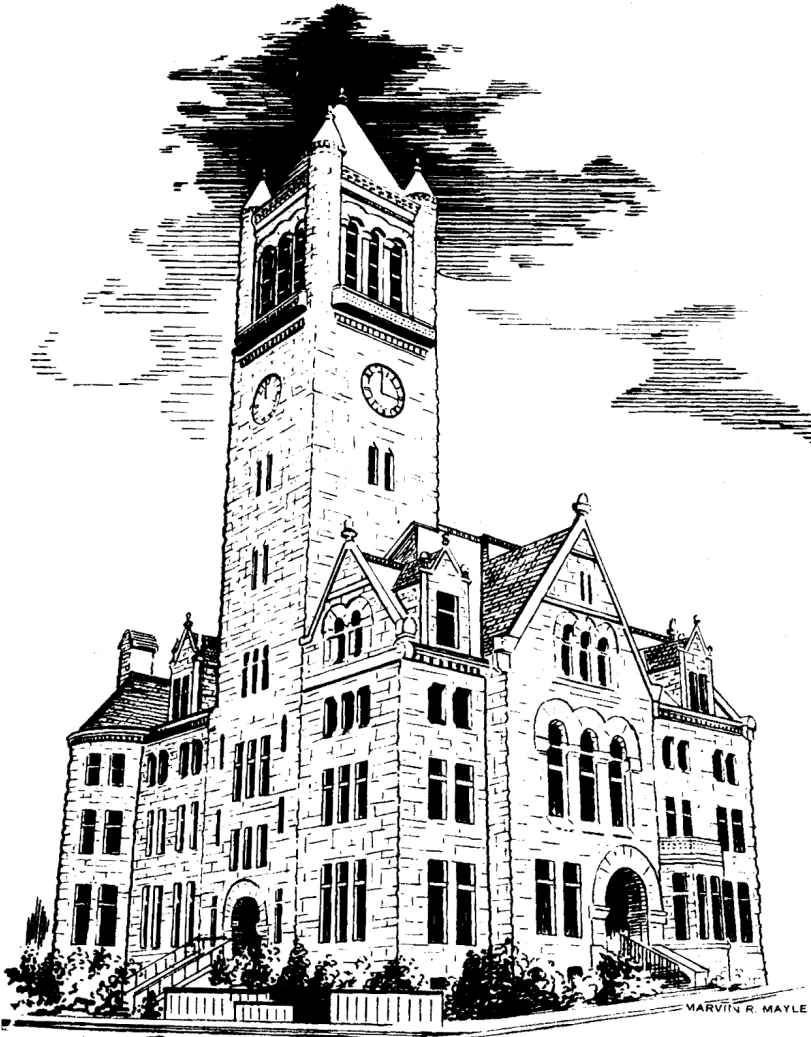


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ESTATE NOTICES

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

Third Publication

**GWENDOLYN FARMER, a/k/a
GWENDOLYN J. FARMER**, late of
Uniontown, Fayette County, PA (3)

Co-Personal Representatives: Anita Farmer
and Karen Farmer White
c/o Ruschell & Associates, LLC
PO Box 577

308 Eaton Avenue
Midway, PA 15060

Attorney: Natalie M. Ruschell

RICHARD G. HUDOCK, late of South Union
Township, Fayette County, PA (3)

Personal Representatives: Patricia A. Myers
and Audrey Palya
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401

Attorney: Gary J. Frankhouser

JESSE L. MOSER, late of Masontown, Fayette
County, PA (3)

Executor: Wayne D. Moser
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

Second Publication

**JEANNETTE J. BALLING, a/k/a
JEANNETTE JONES BALLING**, late of
Uniontown, Fayette County, PA (2)
Personal Representative: James G. Balling
c/o Watson Mundorff Brooks & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

MICHAEL A CAVALIER, late of Uniontown,
Fayette County, PA (2)

