

CARBON COUNTY LAW JOURNAL

Publication Number (ISSN 0090-8789)

The Official Legal Newspaper for Carbon County

Containing Decisions Rendered, Legal Notices, Advertisements
in the 56th Judicial District

ROGER N. NANOVIC, President Judge

STEVEN R. SERFASS, Judge

JOSEPH J. MATIKA, Judge

Vol. XXIII

Jim Thorpe, PA, Friday, May 21, 2021

No. 73

COMMONWEALTH of PENNSYLVANIA vs. DAVID ROBERT JONES,
Defendant..... 140
*Criminal Law—Pre-Arrest Delay in Filing Charges—Whether Prosecution
Barred—Two-Part Due Process Test—Prejudice to the Accused—Cause
of the Delay*

Notice to Bar

ESTATE ATTORNEY POSITION AVAILABLE

Bowe & Odorizzi Law, in Tamaqua, seeks an attorney with experience in the area of estate administration for immediate opening. This position would initially be as an associate, but for the right candidate this position could turn into a full partnership within a few years. We're looking for someone with both the experience and the personality to jump right in and work with us on an already strong caseload. Salary commensurate with experience—please submit resume and letter of interest to tony@boweodorizzilaw.com and jeff@boweodorizzilaw.com.

May 21, 28

CARBON COUNTY LAW JOURNAL

COURT CALENDAR

Week of May 24

Court Calendar Submitted: May 12, 2021

For updates and revisions check courthouse webpage:

www.carboncourts.com

Criminal

Chairman Greek, Michael, Esq.

Friday, May 28

9:00 AM

1 Formal Com. v. Franklin, J.N. (Gazo, Aaroe) 21-0332

Arraignment

2 Formal Com. v. Rauscher, J.S. (Greek, Kemmerer) 21-0353

Arraignment

10:00 AM

3 Formal Com. v. Hellebrand, B.J. (Gazo, Unassigned) 21-0339

Arraignment

4 Formal Com. v. Harris, M.J. (Gazo, Burdett) 21-0348

Arraignment

5 Formal Com. v. Ashner, K.P. (Gazo, Rapa) 21-0341

Arraignment

6 Formal Com. v. Ramirez-Diaz, R. (Gazo, Unassigned) 21-0345

Arraignment

7 Formal Com. v. Huber, D.L. (Rapa, Unassigned) 21-0359

Arraignment

Published by the Carbon County Bar Association, Inc.

Sheri A. Ryan, Managing Editor

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| 8 | Formal Arraignment | Com. v. Wagenhoffer, M.A. | (Miller, Rapa) | 21-0403 |
| 9 | Formal Arraignment | Com. v. Perdue, D.E. | (Miller, Anders) | 21-0411 |
| 10 | Formal Arraignment | Com. v. Mathews, T.M. | (Perilli, Wilttrout) | 21-0431 |
| 11 | Formal Arraignment | Com. v. Williams, E.P. | (Perilli, Harakal) | 21-0448 |
| 12 | Formal Arraignment | Com. v. Weber, S.R. | (Perilli, Unassigned) | 21-0427 |
| 13 | Formal Arraignment | Com. v. Farrell, J.M. | (Perilli, Rapa) | 21-0430 |
| 11:00 AM | | | | |
| 14 | Formal Arraignment | Com. v. Sniscak, J. | (Miller, Rapa) | 21-0334 |
| 15 | Formal Arraignment | Com. v. Roberson, D.L. | (Miller, Hinrichs) | 21-0335 |
| 16 | Formal Arraignment | Com. v. Sofranko, S.P. | (Perilli, Schnell) | 21-0379 |
| 17 | Formal Arraignment | Com. v. Bachman, M.C. | (Hatton, Selwa) | 21-0394 |
| 18 | Formal Arraignment | Com. v. Sterling, T.A. | (Perilli, Unassigned) | 21-0419 |
| 1:15 PM | | | | |
| 19 | Formal Arraignment | Com. v. Stonerock, A.C. | (Miller, Unassigned) | 21-0338 |
| Judge Matika, Joseph J., Hon. | | | | |
| Monday, May 24 | | | | |
| 9:00 AM | | | | |
| 20 | Restitution Hrg. | Com. v. Ciculya, C.C. | (Frycklund, Mousseau) | 20-0796 |
| 21 | Omnibus Pre-Tr. Mot. | Com. v. Miller, J.A. | (Hatton, Sebelin) | 20-0457 |
| 22 | Omnibus Pre-Tr. Mot. | Com. v. Merz, M.J. | (Perilli, Saurman) | 20-0274 |
| 23 | Pet. to Reconsider | Com. v. Getz, B.R. | (Elo, Collins) | 19-0437 |
| 24 | Pet. Reduce Bail | Com. v. Gregg, L.A. | (Doherty, Saurman) | 18-1200 |
| 25 | Pet. Reduce Bail | Com. v. Gregg, L.A. | (Hardik, Saurman) | 20-0208 |
| 1:15 PM | | | | |
| 26 | Mot. to Suppress | Com. v. Markley, M.E. | (Frycklund, Kemmerer) | 20-0273 |
| 27 | Omnibus Pre-Tr. Mot. | Com. v. Fisher, R.W. | (Hatton, Wilttrout) | 19-0514 |
| 28 | Pet. Reduce Bail | Com. v. Machado, J. | (Perilli, Blum) | 21-0029 |
| 29 | Pet. Amend Sentence | Com. v. Krum, T.D. | (Rapa, Kellis) | 21-0051 |
| 30 | Pet. to Extend | Com. v. Kane, G.L.W. | (Gazo, Dutko) | 21-0124 |
| 31 | Pet. Reconsider. Sentence | Com. v. Werner, R.J. | (Rapa, Levy) | 20-0773 |
| 32 | Misc. Court | Com. v. Drete, R.F., III | (Perilli, Kemmerer) | 20-0315 |
| 33 | Misc. Court | Com. v. Lengyel, T.R. | (Perilli, Kemmerer) | 20-0203 |
| 34 | Misc. Court | Com. v. Lengyel, T.R. | (Perilli, Kemmerer) | 20-0205 |
| 35 | Misc. Court | Com. v. Lengyel, T.R. | (Greek, Kemmerer) | 19-1208 |
| 36 | Misc. Court | Com. v. Miller, N.M. | (Miller, Kemmerer) | 19-0426 |
| Thursday, May 27 | | | | |
| 9:00 AM | | | | |
| 37 | Judicial Status Conf. | Com. v. Kistler, C.H., Jr. | (Perilli, Kemmerer) | 19-0858 |
| 38 | Judicial Status Conf. | Com. v. Fisher, R.W. | (Hatton, Wilttrout) | 19-0514 |

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| 39 | Judicial Status Conf. | Com. v. Ruger, S.P. | (Rapa, Mottola) | 20-0855 |
| 40 | Judicial Status Conf. | Com. v. Skelton, C.M. | (Gazo, Kemmerer) | 20-0884 |
| 41 | Judicial Status Conf. | Com. v. Lebron, C. | (Rapa, Kemmerer) | 20-0853 |
| 42 | Judicial Status Conf. | Com. v. Koons, J.C. | (Miller, Kemmerer) | 20-0547 |
| 43 | Judicial Status Conf. | Com. v. Joyce, M.J. | (Hatton, Kemmerer) | 20-0305 |
| 44 | Judicial Status Conf. | Com. v. Heil, L.M. | (Rapa, Kemmerer) | 20-0944 |
| 45 | Judicial Status Conf. | Com. v. Coleman, M.L. | (Miller, Kemmerer) | 20-0124 |
| 46 | Judicial Status Conf. | Com. v. Coleman, M.L. | (Miller, Kemmerer) | 19-0957 |
| 10:00 AM | | | | |
| 47 | Judicial Status Conf. | Com. v. McDonnell, C.C. | (Hatton, Unassigned) | 20-0646 |
| 48 | Judicial Status Conf. | Com. v. Hoffman, E. | (Miller, Unassigned) | 20-0981 |
| 49 | Judicial Status Conf. | Com. v. Cavanaugh, J.L., Jr. | (Hatton, Wildoner-Walbert) | 20-0460 |
| 50 | Judicial Status Conf. | Com. v. Kester, E. | (Greek, Saurman) | 20-1043 |
| 51 | Judicial Status Conf. | Com. v. Campos, A. | (Gazo, Riegel) | 20-0678 |
| 52 | Judicial Status Conf. | Com. v. Campos, A. | (Gazo, Riegel) | 20-0677 |
| 53 | Judicial Status Conf. | Com. v. Campos, A. | (Gazo, Riegel) | 20-0676 |
| 54 | Judicial Status Conf. | Com. v. Hymans, D.L. | (Miller, Levy) | 19-0351 |
| 11:00 AM | | | | |
| 55 | Judicial Status Conf. | Com. v. Laberth, A.M. | (Frycklund, Levy) | 20-0680 |
| 56 | Judicial Status Conf. | Com. v. Reynoso, N. | (Frycklund, Mousseau) | 20-0801 |
| 57 | Judicial Status Conf. | Com. v. Melhem, C. | (Miller, Rapa) | 19-1477 |
| 58 | Judicial Status Conf. | Com. v. Torner, R. | (Frycklund, Saurman) | 19-0242 |
| 59 | Judicial Status Conf. | Com. v. Vandever, C.M. | (Gazo, Kemmerer) | 20-1065 |
| 60 | Judicial Status Conf. | Com. v. Ortman, C.H. | (Hatton, Kemmerer) | 20-0647 |
| 61 | Judicial Status Conf. | Com. v. Johnson, R.D. | (Hatton, Unassigned) | 21-0185 |
| 62 | Judicial Status Conf. | Com. v. Skonieczny, J. | (Perilli, Unassigned) | 20-1082 |
| Friday, May 28 | | | | |
| 9:00 AM | | | | |
| 63 | Plea Court | Com. v. Franklin, J.N. | (Gazo, Aaroe) | 21-0332 |
| 64 | ARD Court | Com. v. Jimenez-Garcia, L.E. | (Hatton, Rapa) | 20-1048 |
| 65 | ARD Court | Com. v. Rauscher, J.S. | (Greek, Kemmerer) | 21-0353 |
| 66 | ARD Court | Com. v. Schleicher, S.J. | (Miller, Levy) | 19-0931 |
| 67 | Plea Court | Com. v. Schleicher, S.J. | (Miller, Levy) | 19-1021 |
| 68 | Plea Court | Com. v. Simcsuk, T.C. | (Miller, Kemmerer) | 20-0974 |
| 69 | Plea Court | Com. v. Conklin, P.R. | (Greek, Unassigned) | 19-0863 |
| 70 | Plea Court | Com. v. Conklin, P. | (Gazo, Unassigned) | 20-0500 |
| 71 | Plea Court | Com. v. Frost, S.P. | (Hatton, Aaroe) | 21-0096 |
| 72 | Plea Court | Com. v. Mustacchio, J.E. | (Miller, Bender) | 19-0669 |
| 73 | Plea Court | Com. v. Czonstka, D.J. | (Frycklund, Kemmerer) | 20-0268 |
| 74 | Plea Court | Com. v. Czonstka, D.J. | (Miller, Kemmerer) | 20-0292 |

