

Lebanon County Legal Journal

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

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No. 39

Public Notices

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Paul W. Kilgore, Esq., Chairman

Stephanie Axarlis, Esq., Editor

Jennifer Wentzel, Esq., Editor

DECEDENTS' ESTATES

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

FIRST PUBLICATION

ESTATE OF SARA L. BIXLER, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Jessica Hilbert, Executrix
258 S White Oak Street
Annville, PA 17003

ESTATE OF GERALDINE F. FISHER, late of Bethel Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Dolores M. Stewart, Co-Executor
Stephen M. Spitler, Co-Executor
c/o Patrick M. Reb, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-6620

ESTATE OF MIRIAM S. HOLIC, a/k/a Miriam I. Holic, late of the Borough of Palmyra, County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Paula Sembach, Executrix
1981 Powderhorn Rd.
Middletown, PA 17057

or to her Attorney:
Jeffrey P. Bowe, Esquire
BOWE, LISELLA AND BOWE
109 West Broad Street
Tamaqua, PA 18252

SECOND PUBLICATION

ESTATE OF MARGIE A. CRAWFORD, late of Fredericksburg, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executors.

Donald E. Crawford, Jr., Executor
Glen R. Crawford, Executor
Bonnie S. Snyder, Executrix
c/o Keys and Burkett
322 South Eighth Street
Lebanon, PA 17042

Jessica E. Weaver, Esquire
Attorney for Estate

ESTATE OF GRACE L. HOWARD, late of Annville Township, County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Kelly E. Howard, Executor
c/o Reilly, Wolfson, Sheffey, Schrum and Lundberg LLP
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF VIOLET R. OLIVER, a/k/a VIOLET ROSE OLIVER, late of Palmyra, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Timothy M. Fehr, Executor
c/o John E. Feather, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

ESTATE OF LENORE N. MYERS, late of South Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Kenneth Egge, Executor
11 Scenic Drive, Myerstown, PA 17067
Gerald J. Brinser – Attorney

THIRD PUBLICATION

ESTATE OF HELEN W. BARTHOLOMEW, late of Cornwall Borough, Lebanon County, PA, deceased. Letters of Administration were granted to the undersigned Personal Representative.

Hedy Bartholomew Stump, Personal Representative
561 Hemlock Lane
Lebanon, PA 17042

ESTATE OF RICHARD L. BOESHORE, a/k/a Richard Lee Boeshore, late of North Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor

Richard W. Stevenson, Executor
c/o David M. Watts, Jr., Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000

ESTATE OF MARY J. ECKENRODE a/k/a Mary B. Eckenrode, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Thomas E. Eckenrode, Executor
c/o George W. Porter, Esq.
909 East Chocolate Ave.
Hershey PA 17033

ESTATE OF CAROL J. GABRIEL, late of the North Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Melanie J. Beck, Executrix
1109 Cumberland Street
Lebanon, PA 17042
Thomas S. Long, Attorney

ESTATE OF MARGARET VAN LIEU, late of the Bethel Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Thomas S. Long, Esq., Executor
315 South 8th Street
Lebanon, PA 17042

Frederick S. Long, Attorney

ESTATE OF ALMA G. MILLER, late of the Borough of Myerstown, County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Brian R. Miller, Executor
95 Apple Lane
Myerstown, PA 17067

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ORPHANS' COURT DIVISION NOTICES

Court of Common Pleas of Lebanon County Notice is hereby given that the following accounts in decedents estates, Guardianships and trusts have been filed in the Office of the Register of Wills and Clerk of Orphans' Court of Lebanon County, and that the same will be presented to the Court of Common Pleas-Orphans' Court Division of said County for Confirmation NISI on **Monday, July 6, 2015 At 10:00 A.M. in Courtroom No. 1, Municipal Building, City of Lebanon**

First and final accounts with proposed schedule of distribution filed by executors or administrators

1. Seyfert, Charles C. dec'd., Patrick J. Seyfert, Exr., Charles A. Ritchie, Jr., Atty.

First and final accounts with no proposed schedule of distribution filed by executors or administrators

1. Keenan, Peggy F., dec'd., David A. Baric, Admr., David A. Baric, Atty.

All of the aforesaid accounts and statements of Proposed Distribution will be confirmed **ABSOLUTELY** as of course by the said Orphans' Court except those to which exemptions are filed within twenty (20) days after the same are confirmed NISI.

