifth Amendment to the United States Constitution, and Article I, Section 10 of the Pennsylvania Constitution, whereas a claim challenging the weight of the evidence if granted would permit a second trial. Commonwealth. v. Widmer, 560 Pa. 308, 318, 744 A.2d 745, 751 (2000) (citation omitted).

I. Sufficiency of the Evidence

"In order to preserve a challenge to the sufficiency of the evidence on appeal, an appellant's Rule 1925(b) statement must state with specificity the element or elements upon which the appellant alleges that the evidence was insufficient." Commonwealth v. Garland, 63 A.3d 339, 344 (Pa. Super. 2013); see also Commonwealth v. Gibbs, 981 A.2d 274, 281 (Pa. Super. 2009).

In his 1925(b) statement, Appellant did not state what element or elements he was challenging in his claim for lack of sufficient evidence provided by the Commonwealth. Instead, Appellant's statement generally challenged all of his convictions without more. See Garland, 63 A.3d at 344; Commonwealth v. Mosley, 1268 WDA 2014 (Pa. Super. filed Dec. 12, 2014) (unpublished memorandum) (Appellant's Rule 1925(b) statement globally challenged all of his convictions and failed to specify any of the elements of the individual crimes allegedly not proven sufficiently by the Commonwealth). Thus, Appellant waived his right to contest the sufficiency of the evidence.

Even if Appellant did not waive his challenge for lack of sufficient evidence, the record supports the jury's verdict.

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, Courts] do not assess credibility nor . . . assign weight to any of the testimony of record. Therefore, we will not disturb the verdict 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. Vogelsong, 90 A.3d 717, 719 (Pa. Super. 2014).

In order to uphold a conviction for DUI-General Impairment, an individual's alcohol consumption must substantially impair his ability to safely operate a vehicle. 75 Pa. C.S. § 3802 (a)(1); Commonwealth v. Mobley, 14 A.3d 887, 890 (Pa. Super. 2011). In Mobley, the Superior Court held the Commonwealth proved beyond a reasonable doubt that Mobley was incapable of safely driving a motor vehicle when evidence revealed that Mobley failed four FST, he smelled of alcohol, and he failed to stop at a stop sign. Id. Likewise, the Commonwealth, through Sergeant Pocsatko's testimony, provided sufficient evidence including: (1) Appellant driving through two stop signs without stopping; (2) Appellant twice failing to use a turn signal before he made a turn; (3) Appellant had a severe odor of alcohol; (4) Appellant had red glassy bloodshot eyes; (5) Appellant admitted to consuming alcoholic beverages prior to driving; and (6) Appellant failed two FST.

The Commonwealth also provided sufficient evidence for the conviction of DUI-Highest Rate of Alcohol. "An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher..." 75 Pa. C.S. § 3802(c). The Commonwealth's expert, Mr. Elsavage, testified regarding the analysis of Appellant's BAC. He explained in detail the steps he took, including what he did to prepare the blood samples for analysis and a detailed explanation of how the gas chromatograph tests the samples. Mr. Elsavage ultimately came to the conclusion, within a reasonable degree of scientific certainty, that Appellant's BAC was 0.223 percent, plus or minus .01 percent. Accordingly, a review of the evidence at trial reveals that there was sufficient credible evidence to support the jury's verdict.

II. Weight of the Evidence

The law is clear that a challenge to the weight of the evidence must be raised first with the Trial Court in a motion for a new trial or a post-sentence motion. Pa.R.Crim.P. 607; Commonwealth v. Muniz, 5 A.3d 345, 349 (Pa.Super. 2010). After reviewing the entire record, this Court finds no motion for a new trial or post-sentence motion raising the weight of the evidence issue on behalf of the Appellant before us. Therefore, the challenge has been waived.

Even if the challenge has not been waived, this Court would find that the verdict was not against the weight of the evidence.

An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. A trial judge must do more than reassess the credibility of the witnesses and allege that he would not have assented to the verdict if he were a juror. Trial judges, in reviewing a claim that the verdict is against the weight of the evidence do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice."

Widmer, 560 Pa. at 319-20, 744 A.2d at 751-52 (citation omitted); See Commonwealth. v. Betz, 664 A.2d 600, 604 (Pa.Super. 1995) (weight of exculpatory evidence must shock the court's sense of justice).