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| 10:00 AM | | | |
| 75 | ARD Court | Com. v. Bennett, J.A. | (Rapa, Unassigned) 20-0627 |
| 76 | Plea Court | Com. v. Ashner, K.P. | (Gazo, Rapa) 21-0341 |
| 77 | ARD Court | Com. v. Harris, M.J. | (Gazo, Burdett) 21-0348 |
| 78 | ARD Court | Com. v. Hellebrand, B.J. | (Gazo, Unassigned) 21-0339 |
| 79 | ARD Court | Com. v. Ramirez-Diaz, R. | (Gazo, Unassigned) 21-0345 |
| 80 | Plea Court | Com. v. Huber, D.L. | (Rapa, Unassigned) 21-0359 |
| 81 | Plea Court | Com. v. Perdue, D.E. | (Miller, Anders) 21-0411 |
| 82 | Plea Court | Com. v. Wagenhoffer, M.A. | (Miller, Rapa) 21-0403 |
| 83 | ARD Court | Com. v. Garcia, J.G. | (Hatton, Cheng) 21-0246 |
| 84 | ARD Court | Com. v. Lower, B.L. | (Gazo, Gyskewicz) 21-0299 |
| 85 | ARD Court | Com. v. Farrell, J.M. | (Perilli, Rapa) 21-0430 |
| 86 | ARD Court | Com. v. Mathews, T.M. | (Perilli, Wiltrout) 21-0431 |
| 87 | ARD Court | Com. v. Weber, S.R. | (Perilli, Unassigned) 21-0427 |
| 88 | ARD Court | Com. v. Williams, E.P. | (Perilli, Harakal) 21-0448 |
| 11:00 AM | | | |
| 89 | ARD Court | Com. v. Roberson, D.L. | (Miller, Hinrichs) 21-0335 |
| 90 | Plea Court | Com. v. Mirabelli, D.J. | (Rapa, Kemmerer) 20-1078 |
| 91 | Plea Court | Com. v. Smith, K.E.L. | (Perilli, Kemmerer) 17-0303 |
| 92 | ARD Court | Com. v. Billig, A.L. | (Gazo, Mousseau) 19-0732 |
| 93 | ARD Court | Com. v. Trainor, R.L., Jr. | (Gazo, Levy) 21-0043 |
| 94 | Plea Court | Com. v. Seo, A.L. | (Miller, Kemmerer) 19-0566 |
| 95 | ARD Court | Com. v. Sniscak, J. | (Miller, Rapa) 21-0334 |
| 96 | Plea Court | Com. v. Valek, C.M. | (Greek, Kellis) 19-0207 |
| 97 | Plea Court | Com. v. Welsch, J.M. | (Hatton, Munley) 20-0369 |
| 98 | Plea Court | Com. v. Sofranko, S.P. | (Perilli, Schnell) 21-0379 |
| 99 | ARD Court | Com. v. Bachman, M.C. | (Hatton, Selwa) 21-0394 |
| 100 | Plea Court | Com. v. Sterling, T.A. | (Perilli, Unassigned) 21-0419 |
| 1:15 PM | | | |
| 101 | Plea Court | Com. v. Eckhart, N.A. | (Rapa, Wiltrout) 21-0059 |
| 102 | Plea Court | Com. v. Visnosky, J.C., IV | (Hatton, Combi) 20-0567 |
| 103 | Plea Court | Com. v. Visnosky, J.C. | (Gazo, Combi) 20-1015 |
| 104 | Plea Court | Com. v. Hems, J.M. | (Hatton, Rapa) 21-0097 |
| 105 | Plea Court | Com. v. Neff, A.L. | (Rapa, Unassigned) 21-0061 |
| 106 | Plea Court | Com. v. Dooley, J. | (Miller, Bender) 20-0592 |
| 107 | ARD Court | Com. v. Kleintop, M.J. | (Miller, Wiltrout) 21-0038 |
| 108 | ARD Court | Com. v. Hayward, J.D. | (Hatton, Wiltrout) 21-0092 |
| 109 | Plea Court | Com. v. Machado, J. | (Perilli, Blum) 21-0029 |
| 110 | Plea Court | Com. v. Graham, J.T. | (Greek, Wiltrout) 21-0004 |
| 111 | Plea Court | Com. v. Stonerock, A.C. | (Miller, Unassigned) 21-0338 |
| 112 | Plea Court | Com. v. De La Rosa Reyes, K. | (Rapa, Unassigned) 21-0102 |
| 2:15 PM | | | |
| 113 | Sentencing | Com. v. Schlier, E.M. | (Frycklund, Unassigned) 20-0250 |
| 114 | Sentencing | Com. v. Castellon, M. | (Perilli, Lermitta) 20-1079 |
| 115 | Sentencing | Com. v. Cacciola, A. | (Frycklund, Mottola) 20-0524 |
| 116 | Sentencing | Com. v. Barna, P.S. | (Frycklund, Kemmerer) 20-0196 |
| 117 | Plea Court | Com. v. Stuckley, A.L. | (Miller, Wildoner-Walbert) 17-1639 |
| 118 | Plea Court | Com. v. Roe, B.D. | (Gazo, Unassigned) 19-1064 |
| 119 | Sentencing | Com. v. Fisher, K.K. | (Miller, Kemmerer) 19-1470 |
| 120 | Sentencing | Com. v. Hawk, W.R. | (Miller, Levy) 16-0391 |
| Judge Nanovic, Roger N., II, Hon. | | | |
| Monday, May 24 | | | |
| 9:00 AM | | | |
| 121 | Judicial Status Conf. | Com. v. Bock, J.A. | (Perilli, Levy) 20-0235 |
| 122 | Judicial Status Conf. | Com. v. Lehrman, M.M. | (Greek, Mottola) 20-0878 |
| Tuesday, May 25 | | | |
| 9:00 AM | | | |
| 123 | Habeas Corp. Pet. | Com. v. Santiago, J.J. | (Hatton, Kemmerer) 19-1226 |
| 124 | Pet. Amend Sentence | Com. v. Krapf, D.M. | (Perilli, Nahas) 19-0495 |