**DAWN L. RESANOVICH
REGISTER OF WILLS AND CLERK
OF ORPHANS' COURT
LEBANON COUNTY,
PENNSYLVANIA**

NOTICE OF SHERIFF'S SALE

IN THE COURT OF COMMON
PLEAS OF LEBANON COUNTY,
PENNSYLVANIA NO. 2014-02095
JPMORGAN CHASE BANK, N.A.
S/B/M CHASE HOME FINANCE LLC,
S/B/M TO CHASE MANHATTAN
MORTGAGE CORPORATION

vs.

UNKNOWN HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS, FIRMS,
OR ASSOCIATIONS CLAIMING
RIGHT, TITLE OR INTEREST FROM
OR UNDER RACINE J. SCHEIDER,
DECEASED

NOTICE TO: UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS, AND ALL
PERSONS, FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR
INTEREST FROM OR UNDER RACINE
J. SCHEIDER, DECEASED

**NOTICE OF SHERIFF'S SALE OF
REAL PROPERTY**

Being Premises: 426 NORTH 6TH
AVENUE, LEBANON, PA 17046-4064

Being in LEBANON CITY, County
of LEBANON, Commonwealth of
Pennsylvania, 09-2344132-372291-0000

Improvements consist of residential
property.

Sold as the property of UNKNOWN
HEIRS, SUCCESSORS, ASSIGNS,
AND ALL PERSONS, FIRMS, OR
ASSOCIATIONS CLAIMING RIGHT,
TITLE OR INTEREST FROM OR

UNDER RACINE J. SCHEIDER,
DECEASED

Your house (real estate) at 426 NORTH
6TH AVENUE, LEBANON, PA 17046-
4064 is scheduled to be sold at the Sheriff's
Sale on 08/11/2015 at 10:00 AM, at the
LEBANON County Courthouse, 400
South 8th Street, Lebanon, PA 17042, to
enforce the Court Judgment of \$48,961.44
obtained by, JPMORGAN CHASE BANK,
N.A. S/B/M CHASE HOME FINANCE
LLC, S/B/M TO CHASE MANHATTAN
MORTGAGE CORPORATION (the
mortgagee), against the above premises.

PHELAN HALLINAN DIAMOND &
JONES, LLP

Attorney for Plaintiff

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that
Articles of Incorporation have been
filed with the Department of State of
the Commonwealth of Pennsylvania, at
Harrisburg, Pennsylvania, for the purposes
of obtaining a Certificate of Incorporation
of a proposed business corporation to
be organized under the provisions of the
Pennsylvania Business Corporation Law
of 1988, approved December 21, 1988,
P.L. 1444, No. 177, as amended. The name
of the corporation is **Xsell Marketing
Group, Inc.**

Robert L. McQuaide
McQuaide Law Office
18 Carlisle Street, Suite 204
Gettysburg, PA 17325

SEARCH UNCLAIMED PROPERTY

Lebanon County has unclaimed property waiting to be claimed.

For information about the nature and value of the property,
or to check for additional names, **visit www.patreasury.gov**

Pennsylvania Treasury Department, **1-800-222-2046**.

**Notice of Names of Persons Appearing to be Owners of Abandoned
and Unclaimed Property
Lebanon County**

Listed in Alphabetical Order by Last Known Reported Address

Annville Pa 17003

Bly Melissa 245 Palm City Park
Boyd Marlene 4090 Shanamantown Rd
Byler Daniel J 146 West Main St
Dissinger Pierce E 426 W Main St
Dupkas Dorothy R 46 Kindred Pl
Dutchland Motor Co 1450 East Main St
Eisenhour Jane 176 Spruce Ct
Engle Charles H 117 W Queen St
Groff Brian 122 Palm City Park
Herr Irvin E 1680 Old Forge Rd
Hocker Ethel E 137 S Chestnut St
Hostetter Edwin N 620 Steelstown Rd
Huff Ellen L 2 Box 401d
John H Boger Son Inc PO Box 310
Keene Laurie A 146 W Main St
McLaughlin Derek T, Jamie M 1316 Louser Rd
Miller Patricia 450 Water St
Miller Stephanie M 111 North Cherry St
Petrino Shanni 144 Palm City Park
Poloney Vincent 303 S White Oak St
Reppert Jade 122 Palm City Park
Shellenberger Marguerite, Charles 227 W Lancaster St
Smith Esther E Cherry Water St
Steiner Franklin, Mildred 48 South Manheim St
Stob Hilda Est 1981 Brandt Rd
Tobias Pyles Tina 481 Mount Pleasant Rd
Weaber Helen, John 414 East Main
Weidman Davilla D 50 Stonehill Prk
White Charles J 4 Starview Dr
Wilehelm Robert L Jr 108 Woodside
Wolfe Beverly RD 2 Box 238
Ziegler David 1403 Cedar St

