

# Lebanon County Legal Journal

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

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

**DECEDENTS' ESTATES**

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

**FIRST PUBLICATION**

**ESTATE OF LUCILLE M. BRUBAKER**, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Jeffrey R. Brubaker, Co-Executor  
Lisa B. Henry, Co-Executor  
Kelly J. Fox, Co-Executor  
c/o Zimmerman Law Office  
466 Jonestown Road  
Jonestown PA 17038

John M. Zimmerman, Esq.  
Attorney for the Estate

**ESTATE OF JOHN R. FORDYCE**, late of Lebanon City, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Scott R. Fordyce, Administrator  
c/o Jon F. Arnold, Esquire  
410 Chestnut Street  
Lebanon, PA 17042

**ESTATE OF JEAN L. HAIN**, late of the Borough of Myerstown, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

John E. Hain, Executor  
545 Stracks Dam Road  
Myerstown, PA 17067

Nickolas Hain, Executor  
541 Stracks Dam Road  
Myerstown, PA 17067

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

**ESTATE OF WALTER A. HERR**, late of the County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executrices.

Larry L. Herr, Executor  
2007 Birch Road  
Lebanon, PA 17042

Priscilla H. Swanger, Executrix  
2003 Birch Road  
Lebanon, PA 17042

Paul W. Kilgore, Esquire  
Spitler, Kilgore & Enck, PC  
522 South 8th Street  
Lebanon, PA 17042  
Attorney

**ESTATE OF EARL B. HIGLEY**, late of Jackson Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Jerry E. Higley, Executor  
c/o Gerald J. Brinser, Esq.  
P. O. Box 323  
Palmyra, PA 17078  
Attorney

**ESTATE OF ANNA MAE LUCIOTTI**, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Richard F. Luciotti, Executor

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

**ESTATE OF JOHN D. REINBOLD**, late of North Cornwall Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Thomas K. Reinbold, Co-Executor  
John D. Reinbold, Jr., Co-Executor  
Kevin M. Richards, Esquire  
P.O. Box 1140  
Lebanon, PA 17042-1140

**ESTATE OF JENNIFER A. SANDERS**, late of North Londonderry Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Devan S. Waibel, Executor  
c/o Keith D. Wagner  
P. O. Box 323  
Palmyra, PA 17078  
Attorney

**ESTATE OF JEAN B. SCHWAB**, late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Janette Lebo, Executor  
43 Rehrersburg Road  
Richland, PA 17087

Timothy T. Engler, Esquire  
Steiner & Sandoe, Attorneys

**ESTATE OF SANDRA C. WOOD**, late of Myerstown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Diane M. Brewer, Executor  
9 E. Richland Avenue  
Myerstown, PA 17067  
Thomas S. Long, Attorney

**ESTATE OF MIRIAM A. YEAGLEY**, late of Cleona, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Beth Ann Hostetter, Executrix

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

**SECOND PUBLICATION**

**ESTATE OF ERNESTINE A. FENNER**, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Larry A. Fenner, Executor  
c/o John E. Feather, Jr., Esquire  
Feather and Feather, P.C.  
22 West Main Street  
Annville, PA 17003  
ATTORNEY

**ESTATE OF JANE D. GURNEE**, late of 830 South Railroad Street of Palmyra Township, Lebanon County, Pennsylvania, deceased. Letters of Administration on the above estate having been granted to the undersigned, all persons indebted to the estate are requested to make payment, and those having claims to present the same, without delay, to the undersigned Administrator.

Elizabeth Darrach, Administrator  
c/o Lengert & Raiders LLC  
210 West Penn Avenue  
PO Box 223  
Robesonia, PA 19551

Attorney: Rich Raiders, Esquire  
Lengert & Raiders LLC  
210 West Penn Avenue  
PO Box 223  
Robesonia, PA 19551

**ESTATE OF WILLIAM F. LUDWIG**, late of Union Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Edward L. Ludwig, Executor  
126 South Center Street  
Fredericksburg, PA 17026

Bret M. Wiest, Esquire  
Buzgon Davis Law Offices  
P.O. Box 49  
525 South Eighth Street  
Lebanon, PA 17042

**ESTATE OF GLADYS A. SHERRID**, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

David C. Sherrid, Executor  
1639B Donegal Springs Rd.  
Mt. Joy, PA 17552  
Thomas S. Long, Attorney

**ESTATE OF LOIS I. STOUFFER**, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Debra L. Stouffer, Jack L. Stouffer and  
Tamela J. Fisher  
c/o Reilly Wolfson Law Office  
1601 Cornwall Road  
Lebanon, PA 17042

