

# FAYETTE LEGAL JOURNAL

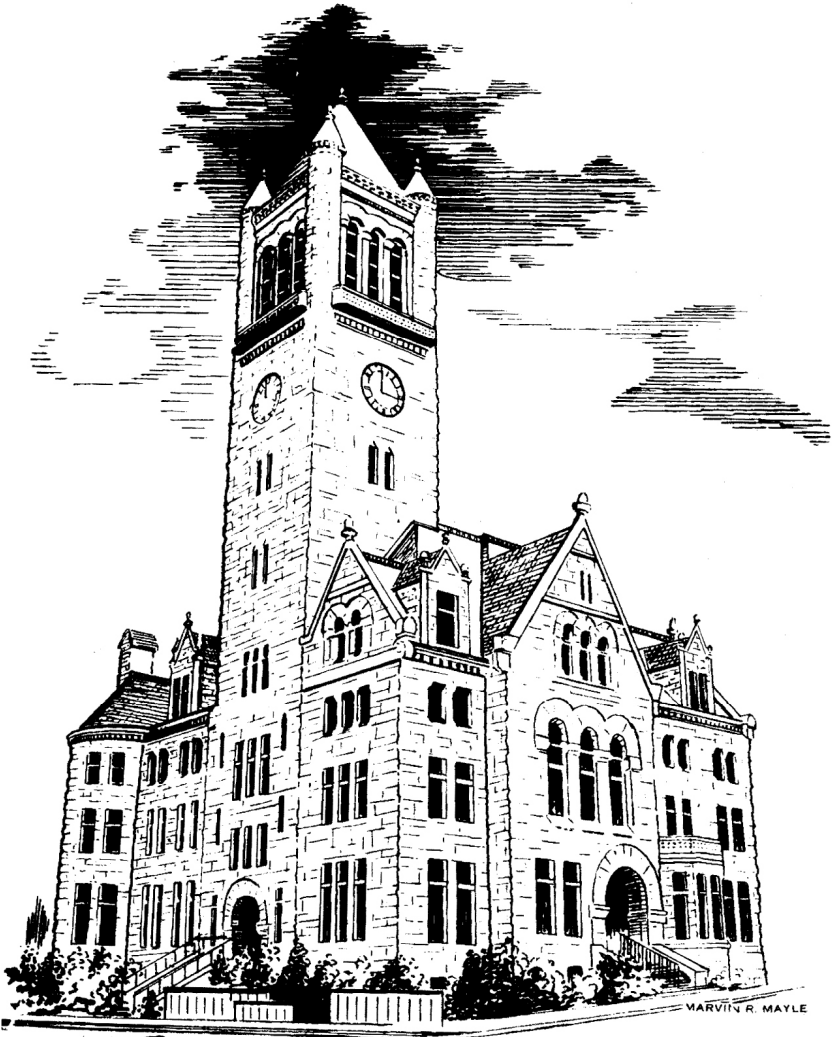
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## FAYETTE LEGAL JOURNAL

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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

**SUSAN JOYCE ADAMS**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Keith Adams  
c/o Adams & Adams  
55 East Church Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Jason Adams

**DEBORAH D. GHRIST**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Michelle Nicola  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**EDWIN PAUL HAINES, JR. a/k/a EDWIN P. HAINES, JR.**, late of Wharton Township, Fayette County, PA <sup>(3)</sup>

*Administratrix:* Nicole L. Fazenbaker  
c/o 39 Francis Street  
Uniontown, PA 15401  
*Attorney:* Jack R. Heneks, Jr.

**JOAN HELINSKY**, late of Dunbar Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Michael A. Helinsky  
123 Aspen Road  
Acme, PA 15610  
c/o Snyder and Snyder Attorneys at Law, PLLC  
17 North Diamond Street  
Mt. Pleasant, PA 15666  
*Attorney:* Marvin Snyder

**RUSSELL B. MECHLING, JR.**, late of Hopwood, Fayette County, PA <sup>(3)</sup>

*Administratrix:* Ellen Ulmer  
311 Derrick Avenue  
Uniontown, PA 15401

**RICHARD K. SPARKS**, late of Springfield Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Aimee Lynn Cain  
c/o 815A Memorial Boulevard  
Connellsville, PA 15425  
*Attorney:* Margaret Zylka House

### Second Publication

**GEORGE EDWARD BAILEY, a/k/a GEORGE E. BAILEY**, late of Connellsville, Fayette County, PA <sup>(2)</sup>

*Executor:* Gregory E. Bailey  
1435 Spyglass Hill  
Greensburg, PA 15601  
c/o Fike, Cascio and Boose  
Scull Building  
124 North Center Avenue  
P.O. Box 431  
Somerset, PA 15501-0431  
*Attorney:* Lois W. Caton

**JOHN G. HALL, a/k/a JOHN GARY HALL**, late of North Union Township, Fayette County, PA <sup>(2)</sup>

*Executrix:* Rachele F. Hall  
111 Runaround Road  
Dunbar, PA 15431  
c/o Dellarose Law Office, PLLC  
99 East Main Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Melinda Deal Dellarose