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| 125 | Pet. Expunge Record | Com. v. Paquette, T.A. | (Lavelle, Unassigned) | 10-0576 |
| 126 | Pet. Expunge Record | Com. v. Lopes, S.D. | (Dougherty) | 21-0115 |
| 1:15 PM | | | | |
| 127 | Habeas Corp. Pet. | Com. v. Smith, B.L., Jr. | (Rapa, Wiltrout) | 20-0429 |
| 128 | Pet. Reduce Bail | Com. v. Mead, M.A. | (Greek, Gough) | 19-1113 |
| 129 | Omnibus Pre-Tr. Mot. | Com. v. Walck, L.C. | (Hatton, Wiltrout) | 20-0445 |
| Judge Serfass, Steven R., Hon. | | | | |
| Tuesday, May 25 | | | | |
| 9:00 AM | | | | |
| 130 | Judicial Status Conf. | Com. v. Schaeffer, J. | (Frycklund, Wiltrout) | 19-1104 |
| 10:00 AM | | | | |
| 131 | Judicial Status Conf. | Com. v. Rodriguez, J.A. | (Miller, Kemmerer) | 17-1569 |
| 132 | Judicial Status Conf. | Com. v. Yezierski, K.M. | (Gazo, Unassigned) | 20-1017 |
| 1:15 PM | | | | |
| 133 | Plea Court | Com. v. Barry, M.H. | (Rapa, Lubin) | 20-0763 |
| Thursday, May 27 | | | | |
| 9:00 AM | | | | |
| 134 | PCRA Pet. | Com. v. Hogg, S.E., Jr. | (Hatton, Gough) | 16-1294 |
| 1:15 PM | | | | |
| 135 | Omnibus Pre-Tr. Mot. | Com. v. Sanders, A.J. | (Bonesch, Gough) | 20-0575 |
| 136 | Pet. Reduce Bail | Com. v. Freeman, R.H., Jr. | (Hatton, Saurman) | 17-1523 |
| 137 | Pet. Reduce Bail | Com. v. Freeman, R.H., Jr. | (Hatton, Saurman) | 18-1040 |
| 138 | Pet. Reduce Bail | Com. v. Freeman, R.H. | (Hatton, Saurman) | 18-1067 |
| 139 | Pet. Reduce Bail | Com. v. Freeman, R.H. | (Miller, Saurman) | 20-0330 |
| 140 | Omnibus Pre-Tr. Mot. | Com. v. Correll, J.P. | (Rapa, Mottola) | 21-0216 |

Civil

Monday, May 24

Judge Serfass, Steven R., Hon.

| | | | | |
|---------|-----------------------------|--|--|---------|
| 9:00 AM | | | | |
| 1 | Pet. to Appl. Nunc Pro Tunc | Brooking, J.A. (Saurman) v. Commonwealth of Pennsylvania D. (Watters) | | 20-2444 |
| 2 | Pet. to Appl. Lic. Susp. | Canzoneri, M.D. (Rapa) v. Commonwealth of Pennsylvania D. (Watters) | | 20-1795 |
| 3 | Pet. to Appl. Lic. Susp. | Kresge, B.A. (Riegel) v. Commonwealth of Pennsylvania (Watters) | | 20-2302 |
| 4 | Pet. to Appl. Lic. Susp. | Brooking, J.A. (Saurman) v. Commonwealth of Pennsylvania D. (Watters) | | 20-2444 |
| 5 | Pet. to Appl. Lic. Susp. | Culkin, C.G. (Aaroe) v. Commonwealth of Pennsylvania D. (Watters) | | 20-2852 |
| 1:15 PM | | | | |
| 6 | Mot. for Protective Order | Foster, T.M. (Primerano) v. Roberts, F. (Peterson) | | 19-3523 |
| 7 | Pet. Reconsider | Rocha, J.A. (Shabbick) v. Rocha, A. (Gillen) | | 18-1792 |
| 8 | Mot. to Compel | Pemberton, C. (Bahgat) v. Indian Mountain Lake Civic Ass. (Balch) | | 20-2125 |
| 9 | Pet. | HSBC Bank U.S.A. National Associa. (McKee) v. Schepige, S. (Pro Se) | | 19-3718 |
| 10 | Prelim. Obj. | Buskirk-Henritzy, S. (Spegar) v. Lehigh Canal Recreation Commis. (Walsh) | | 20-0807 |

CARBON COUNTY LAW JOURNAL

Tuesday, May 25

Chairman Diehl, Eileen M., Esq.

| | | | |
|----------|--------------------------|---|---------|
| 8:30 AM | | | |
| 1 | Pre-Tr. Conf. | Cicardo, J.A. (Shabbick) v. Cicardo, W.A. (Kelly) | 20-0698 |
| 9:30 AM | | | |
| 2 | Pet./Comp. to Mod. Cust. | Pieri, K. (Pro Se) v. Cyr, A. (Pro Se) | 14-0320 |
| 10:30 AM | | | |
| 3 | Pre-Tr. Conf. | Weaver, J.D. (Frycklund) v. Weaver, C. (Pro Se) | 18-3490 |
| 4 | Pet./Comp. to Mod. Cust. | Kibler, T. (Pro Se) v. Kibler, D. (Stehle) | 17-0760 |
| 11:30 AM | | | |
| 5 | Pet./Comp. to Mod. Cust. | Smith, L.F. (Pro Se) v. Deem, T.A., II (Nanovic) | 10-3176 |
| 6 | Pet./Comp. to Mod. Cust. | Mullen, D. (Pro Se) v. Getz, M. (Yurchak) | 18-3170 |
| 1:00 PM | | | |
| 7 | Pet./Comp. to Mod. Cust. | French, R. (Pro Se) v. French, C., Jr. (Pro Se) | 15-0611 |

Wednesday, May 26

Judge Nanovic, Roger N., II, Hon.

| | | | |
|---------|-------------------------|---|---------|
| 9:00 AM | | | |
| 1 | Complnt./Pet. for Cust. | Vializ, M. (Sebelin) v. Vazquez, F. (Cohen) | 21-0113 |
| 2 | Pet. for Contmpt. | Vializ, M. (Sebelin) v. Vazquez, F. (Cohen) | 21-0113 |
| 3 | Pet. for Contmpt. | Vializ, M. (Sebelin) v. Vazquez, F. (Cohen) | 21-0113 |

Judge Serfass, Steven R., Hon.

| | | | |
|---------|--------------------------|---|---------|
| 9:00 AM | | | |
| 4 | Pet. for Contmpt. | Smith, G. (Margle) v. Doerr, V. (Smirnov) | 17-1440 |
| 5 | Pet./Comp. to Mod. Cust. | Smith, G. (Margle) v. Doerr, V. (Smirnov) | 17-1440 |

Judge Matika, Joseph J., Hon.

| | | | |
|---------|-------------------------|--|---------|
| 1:15 PM | | | |
| 6 | Complnt./Pet. for Cust. | Fialkowski, M. (Pro Se) v. Carrelli, B. (Pro Se) | 20-2495 |
| 7 | Pet. for Contmpt. | Fialkowski, M. (Pro Se) v. Carrelli, B. (Pro Se) | 20-2495 |

Thursday, May 27

Judge Nanovic, Roger N., II, Hon.

| | | | |
|---------|-------------------------|--|---------|
| 9:00 AM | | | |
| 1 | Complnt./Pet. for Cust. | Hottenstein, T. (Kemmerer) v. Nielsen, J. (Pro Se) | 21-0864 |

Chairman Diehl, Eileen M., Esq.

| | | | |
|---------|--------------------------|--|---------|
| 1:00 PM | | | |
| 2 | Pet./Comp. to Mod. Cust. | Hunadi, M.S. (Kemmerer) v. Hunadi, D.S. (Pro Se) | 20-2214 |

Chairman Combi, Mark E., Esq.

| | | | |
|---------|-------------------|---|---------|
| 9:00 AM | | | |
| 3 | Arbitration Ready | Sommerfield, T.G. (Weaver) v. Flynn, C. (Katsock) | 17-2695 |

Friday, May 28

Judge Nanovic, Roger N., II, Hon.

| | | | |
|---------|--------------|--|---------|
| 1:15 PM | | | |
| 1 | Prelim. Obj. | Hettler, D. (Kemmerer) v. Hettler, T.S. (Margle) | 21-0778 |

Judge Serfass, Steven R., Hon.

| | | | |
|---------|------------------|--|---------|
| 9:00 AM | | | |
| 2 | PFA Hrg. | Kapral, J.B. (Pro Se) v. Rostocki, J.J. (Schnell) | 18-0989 |
| 3 | Pet. to Withdraw | Schleicher, C.A. (Pro Se) v. Rehl, T.P., Jr. (Pro Se) | 21-0812 |
| 1:00 PM | | | |
| 4 | PFA Hrg. | Berger, P.J. (Pro Se) v. Bollinger, M.A., Sr. (Pro Se) | 21-0930 |

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|---|-------------------------|---|---------|
| 1:15 PM | | | |
| 5 | Mot. for Sanctions | Hauser, B.G. (Sebelin) v. Hauser, D.T. (Walbert) | 18-2832 |
| 6 | Pet. for Special Relief | Bojko, A. (Sebelin) v. Otto, A. (Pro Se) | 21-0508 |
| Chairman Velitsky, Joseph J., Esq. | | | |
| 9:00 AM | | | |
| 7 | Arbitration Ready | Accesslex Institute (Dougherty) v. Rakos, D.M. (Rapa) | 20-1749 |

ESTATE AND TRUST NOTICES

Notice is hereby given that, in the estates of the decedents set forth below, the Register of Wills has granted letters testamentary or of administration to the persons named. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

FIRST PUBLICATION

KARAS, ANTOINETTE a/k/a ANTOINETTE M. KARAS, Dec'd.

Late of Lehighton.
 Executor: George S. Karas, 30 Beltzville Drive, Lehighton, PA 18235.
 Attorneys: Roberti & Roberti, LLC, 56 Broadway, P.O. Box 29, Jim Thorpe, PA 18229.

MERTZ, RICHARD E. a/k/a RICHARD MERTZ, Dec'd.

Late of 16 East Abbott Street, Lansford.
 Executor: Arthur Williams, 12 E. Abbott Street, Lansford, PA 18232.
 Attorneys: Daniel A. Miscavige, Esquire, Gillespie, Miscavige & Ferdinand, LLC, 3 East Butler Drive, Suite 102, Drums, PA 18222.