### **THIRD PUBLICATION**

**ESTATE OF BETTY L. HIRNEISEN**, late of Cornwall, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Mr. Jeffrey L. Hirneisen, Executor  
727 New Schaefferstown Rd.  
Bernville, PA 19506

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

**ESTATE OF CLARENCE R. REICHARD**, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Thomas D. Reichard, Executor  
James A. Reichard, Executor  
c/o Reilly Wolfson Law Office  
1601 Cornwall Road  
Lebanon, PA 17042

### **FICTITIOUS NAME REGISTRATION**

**NOTICE IS HEREBY GIVEN** that an application for registration of the assumed name Royer's Flowers & Gifts for the conduct of business in Lebanon County, Pennsylvania, with the principal place of business being 810 South 12th Street, Lebanon PA 17042, was made to the Department of State of Pennsylvania at Harrisburg, Pennsylvania, on the 28th day of November, 2017, pursuant to 54 Pa.C.S. 8311. The name of the entity owning or interested in the said business is U.S. Retail Flowers, Inc.

McNees Wallace and Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg PA 17108-1166

## ARTICLES OF INCORPORATION

**NOTICE IS HEREBY GIVEN** that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on the 2nd day of October, 2017 with respect to a domestic nonprofit corporation, Daughters of '98, which has been incorporated under the Nonprofit Corporation Law of 1988. The purpose for which said domestic non-profit corporation is organized is to honor veterans of the Spanish American War Era for its descendants and historians.

## NOTICE OF TERMINATION OF PARENTAL RIGHTS

**NOTICE IS HEREBY GIVEN** that Kimberly Lynn Sourwine gave birth to a daughter on February 13, 2006, in Lebanon County, Pennsylvania. A hearing will be held in the Court of Common Pleas of Lebanon County, Pennsylvania, in Courtroom No. 4, before the Honorable Charles T. Jones, Jr., Judge of the Several Courts of Lebanon County, Pennsylvania on the 4th day of January, 2018 at 1:30 p.m. at the Lebanon County Municipal Building located at 400 South Eighth Street, Lebanon, Pennsylvania, on the third floor. All parental rights of the father to the child shall be terminated by the Court on the date of the hearing unless the father either appears at the hearing for the purpose of objecting to termination of his parental rights or he files a written objection to such termination with the Court prior to the hearing. In addition,

the father shall file an acknowledgment of paternity or claim of paternity pursuant to 23. C.S.A. §5103.

Written objections shall be filed no later than December 28, 2017 by filing them with the Clerk of Orphans Court at the Orphans Court office located at the Lebanon County Municipal Building, 400 South Eighth Street, Lebanon, Pennsylvania. The objections shall be filed in the Court of Common Pleas, Lebanon County, Pennsylvania, Orphans Court Division-No. 2017-790.

Frederick S. Wolf, Esquire  
Henry & Beaver LLP  
937 Willow Street  
P.O. Box 1140  
Lebanon, PA 17042  
(717) 274-3644

## NOTICE OF VEHICLE TITLE TRANSFER

**Billy J. Davis.** You are hereby notified that you are required to appear for a Title Transfer of a Vehicle-2001 Ford Truck-VIN # 1FMZU77E61UA41535. Case # CI-17-09948 Carrion, Jr, Angelo vs. Davis, Billy J. on December 27th, 2017 at 9:30 AM in Lancaster County Courthouse, Courtroom #1, 50 North Duke Street, Lancaster, PA 17605-3480.



COMMONWEALTH OF PA V. ARTURO VIZCARRONDO

NO. CP-38-CR-0001648-2015

*Criminal Action-Law-Homicide-Motion in Limine-Crimen Falsi-Expert Testimony-Method of Homicide Investigation-Credibility of Eyewitness*

Defendant was charged with Criminal Homicide and related charges relating to the deaths of two (2) victims who were shot. The Commonwealth filed Motions in Limine prior to trial first seeking a ruling on the admissibility of Defendant's prior crimen falsi conviction of Robbery that occurred in 1997 and juvenile adjudications for Robbery and Theft in 1992, more than ten (10) years after Defendant's convictions/adjudications or release from confinement, in the event that Defendant testifies at trial. In its Motions in Limine, the Commonwealth also seeks preclusion of the expert testimony of a former Pennsylvania State Police trooper regarding the accepted methods of a thorough homicide investigation and a forensic pathology/neuropathology expert who indicated in his report that the path of the missile is not consistent with the representation of the manner of the shooting indicated by Defendant's co-defendant.