**GEORGE NOVAK, a/k/a GEORGE NOVAK, JR.**, late of North Union Township, Fayette County, PA <sup>(2)</sup>

*Executor:* David P. Novak  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**EMMALOU PLETCHER**, late of Springfield Township, Fayette County, PA (2)  
*Executor:* Roger Pletcher  
 c/o 208 South Arch Street  
 Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**PATRICIA DOVONA REYNOLDS, a/k/a PATRICIA D. REYNOLDS**, late of Georges Township, Fayette County, PA (2)  
*Administrator:* Dustin Reynolds  
 c/o 9 Court Street  
 Uniontown, Pa 15401  
*Attorney:* Vincent J. Roskovensky, II

**JOSEPH STRYCULA, a/k/a JOSEPH M. STRYCULA**, late of Luzerne Township, Fayette County, PA (2)  
*Executor:* Jon R. Paulovich  
 c/o Webster & Webster  
 51 East South Street  
 Uniontown, PA 15401  
*Attorney:* Webster & Webster

**HOLLY L. SUNDIN**, late of Bullsken Township, Fayette County, PA (2)  
*Administrator:* Ronald M. Sundin  
 136 White Bridge Road  
 Mt. Pleasant, PA 15666  
 c/o Pribanic & Pribanic, LLC  
 1735 Lincoln Way  
 White Oak, PA 15131  
*Attorney:* Sherie P. Cannin

**First Publication**

**BENJAMIN AUGUSTINE**, late of Nicholson Township, Fayette County, PA (1)  
*Executor:* Ben J. Augustine  
 c/o 84 East Main Street  
 Uniontown, PA 15401  
*Attorney:* Vincent M. Tiberi

**AGNES G. KROLIK**, late of Washington Township, Fayette County, PA (1)  
*Co-Executors:* Andrew A. Krolik and Cheryl Ann Jenkins  
 c/o 823 Broad Avenue  
 Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

**JAMES A. SILBAUGH III, a/k/a JAMES SILBAUGH**, late of Connellsville, Fayette County PA (1)  
*Executrix:* Donna Silbaugh  
 c/o Tremba, Kinney, Greiner, & Kerr  
 120 South Third Street  
 Connellsville, PA 15425  
*Attorney:* John K. Greiner

**LEGAL NOTICES**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
 CIVIL ACTION-LAW  
 No. 23 Adopt 2020

IN RE: CHANGE OF NAME OF LOGAN JAMES RILEY

NOTICE is hereby given that on the 11th day of June, 2020, the Petition of Logan James Riley was filed in the Fayette County Court of Common Pleas at No. 23 Adopt 2020, seeking to change his name from Logan James Riley to Logan James Angelo. The Court has fixed December 4, 2020 at 11:00 AM in the Fayette County, Courthouse, at 61 E. Main Street, Uniontown, Fayette County, Pennsylvania as the date for hearing of the Petition. All persons interested in the proposes of said change of name may appear and show cause, if any they have, why the Petition should not be granted.

Douglas Sholtis, Esquire  
 76 E Main Street  
 Uniontown, PA 15401

# SHERIFF'S SALE

Date of Sale: January 21, 2021

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, January 21, 2021, at 2:00 p.m. in Courtroom Number Five at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

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

James Custer  
Sheriff Of Fayette County

No. 1568 of 2019 GD  
No. 153 of 2020 ED

**PNC Bank, National Association**  
**Plaintiff,**  
**vs.**

**Roger Albaugh, AKA Roger W. Albaugh;**  
**Joanna Albaugh, AKA Joanna R. Albaugh**  
**Defendants.**

ALL that certain parcel of land lying and being situate in the Township of Washington, County of Fayette, and Commonwealth of Pennsylvania, known as 302 Center Street, Belle Vernon, PA 15012 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 41-05-0329

BEING the same premises which Joanna R. Cerini, an individual, married, by Deed dated January 7, 2012 and recorded in and for Fayette County, Pennsylvania in Deed Book 3174, Page 1956, granted and conveyed unto Roger W. Albaugh, married.

RAS Citron, LLC - Attorneys for Plaintiff  
Robert Flacco, Esquire, ID. No. 325024  
132 Gaither Drive, Suite F  
Mt. Laurel, NJ 08054  
855-225-6906  
rflacco@rasnj.com

No. 213 of 2018 GD  
No. 186 of 2020 ED

**HSBC BANK USA, NATIONAL**  
**ASSOCIATION, AS TRUSTEE FOR**  
**FREMONT HOME LOAN TRUST 2006-C,**  
**MORTGAGE- BACKED CERTIFICATES,**  
**SERIES 2006-C**  
**Plaintiff**

**v.**

**ALBERT CELLURALE;**  
**KATHY CELLURALE**  
**Defendant(s)**

ALL THOSE CERTAIN LOTS OR  
PIECES OF GROUND SITUATE IN SOUTH  
UNION TOWNSHIP, FAYETTE COUNTY,  
PENNSYLVANIA:

BEING KNOWN AS: 112 DUALL  
DRIVE HOPWOOD (SOUTH UNION  
TOWNSHIP), PA 15445

BEING PARCEL NUMBER: 34-12-0091  
IMPROVEMENTS: RESIDENTIAL  
PROPERTY

Andrew J. Marley, Esquire  
Stern & Eisenberg, PC  
1581 Main Street, Suite 200  
The Shops at Valley Square  
Warrington, PA 18976  
Phone: (215) 572-8111

No. 796 of 2020 GD  
No. 182 of 2020 ED

**HSBC Bank USA, N.A., as Indenture Trustee  
for the registered Noteholders of Renaissance  
Home Equity Loan Trust 2007-1**

**v.  
Althea M. Cowan**

By virtue of Writ of Execution No 796 of 2020 GD/182 of 2020 ED, HSBC Bank USA, N.A., as Indenture Trustee for the registered Noteholders of Renaissance Home Equity Loan Trust 2007-1 v. Althea M. Cowan, 3121 Richey Road, Bullsken Township, Connellsville, PA 15425, Tax Parcel No. 04-25-010101. Improvements thereon consisting of a Residential Dwelling, sold to satisfy judgment in the amount of \$121,988.91.