SECOND PUBLICATION

WAGNER, RICHARD L. a/k/a RICHARD LEE WAGNER, Dec'd.

Late of the Borough of Palmerton.
 Executrix: Jana M. Boyer, 601 Lehigh Ave., Palmerton, PA 18071.
 Attorneys: Jenny Y.C. Cheng, Esquire, Cheng Law Offices, P.C., 430 Delaware Avenue, P.O. Box 195, Palmerton, PA 18071.

THIRD PUBLICATION

BRIMMER, ROBERTA F., Dec'd.

Late of the Borough of Lansford.
 Executrix: Kim D. Thomas, 173 Great Oaks Drive, Nesquehoning, PA 18240.

Attorneys: Michael L. Ozalas, Esquire, Ozalas & McKinley, 47 Broadway, Jim Thorpe, PA 18229.

BUCK, HANNAH E., Dec'd.

Late of Lower Towamensing. Co-Executors: Linda Lou Hill, 370 Buck Hill Road, Palmerton, PA 18071 and Lanny Lee Buck, P.O. Box 5, Aquashicola, PA 18012.

Attorneys: Michael L. Ozalas, Esquire, Ozalas & McKinley, 47 Broadway, Jim Thorpe, PA 18229.

EASTGATE, DESIREE C., Dec'd.

Late of Palmerton.

Administratrix: Danielle E. Eastgate, 4384 Coulbourn Mill Road, Salisbury, MD 21804.

Attorneys: Angela M. Stehle, Esquire, Shabbick & Associates, P.C., 533 Delaware Avenue, Palmerton, PA 18071.

MATZEN, PATRICIA A., Dec'd.

Late of Nesquehoning.

Executrix: Dawn Marie Jacobs c/o Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

Attorneys: Joseph J. Velitsky, Esquire, Velitsky & Frycklund, 49 East Ludlow Street, Summit Hill, PA 18250.

MOYER, BRENDA K. a/k/a BRENDA MOYER, Dec'd.

Late of 701 E. Ridge Street, Lansford.

Executor: Dennis A. Snyder a/k/a Dennis Alan Snyder, 22

West Fell Street, Summit Hill, PA 18250.

Attorneys: Matthew G. Schnell, Esquire, Strubinger Law, P.C., 505 Delaware Avenue, P.O. Box 158, Palmerton, PA 18071-0158.

SHERLOCK, NICHOLAS J. a/k/a NICHOLAS SHERLOCK a/k/a NICHOLAS J. SHERLOCK, SR., Dec'd.

Late of Albrightsville.

Executrix: Donna Marie Bartle, 1026 Avenue E, Langhorne, PA 19047.

Attorney: Kelly C. Jamison, Esquire, Professional Bldg., Rt. 903, P.O. Box 2257, Albrightsville, PA 18210.

WAGNER, WAYNE T. a/k/a WAYNE WAGNER, Dec'd.

Late of 1254 Laurytown Road, Weatherly.

Co-Executors: Laura Pfeiffer and Timothy Wagner, 1132 Laurytown Road, Weatherly, PA 18255.

Attorneys: Daniel A. Miscavige, Esquire, Gillespie, Miscavige & Ferdinand, LLC, 67 North Church Street, Hazleton, PA 18201.

WARNER, HARRY H. a/k/a HARRY WARNER a/k/a SPATZ WARNER, Dec'd.

Late of 800 Sixth Street, Weatherly.

Executrix: Wendy Utz, 23 Larbo Road, Millersville, MD 21108.

CARBON COUNTY LAW JOURNAL

Attorneys: Daniel A. Miscavige, Esquire, Gillespie, Miscavige & Ferdinand, LLC, 3 East Butler Drive, Suite 102, Drums, PA 18222.

REGISTER OF WILLS

FORCINITO, RICHARD PERRY, SR.; Albrightsville, PA; Admn.; Samuel T. Swansen, Esquire (Montgomery County).

HECKMAN, BARBARA S. a/k/a BARBARA HECKMAN a/k/a BARBARA S.A. HECKMAN; Lehighon, PA; Will; Angela M. Stehle, Esquire.

KISTLER, KAREN M.; Palmerston, PA; Will; Matthew G. Schnell, Esquire.

MERTZ, RICHARD E. a/k/a RICHARD MERTZ; Lansford, PA; Will; Daniel Miscavige, Esquire.

PERICH, HELEN E.; Palmerton, PA; Will; Joshua D. Shulman, Esquire.

May 21

SUITS BEGUN

The plaintiff's name appears first, followed by the name of the defendant, the case number, the nature of the suit, the name of the plaintiff's attorney, and the date the suit was filed.

ABREU, ASHLEY obo K.V. (M.); Anthony Abreu; 21-1079; Protect/Abuse; Pro Se; 05/10/21.

AJAX MORTGAGE LOAN TRUST 2019 C MORTGAGE BACKED SECURITIES 2019 C BY U.S. BANK NA-

TIONAL ASSOCIATION; Dennis B. Graham; 21-1061; Mortgage Foreclosure; Jacqueline F. McNally, Esquire; 05/07/21.

BANK OF AMERICA N.A.; Bridget Curreri; 21-1058; Civil Action; Bryan J. Polas, Esquire; 05/07/21.

BANK OF AMERICA N.A.; Patrick J. Shannon; 21-1070; Civil Action; Joel M. Flink, Esquire; 05/10/21.

BARLIP, JOSHUA; Mariah M. Miller; 21-1094; Custody; Pro Se; 05/11/21.

CANIZARES, SHERLLY; Drew Weaver; 21-1063; Civil Action; Michael S. Levin, Esquire; 05/07/21.

CAPITAL ONE BANK N.A.; Darren Reinart; 21-1069; Civil Action; Michael F. Ratchford, Esquire; 05/10/21.

CAVALRY SPV I LLC AS ASSIGNEE OF CITIBANK N.A.; Scott A. Morgan; 21-1073; Civil Action; Michelle L. Sanginiti, Esquire; 05/10/21.

DISCOVER BANK; Ann Chlebovec; 21-1072; Civil Action; Michael J. Dougherty, Esquire; 05/10/21.

DISCOVER BANK; Ann J. Woginrich, Terry S. Woginrich; 21-1071; Civil Action; Michael J. Dougherty, Esquire; 05/10/21.

FRANTZ, NICOLLE; Christopher Frantz, Timara Reed; 21-1066; Custody; Pro Se; 05/10/21.

CARBON COUNTY LAW JOURNAL

- GONZALEZ, AMANDA L.; Anthony L. Abreu; 21-1090; Protect/Abuse; Pro Se; 05/11/21.
- GRAVER, CAROLYN J., INDIVIDUALLY & AS ADMINISTRATRIX OF THE ESTATE OF RONALD D. GRAVER, JR.; Erie Insurance; 21-1080; Civil Action; Melissa A. Scartelli, Esquire; 05/11/21.
- HAINES, CHRISTINE; John Blaney; 21-1057; Protect/Abuse; Pro Se; 05/07/21.
- KNAUSS, PATRICIA, PHILIP KNAUSS, SR.; Carrie Stuffle; 21-1059; DJ Appeal; Pro Se; 05/07/21.
- LEVAN, JEFFREY S.; Commonwealth of Pennsylvania Department of Transportation; 21-1064; License Appeal; Pro Se; 05/07/21.
- MOSER, CODY; Dana Moser; 21-1086; Divorce; Jennifer Lynn Rapa, Esquire; 05/11/21.
- MULLANEY, STEPHANIE; Richard Futchko; 21-1085; Protect/Abuse; Pro Se; 05/11/21.
- NICHOLS, CHANELLE; Lakaiya Smith; 21-1083; Protect/Abuse; Pro Se; 05/11/21.
- SCHLEICHER, TRELL; Dan Schleicher; 21-1095; Protect/Abuse; Pro Se; 05/12/21.
- TRACY, DENISE; Chad Lloyd; 21-1096; Protect/Abuse; Pro Se; 05/12/21.
- TROTТА, BRENDA; Carbon County Children & Youth, Michael Gough, Esquire, Daisy Dixon, Jordan Trotta; 21-1074; Custody; James P. Madson Esquire; 05/10/21.
- U.S. BANK TRUST NATIONAL ASSOC. AS TRUSTEE FOR GIFM HOLDINGS TRUST; Scott A. Steimle; 21-1077; Mortgage Foreclosure; Michael T. McKeever, Esquire; 05/10/21.
- U.S. BANK TRUST NATIONAL ASSOCIATION ET AL.; Georgine Robertshaw Individually et al.; 21-1097; Mortgage Foreclosure; Jill Manuel Coughlin, Esquire; 05/12/21.
- May 21

JUDGMENT INDEX REPORT

The information contained herein is listed in the following order: (1) party against whom judgment was entered; (2) party for whom judgment was entered; (3) docket number; (4) date of entry; and (5) amount. Subsequent entries and filings, including appeals and satisfactions, may not be reported herein and may affect the lein status of any entry.