1. Pa.R.E. Rule 609(a) provides that for the purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime must be admitted if it involved dishonesty or false statement. Rule 609(b) further provides that if more than ten (10) years have passed since the witness' conviction or release from confinement for it, whichever is later, evidence of the conviction will be admissible only if its probative value substantially outweighs its prejudicial effect and the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use. Rule 609(d) provides that in criminal cases only, evidence of adjudication of delinquency for an offense under the Juvenile Act may be used to impeach the credibility of a witness if conviction of the offense would be admissible to attack the credibility of an adult.

2. In weighing the probative value against the prejudicial impact of older crimen falsi convictions, the court should consider: (1) the degree to which the commission of the prior offense reflects upon the veracity of the defendant; (2) the likelihood, in view of the nature and the extent of the prior record, that it would have a greater tendency to smear the character of the defendant and to suggest a propensity to commit the crime for which the defendant stands charged rather than to provide a legitimate reason for discrediting the defendant as an untruthful person; (3) the age and circumstances of the defendant; (4) the strength of the prosecution's case and the prosecution's need to resort to the evidence as compared with the availability to the defense of other witnesses through which its version



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of events surrounding the incident could be presented; and (5) the existence of alternative means of attacking the defendant's credibility.

3. The offense of Robbery is *crimen falsi* bearing directly upon the honesty or truthfulness of the perpetrator.

4. Defendant's age and the nature of his *crimen falsi* convictions/adjudications falling outside of the ten (10) year limitation set in Rule 609 will not bar admission of those convictions/adjudications in the instant case when Defendant's credibility will be the crux of the case, as Defendant and a co-defendant are the only witnesses who can offer direct evidence as to whether Defendant shot the victims and Defendant has provided a notice of alibi, the record does not reveal any alternative means by which the Commonwealth will be able to attack Defendant's credibility and Defendant's criminal history reveals a solid, established pattern of dishonesty and does not point to any propensity to commit murder.

5. Pa.R.E. Rule 702 provides that a witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion or otherwise if the expert's scientific, technical or other specialized knowledge is beyond that possessed by the average layperson, the expert's scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue and the expert's methodology generally is accepted in the relevant field.

6. Pa.R.E. Rule 703 provides that an expert may base an opinion on facts or data in the case that the expert has been made aware of or personally has observed. Pa.R.E. Rule 705 provides that if an expert states an opinion, the expert must state the facts or data upon which the opinion is based.

7. Expert testimony is permitted to aid the jury when the subject matter distinctly is related to a science, skill or occupation beyond the knowledge or experience of the average layperson.

8. The standard for qualification of an expert witness is a liberal one. The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under the investigation. A witness' expertise may be acquired as a result of formal education or experience.

9. State troopers have been approved to render expert opinions on crime scene and accident reconstruction based upon their training and experience in the field.

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10. The accepted methods of a thorough homicide investigation by the former Pennsylvania State Police trooper is an appropriate subject upon which expert testimony may be rendered, as this issue is beyond the knowledge and experience of an ordinary layperson and will aid the jury in its determination.

11. The report of the former Pennsylvania State Police trooper that fails to provide any indication of the particulars of the deficiencies he indicates occurred relating to crime scene documentation or evidence processing and verification of witness statements fails to conform to the Pennsylvania Rules of Evidence such that Defendant will be afforded twenty (20) days to provide an amended or supplemental report to remedy the deficiencies.

12. It generally is impermissible for an expert witness to render an opinion regarding the credibility of another witness.

13. Courts have approved of the admission of expert opinions that contradict statements made by eyewitnesses based upon physical facts and scientific analysis.

14. The proposed testimony of the forensic pathologist/neuropathologist that the path of the missile is not consistent with the manner of the shooting to which Defendant's co-defendant has indicated clearly is a subject matter upon which expert testimony may be presented, as Defendant is entitled to present an independent analysis of factual matters based upon personal observations, information provided by the coroner, crime scene autopsy reports and witness statements even if that analysis leads to a conclusion that differs from the version of events provided by an eye witness and the expert does not render any opinion as to the witness' behavior or psyche that would reflect upon her credibility.

L.C.C.C.P. No. CP-38-CR-0001648-2015, Opinion by John C. Tylwalk, President Judge, May 24, 2017.

COMMONWEALTH OF PA V. ARTURO VIZCARRONDO

NO. CP-38-CR-0001648-2015

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY

PENNSYLVANIA

CRIMINAL DIVISION NO. CP-38-CR-1648-2015

COMMONWEALTH OF PENNSYLVANIA

v.