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Phelan Hallinan Diamond & Jones, LLP

No. 2401 of 2019 GD  
No. 161 of 2020 ED

**PNC Bank, National Association  
Plaintiff**

**v.  
Matthew C. Craig  
Defendant(s)**

By virtue of a Writ of Execution No. 2019-02401, PNC Bank, National Association v. Matthew C. Craig, owner(s) of property situate in the UPPER TYRONE TOWNSHIP, Fayette County, Pennsylvania, being 110 Penn Avenue, Connellsville, PA 15425-6021.

Parcel No.: 39-07-0131

Improvements thereon: RESIDENTIAL DWELLING

No. 1997 of 2019 GD  
No. 157 of 2020 ED

**THE UNITED FEDERAL CREDIT UNION,  
Plaintiff,  
vs.  
ELIZABETH H. CRUTCHMAN,  
Defendant.**

ALL that certain tract situate in the City of Uniontown, Fayette County, Pennsylvania, described as Tax Parcel No. 38-01-0283 and more particularly described in deeds recorded in the Office of the Recorder of Deeds for Fayette County in Deed Book Volume 1163, page 159 and Record Book 3229, page 1722.

The street address of the property is 226 North Gallatin Avenue, Uniontown, Fayette County, Pennsylvania 15401.

Seized and taken in execution as the property of Elizabeth H. Crutchman, defendant, in the action filed by the United Federal Credit Union in the Court of Common Pleas of Fayette County, Pennsylvania at No. 1997 of 2019, G.D.

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No. 2803 of 2020 GD  
No. 160 of 2020 ED

**CORNING FEDERAL CREDIT UNION,  
Plaintiff,  
v.  
CATARINA J. DELGIACCO,  
Defendant.**

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF CATARINA J. DELGIACCO OF, IN AND TO:

ALL THE FOLLOWING DESCRIBED REAL ESTATE SITUATED IN THE BOROUGH OF BROWNSVILLE, COUNTY OF FAYETTE, COMMONWEALTH OF PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AND NUMBERED AS 426 GREEN STREET, BROWNSVILLE, PA 15417. DEED BOOK VOLUME 2665, PAGE 160, PARCEL NUMBER 02-10-0233.

No. 2199 of 2019 GD  
 No. 151 of 2020 ED

**Caliber Home Loans, Inc.**  
**Plaintiff,**  
 vs.

**Ronald L. Haney, as Believed Heir and/or Administrator of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.; Lloyd W. Haney, III, as Believed Heir and/or Administrator of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.; Jennie R. Moran, as Believed Heir and/or Administrator of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.; Unknown Heirs and/or Administrators of the Estate of Lloyd Haney, Jr., AKA Lloyd Haney, AKA Lloyd W. Haney, Jr.**  
**Defendants.**

ALL that certain parcel of land lying and being situate in the City of Uniontown, County of Fayette, and Commonwealth of Pennsylvania, known as 64 Bailey Avenue, Uniontown, PA 15401 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 38040595

BEING the same premises which Betherin Mechling, unmarried, by Deed dated August 27, 2018 and recorded in and for Fayette County, Pennsylvania in Deed Book 3385, Page 510, granted and conveyed unto Lloyd Haney, no marital status shown.

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Phelan Hallinan Diamond & Jones, LLP

No. 1942 of 2019 GD  
 No. 149 of 2020 ED

**PNC Bank, National Association,**  
**Plaintiff**  
 v.  
**Jason L. Smith, II,**  
**Defendant(s)**

By virtue of a Writ of Execution No. 1942 OF 2019, PNC Bank, National Association v. Jason L. Smith, II, owner(s) of property situate in the CONNELLSVILLE TOWNSHIP, Fayette County, Pennsylvania, being 407 West Blake Avenue, Connellsville, PA 15425-1612.