Administrator: Jana Cavalier
c/o Meyers Evans Lupetin & Unatin, LLC
707 Grant Street
Gulf Tower, Suite 3200
Pittsburgh, PA 15219
Attorney: Gregory R. Unatin

**THELMA FEDOR, a/k/a THELMA LOUISE
FEDOR, a/k/a THELMA L. FEDOR**, late of
Uniontown, Fayette County, PA (2)

Administratrix: Kimberly A. Duckett
564 Woodruff Lane
Culpeper, VA 22701

**ROBERT N. OBER, a/k/a ROBERT NEVIN
OBER**, late of Lower Tyrone Township, Fayette
County, PA (2)

Executrix: Lisa M. Negich
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

MARY MARGARET PIERCE, late of
Uniontown, Fayette County, PA (2)

Executrix: Betty Ackincloss
c/o One Oxford Centre, Suite 4300
301 Grant Street
Pittsburgh, PA 15219
Attorney: Amy Acheson

JOHN JEROME POMPURA, a/k/a JOHN POMPURA, late of Connellsville, Fayette County, PA (2)

Executrix: Kathleen Donaldson
c/o Donald McCue Law Firm, P.E.
Colonial Law Building
813 Blackstone Road
Connellsville, PA 15425
Attorney: Donald J. McCue

CHARLES SWEDA, late of Masontown, Fayette County PA (2)

Executor: George M. Wallace
c/o Adams & Adams
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason F. Adams

First Publication

PAUL CAPOZZA, a/k/a PAUL BEN CAPOZZA, late of Belle Vernon, Fayette County, PA (1)

Administratrix c.t.a.: Janet Bricker
Box 179
Barr Road
Mather, PA 15346
c/o Shire Law Firm
1711 Grand Boulevard
Park Centre
Monessen, PA 15062
Attorney: Mark J. Shire

LUCY PEARL DENNIS, a/k/a LUCY P. DENNIS, late of Georges Township, Fayette County, PA (1)

Executrix: Linda Bittinger
1488 Connellsville Road
Lemont Furnace, PA 15456
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

DANIEL J. LUKOTCH, a/k/a DANIEL J. LUKOTCH, SR., late of South Union Township, Fayette County, PA (1)

Executrix: Doreen M. Detweiler
c/o Radcliffe & DeHaas, L.L.P.
2 West Main Street, Suite 700
Uniontown, PA 15401
Attorney: William M. Radcliffe

JEAN A. PEPERAK, late of Connellsville City, Fayette County, PA (1)

Personal Representatives: Rita P. Peters,
Charles A. Peperak, Daniel L. Peperak and
Cynthia D. Peperak,
c/o Attorney Richard A. Husband
Riverfront Professional Center
208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

LEGAL NOTICES

*** NONE ***

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

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

Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2616-0218	JOHN FRITSKY, JR.	Deborah J. Bigam, Administratrix DBNCTA
2615-0634	ROBERT M. HUSTON a/k/a ROBERT MCCREADY HOUSTON	Mary E. Benne, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 21, 2017 at 9:30 A.M.

in Court Room No. 1 of the Honorable STEVE P. LESKINEN, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

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Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2613-0029	ELOUISE R. EBERLY	Mary Katherine Zickefoose, Administratrix DBNCTA
2612-0837	ALVERTA PORTERFIELD a/k/a ALVERTA M. PORTERFIELD	Cynthia Knieriem Wielock, Administratrix
2616-0014	LOIS J. JOHNSON	Lori Ann Suitoer, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 21, 2017 at 9:30 A.M.

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

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Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
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Accounts filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Fayette County Pennsylvania

24-OC-2009	Third and Interim Account for LAFAYETTE MEMORIAL PARK	PNC BANK, NATIONAL ASSOCIATION, TRUSTEE
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Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 21, 2017 at 9:30 A.M.