ARTURO VIZCARRONDO

ORDER OF COURT

AND NOW, this 24th day of May, 2017, upon consideration of the Commonwealth's Motions in Limine, and the Briefs submitted by the parties, it is hereby Ordered as follows:

1. The Commonwealth's Motion to Present Evidence of Defendant's Crimen Falsi Adjudications/Convictions is GRANTED.
2. The Commonwealth's Motion to Preclude Testimony of James Biever is GRANTED, in part, and DENIED, in part, in accordance with the Opinion accompanying this Order. It is further Ordered that Defendant shall provide a supplemental Report prepared by Mr. Biever to the Commonwealth within twenty days of this Order.
3. The Commonwealth's Motion to Preclude Testimony of Dr. William Cox is GRANTED, in part, and DENIED, in part, in accordance with the Opinion accompanying this Order. It is further Ordered that Defendant shall provide a supplemental Report prepared by Dr. Cox to the Commonwealth within twenty days of this Order.

BY THE COURT:

JOHN C. TYLWALK, P.J.

COMMONWEALTH OF PA V. ARTURO VIZCARRONDO

NO. CP-38-CR-0001648-2015

APPEARANCES:

DAVID ARNOLD, JR., ESQUIRE  
DISTRICT ATTORNEY

FOR THE COMMONWEALTH

DAVID WARNER, ESQUIRE  
BRET WEIST, ESQUIRE  
BUZGON DAVIS LAW OFFICES

FOR ARTURO VIZCARRONDO

**OPINION, TYLWALK, P.J., MAY 24, 2017.**

Defendant is charged with two counts of Criminal Homicide, two counts of Conspiracy to Commit Criminal Homicide, and one count of Possession of a Firearm by a Prohibited Person with regard to a double homicide<sup>1</sup> which occurred on October 22, 2014 in the City of Lebanon. A jury trial is scheduled for the September 2017 Term of Criminal Jury Trials. At trial, it is expected that Defendant's co-defendant, Keila Guillen, the sole eyewitness to this incident, will testify as to the events which led to the deaths of the victims.<sup>2</sup> It is also expected that Defendant will testify to a different version of the facts as he has filed a notice of alibi indicating that he will present a witness who will testify that Defendant was in Pottsville, Pennsylvania at the time of the murders.

The Commonwealth has filed two Motions in Limine in anticipation of the jury trial. In its Motions, the Commonwealth seeks to present evidence of Defendant's various convictions for *crimen falsi* dating back to 1992. The Commonwealth also seeks to have the testimony of two of Defendant's expert witnesses precluded at trial.

**Crimen Falsi**

Pennsylvania Rule of Evidence 609 provides, in part, as follows:

**Rule 609. Impeachment by Evidence of a Criminal Conviction**

(a) In General. For the purpose of attacking the credibility of any witness, evidence that the witness has been convicted of a crime, whether by verdict or by plea of guilty or *nolo contendere*, must be admitted if it involved dishonesty or false statement.

1 The two victims of the homicide, Larry Martin and Aeyisha Holden, were shot in Martin's apartment in the City of Lebanon.

2 Guillen's statement points to Defendant as the individual who shot the two victims.

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(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(d) Juvenile Adjudications. In a criminal case only, evidence of the adjudication of delinquency for an offense under the Juvenile Act, 42 Pa.C.S. §§ 6301 *et seq.*, may be used to impeach the credibility of a witness if conviction of the offense would be admissible to attack the credibility of an adult.

Pa.R.E. 609(a)-(b), (d).

In the event that Defendant testifies at his jury trial, the Commonwealth has given notice that it will present evidence of Defendant's 2013 convictions for forgery and false identification, a 2008 conviction for false personation, and a 2006 conviction for larceny for the purposes of impeachment. These are all crimes involving dishonesty which are admissible for impeachment purposes under Rule 609.

The Commonwealth also seeks to present several *crimen falsi* which lie outside of the ten-year period provided by Rule 609: Defendant's 1997 conviction for robbery, as well as juvenile adjudications for robbery and theft from 1992. The Commonwealth argues that the prejudicial effect of these adjudications/convictions which date more than the ten-year timeframe is outweighed by the probative value of this criminal history. Defendant objects to the admission of the *crimen falsi* which occurred outside of the ten-year period, arguing that the older crimes are too remote in time to be relevant to his veracity and that he will be unduly prejudiced by the admission of such evidence.