Parcel No.: 06-03-0021  
 Improvements thereon: RESIDENTIAL DWELLING

KML LAW GROUP, P.C.  
 Suite 5000  
 701 Market Street  
 Philadelphia, PA 19106-1532  
 (215) 627-1322

No. 262 of 2020 GD  
 No. 162 of 2020 ED

**MTGLQ INVESTORS, L.P.**  
**2001 Ross Avenue, Suite 2800**  
**Dallas, TX 75201**  
**Plaintiff**  
 vs.  
**DEBRAH A. SMODIC**  
**Mortgagor(s) and Record Owner(s)**  
**119 Cross view Acres**  
**Mcclellandtown, PA 15458**  
**Defendant(s)**

ALL THAT CERTAIN LOT OF LAND SITUATE TN TOWNSHIP OF GERMAN, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 119 CROSSVIEW ACRES, MCCLELLANDTOWN, PA 15458 TAX PARCEL #15-36-43-15

IMPROVEMENTS: A RESIDENTIAL DWELLING  
 SOLD AS THE PROPERTY OF:  
 DEBRAH A. SMODIC

---

BARLEY SNYDER  
 Shawn M. Long, Esquire  
 Court I.D. No. 83774  
 126 E. King Street  
 Lancaster, PA 17602  
 717.299.5201

No. 529 of 2020 GD  
 No. 159 of 2020 ED

**MID PENN BANK, SUCCESSOR BY MERGER TO THE SCOTTDALE BANK & TRUST COMPANY,**  
**Plaintiff**  
 v.  
**STRONGARM ENTERPRISES, LLC AND J. ERIC SHOTTS, individually,**  
**Defendants**

Mid Penn Bank, successor by merger to The Scottsdale Bank & Trust Company v. Strong Arm Enterprises, LLC and J. Eric Shotts, individually

No. 529 of 2020  
 Property Address: 203 Railroad Street, Borough of Dawson, Fayette County,

Pennsylvania 15428

Parcel ID Number: 07-03-0003

Judgment Amount: \$8,965.59

BEING the same premises which Mary E. Hodgkiss and Nicholas A. Hodgkiss by Deed dated October 20, 2009 and recorded November 3, 2009 in the Office of the Recorder of Deeds in and for Fayette County Pennsylvania in Record Book 3108, Page 1655, granted and conveyed unto Strong Arm Enterprises, LLC.

No. 1316 of 2020 GD

No. 155 of 2020 ED

**Nationstar Mortgage LLC d/b/a Mr. Cooper  
PLAINTIFF  
vs.**

**Michele Tardivo and Robert Tardivo  
DEFENDANTS**

All that certain piece, parcel or lot of ground situate, lying and being in Luzerne Township, Fayette County, Pennsylvania, in the plan of lots of the Village of Isabella, as recorded in the Recorder's Office of said county, in Plan Book Volume 8 at Page 60, having erected thereon a two story frame double dwelling numbered 118-120, in said plan; said parcel or lot of ground being bounded and described as follows:

514 Second Street, Isabella, PA 15447

Tax ID; 19-33-0035

Leon P. Haller, Esquire  
Purcell, Krug & Haller  
1719 North Front Street  
Harrisburg, PA 17104  
(717) 234-4178

No. 71 of 2020 GD

No. 86 of 2020 ED

**PENNSYLVANIA HOUSING FINANCE  
AGENCY,  
PLAINTIFF**

**vs.**

**EDWARD S. WAGNER,  
DEFENDANT**

By virtue of a Writ of Execution No. 71 OF 2020 GD, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs EDWARD S. WAGNER, Defendant(s)

Real Estate: 1501 SUN STREET,  
CONNELLSVILLE, PA 15425

Municipality: TOWNSHIP OF

CONNELLSVILLE

Dimensions: 180 x 140 and being Lot Nos. 33, 34 and 35, Poplar Grove Plan of Lots, Plan Book 1, page 178

See Deed Book: 3124, page 843

Tax Parcel #: 06-03-0071

Improvement thereon: a residential dwelling house as identified above

TO BE SOLD AS THE PROPERTY OF EDWARD S. WAGNER UNDER FAYETTE COUNTY JUDGMENT NO. 71 OF 2020 GD.

KML LAW GROUP, P.C.

Suite 5000

701 Market Street

Philadelphia, PA 19106-1532

(215) 627-1322

No. 429 of 2020 GD

No. 163 of 2020 ED

**LAKEVIEW LOAN SERVICING, LLC**

**5151 Corporate Drive**

**Troy, MI 48098**

**Plaintiff**

**vs.**

**ERIC R. WEAVER**

**Mortgagor(s) and Record Owner(s)**

**170 Horseshoe Bend Road**

**Acme, PA 15610**

**Defendant(s)**

ALL THAT CERTAIN LOT OF LAND SITUATE IN TOWNSHIP OF BULLSKIN, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 170 HORSESHOE BEND ROAD, ACME, PA 15610

TAX PARCEL #04-14-0198

IMPROVEMENTS: A RESIDENTIAL DWELLING

SOLD AS THE PROPERTY OF: ERIC R. WEAVER

**\*\*End Sheriff's Sale\*\***





**JUDICIAL OPINION**

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

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
v.	:	
	:	
OBATAIYE SCOTT,	:	No. 962 of 2018
Appellant.	:	Honorable Judge Linda R. Cordaro

**OPINION**

Linda R. Cordaro, J.

October 14, 2020

**SUMMARY**

As the result of an incident that occurred on July 9, 2017, Appellant was tried before a jury and found guilty of Attempted Homicide, Aggravated Assault, Unlawful Possession of a Firearm, and other related offenses. Appellant was sentenced to a term of incarceration for 9 to 18 years. Appellant now appeals his judgment and sentence.

**BACKGROUND**

The following testimony was presented at trial. In July of 2017, Jennifer Mapstone lived in South Hills Terrace in Fayette County, Pennsylvania. She knew the Appellant, Obataiye Scott, for his entire life because she and Mr. Scott's mother were best friends.