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Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
----------------------	--------------------	-------------------

Accounts filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Fayette County Pennsylvania

25-OC-2009	Third & Interim Account for SYLVAN HEIGHTS PERPETUAL CARE TRUST #618	PNC BANK, NATIONAL ASSOCIATION, TRUSTEE
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in Court Room No. 2 of the Honorable JOHN F. WAGNER or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN

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

JUDICIAL OPINION

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

COMMONWEALTH OF	:
PENNSYLVANIA,	:
	:
vs.	:
	:
BRIAN ONESKO,	: No. 2304 of 2016
Appellant	: JUDGE NANCY D. VERNON

OPINION IN SUPPORT OF JURY VERDICT

Vernon, J.

July 14, 2017

Following a trial by jury, Appellant, Brian Onesko, was found guilty of two counts of robbery, criminal trespass, simple assault, theft by unlawful taking, and receiving stolen property and was also convicted of summary harassment by this Court. Appellant was sentenced to a term of incarceration of three and one-half (3 1/2) to seven (7) years on the robbery conviction at Count 1 and no further penalty was imposed for the remaining convictions. Appellant has appealed to the Superior Court and this Opinion is in support of the jury verdict and sentence imposed.

On appeal, the Appellant raises the following issues:

- (1) Whether the evidence [was] insufficient [to] find the Appellant guilty beyond a reasonable [doubt] of the criminal charges?
- (2) Did the Court err by refusing to read the requested jury instruction proposed by the defense?

STATEMENT OF THE CASE

Frank E. Softa, an 80 year old Fayette County resident, has been the owner of the Mid-Towne Cafe in Uniontown, Pennsylvania for thirty years. N.T., 4/3-4/2017, at 7-8. Mr. Softa arrives for work between 5:30 and 6:00 a.m. Id. at 8. On October 7, 2016, before 6:00 a.m. a knock was made at the back door to Mid-Towne Cafe and Softa yelled out asking if it was his delivery driver. Id. at 10. The person responded affirmatively. Id.

(1) 18 Pa.C.S.A. §3701(a)(1)(iv) and 18 Pa.C.S.A. §3701(a)(1)(v)
 (2) 18 Pa.C.S.A. §3503(a)(1)(i)
 (3) 18 Pa.C.S.A. §2701(a)(1)
 (4) 18 Pa.C.S.A. §3921(a)
 (5) 18 Pa.C.S.A. §3925(a)
 (6) 18 Pa.C.S.A. §2709(a)(1)

As Softa opened the door, he was pushed and he fell down resulting in a cut to his hand. *Id.* The person at the door put his arms around Softa and Softa announced that he did not have any money. *Id.* at 11. The person kept “wailing around” and then pushed Softa back down to the floor, enveloped him in a bear hug and was feeling in Softa’s pockets for a wallet. *Id.*

In the tussle, Softa recognized the actor and said to him, “Brian why are you doing this? Your uncle’s right in the back waiting for me to wait on him by the way.” *Id.* at 11-12. The intruder directed Softa to not “call the cops” and then left the restaurant. *Id.* at 18. Softa noted his wallet was missing which included his driver’s license, credit cards, and approximately fifteen dollars in cash. *Id.* at 17. Softa identified the assailant as the Appellant who he knew as “Brian,” stating that he knew Brian “since he was a young kid” as he often came with his grandparents or parents to the restaurant. *Id.* at 12.

Softa telephoned for police assistance and identified Appellant to the Uniontown Police Department by the name of “Brian” and also identified him in a photo lineup. *Id.* at 14-15, 28. Softa was transported by ambulance to the hospital because of the bleeding from his hand and received stitches for the cut. *Id.* at 16-17. Softa received chiropractic treatment for the injury to his back. *Id.* at 17.

Keith Bowers resides in Uniontown and was walking to the gas station to get coffee and the newspaper early in the morning on October 7, 2016. *Id.* at 29-30. Bowers heard a commotion and saw Softa, the owner of Mid-Towne Cafe, with blood on him. *Id.* at 30-31. Bowers watched as a man ran from the area of the cafe. *Id.* at 31. As he ran, the man kept looking back at Bowers and Softa while trying to take his coat off. *Id.* Bowers heard Softa say something to the effect of, “Don’t do this Brian.” *Id.* Bowers identified Appellant in the courtroom as the man running from Mid-Town Cafe.