When an Appellant challenges the weight of the evidence, he concedes that sufficient evidence exists to sustain the verdict but questions which evidence is to be believed. Commonwealth v. Lewis, 911 A.2d 558, 566 (Pa.Super. 2006). Credibility determinations are

solely made by the finder of fact; therefore, an appellate court may not reweigh the evidence and substitute its judgment for that of the finder of fact. Commonwealth v. Gibson, 553 Pa.648, 664, 720 A.2d 473, 481 (1998). "A new trial is warranted only when the jury's verdict is so contrary to the evidence that it shocks one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." Commonwealth v. Morales, 625 Pa. 146, 164, 91 A.3d 81, 91 (2014).

Appellant argued he was capable of safely driving and had fine motor skills based on the actual physical movement of the turns being proper, his smooth handling of his documents to Sergeant Pocsatko, and his lack of trouble when exiting his vehicle to perform the FST. He also argued he was cognizant because he pulled over promptly and correctly when Sergeant Pocsatko flashed his lights and he was ready with his documents when Sergeant Pocsatko approached his vehicle. Finally, Appellant challenged the results of the FST by claiming both Appellant was unable to perform the FST due to his medical diagnosis of his knees and Sergeant Pocsatko did not follow the standards of the FST set forth in the training manual of the National Highway Traffic Safety Administration.

A review of Sergeant Pocsatko's testimony presented at trial demonstrates that Appellant failed to stop at two stop signs and failed to use his turn signals at two turns, Appellant failed two FST, and Appellant had red, glassy bloodshot eyes with a severe odor of alcohol. After reviewing the evidence, the jury determined Sergeant Pocsatko's testimony was credible.

Furthermore, Appellant argued the Commonwealth's process of collecting and analyzing his blood produced invalid results of his BAC. While there was a clear conflict in testimony between Mr. Elsavage and Ms. Arvizu regarding the analysis of Appellant's blood, the jury chose to accept Mr. Elsavage's testimony over Ms. Arvizu's testimony. See Commonwealth v. Shaffer, 40 A.3d 1250 (Pa. Super. 2012) (The verdict convicting the defendant of a DUI was not against the weight of the evidence when the Commonwealth presented the lab report indicating the defendant's BAC was over the legal limit and the lab analyst who tested the defendant's blood and prepared the report testified regarding the testing procedures). This Court finds that the jury verdict is amply supported by the evidence and the verdict of guilty does not shock this Court's sense of justice.

Wherefore, it is respectfully submitted that this appeal is without merit and should be denied.

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

ATTEST: CLERK OF COURTS

LUNCH AND LEARN

What Attorneys Need to Know About the New 2015 Regulations Regarding Real Estate Transactional Practice

Most attorneys have heard that there are dramatically new regulations which impact how we handle most residential real estate loan transactions. The regulations went into effect on October 3, 2015 and pertain to new loan applications which were taken by lenders on and after October 3, 2015. The settlements pursuant to the new regulations will begin to occur soon, probably sometime in November. This program discusses the nature of these changes and how the attorney can "remain in the game" of real estate transactional practice.

Presented by:

Susan Swick, Esquire

Western Pennsylvania Manager, Associate Counsel and Vice President of the Pittsburgh office of Old Republic National Title Insurance Company

Eric J. Weinheimer, Esquire

Associate Underwriting Counsel with the Pittsburgh office of Old Republic National Title Insurance Company

Wednesday, December 2, 2015
1 substantive CLE credit
12:00 - 1:00 p.m.
\$30.00 registration fee
Corporate Training Center
First Niagara Bank Building

RSVP to Cindy at the Fayette County Bar Association 724-437-7994 or cindy@fcbar.org

LUNCH AND LEARN

Special Needs Planning in Pennsylvania

This CLE seminar will clarify the intended function of special needs planning and review several circumstances in which special needs planning could prove beneficial to clients and their families. Additionally, this CLE seminar will examine the tools that attorneys may use in effectuating special needs planning strategies. Finally, this CLE will include a discussion of practical tips and potential pitfalls related to special needs planning for clients in Pennsylvania.

Presented by: Tim Witt, Esquire Watson Mundorff Brooks & Sepic, LLP

Tuesday, December 15, 2015
1 Substantive CLE Credit
12:00 - 1:00 p.m.
\$30.00 registration fee
Uniontown Country Club

CLE sponsored by STC Trust & Investment Management**

Lisa M. Bittner, Vice President & Business Development Manager

**11:30 a.m. Meet the Sponsor Lunch provided by Somerset Trust Company Trust & Investment Management



RSVP to Cindy at the Fayette County Bar Association 724-437-7994 or cindy@fcbar.org

UPCOMING EVENTS

Holiday Toys for Tots Event Thursday, December 3, 2015 5:00 - 8:00 p.m.

Tropics on the Links Restaurant and Bar at the Uniontown Country Club

RSVP to Cindy at the Fayette County Bar Association 724-437-7994 or cindy@fcbar.org



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