At around 2 AM on July 9, 2017, Jennifer Mapstone was outside of her residence with Cedric Harrison. Jennifer Mapstone noticed a car drive into the parking lot at South Hills Terrace. The car was driven by Jennifer Mapstone's niece, Jerree Mapstone. The car stopped and Obataiye Scott got out of the back of the car.

Mr. Scott started arguing with Mr. Harrison. The argument became physical. According to Jennifer Mapstone, after a few minutes of physical fighting, Mr. Scott went back to the vehicle he arrived in. He then came back towards Jennifer Mapstone and Mr. Harrison with a gun. Jennifer Mapstone began yelling at Mr. Scott to stop. Jennifer Mapstone then heard at least four or five shots fired. After a few seconds, Jennifer Mapstone realized she had been hit with bullets and was bleeding. She had been shot in the stomach and left hand.

Jennifer Mapstone was taken to the hospital, where she eventually recovered from her gunshot wounds. Her testimony was corroborated by other witnesses.

Mr. Scott was arrested and charged with Attempted Homicide, two counts of Ag-

gravated Assault, Prohibited Possession of a Firearm, Carrying a Firearm without a License, Simple Assault, and Recklessly Endangering another Person.

Prior to trial, the following occurred which is relevant to this appeal. Mr. Scott was represented by numerous attorneys before trial. At one point, he was represented by Attorney Peter Daley. Attorney Daley filed an Omnibus Pretrial Motion on behalf of Mr. Scott. The Honorable Nancy Vernon issued an Order on January 4, 2019 denying Mr. Scott's Omnibus Pretrial Motion.

On March 22, 2019, Attorney Daley filed a Motion for Recusal, asking Judge Vernon to recuse herself because "when she was the District Attorney[, Judge Vernon] prosecuted [Mr. Scott] as a juvenile, thus creating a substantial bias against [Mr. Scott]." On May 10, 2019, Judge Vernon issued an Order recusing herself "based upon the request of the Defendant, this Judge having prosecuted him as a juvenile when she was District Attorney." All further hearings in this case were assigned to other judges in Fayette County.

Attorney Daley later withdrew his appearance in this case, and Mr. Scott was eventually represented by Attorney Richard McCague.

On March 3-4, 2020, a jury trial was held before this Court. Attorney McCague represented Mr. Scott at trial. At the conclusion of the trial, Mr. Scott was found guilty on all counts. On May 8, 2020, Mr. Scott was sentenced to 9 to 18 years of incarceration.

On June 5, 2020, Mr. Scott filed a timely notice of appeal. Attorney Amber Owens entered her appearance on behalf of Mr. Scott. This Court issued a 1925 Order, which Appellant complied with by filing a Concise Statement of Errors Complained of on Appeal on July 22, 2020. {1} Pursuant to Pa.R.A.P. 1925(b)(3)(iv), this Court's 1925 Order stated that "[a]ny issues not properly included in the statement timely filed and served pursuant to 1925(b) shall be deemed waived."

On July 27, 2020, this Appeal was dismissed by the Pennsylvania Superior Court due to Appellant's counsel failing to file a docketing statement in accordance with Pa.R.A.P. 3517.

On September 2, 2020, after the Appeal was dismissed, Appellant then filed an Amended Statement of Issues on Appeal. This was filed without leave of court, after the 21 days granted by this Court by Order dated July 1, 2020, and after the Appeal was dismissed by the Superior Court. Appellant then filed a Motion to Reinstate Appellate Rights on September 14, 2020. This Court granted Appellant's Motion on September 18, 2020 with the stipulation that this Court would file its Opinion within 30 days of the Order.

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{1} On June 29, 2020, Appellant requested an extension of time to file a Statement of Issues, which this Court granted on July 1, 2020. This Court specifically gave Appellant until July 22, 2020 to file a Statement of Issues on Appeal.

On October 5, 2020, Appellant filed a Second Amended Statement of Issues on Appeal. This was also filed without leave of court and after the 21 days granted by this Court by Order dated July 1, 2020.

### ISSUES ON APPEAL

In his Original Statement of Issues on Appeal, Mr. Scott raised three issues:

1. Ineffective assistance counsel [sic], in that he:
  - a. Failed to include the defendant in the jury selection processes [sic].
  - b. Failed to properly object to the admission of Commonwealth's Exhibit 4, shirt allegedly worn by victim on the day of shooting.
  - c. Failed to properly object to the admission of Commonwealth's Exhibit 7, letter allegedly written by defendant to the victim, under the Rule of Completeness and exposure of the defendant's criminal record.
2. The trial court committed an error of law and/or abuse of discretion by not allowing defense counsel to question victim[,] Ms. Jennifer Mapston[,] regarding her agreement to provide testimony against defendant, Obataiye Scott, in exchange for a lesser charge and sentence in her daughter's, Justice Mapston, vehicular homicide case.
3. The trial court committed an error of law and/or abuse of discretion by ordering a finding guilty [sic], despite the lack of evidence to support such finding.

Appellant's Concise Statement of Errors Complained of on Appeal, filed July 22, 2020.

In his First Amended Concise Statement, Appellant raised two additional issues:

4. Judge Nancy D. Vernon[] failed to properly recuse herself[] prior to making a ruling on the defendant's Habeas Corpus Motion and Motion to Dismiss.
5. Ineffective assistance of counsel, in that Atty. Peter J. Daley for failing to request Judge Vernon to recuse herself prior to ruling on the Habeas Corpus Motion and Motion to Dismiss.