On October 7, 2016, at 5:12 a.m. Officer Michael Bittner of the Uniontown Police Department was dispatched to Mid-Towne Cafe on the report of a “Brian” beating up the owner and taking his money. *Id.* at 42. Officer Bittner noted that Softa’s hand was cut and he located blood on his person, in the restaurant and on the sidewalk. *Id.* at 43. The same were submitted as photograph exhibits to the jury. *Id.* at 44-51. In interviewing Softa, Officer Bittner learned that a heavy set white male named Brain was the actor and that Softa was familiar with him. *Id.* at 51. Softa also identified Brian by naming his family member. *Id.* at 52. Sergeant Wayne Brown of the Uniontown Police Department presented a photo line-up to Softa at which Softa identified a perpetrator. *Id.* at 80-82.

DISCUSSION

In his first issue raised on appeal, Appellant claims the evidence presented at trial was insufficient to find him guilty of the crimes charged. The Court disagrees.

When a party challenges the sufficiency of the evidence, the critical inquiry on review does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. *Commonwealth v. McCurdy*, 943 A.2d 299, 301 (Pa.Super. 2008). Instead, it must determine simply whether the evidence believed by the fact-finder was sufficient to support the verdict. All of the evi-

dence and any inferences drawn therefrom must be viewed in the light most favorable to the Commonwealth as the verdict winner. *Id.* at 301-302. While it is true that the Commonwealth must prove every essential element of a crime beyond a reasonable doubt, it is well established that the Commonwealth may sustain this burden by means of wholly circumstantial evidence. *Commonwealth v. Richardson*, 357 A.2d 671, 673 (Pa.Super. 1976). The Commonwealth need not preclude every possibility of innocence or establish the Appellant's guilt to a mathematical certainty. *Commonwealth v. Williams*, 871 A.2d 254, 259 (Pa.Super. 2005).

Further, any doubts regarding an appellant's guilt may be resolved by the factfinder unless the evidence is so weak and inconclusive that no probability of fact may be drawn from the combined circumstances. The trier of fact while passing upon the credibility of the witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence. *Commonwealth v. Robertson-Dewar*, 829 A.2d 1207, 1211 (Pa. Super. Ct. 2003).

With the above principles in mind, we now consider whether the Commonwealth presented sufficient evidence to sustain Appellant's convictions.

Appellant was convicted of two counts of robbery, namely the jury found that the offense occurred "in the course of committing a theft" and he "inflict[ed] bodily injury upon another or threaten[ed] another with or intentionally puts him in fear of immediate bodily injury" and "physically [took] or remove[d] property from the person of another by force however slight." 18 Pa.C.S.A. §3701(A)(1)(iv) and 18 Pa.C.S.A. §3701(A)(1)(v).

Criminal trespass occurred when Appellant "[...] if, knowing that he is not licensed or privileged to do so, he [...] enter[ed], gain[ed] entry by subterfuge or surreptitiously remain[ed] in any building or occupied structure or separately secured or occupied portion thereof." 18 Pa.C.S.A. §3503(A)(1)(i).

A person is guilty of simple assault when he "attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another." 18 Pa.C.S.A. §2701(A)(1).

Appellant was also convicted of two theft offenses being theft by unlawful taking or disposition which required a finding that he unlawfully took, or exercised unlawful control over, movable property of another with intent to deprive him thereof and receiving stolen property which requires a finding that he intentionally received, retained, or disposed of movable property of another knowing that it has been stolen. 18 Pa.C.S.A. §3921(A) and 18 Pa.C.S.A. §3925(A).