- ABREU, JUAN A.; Carbon County Clerk of Courts; 21-6608; 05/12/21; \$29,466.78
- ALBERT, SCOTT MICHAEL; Carbon County Clerk of Courts; 21-6599; 05/10/21; \$1,456.52
- ALBERT, SCOTT MICHAEL; Carbon County Clerk of Courts; 21-6600; 05/10/21; \$954.52

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- ALBERT, SCOTT MICHAEL; Carbon County Clerk of Courts; 21-6601; 05/10/21; \$812.10
- ALBERT, SCOTT MICHAEL; Carbon County Clerk of Courts; 21-6602; 05/10/21; \$3,156.34
- ALBERT, SCOTT MICHAEL, JR.; Carbon County Clerk of Courts; 21-6603; 05/10/21; \$892.43
- ARNER, COREY ELIZABETH; Carbon County Clerk of Courts; 21-6589; 05/10/21; \$2,394.68
- BELL, COREY ISHWAR; Carbon County Clerk of Courts; 21-6615; 05/12/21; \$948.68
- BERGER, CLAYTON WILLIAM, JR.; Carbon County Clerk of Courts; 21-6614; 05/12/21; \$1,491.18
- BRADY, ANDRE NICHOLAS; Carbon County Clerk of Courts; 21-6620; 05/12/21; \$936.38
- BURNS, AMY S.; Carbon County Clerk of Courts; 21-6585; 05/10/21; \$1,989.25
- CIPRIAN, GABRIEL J. PUJOL; Carbon County Clerk of Courts; 21-6611; 05/12/21; \$2,050.68
- COMER, ETHAN SILAS; Carbon County Clerk of Courts; 21-6604; 05/10/21; \$1,649.53
- COWIN, WILLIAM JOHN; Carbon County Clerk of Courts; 21-6616; 05/12/21; \$1,662.80
- DELLECKER, JENNIFER ANN; Carbon County Clerk of Courts; 21-6610; 05/12/21; \$2,039.08
- DIAZ, JENNIFER; Carbon County Clerk of Courts; 21-6618; 05/12/21; \$1,644.68
- ENDY, CHERYL L.; Carbon County Clerk of Courts; 21-6587; 05/10/21; \$2,194.68
- FANTASTIC LLC A NEW JERSEY LIMITED LIABILITY COMPANY; Borough of Weatherly; 21-1091; 05/11/21; \$2,953.80
- FRABLE, TYLER R.; Midland Credit Management Inc.; 21-1068; 05/10/21; \$2,077.06
- GILMAN, NATHAN; Carbon County Clerk of Courts; 21-6591; 05/10/21; \$1,030.18
- GRAHAM, DENNIS B.; Borough of Weatherly; 21-1093; 05/11/21; \$7,467.20
- GRAVER, MICHELE MARIE; Carbon County Clerk of Courts; 21-6590; 05/10/21; \$1,754.93
- HAYDT, TARA LYNN; Carbon County Clerk of Courts; 21-6606; 05/10/21; \$6,686.68
- HEARN ENTERPRISES INCORPORATED; Commonwealth of Pennsylvania Department of Labor & Industry; 21-1067; 05/10/21; \$2,872.68
- HEBUR, MARIA; Barclays Bank Delaware; 21-1087; 05/11/21; \$5,096.47
- HOCKENBERRY, JACOB; Carbon County Clerk of Courts; 21-6579; 05/10/21; \$2,194.68
- JOHNSON, JOSIAH R.; Carbon County Clerk of Courts; 21-6584; 05/10/21; \$1,983.68

CARBON COUNTY LAW JOURNAL

- KINTZ, WILLIAM PAUL; Carbon County Clerk of Courts; 21-6588; 05/10/21; \$1,508.68
- KNAUFT, DAVID LEE, JR.; Carbon County Clerk of Courts; 21-6592; 05/10/21; \$904.77
- KRAFT, ANNE; Summit Hill Borough; 21-1076; 05/10/21; \$689.89
- MEHER HOMES LLC, SHATRUGHAN KUMAR SINHA, PUNEET SINHA; Venkateshwaran Raja; 21-1081; 05/11/21; \$979,146.18
- MILLER, MICHAEL JAMES; Carbon County Clerk of Courts; 21-6580; 05/10/21; \$759.20
- MILLER, MICHAEL JAMES; Carbon County Clerk of Courts; 21-6581; 05/10/21; \$1,654.42
- MILLER, MICHAEL JAMES; Carbon County Clerk of Courts; 21-6582; 05/10/21; \$1,551.08
- MILLER, MICHAEL JAMES; Carbon County Clerk of Courts; 21-6583; 05/10/21; \$807.86
- MINAYA, REYNA; Douglas Pierno; 21-1084; 05/11/21; \$1,965.25
- MINCHALA, FRANKLIN O.; Carbon County Clerk of Courts; 21-6586; 05/10/21; \$2,066.93
- RIVERA, CHRISTOPHER; Carbon County Clerk of Courts; 21-6605; 05/10/21; \$10,946.68
- ROLDAN, JOSE & GEORGIA ROLDAN, HIS WIFE; Borough of Weatherly; 21-1092; 05/11/21; \$2,284.76
- ROSS, JIMMY LEE, II; Carbon County Clerk of Courts; 21-6609; 05/12/21; \$672.68
- SILFIES, ALICIA; Carbon County Clerk of Courts; 21-6612; 05/12/21; \$1,327.68
- SILVERS, JAMES C.; Carbon County Clerk of Courts; 21-6594; 05/10/21; \$878.68
- SILVERS, JAMES CLAYTON; Carbon County Clerk of Courts; 21-6593; 05/10/21; \$1,391.18
- SMITH, CHRISTINA; Carbon County Clerk of Courts; 21-6598; 05/10/21; \$1,877.68
- SOLT, KELLY S.; United States Internal Revenue Service; 21-1089; 05/11/21; \$37,527.60
- SOLT, KERRY J.; United States Internal Revenue Service; 21-1088; 05/11/21; \$37,527.60
- STEVENS, CASSANDRA MARIE; Carbon County Clerk of Courts; 21-6613; 05/12/21; \$1,114.35
- STROHL, MICHAEL C.; Carbon County Clerk of Courts; 21-6596; 05/10/21; \$3,834.44
- STROHL, MICHAEL C.; Carbon County Clerk of Courts; 21-6597; 05/10/21; \$6,203.94
- STROHL, MICHAEL CHARLES; Carbon County Clerk of Courts; 21-6595; 05/10/21; \$1,377.68

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STROHL, RONALD; Carbon County Clerk of Courts; 21-6617; 05/12/21; \$951.88

SUMMERS, LARRY JAMES; Carbon County Clerk of Courts; 21-6619; 05/12/21; \$827.68

VELAZQUEZ, CHRISTOPHER T.; Carbon County Clerk of Courts; 21-6607; 05/10/21; \$1,860.18

May 21

NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization has been filed with the Depart-

ment of State of the Commonwealth of Pennsylvania for the purpose of creating an LLC and obtaining a Certificate of Incorporation pursuant to the provisions of Pennsylvania Business Law.

The name of the corporation is:
JAYSON CASPER, LLC

The Certificate of Organization was filed on May 6, 2021.

BRETT J. RIEGEL, ESQUIRE
18 N. 8th Street
Stroudsburg, PA 18360

May 21

CARBON COUNTY LAW JOURNAL

COMMON PLEAS OF CARBON COUNTY
SHERIFF'S SALE OF VALUABLE REAL ESTATE
Sheriff's Office, Courthouse Building, Jim Thorpe, PA

SHERIFF'S NOTICE: The Sheriff shall not be liable for loss or damage to the premises sold resulting from any cause whatsoever and makes no representation or warranty regarding the condition of the premises.

Notice is hereby given and directed to all parties in interest and claimants that a Schedule of Distribution will be filed by the Sheriff on June 21, 2021 and that distribution will be made in accordance with that Schedule unless exceptions are filed thereto within ten (10) days thereafter.

ANTHONY C. HARVILLA
Sheriff, County of Carbon
www.carboncountysheriff.com
May 21, 28; June 4

Sale of the real estate shall be held on Friday, June 11, 2021 at 11:00 a.m. at the Carbon County Courthouse.

SALE #1

Writ of Execution No.: 20-0024.

Property Address: 339 Hillside Avenue, Palmerton, PA 18071.

Location: Borough of Palmerton.

Improvements: Single family dwelling.

Defendants: James A. Medei, III a/k/a James Medei, III and Danielle R. Medei.

SALE #2

Writ of Execution No.: 20-0638.

Property Address: 210 West Snyder Avenue, Lansford, PA 18232.

Location: Borough of Lansford.

Improvements: Residential family dwelling.

Defendant: Brenda Oboril.

SALE #3

Writ of Execution No.: 19-2947.

Property Address: 253 East Patterson Street, Lansford, PA 18232.

Location: Borough of Lansford.

Improvements: Residential dwelling.

Defendants: Kristan Eschbach and Chad Eschbach a/k/a Chad M. Eschbach.

CARBON COUNTY LAW JOURNAL

MORTGAGES

The name of the mortgagor appears first, followed by mortgagee, location of property, amount of the mortgage, and date of recording.