In weighing the probative value versus prejudicial impact of older *crimen falsi* convictions, a trial court should consider,

- 1) the degree to which the commission of the prior offense reflects upon the veracity of the defendant-witness; 2) the likelihood, in view of the nature and extent of the prior record, that it would have a greater tendency to smear the character of the defendant and suggest a propensity to commit the crime for which he stands charged, rather than provide a legitimate reason for discrediting him as an untruthful person; 3) the age

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and circumstances of the defendant; 4) the strength of the prosecution's case and the prosecution's need to resort to this evidence as compared with the availability to the defense of other witnesses through which its version of the events surrounding the incident can be presented; and 5) the existence of alternative means of attacking the defendant's credibility.

*Commonwealth v. Kopack*, 2016 WL 5846150 (Pa. Super. 2016), citing

*Commonwealth v. Palo*, 24 A.3d 1050 (Pa. Super. 2011), appeal denied 34 A.3d 828 (Pa. 2011).<sup>3</sup>

With regard to factor 2 of this test, Defendant admits that his 1992 theft charge does not suggest a propensity to commit murder; however, he contends that it is conceivable that his 1992 and 1997 convictions for robbery may suggest to the jury that he used physical threats to take something from his victim. Because of this, he fears that the jury may conclude that he has the propensity to commit other violent crimes, such as murder.

The offense of robbery is *crimen falsi* bearing directly on honesty or truthfulness of the perpetrator. *Commonwealth v. Yarris*, 549 A.2d 513 (Pa. 1988); *Commonwealth v. Campbell*, 368 Pa. Super. 1299 (Pa. Super. 1976). It is possible that the "use of force" aspect of this offense may tilt the balance of this factor slightly in Defendant's favor. However, we do not believe that the jury will necessarily jump to the conclusion that Defendant's commission of a criminal act involving threat of force that long ago, when he was twenty to twenty-five years younger, would have evolved into his commission of two murders in 2014. We note that none of the subsequent *crimen falsi* which will be presented by the Commonwealth involved any aspect of violence whatsoever. This fact may certainly be called to the attention of the jury at trial. Moreover, we believe Defendant will be adequately protected from any prejudice which may be caused by the admission of this evidence through a cautionary instruction to the jury that such adjudications and convictions have bearing only on Defendant's credibility and may not be considered for any other purpose.

Defendant also contends that factor 3 weighs in his favor due to his age at the time of the 1992 and 1997 offenses. The record indicates that Defendant was born on April 6, 1977, making him 15 years of age when he was adjudicated for robbery and theft in 1992 and 20 years of age when he was convicted of robbery in 1997. At the time of his trial, he will be forty years old. The Commonwealth indicates that Defendant's last day of confinement for

<sup>3</sup> These factors were set forth in *Commonwealth v. Randall*, 528 A.2d 1327 (Pa. 1987).

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his 1997 robbery conviction was in 2001 when he was twenty-four years old.

In *Commonwealth v. Rivera*, 983 A.2d 1211 (Pa. 2009), certiorari denied 560 U.S. 909 (2010), the defendant was charged with murder for shooting a plainclothes police officer during a foot chase. The court approved of the admission of a string of juvenile adjudications to impeach the defendant. Although most were theft offenses, one of the adjudications was for a robbery committed when the defendant was thirteen years old. The court reasoned that the determination of Defendant's credibility was the crux of the case because he claimed that he acted in self-defense and the Commonwealth had the burden of proving his acts were not justifiable. The only eyewitness was a police officer who could not testify as to Defendant's claimed belief that he was in danger. The court further noted that the prior offenses would not suggest a propensity to commit such a serious crime as murder. Under those circumstances, the Court found that the probative value of the evidence of the defendant's credibility outweighed any potential prejudice. Thus, while Defendant's age may be a slight attenuating factor in his favor in the case before us, we must also examine all of the circumstances in this matter.

The Commonwealth points to a case with similar facts which was previously before this Court, *Commonwealth v. Cascardo*, No. CP-38-CR-439-2007. In that case, the defendant and his co-defendant, Randy Gerber, were charged with the murder of a party with whom they were engaged in loansharking activities. Like this case, the Commonwealth's case relied heavily upon the testimony of the co-defendant regarding the murder scene. The defendant also filed a notice of alibi, indicating that a witness would testify that he was home at the time of the murder. The Superior Court affirmed our admission of two *crimen falsi* convictions which fell outside of the ten-year period under Rule 609:

Under the first factor, the federal convictions for *crimen falsi* are an appropriate basis for impeachment. Under the second factor, Cascardo's federal convictions do not suggest a propensity to commit murder, the charge that is being currently tried. Under the third factor, Cascardo, born on June 17, 1944, was forty-seven years old at the time of his federal convictions and, therefore, their relevance was not attenuated by age. Under the fourth factor, the Commonwealth's case depended in large measure on Gerber's testimony testifying that he and Cascardo killed Hoffner. Cascardo is the only other person who could have testified about the murder. Cascardo presented an alibi witness intended to show he could not have killed Hoffner because he was not at the scene of the murder. Attacking Cascardo's credibility was particularly important given his defense was totally contradictory to the Commonwealth's version of the facts. Under

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the fifth factor, a review of the record does not reveal an adequate alternative ground for impeaching Cascardo.

The trial court addressed the issue of balancing the probative value of the federal convictions with their prejudicial effect as follows:

Although both sides presented significant evidence during this [week-long] trial, only two people—Gerber and [Cascardo]—could provide direct evidence as to whether [Cascardo] solicited and/or participated in the murder of Hoffner. As such, the credibility of both Gerber and [Cascardo] was critical to any analysis by the jury. If the jury believed Gerber, they could convict [Cascardo]. If the jury believed [Cascardo], an acquittal would have to follow.

Because of the criticality of both Gerber’s and [Cascardo]’s testimony, we concluded that the jury should hear as much as possible about each man’s believability. One piece of information impacting upon the believability of [Cascardo] was his prior convictions involving dishonesty. We concluded at trial and still believe that the information regarding [Cascardo]’s prior record was probative of an extremely important issue—whether [Cascardo] should be believed by the jury. As such, evidence of [Cascardo]’s prior convictions had probative value within the context of the trial as it evolved.

*Commonwealth v. Cascardo*, 981 A.2d 245, 256 (Pa., Super. 2009), appeal denied 12 A.3d 750 (Pa. 2010).

After careful consideration, we do not believe Defendant’s age or the nature of any of his *crimen falsi* should bar the admission of the adjudications/convictions which fall outside of the Rule 609 timeframe here. Defendant and Guillen will be the only witnesses who can offer direct evidence as to whether Defendant was the individual who shot the two victims. Defendant has also provided a notice of alibi. Thus, as in both *Rivera* and *Cascardo*, Defendant’s credibility will be the crux of this case. The record does not reveal any alternative means by which the Commonwealth will be able to attack Defendant’s credibility on this crucial point. Moreover, while Defendant’s criminal history does not point to any propensity to commit the serious crime of murder, it does reveal a solid established pattern of dishonesty which will be relevant to this central issue. For these reasons, we believe the Commonwealth should have the ability to impeach Defendant’s testimony offered with these *crimen falsi* at the trial of this matter and we will grant the Commonwealth’s Motion to present this evidence for this purpose.



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**Motion to Preclude Testimony of James Biever**

The Commonwealth seeks to preclude the testimony of defense expert James Biever. Biever identifies himself as a private investigator. His report indicates that he was previously involved in conducting homicide/death investigations as a member of the Pennsylvania State Police (“PSP”) and that he was retained by Defendant to render an opinion regarding the quality of the police investigation of this double homicide. In his report, Biever describes the difficulties, as well as the necessary steps to be taken by law enforcement, which are involved in these types of investigations. After noting the actions taken by the Lebanon City Police, and commending those efforts, he identifies several deficiencies with regard to the investigation: improper crime scene documentation, crime scene evidence processing, and incomplete verification of witness statements. The Commonwealth seeks preclusion of this opinion on the basis that this is not an appropriate subject for an expert opinion, because the report fails to disclose the subject matter on which Biever will testify, and because the report fails to set forth the information which forms the basis of the opinion.

The Commonwealth further complains that Biever’s report is in derogation of Pa.R.Crim.P. 573(C)(2) which governs a defendant’s obligations with regard to disclosure of expert reports: “[i]f an expert whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the defendant disclose a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert’s opinions and the grounds for each opinion.” Pa.R.Crim.P. 573(C)(2).

With regard to expert evidence, the Pennsylvania Rules of Evidence provide:

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
- (b) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (c) the expert’s methodology is generally accepted in the relevant field.

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Pa.R.E. 702.

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.

Pa.R.E. 703.

705. Disclosing the Facts or Data Underlying an Expert's Opinion

If an expert states an opinion the expert must state the facts or data on which the opinion is based.

Pa.R.E. 705.