Appellant's Amended Concise Statement of Errors Complained of on Appeal, filed on September 2, 2020. (Errors numbered 1 and 2 in Appellant's Amended Statement renumbered 4 and 5.) Appellant also added to the Original Error 1, which raised an Ineffective Assistance of Counsel Claim against Attorney McCague:

- d. Failed to adopt defendant's pre-trial motions that were filed pro se, and to ensure that all pre-trial motions were determined prior to trial.
- e. Failed to file pre-sentence motion as requested by the defendant.

- f. Failed to file proper post-sentence motions as requested by the defendant.

Appellant's First Amended Concise Statement. (Error numbered 3 in Appellant's First Amended Concise Statement.) The other alleged Errors remained the same.

In his Second Amended Concise Statement, Appellant raised one additional Error:

6. Prosecutorial misconduct by failing to obey by 2/14/19 Court order, that granted discovery. District Attorney's Office was ordered to turn over ballistic testing to defense counsel and failed to comply to Court Order.

Appellant's Second Amended Concise Statement of Errors Complained of on Appeal, filed on October 5, 2020. (Error numbered 4 in Appellant's Second Amended Statement renumbered 6.) All other alleged Errors remained the same.

### DISCUSSION

This Court will first address Appellant's Original Issues on Appeal, as both Amended Statements were filed without leave of Court and more than 21 days after this Court directed Appellant to file a Concise Statement of Issues.

Appellant's First Issue on Appeal raises an Ineffective Assistance of Counsel Claim for various reasons against Attorney McCague, who represented Mr. Scott at trial.

In *Commonwealth v. Grant*, 813 A.2d 726 (Pa. 2002), the Pennsylvania Supreme Court held that, "as a general rule, a petitioner should wait to raise claims of ineffective assistance of trial counsel until collateral review." *Grant* at 738. The holding in *Grant* was reaffirmed in *Commonwealth v. Holmes*, 79 A.3d 562 (Pa. 2013), where the Pennsylvania Supreme Court held that ineffective assistance of counsel claims should not be reviewed on direct appeal, except for in very limited circumstances. *Holmes* at 576. The *Holmes* Court went on to outline those circumstances, which include "Cases Posing Individual Claims Alleged to Warrant Exceptional Treatment" and "Cases Where Review is Sought of Prolix Claims." *Id.* at 577. In cases where prolix claims of ineffective assistance of counsel are raised on direct appeal, an appellant must show good cause and must expressly waive PCRA review of the claims. *Id.* at 577-78.

In this case, the Ineffective Assistance of Counsel claims raised against Attorney McCague do not warrant exceptional treatment. Further, Appellant has not shown good cause as to why these claims should be reviewed on direct appeal, nor has he expressly waived his right to collateral review of the claims. As such, this Issue is prematurely raised and should be waived.

Appellant's Second Issue on Appeal is that the Trial Court erred in not allowing defense counsel to question the victim about an alleged agreement with the District Attorney's Office. According to Appellant's Statement of Errors, the agreement was that the victim would provide testimony against Appellant in exchange for a lesser charge and sentence in the victim's daughter's vehicular homicide case.

This issue is without merit for two reasons.

First, there was never an objection at trial or a decision by this Court regarding the admissibility of such evidence. At trial, Defense Counsel and the Assistant District Attorney asked to approach at sidebar. {2} Defense Counsel stated that it was his understanding that the victim's daughter was arrested for vehicular homicide and had been placed on electronic monitoring-implying that she was given a lenient plea deal, apparently in exchange for the victim testifying against Appellant. The incident involving the victim's daughter had no connection with the present case. The Assistant District Attorney stated that the victim's daughter-in the separate case-was charged with involuntary manslaughter, and that the charge was reduced to recklessly endangering another person, but that the charges were not amended as a result of any plea agreement involving the present case. Defense Counsel then stated:

[Appellant] is absolutely convinced that there is a link between what the District Attorney's Office is doing here and a quid pro quo with the defendant [sic- should read "quid pro quo with the victim"]. Now, if there is no possible trade and what I've been, just been described to me makes it very clear that there's no trade because that's not an unusual or outlandish result for recklessly endangering.

Criminal Jury Trial Proceedings, Day 1 of 2 at 161. The discussion was ended at that point, and Attorney McCague went back to cross-examining the victim-apparently satisfied with the Assistant District Attorney's description of the ordeal. Defense Counsel never objected or asked whether he could cross-examine the witness about her daughter, and this Court never made any determinations or ruled on the issue. As a result, there was no claim to preserve for appeal, and this issue is without merit.

Second, even if Defense Counsel had made a proper objection regarding the admissibility of such evidence, the evidence would not have been admissible. According to the Assistant District Attorney at trial, the victim's daughter was not given a plea deal in exchange for the victim testifying against Appellant. In *Commonwealth v. Busanet*, 54 A.3d 35 (Pa. 2012), the Pennsylvania Supreme Court addressed a Brady claim raised by an appellant who argued that the Commonwealth failed to disclose a plea deal between a key witness and the prosecution. The Busanet Court determined that the record supported the PCRA court's finding that no undisclosed agreement existed, and that the appellant therefore failed to prove his Brady claim. *Id.* at 48-49. While the issue here is subtly different from that in *Busanet* in that the underlying issue here deals with the admissibility of evidence rather than prosecutorial misconduct, the result is the same-if no deal existed between the victim and the Commonwealth, then questioning the witness about an alleged deal would have been inadmissible based on relevance. See Pa.R.E. 402.