MOONEY, STEPHEN M., Mauch Chunk Trust Co., Mahoning, \$15,000.00, 01/19/21

MILLER, ROBERT J., Mortgage Electronic Registration Systems Inc., Palmrtn., \$144,000.00, 01/19/21

RMW ENTERPRISES LLC, Financial Resources Federal Credit Union, Kidder, \$127,000.00, 01/19/21

PRITCHETT, DAVID C., ESSA Bk. & Trust, Low. Tow., \$124,500.00, 01/19/21

COVER, ROBERT J., Mortgage Electronic Registration Systems Inc., Tow. Twp., \$170,000.00, 01/19/21

SZERLIP, LISA M., PNC Bk. Ntl. Assn., Penn For., \$27,300.00, 01/19/21

SNYDER, ZACAHARY P., First Northern Bk. and Trust Co., Bowmanst., \$104,000.00, 01/19/21

BLUE RIDGE AUTO CENTER INC., First Northern Bk. and Trust Co., Low. Tow., \$200,000.00, 01/19/21

McCARROLL, TIMOTHY J., Mortgage Electronic Registration Systems Inc., E. Penn, \$224,000.00, 01/19/21

KLINE, JESSICA L., Mortgage Electronic Registration Systems Inc., Penn For., \$249,900.00, 01/19/21

CHUPA, PATRICIA, First Northern Bk. and Trust Co., Palmrtn., \$75,000.00, 01/19/21

ROBINSON, BETSY IRENE, Mortgage Electronic Registration Systems Inc., Nesq., \$406,000.00, 01/19/21

ARGUELLES, ROY, Wells Fargo Bk. N.A., Kidder, \$284,800.00, 01/20/21

REX, GREGORY A., Mortgage Electronic Registration Systems Inc., Tow. Twp., \$182,100.00, 01/20/21

FISCELLA, CHRISTINA R., Mortgage Electronic Registration Systems Inc., Kidder, \$168,300.00, 01/20/21

HAMEID, EBTESAM, Mortgage Electronic Registration Systems Inc., Kidder, \$150,000.00, 01/20/21

PLACE, AUTUMN LEE, Mortgage Electronic Registration Systems Inc., Penn For., \$132,554.00, 01/20/21

NUNEZ, DIANA, Mortgage Electronic Registration Systems Inc., Sum. Hill, \$153,174.00, 01/20/21

SITTLER, KERRY L., Keybank Ntl. Assn., Mahoning, \$120,295.00, 01/20/21

PINKETTI, VINCENT, Mortgage Electronic Registration Systems Inc., Penn For., \$103,098.00, 01/20/21

GAVIN, SEAN, Mauch Chunk Trust Co., Mahoning, \$126,000.00, 01/20/21

FISHER, SCOTT, Keybank Ntl. Assn., Lansfd., \$19,500.00, 01/20/21

CARBON COUNTY LAW JOURNAL

- FELDMAN, EVAN S., Mortgage Electronic Registration Systems Inc., Kidder, \$156,000.00, 01/20/21
- SWANK, TRISHA E., Mortgage Electronic Registration Systems Inc., Bowmanst., \$131,750.00, 01/20/21
- RECIO, ELIZABETH, Mortgage Electronic Registration Systems Inc., Penn For., \$179,910.00, 01/20/21
- STERNER, KEVIN R., Mortgage Electronic Registration Systems Inc., Tow. Twp., \$153,200.00, 01/20/21
- ZIEJEWSKI, KENNETH J., Mortgage Electronic Registration Systems Inc., Nesq., \$107,910.00, 01/21/21
- MUSCOVITCH, ROBERT, Mortgage Electronic Registration Systems Inc., Penn For., \$138,100.00, 01/21/21
- DAY, BRIAN J., Jim Thorpe Neighborhood Bk., Nesq., \$39,200.00, 01/21/21
- BOWMAN, KERRY L., PNC Bk. Ntl. Assn., Frankl., \$200,143.50, 01/21/21
- WEST, DANA ERIC, Mortgage Electronic Registration Systems Inc., Penn For., \$156,177.00, 01/21/21
- ABRAHAM, WARREN S., Mortgage Electronic Registration Systems Inc., Kidder, \$194,000.00, 01/21/21
- SHORTEN, MICHAEL A., Hlavka, Stephen, J. Thorpe, \$100,000.00, 01/21/21
- MARKLEY, IVAN ALAN, JR., Mortgage Electronic Registration Systems Inc., J. Thorpe, \$221,341.00, 01/21/21
- KING, JANICE M., Mortgage Electronic Registration Systems Inc., Nesq., \$78,933.00, 01/21/21
- ULIANA, STEPHEN J., Wells Fargo Bk. N.A., Penn For., \$250,000.00, 01/21/21
- LADDEN, CARLEEN M., Mortgage Electronic Registration Systems Inc., Mahoning, \$228,000.00, 01/21/21
- RUGH, WILLIAM B., SR., Mortgage Electronic Registration Systems Inc., Penn For., \$112,000.00, 01/21/21
- BEMBRIDGE, MICHAEL L., Mortgage Electronic Registration Systems Inc., Penn For., \$97,750.00, 01/21/21
- THOMAS, VICTOR A., Mortgage Electronic Registration Systems Inc., Palmrtn., \$126,564.00, 01/21/21
- FUSARO, NORMAN W., Mortgage Electronic Registration Systems Inc., Penn For., \$159,900.00, 01/21/21
- SERRATORE, FRANK JOSEPH, IV, Mortgage Electronic Registration Systems Inc., Penn For., \$119,380.00, 01/22/21
- PORT, ROSEMARY T., Mortgage Electronic Registration Systems Inc., Penn For., \$150,000.00, 01/22/21
- KRESGE, GLEN P., Mortgage Electronic Registration Systems Inc., Sum. Hill, \$121,000.00, 01/22/21

**COMMONWEALTH of PENNSYLVANIA vs.
DAVID ROBERT JONES, Defendant**

*Criminal Law—Pre-Arrest Delay in Filing Charges—
Whether Prosecution Barred—Two-Part Due Process Test—
Prejudice to the Accused—Cause of the Delay*

1. The due process protections afforded by Article I, Section 9 of the Pennsylvania Constitution and the Fourteenth Amendment of the United States Constitution protect criminal defendants from having to defend stale charges where the delay prejudices the defendant's right to a fair trial.
2. Due process bars the criminal prosecution of an accused for undue pre-arrest delay where (1) the delay causes actual prejudice to the accused, and (2) the prosecution lacks sufficient and proper reasons for the delay.
3. The burden of establishing actual prejudice attributable to pre-arrest delay is upon the accused. To meet this standard, the accused must show that he was "meaningfully impaired in his ... ability to defend against the state's charges to such an extent that the disposition of the criminal proceedings was likely affected."
4. Where an accused claims pre-arrest delay has resulted in the loss or absence of witnesses and resulting prejudice, to meet the standard of actual prejudice requires a showing in what specific manner missing witnesses would have aided the defense and further, that the lost testimony or information is not available through other means.
5. If the accused's threshold burden of establishing actual prejudice attributable to pre-arrest delay is met, and only then, does the burden of production shift to the Commonwealth to establish constitutionally sufficient and proper reasons for the delay. Pre-arrest delay, by itself, is not **per se** prejudicial.
6. If pre-arrest delay is intentionally undertaken by the prosecution to gain a tactical advantage over the defendant or is a product of bad faith, the delay will not be countenanced. If the delay is attributable to the prosecution's need to reasonably investigate, or to neglect or even reckless inattentiveness by the Commonwealth, due process will not be offended.
7. A due process challenge to the period of delay between the occurrence of a crime and the defendant's arrest is different and distinct from a defendant's right to a speedy trial under the Sixth Amendment, which is not implicated until the filing of either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge. Whereas, the primary concern in a delayed prosecution case is whether the defendant was meaningfully impaired in his ability to defend against the state's charges to such an extent that his right to a fair disposition of the criminal charges has been compromised, the primary concern of a speedy trial case is the duration of incarceration of a defendant after charges have been filed.
8. Where a defendant fails to establish actual prejudice attributable to pre-arrest delay and that the prosecution lacks sufficient and proper reasons for the delay, due process will not act to bar prosecution, notwithstanding a 10 1/2-year delay between when the Commonwealth became aware of the crime and defendant's involvement and when criminal charges were filed.

NO. 478 CR 2019

MICHAEL S. GREEK, Esquire—Counsel for the Commonwealth.
MICHAEL P. GOUGH, Esquire—Counsel for the Defendant.

MEMORANDUM OPINION

NANOVIC, P.J.—December 22, 2020

Does due process and the right to a fair trial bar criminal prosecution for a crime when the Commonwealth knew of the crime and of the accused’s involvement more than a decade before charges were filed? This, essentially, is the question before us, and requires review of two critical factors: (1) the existence of prejudice to the accused and (2) the cause of the delay.

PROCEDURAL AND FACTUAL BACKGROUND

On July 5, 2008, David Robert Jones (“Defendant”) was charged with the rape and sexual assault of two sisters, then seven and eleven years of age, the children of his girlfriend. (N.T., 8/25/20, p. 30.) Defendant pled guilty on September 17, 2009, to a charge of Aggravated Indecent Assault,¹ a felony of the second degree, with respect to the older sister (“A.M.”) and was sentenced on February 1, 2010, to a period of imprisonment of no less than 29 months nor more than 10 years in a state correctional institution. Defendant served the full term of this sentence in prison.