Expert testimony is permitted to aid the jury when the subject matter is distinctly related to a science, skill, or occupation beyond the knowledge or experience of the average layman. *Commonwealth v. Lopez*, 854 A.2d 465, 470 (Pa. Super. 2004). The standard for qualification of an expert witness is a liberal one. *Commonwealth v. Serge*, 837 A.2d 1255 (Pa. Super. 2003). The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. *Id.* A witness' expertise may be acquired as a result of formal education or by experience. *Commonwealth v. Auken*, 681 A.2d 1305 (Pa. Super. 1996).

We believe that this subject matter is appropriate for expert testimony. The subject matter identified in Biever's report – the accepted methods of a thorough homicide investigation – is a matter which is beyond the realm of knowledge and experience of an ordinary layman and is an appropriate subject for an expert opinion to aid the jury in its determination. We further believe that Biever, through his training and experience as a member of the PSP, may be qualified as an expert to render an opinion on that subject. As noted by Defendant, state troopers have been approved to render expert opinions on crime scene and accident reconstruction based on their training and experience in the field. See, *Commonwealth v. Serge*, supra; *Commonwealth v. Bowser*, 624 A.2d 125 (Pa. Super. 1993). We also believe that Biever's report indicates that this will be the subject matter of his testimony if he is called as a witness at trial.

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However, after reviewing Biever’s report, we believe that it does not conform to the requirements of the Pennsylvania evidentiary and procedural rules. In disregard of both evidentiary Rule 705 and procedural Rule 573, Biever sets forth no specific facts to support his conclusions. He states that the Lebanon Police efforts at crime scene documentation, crime scene evidence processing and verification of witness statements were deficient, yet fails to provide any indication of the particulars of these deficiencies, i.e., what was not documented, collected or processed correctly and completely, and/or which witness statements were not properly verified and corroborated. We agree with the Commonwealth that this report amounts to only a generic summary of his opinions and that no grounds are provided to support these opinions. At the least, we believe Biever should have identified the specific accepted methods, investigative techniques, and protocol which should have been followed in an investigation of this nature, the specific tasks the Lebanon Police investigators failed to perform, and how the failure to perform those activities compromised the investigation.

Procedural Rule 573(D) provides “[i]f at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the defendant, or it may enter such other order as it deems just under the circumstances.” Pa.R.Crim.P. 573(D). Since trial in this matter is not scheduled until September 2017, we will deny the Commonwealth’s request for preclusion at this juncture, but will allow Defendant twenty days from the date of this Order to provide an amended/supplemental report to the Commonwealth to remedy the aforementioned deficiencies. If the supplemental report does not fully comply with the directives of the relevant evidentiary and criminal procedural rules, the Commonwealth may move for an appropriate sanction at that time.

**Motion to Preclude Testimony of Dr. William Cox**

The Commonwealth also seeks preclusion of the testimony of Dr. William Cox, Defendant’s forensic pathology/neuropathology expert. In his report, Dr. Cox states his conclusion with regard to both victims, that “[t]he path of this missile is not consistent with the representation of how the shooting of Larry Martin and Aeyisha Holden took place by Kelia (sic) Guillen.” The Commonwealth argues that this is an inappropriate attempt by Defendant to attack Guillen’s credibility through the use of an expert witness. It also complains that Dr. Cox’s report fails to conform to the mandates of procedural Rule 573.

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Our review of Dr. Cox's report reveals that, in reaching his conclusion, he relied on his personal examination of the crime scene, the clinical history, the autopsy findings, and the investigation of the Lebanon County Coroner, as well as the statement of Keila Guillen. We wholly agree with the Commonwealth that Dr. Cox must be precluded from making any comments whatsoever with regard to the credibility of Keila Guillen or her testimony as it is generally impermissible for an expert witness to render an opinion regarding the credibility of another witness. See, *Commonwealth v. Spence*, 627 A.2d 1176 (Pa. 1993); *Commonwealth v. Mendez*, 74 A.3d 256 (Pa. Super. 2013).

Defendant counters that Dr. Cox's opinion does not impinge on the province of the jury in assessing witness credibility, but is merely an analysis of the crime scene evidence to determine the relative positions of the shooter and the victims. Reference to Dr. Cox's report reveals that his testimony will relate to the crime scene, the location of the bodies, the location of furniture and shell casings, bullet holes in structures in the apartment, and the path of the bullets that hit the two victims.