Appellant's Third Issue on Appeal is that this Court erred by "ordering a finding guilty, despite the lack of evidence to support such finding." First of all, this Court did not "order a finding guilty." This is an outrageous and baseless claim, and a reading of the Criminal Jury Trial Proceedings would clearly show that this Court never ordered the jury to find Mr. Scott guilty. In contrast to this allegation, this Court specifically stated at trial during the preliminary jury instructions:

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{2} The sidebar discussion is on the record; see, Criminal Jury Trial Proceedings, Day 1 of 2 at 158-61.

You, the jurors are the sole judges of the facts. It will be your responsibility to weigh the evidence, to find the facts from that evidence, and then applying the rules of law, which I give you, to the facts as you find them, to decide whether or not the defendant has been proven guilty of the charges made against him. A fundamental principle of our system of criminal laws as I've already stated is that a defendant is presumed to be innocent.

Criminal Jury Trial Proceedings 1 of 2 at 14. This Court reiterated similar statements in its closing instructions to the jurors before their deliberation:

The Commonwealth has the burden of proving the defendant guilty beyond a reasonable doubt. If the Commonwealth has met that burden, then the defendant is no longer presumed to be innocent and you should find him guilty. On the other hand, if the Commonwealth has not met its burden then you should find him not guilty.

Criminal Jury Trial Proceedings 2 of 2 at 122. (Emphasis added.) The Transcript also reflects the fact that the jury deliberated from 3:40 to 5:53 PM on March 4, 2020 before reaching a verdict.

At all times, this Court presided over a fair trial and instructed the jury appropriately in the law as it applied to this case. This Court never ordered or instructed the jury to find Appellant guilty, nor did it hint to the jury that Appellant should be found guilty, nor did it hold up a sign or pass secret notes to the jury asking them to find Appellant guilty. Appellant's Third Issue is absurd and entirely without merit.

Appellant's First and Second Amended Statements of Errors Complained of on Appeal

Appellant's remaining issues were raised in Amended Statements of Errors that were untimely filed and also filed without seeking leave of court. In *Commonwealth v. Castillo*, 888 A.2d 775 (Pa. 2005), the Pennsylvania Supreme Court stated:

[We reaffirm] the bright-line rule first set forth in [*Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998)] that "in order to preserve their claims for appellate review, [a] ppellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P.1925. Any issues not raised in a Pa.R.A.P.1925(b) statement will be deemed waived."

*Castillo* at 780. Here, by Order dated July 1, 2020, this Court granted Appellant until July 22, 2020 to file a Statement of Issues on Appeal. Appellant complied and filed a Statement on July 22, 2020.

However, Appellant then filed two additional Amended Statements after that date, raising additional issues on appeal. In view of the Pennsylvania Supreme Court's rulings that issues not timely raised on appeal should be waived, this Court believes that all issues raised by Appellant in his two Amended Statements should be waived.

However, even if the Additional Issues are not waived for timeliness, they are still without merit or cannot be addressed at this stage of the criminal justice process.

Appellant's Fourth Issue raised on Appeal is that the Honorable Nancy D. Vernon failed to recuse herself prior to ruling on several of Appellant's pretrial motions, even though she previously prosecuted Appellant when he was a juvenile and she was a district attorney. However, Appellant fails to mention that he did not make a motion asking Judge Vernon to recuse until after she had already ruled on his pretrial motions.

"A party seeking recusal or disqualification [is required] to raise the objection at the earliest possible moment, or that party will suffer the consequence of being time barred." *In re Lokuta*, 11 A.3d 427,437 (Pa. 2011) (emphasis added) (quoting *Goodheart v. Casey*, 565 A.2d 757, 763 (Pa. 1989)). Once a party has waived the issue, "he cannot be heard to complain following an unfavorable result." *Commonwealth v. Stanton*, 440 A.2d 585, 588 n. 6 (Pa. Super. Ct. 1982) (citations omitted).

*Lomas v. Kravitz*, 130 A.3d 107, 120 (Pa. Super. Ct. 2015). If Appellant remembered being prosecuted in a case by Judge Vernon when she was a district attorney and he believed that she was biased against him, he should have brought that information to Judge Vernon before she ruled on his pretrial motions. Appellant waived the Issue by not raising it immediately.

Further, district attorneys prosecute hundreds of cases each year, if not more. If they later become a judge, it is not practical to require them to remember the name or face of every individual whose case they prosecuted years before.

Finally, the Pennsylvania Supreme Court stated the following in regard to this Issue:

We have never held and are unwilling to adopt a per se rule that a judge who had participated in the prosecution of a defendant may never preside as judge in future unrelated cases involving that defendant. Absent some showing of prejudice or bias we will not assume a trial court would not be able to provide a defendant a fair trial based solely on prior prosecutorial participation.