The charges involving the younger sister (“W.M.”) were dismissed by the Commonwealth after the Commonwealth concluded W.M. was not competent to testify. (N.T., 8/25/20, pp. 34-35.) This decision was made without any judicial determination of W.M.’s competency. Nothing further was done in the case until June 22, 2018, when W.M., then seventeen years of age, appeared at the Lansford police station and requested Defendant be charged for the offenses committed against her. (N.T., 8/25/20, pp. 35, 50-51.) Charges were filed on April 26, 2019. By this time, Defendant had fully completed his sentence of February 1, 2010, with respect to A.M.

The charges filed on April 26, 2019, involve the same underlying conduct with which Defendant was charged in 2008 relating to W.M. On June 4, 2020, Defendant filed the instant Petition for Extraordinary Relief requesting the charges be dismissed premised on the belief that the length of time—more than ten and a half

¹18 Pa. C.S.A. §3125(a)(7).

years—between when the offense took place and when he was arrested on the new charges has deprived him of the right to a fair trial as a matter of due process guaranteed by both the federal and state constitutions. A hearing on this Petition was held on August 25, 2020.

At the hearing held on Defendant’s Petition, Defendant testified he was at his mother’s home in Philadelphia on the date of the offense, July 3, 2008, for the Fourth of July holiday. (N.T., 8/25/20, pp. 24-25.) Defendant identified his mother, younger brother and six-year-old nephew as potential alibi witnesses who were also at his mother’s home for the holiday, but who were no longer available to testify on his behalf because of the passage of time: (1) his mother died on November 14, 2008 (N.T., 8/25/20, p. 13); (2) he has not had contact with his brother in more than ten years and does not know how to find him (N.T., 8/25/20, p. 29); and (3) he does not know where his nephew is or whether his nephew recalls anything given his young age at the time. (N.T., 8/25/20, p. 15.)

At the time of the July 3, 2008, assaults against A.M. and W.M., the Commonwealth claims Defendant ejaculated onto the carpet of the home where the assaults occurred. (N.T., 8/25/20, p. 15; **see also**, Affidavit of Probable Cause attached to the criminal complaint filed against Defendant.) Based on this assertion and the Commonwealth’s failure to conduct any DNA testing, or to preserve the carpet for DNA testing at a future date,² Defendant contends the delay in filing charges has deprived him of the opportunity to do DNA testing, the results of which could have exonerated him from the charges.

DISCUSSION

Due process as guaranteed by Article I, Section 9 of the Pennsylvania Constitution and the Fourteenth Amendment of the United States Constitution “protects defendants from having to defend stale charges, and criminal charges should be dismissed if improper pre-arrest delay causes prejudice to the defendant’s

²Defendant testified that his belief as to the failure of the Commonwealth to conduct DNA testing or to preserve the carpet is based on the responses he received from the Commonwealth to his discovery requests. (N.T., 8/25/20, pp. 15-16, 29.) The Commonwealth has not disputed Defendant’s belief in this regard.

right to a fair trial.” **Commonwealth v. Snyder**, 552 Pa. 44, 52, 713 A.2d 596, 599-600 (1998).³ A two-part due process test is used to determine whether delay in the filing of criminal charges after a crime has been committed violates a defendant’s right to due process under the United States and Pennsylvania Constitutions. **Commonwealth v. Louden**, 569 Pa. 245, 250, 803 A.2d 1181, 1184 (2002). First, the defendant must show that he was prejudiced by the delay which requires a showing that he was “meaningfully impaired in his ... ability to defend against the state’s charges to such an extent that the disposition of the criminal proceedings was likely affected.” **Commonwealth v. Scher**, 569 Pa. 284, 314, 803 A.2d 1215, 1222 (2002) (plurality opinion). The prejudice claimed by the defendant must be actual, concrete, and non-speculative. **United States v. Marion**, 404 U.S. 307, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971); **United States v. Lovasco**, 431 U.S. 783, 789, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977). A finding of prejudice, while a threshold inquiry, is not alone sufficient to show a violation of due process. **Id.** at 790 (“**Marion** makes clear that proof of prejudice is generally a necessary but not sufficient element of a due process claim, and that the due process inquiry must consider the reasons for the delay as well as the prejudice to the accused.”).

“To establish a due process violation resulting from a delay in prosecution, a defendant must prove that the passage of time

³The due process protections afforded under Article I, Section 9 of the Pennsylvania Constitution are coextensive with those provided under the United States Constitution with respect to pre-arrest delay. **Commonwealth v. Scher**, 569 Pa. 284, 303, 803 A.2d 1204, 1215 (2002) (plurality opinion). In examining a claim of violation of due process caused by pre-arrest delay, the analysis is the same under both the state and federal constitutions, with decisions of the United States Supreme Court being binding on the issue. **Id.**

A due process challenge to the period of delay between the occurrence of a crime and the defendant’s arrest is different and distinct from a defendant’s right to a speedy trial under the Sixth Amendment, which is not implicated until the filing of “either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge.” **Id.** at 304, 803 A.2d at 1216. In contrast to a delayed prosecution case where the primary concern is with whether the defendant “was meaningfully impaired in his ... ability to defend against the state’s charges to such an extent that the disposition of the criminal proceedings was likely affected,” **Commonwealth v. Louden**, 569 Pa. 245, 250, 803 A.2d 1181, 1184 (2002) (quoting **Commonwealth v. Scher**, 569 Pa. 284, 803 A.2d 1204, 1222 (2002) (plurality opinion)), the primary concern of a speedy trial case is the duration of incarceration of a defendant after charges have been filed.

caused actual prejudice and that the prosecution lacked sufficient and proper reasons for the delay.” **Commonwealth v. Weiss**, 622 Pa. 663, 733, 81 A.3d 767, 808 (2013) (citing **Commonwealth v. Snyder**, 552 Pa. 44, 713 A.2d 596, 601 (1998)). Under this second prong of the due process test, if the defendant proves actual prejudice, the burden of production shifts to the Commonwealth to establish constitutionally proper reasons for the delay in prosecution. **Commonwealth v. Wright**, 865 A.2d 894, 901-902 (Pa. Super. 2004) (per curiam), **appeal denied**, 584 Pa. 713, 885 A.2d 533 (2005). Only if the defendant meets the initial burden of proving actual prejudice does the burden shift to the Commonwealth to explain a reasonable basis for the delay. **Louden**, *supra* at 254, 803 A.2d at 1186.

The standard applicable to the Commonwealth for determining what are “sufficient and proper reasons” for the delay has not been decided by a majority of the Pennsylvania Supreme Court. **Wright**, *supra* at 900. **In dicta** in the lead opinion in **Scher**, *supra*, Justice Newman found that “insufficient or improper reasons for delay exist whenever consideration of the totality of the evidence shows that the delay was the product of intentional, bad faith, or reckless conduct by the prosecution.” **Id.** at 331, 803 A.2d at 1232-33 (Castille, J., concurring) (emphasis in original, internal quotation marks omitted). In contrast, Justice Castille believed that “a proper assessment of the reasons for the delay in initiating prosecution must be confined to the question of the prosecution’s bad faith—**i.e.**, whether the delay was intentionally undertaken by the prosecution to gain a tactical advantage over the defendant.” **Id.** at 332, 803 A.2d at 1233.

Neither view was supported by a majority of the **Scher** court, is not precedential, and, as found in **Wright**, necessitates an examination of the standards set out by the Supreme Court in **Commonwealth v. Snyder**, *supra*, as subsequently applied by the Pennsylvania Superior Court in **Commonwealth v. Snyder**, 761 A.2d 584 (Pa. Super. 2000) (**en banc**), **appeal denied**, 572 Pa. 703, 813 A.2d 841 (2002). **Wright**, *supra* at 901. Under this standard, judicial evaluation of the reasons for delay does not encompass the court’s second guessing the day-to-day decisions made by the Commonwealth under a due diligence or negligence

standard. **Snyder, supra** at 589-90.⁴ As to delay resulting from the Commonwealth's investigation of a crime, the Superior Court stated that "even in the face of prejudice, delay is excusable if it is a derivation of a reasonable investigation." **Id.** at 587 (citing **Commonwealth v. Sneed**, 514 Pa. 597, 526 A.2d 749, 752-53 (1987)).

Standard of Actual Prejudice

As regards the death of Defendant's mother, the offense occurred on July 3, 2008; Defendant was arrested on July 5, 2008; and Defendant's mother died on November 14, 2008, within four months of the offense and after Defendant was first arrested. Defendant entered his plea for assaulting A.M. on September 17, 2009. From this timeline, it is evident that even if the ten-and-a-half-year delay in the filing of the second set of charges had not occurred, Defendant's mother would not have been available as a witness. Stated differently, because Defendant's mother died before any period of delay in prosecution could be considered unreasonable, Defendant was not prejudiced for this reason by the delay in the filing of the second set of charges.