Lastly, the Crimes Code defines harassment as "when, with intent to harass, annoy or alarm another, the person [...] strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same." 18 Pa.C.S.A. §2709(A)(1).

Viewed under the aforementioned standard, and with this law to guide us, we find Appellant's challenge to the sufficiency of the evidence frivolous. A review of the record reveals evidence, sufficient in kind and quality, presented at trial, such that the trier

of fact permissibly concluded that Appellant committed the offenses when he used subterfuge to gain entry into Mid-Towne Cafe, knocking Frank Softa to the ground causing a cut to Softa's hand which required medical attention, and by using force to take Softa's wallet from his person. The evidence presented, again as believed by the trier of fact, establishes that the jury found credible Frank Softa, Keith Bowers, and Officer Michael Bittner. As such, this issue is without merit.

In his second issue, Appellant alleges that the Court erred by refusing to read the requested jury instruction. A review of the Record reveals that defense counsel requested this Court to provide the Identification Testimony instruction found at the Pennsylvania Suggested Standard Criminal Jury Instructions at 4.07A. N.T., 4/3-4/2017, at 78. Defense counsel requested the instruction arguing that the incident occurred shortly after 5:00 a.m., that it was still dark outside, and that the victim testified that he did not see the assailant's face. *Id.* Upon the request for this instruction, the Court reviewed the same with counsel and stated the reasons for denial. Specifically, the victim was face-to-face with the perpetrator, the victim recognized him, there was no evidence that the victim did not have an opportunity to observe the perpetrator, and there were no inconsistencies in the testimony.

In reviewing a challenge to the trial court's refusal to give a specific jury instruction, it is the function of this Court to determine whether the record supports the trial court's decision. In examining the propriety of the instructions a trial court presents to a jury, the scope of review is to determine whether the trial court committed a clear abuse of discretion or an error of law which controlled the outcome of the case. A jury charge will be deemed erroneous only if the charge as a whole is inadequate, not clear or has a tendency to mislead or confuse, rather than clarify, a material issue. A charge is considered adequate unless the jury was palpably misled by what the trial judge said or there is an omission which is tantamount to fundamental error. Consequently, the trial court has wide discretion in fashioning jury instructions. The trial court is not required to give every charge that is requested by the parties and its refusal to give a requested charge does not require reversal unless the Appellant was prejudiced by that refusal. *Commonwealth v. Thomas*, 904 A.2d 964, 970 (Pa.Super.2006)

Here, the Court gave ample reason for denying the Identification Testimony instruction proposed by defense counsel. Namely, the content of the charge did not apply to the facts testified to at trial. Further, Appellant alleges no prejudice as a result of this Court's denial of the Identification Testimony instruction. Without even an allegation thereof, this issue should not be considered by the appellate court.

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

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
CLERK OF COURTS

UPCOMING EVENTS

SUMMER PICNIC

hosted by
JUDGE STEVE & SHANON LESKINEN
THURSDAY, AUGUST 10TH
4:30 PM

Acoustic Entertainment by Cellar Dwellers

Guest welcome with Bar Member
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on or before August 7th
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FEDERAL COURTS 101

Wednesday, September 20, 2017

Save the date to join your fellow Fayette County Bar colleagues at “Federal Courts 101”, presented by a distinguished panel of Judges from the Western District of Pennsylvania, including: Chief Judge Joy Flowers Conti; Judge Mark R. Hornak, Judge Cathy Bissoon, Magistrate Judge Cynthia Reed Eddy, and Chief Bankruptcy Judge Jeffery A. Deller.

Moderated by Fayette’s own Anne N. John, Esquire and Samuel J. Davis, Esquire, this event will introduce you to federal court procedures, and a reception following the CLE will provide you with an opportunity to introduce yourselves and chat with the Judges.

Please mark your calendars to join us on Wednesday, September 20, 2017 at 3:30 at Nemaquin Woodlands Resort for this unique and informative session. Attendees will receive one complimentary Substantive CLE credit.

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