*Commonwealth v. Darush*, 459 A.2d 727, 731 (Pa. 1983). Even if this Issue is not waived for timeliness, this Issue is without merit because 1) Appellant should be time barred for failing to raise the Issue before Judge Vernon ruled on his pretrial motions, and 2) there is no per se rule that a former prosecutor cannot later preside as judge over an unrelated case involving a defendant she once prosecuted.

Appellant's Fifth Issue raised on Appeal is another Ineffective Assistance of Counsel claim, this one against Attorney Daley for failing to request that Judge Vernon recuse herself prior to her ruling on Appellant's pretrial motions. For the reasons stated above regarding Appellant's Ineffective Assistance of Counsel claim against Attorney McCague, ineffective assistance of counsel claims are inappropriate on direct appeal absent limited circumstances, none of which apply to this issue. For this reason, Appellant's Fifth Issue is without merit.

Appellant's Sixth Issue raised on Appeal is that the prosecution engaged in misconduct by failing to obey a February 14, 2019 Order directing the Commonwealth to turn over ballistic testing evidence to Appellant. The Order referred to by Appellant states in



relevant part:

AND NOW, this 13th day of February, 2019, as to Paragraph 12 of the Motion, in regard to the bullet, it is alleged that no forensic testing has been as of yet performed. The Commonwealth shall produce any report of testing to defense counsel within thirty (30) days or be precluded from entering evidence of such at trial.

As to Paragraph 13, in regard to all firearms in possession of the Pennsylvania State Police, the Commonwealth is Ordered to provide to defense counsel within 30 days any and all reports of testing on said firearms or testimony of such will be precluded at trial.

Order by Judge Vernon filed on February 14, 2019. The Motion to Dismiss, which is referred to in the Order, states in relevant part:

12. The Commonwealth has failed to produce any and all documentation regarding Forensic Analysis testing, or otherwise obtained by the Pennsylvania State Police regarding the recovered bullet from victim, Jennifer Mapstone, by way of further information,[] this bullet was recovered from victim Mapstone by hospital personnel from UPMC Presbyterian Hospital, Pittsburgh, PA and provided to Sharrie Heffer, a specimen processor at UPMC Presbyterian Hospital. The item in question was entered into evidence as Item #1 of inventory #1189 and was entered as property # BO2 12335 G item 1. This evidence should be barred, stricken or otherwise suppressed.

13. Commonwealth has failed to produce any and an information regarding a pre-log information request for Forensic Analysis, Ballistics testing, or otherwise, obtained by the Pennsylvania State Police regarding a Round Type 1 Make Cross reference to a Hipoint Model C9 9mm Luger.380 WH casing, evidence # BO2 12335 G/1. As well as evidence identified as a 9mm Luger S16 casing and a.380 Winchester casing and one (1) 9mm Luger S16 live round. This evidence should be barred, stricken or otherwise suppressed.

Appellant's Motion to Dismiss, filed on December 31, 2018.

To be clear, the language of Judge Vernon's Order did not require the Commonwealth to provide any specific evidence to Appellant. Rather, the Order precluded the Commonwealth from presenting such evidence at trial if it was not provided to Appellant. This is even what Appellant's Motion to Dismiss asked for: "[t]his evidence should be barred, stricken or otherwise suppressed."

Importantly, the Commonwealth did not present any ballistic evidence at trial. Instead, the Commonwealth relied on the testimony of Jennifer Mapstone, who stated that she had known Mr. Scott his whole life and that she saw him shoot her with a gun. Ms. Mapstone's testimony was corroborated by other witnesses. Because the Commonwealth did not use the evidence in question at trial, this Issue is without merit.

Additionally, to the degree that Appellant now challenges that the Commonwealth failed to provide him with this evidence before trial, the Issue should also be waived

because Appellant failed to object to this lack of discovery at trial. See *Commonwealth v. Roney*, 79 A.3d 595 (Pa. 2013) (holding that appellant waived alleged Brady violations that could have been brought at trial but were not); see also Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."). This Court had no opportunity to rule on such issue and determine if any sanctions or remedies were appropriate. The Issue should therefore be waived.

Appellant's Issues on Appeal are without merit. For the foregoing reasons, this Court respectfully asks that the judgment and sentence of Obataiye Scott be **AFFIRMED**.

BY THE COURT:  
LINDA R. CORDARO, JUDGE

ATTEST:  
Clerk of Courts

Date: October 14, 2020

## **WARMAN ABSTRACT & RESEARCH LLC**

**JOHN F. WARMAN**

**518 Madison Drive**

**Smithfield, PA 15478**

**724-322-6529**

**johnfranciswarman@gmail.com**

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## **ANNUAL MEMBERSHIP MEETING**

The Annual General Membership meeting of the Fayette County Bar Association shall be held on Wednesday, December 9, 2020, at 1:30 pm in the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401. Members are invited to present topics of concern or interest to the Association.



## LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, December 9th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **A Primer on Personal Injury**
- Presenters: James T. Davis, Esquire  
Honorable Senior Judge Gerald R. Solomon

### CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

#### Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

#### Attorneys admitted to practice in Pennsylvania after January 1, 2012

- No charge for attendance with CLE Credit

#### Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**\*\* All fees to be paid at the door \*\***

A light lunch will be provided.

### RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to [cindy@fcb.org](mailto:cindy@fcb.org) on or before Monday, December 7th.

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