As to Defendant's younger brother and nephew,

[w]hen a defendant claims prejudice through the absence of witnesses, he or she must show in what specific manner missing witnesses would have aided the defense. ... Furthermore,

⁴The Supreme Court in **Snyder** held that to sustain a due process claim the defendant must establish as a threshold matter that he suffered actual prejudice from the delay and that the Commonwealth's reasons for the delay were not proper. **Commonwealth v. Snyder**, 552 Pa. 44, 58, 62, 713 A.2d 596, 603, 605 (1998). In further explanation of this holding, the Supreme Court in **Scher, supra**, stated that "in requiring, as we did in **Snyder**, an examination of the reasons for the delay, we did not intend to create an obligation on the Commonwealth to conduct all criminal investigations pursuant to a due diligence or negligence standard, measured from the moment when criminal charges are filed and the defendant raises his due process claim." **Id.** at 311, 803 A.2d at 1220 (Newman, J., lead opinion).

Having determined **Snyder** met his burden of establishing actual prejudice, the Pennsylvania Supreme Court remanded the case to the trial court to provide the Commonwealth with an opportunity to present the reasons for the delay. On appeal from the trial court's finding that valid reasons existed for the delay, the Superior Court in an **en banc** decision held judicial evaluation of the Commonwealth's reasons for the delay should not incorporate due diligence or negligence standards in assessing the validity of the delay. **Commonwealth v. Snyder**, 761 A.2d 584, 589-90 (Pa. Super. 2000).

it is the defendant's burden to show that the lost testimony or information is not available through other means.

Louden, supra at 251, 803 A.2d at 1184 (internal quotation marks and citations omitted) (**quoting Commonwealth v. Scher**, 569 Pa. 284, 803 A.2d 1204, 1222 (2002)).

Defendant testified he believed, but was not certain his younger brother was at his mother's home for the Fourth of July holiday and that he never spoke to his brother at any time after he was charged to learn whether his brother was there and, if he was, whether his brother could recall Defendant being there. (N.T., 8/25/20, pp. 26-27.) Similarly, Defendant was unsure if his nephew was at his mother's home; he never spoke with his nephew to confirm if he was there; and he did not know if his nephew had any memory of Defendant being there. (N.T., 8/25/20, pp. 15, 27-28.) With respect to these two witnesses, Defendant has not met his burden of establishing actual, concrete and non-speculative prejudice, that either would have qualified as an alibi witness but for the passage of time. **See Commonwealth v. Sneed**, 514 Pa. 597, 603-604, 526 A.2d 749, 752 (1987). Moreover, as is also the case with respect to Defendant's mother, any prejudice is due, at least in part, to Defendant's own actions during the investigation: After Defendant's arrest on July 5, 2008, Defendant never mentioned to the police or to his counsel the existence of an alibi defense which, if he had, could have been investigated and documented at the time. **See Weiss, supra**, at 733-34, 81 A.3d at 809.⁵

Finally, Defendant claims prejudice from the loss or destruction of evidence, namely the ability to conduct DNA testing of the ejaculate on the carpeting. This is a two-edged sword. If given the opportunity and choice would Defendant have requested DNA

⁵Defendant's credibility as to this defense is also suspect. If this defense was available and Defendant was at his mother's on the date of the offense, two days before he was arrested on July 5, 2008, why wouldn't he raise it immediately, or at least tell his attorney where he was. (N.T., 8/25/20, p. 25.) And why did he plead guilty to a crime he didn't commit. (N.T., 8/25/20, p. 20.) Defendant's claim that he pled guilty on September 17, 2009, because he was depressed over his mother's death eleven months earlier does not ring true given the significant amount of time which passed between his mother's death and Defendant's plea and the opportunity he had during this period of time to discuss the matter with counsel and to have his alibi investigated. (N.T., 8/25/20, pp. 19-20.)

testing. While a negative test would clearly assist his defense, so does no test, from which the shoddiness of the police investigation could be argued. On the other hand, a positive test might bury him. The question then is whether he was prejudiced by being unable to make this choice.

The second question is whether any loss or destruction of evidence can be attributed to the delay in filing the second set of charges. We do not know, and no evidence has been presented as to whether the carpet was ever replaced and, if so, when; what cleaning, if any, was done, when, and how this would affect the ability to recover reliable samples for DNA testing; or for what period of time DNA found in ejaculate on a carpeted floor, subject to wear and tear to an extent not disclosed in the record, can be recovered and accurately tested. For all we know, the evidence may have been lost within days of the offense, or may still be there today. Because Defendant has failed to answer these questions, he has not met his burden of proving actual prejudice caused by delay for which the prosecution can be held responsible.

Basis for Delay

Delay, by itself, is not **per se** prejudicial. Absent a showing of actual prejudice, delay alone—even that, as here, in excess of ten and a half years—is insufficient to establish a defendant has been denied due process of law. **Commonwealth v. Daniels**, 480 Pa. 340, 390 A.2d 172 (1978) (finding six and three-quarter years’ delay not **per se** prejudicial, where the delay was not manufactured to gain an unfair advantage and no actual prejudice was demonstrated). Nevertheless, some discussion of the pre-arrest delay in filing charges against Defendant is appropriate.

At the hearing held on August 25, 2020, the ten-and-a-half-year period—between July 3, 2008 (**i.e.**, date of the offense) until April 26, 2019 (**i.e.**, date new charges were filed against Defendant)—of delay before Defendant was re-charged was never explained. Certainly, not because the Commonwealth needed this time to investigate or because of new evidence suddenly coming to light. The victims’ mother reported the abuse to the police within a day or two of the assaults, and by July 5, 2008, charges were filed and Defendant was arrested. (N.T., 8/25/20, pp. 33, 41.)

A.M. and W.M. reported they were both raped at least twice by the Defendant, between the hours of 12:00 Noon and 5:00 P.M. on July 3, 2008. (Affidavit of Probable Cause.) During these assaults, Defendant ejaculated at least once onto the carpet of the home where the victims were living and at least once inside of A.M. (Affidavit of Probable Cause.) It was unclear whether Defendant ejaculated inside of W.M. (Affidavit of Probable Cause.) The affidavit further notes that a physical examination of the two sisters at St. Luke's Hospital in Coaldale conducted on July 4, 2008, by Dr. R. Britton revealed trauma to the victims' vaginas and semen found inside of A.M. (N.T., 8/25/20, p. 34.) Additionally, as part of the 2008 investigation both victims were interviewed by the Children's Advocacy Center (CAC) in Scranton. (N.T., 8/25/20, p. 34.) Following W.M.'s appearance at the police station in 2018, a second CAC interview of W.M. was conducted on July 23, 2018, and found consistent with her 2008 interview. On the record before us, with the possible exception of the second CAC interview—which appears to have simply confirmed W.M.'s recollection of what occurred and what she told the police in 2008—no additional investigation or evidence surfaced beyond the information known to the Commonwealth by the end of 2008.

The record does not support a finding that the delay after 2008, was for further investigation. Nor was any additional investigation or evidence apparently needed. The Commonwealth had sufficient evidence to convict Defendant of the sexual assault of A.M. and Defendant pled guilty to this offense on September 17, 2009. Given the physical evidence available to the Commonwealth and the eyewitness testimony of A.M. as to what occurred on July 3, 2008, it is unclear why the charges against Defendant involving W.M. could not proceed. But if, as the Commonwealth appears to argue, W.M.'s competency was the reason for the delay, then why didn't the Commonwealth periodically follow up on W.M.'s status in this regard. For instance, by comparison, it appears the Commonwealth found W.M.'s older sister, A.M., to be competent to testify at the time of the assaults, even though she was then only eleven years of age. **See also, Commonwealth v. Harvey**, 571 Pa. 533, 548, 812 A.2d 1190, 1199 (2002) (holding that while the common-law

presumption of a witness's competency to testify does not apply to a child under the age of fourteen, the competency of a minor less than fourteen years of age to testify may be independently established by a searching judicial inquiry). Instead, the Commonwealth apparently did nothing and nothing would have happened but for W.M. one day walking into the police station on her own ten years later and requesting the police do something. This period of delay following the conclusion of the Commonwealth's investigation in 2008 until the filing of charges on April 26, 2019, is attributable to the Commonwealth.

While the evidence does not support a finding that the Commonwealth intentionally delayed prosecution to gain a tactical advantage, acted in bad faith, or was reckless in prosecuting the case against Defendant for the assault of W.M., the complete absence of any explanation for taking any action for more than ten years after its investigation was concluded evidences on its face an inexplicable neglect. This level of culpability even if properly attributable to the Commonwealth for the delay in prosecution is not, however, sufficient to establish a due process claim based on pre-arrest delay. **Commonwealth v. Scher, supra**, at 310, 803 A.2d 1204, 1220-22.

CONCLUSION

Finding that Defendant has not met his burden of showing actual prejudice caused by pre-arrest delay for which the Commonwealth is responsible and that the Commonwealth did not delay filing criminal charges against Defendant to gain a tactical advantage or was otherwise in bad faith, Defendant's Petition for Extraordinary Relief will be denied.

ORDER OF COURT

AND NOW, this 22nd day of December, 2020, upon consideration of Defendant's Petition for Extraordinary Relief and Dismissal of Charges filed on June 4, 2020, after hearing thereon, review of Defendant's Memorandum of law in support of the Petition—no memorandum of law having been filed by the Commonwealth—and in accordance with our Memorandum Opinion of this same date, it is hereby

ORDERED and DECREED that Defendant's Petition is denied.



PERIODICAL PUBLICATION

* Dated Material. Do Not Delay. Please Deliver Before Monday, May 24, 2021