We agree with Defendant's observations that cases excluding expert opinion regarding witness credibility involved psychological, behavioral and other similar factors. See, e.g., *Commonwealth v. Seese*, 517 A.2d 920 (Pa. 1986) (excluding testimony of pediatrician seeking to demonstrate the veracity of young children regarding allegations of sexual abuse); *Commonwealth v. Gallagher*, 547 A.2d 355 (Pa. 1988) (excluding testimony regarding effects of rape trauma syndrome on victim to bolster victim's credibility); *Commonwealth v. Dunkle*, 602 A.2d 830 (Pa. 1992) (expert testimony regarding behavior exhibited by children who have suffered sexual abuse held inadmissible to show why sexually-abused children may not recall details of the assault, give incomplete details, and to explain delayed reports of such incidents). These considerations are different from this case where the expert opinion is based on physical facts and scientific analysis.

In *Commonwealth v. Walker*, 92 A.3d 766 (Pa. 2014), the court departed somewhat from the exclusion of all expert testimony regarding eyewitness identification, leaving the admissibility of expert testimony of that nature to the discretion of the trial court. The court reasoned that expert testimony on psychological factors which may impact eyewitness identification do not speak to whether a witness was untrustworthy or unreliable; rather, it provides jurors with education by which they may assess for themselves the witness' credibility.

Our research has revealed other cases in which courts have approved of the admission

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of an expert opinion which contradicts statements made by eyewitnesses. For example, in *Commonwealth v. Gramby*, 2014 WL 10558256 (Pa. Super. 2014) (non-precedential decision), appeal denied 113 A.3d 357 (Pa. 2015), the defendant was charged with and convicted of DUI, homicide by vehicle – DUI related, and homicide by vehicle. Several eyewitnesses gave statements indicating that another vehicle was responsible for the fatal accident, rather than the defendant. A police officer, who was presented by the Commonwealth as an expert in the field of accident reconstruction, testified that he had reviewed the eyewitnesses’ statements and determined that the damage to the vehicle was inconsistent with their accounts of the accident. His opinion was based on scene evaluation, vehicle examination, physical evidence, injury documentation, statements of principals, statements of witnesses, and other information. He also checked that the traffic lights were cycling properly. The officer determined that the defendant’s vehicle had caused the accident. At the trial, the defendant presented a different theory of how the accident occurred, in part, through the testimony of another officer. This different version also relied upon eyewitness statements and accident reports. In addressing the defendant’s challenge to the weight of the evidence, the court upheld the verdict, noting that the jury was entitled to believe the expert opinion which was in contradiction to the account of the eyewitnesses.

In *Commonwealth v. Williams*, 141 A.3d 440 (Pa. 2016), the defendant was charged with shooting three victims and was convicted of three counts of first-degree three murder and related offenses. He filed a proceeding under the Post-Conviction Relief Act (“PCRA”),<sup>4</sup> in part, charging ineffectiveness on the part of his trial counsel for failing to obtain and present blood splatter expert testimony to contradict the eyewitness/co-defendant’s version of the shootings. The lower court’s finding of ineffectiveness was upheld on appeal. The court noted that the defense trial strategy was based, in part, on the theory that the three murders could not have occurred the way the eyewitness/co-defendant had testified. At the PCRA hearing, the defendant presented a blood splatter expert who testified that, based upon the victims’ injuries, blood flow evidence, the condition of the victims’ clothing, and the locations of the bodies, the way in which the murders actually occurred was wholly incompatible with the testimony of the eyewitness/co-defendant. The appellate court agreed that trial counsel’s failure to present such testimony from an expert at trial had no reasonable basis and that this failure rendered trial counsel’s representation ineffective.

This is clearly a subject matter for expert testimony and we believe Defendant is

<sup>4</sup> 42 Pa.C.S.A. §9541 et seq.

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entitled to present his own analysis of the evidence. Defendant is entitled to present an independent analysis of these factual matters, even if that analysis leads to a conclusion which differs from the version given by an eyewitness. The admission of such expert testimony would not create an impermissible intrusion into the jury's assessment of Guillen's credibility. Dr. Cox's opinion, insofar as it is limited to an analysis of the physical evidence obtained through personal observations, information provided by the coroner, and crime scene autopsy reports, and witness statements is permissible. Of course, he may not comment or render any opinion as to Guillen's behavior, psyche, etc., which would reflect on her credibility.

However, we do agree with the Commonwealth that Dr. Cox's report is also lacking sufficient specificity under evidentiary Rule 705 and procedural Rule 573. For this reason, we will also provide Defendant with the opportunity to submit a supplemental report from Dr. Cox within twenty days of this Order and Opinion stating the specific facts/observations which support his conclusion that these murders did not occur in a manner consistent with Guillen's statement.

We will enter an appropriate Order.