Campbelltown Pa 17010

Gillin M Gertrude 90 W Main St PO Box 137
Pyle Gary E 2808 Horseshoe Pike

Cornwall Pa 17016

Ellenberger Myrle Northhills No 207 PO Box 125
James Todd 301 Boyd St
Longenecker Brad PO Box 69
Nielsen Robert K, Carol L 150 Maple Ln PO Box 41

Fredericksburg Pa 17026

Hauer Ivy A PO Box 64
Lasianto Fnu 221 Sunset Dr
Leshner Katherine A 221 Sunset Dr
Mogel Michael, Earl 1016 Pine Grove Rd
Ninkovick Andrew 952 Pinegrove St
Sellers Tonya 119 Hemlock Dr

Jonestown Pa 17038

Aller Linda Lou, Gary A 17 Green Point School Rd
Aller Britta RR 2 Box 4340
Ashby Dewey D 195 Greble Rd Apt B
Boltz Clayton M, Maggie 438 Jonestown Rd #11
Donmoyer Ronald 458 N Lancaster St
Fecondo Fiore PO Box 192
Heisey Ronald 6 North Lancaster St
Heist Starlet M 8 Smokey Ln
Hopkins Elizabeth 84 Church Ln c/o Kathryn Otto
Johnson Brian PO Box 257
Kindt Thomas PO Box 459
MSC Industrial Supply 100 Msc Dr
Schaeffer Karen M 15 Old State Rd
Strong Jill 37 S Brd St
Winklebleck Earl PO Box 91
Zechman Clarence 72 Fisher Ave
Zimmerman John E, Grace 88 Fisher Ave

Lebanon Pa 17042

Allwein Kathryn, Ammon RR 2 Box 855
Altoona VAMC PO Box 3004
Andreozzi Laura S 820 Wheatfield Ln
Angelo Arlene S 1816 Ctr St
Arnold Raymon 4 Lights Rd

LEBANON COUNTY LEGAL JOURNAL

Ash Nam Chu 1205 Heritage Ln Apt 239
Baughman John K 134 Palm Ln
Becker Ken 565 Hemlock Ln
Birdwell Sharon 42 Cumberland St 1
Bishop Faye 1009 Horseshoe Cir
Bixler Raymond C Jr, Anne 442 Walnut St
Bixler Lisa 2080 Greystone Dr
Black Rhoderick D 1610 Plaza Apts
Bogertey Stanley 1700 S Lincoln Ave
Boltz Violet 418 N 15th Ave
Bomgardner Christine, Floyd D 590 S Fifth Ave
Bomgardner Dorothy M, Lloyd 6030 Grandview Cir
PO Box 125
Bouchette Florence M 217 High St Rural
Bowman Thomas B 340 E Chestnut St
Brandt Enjali 150 South 22nd St
Brown Kathy L 502 Klein Ave 2nd Floor
Buffenmeyer Kale 705 Charles St
Cake Andrew A 535 Hemlock Ln
Cardiovascular Medic 229 S 4th St
Carney Donovan A 317 N 12th St
Carpenter Irvin Jr, Sue 22 E Walton St c/o Kathleen
C Deitzler
Carpenter Irvin Jr 47 Chestnut St
Connell Elinor 860 Norman Dr
Curzi Jedio A 1217 Lehman St
Dabney Milton P 42 S 9th St
Daugherty Janet M 1601 Cornwall Rd
Deck Lester 122 Highland Glen St
Deleon Nino 112 Cumberland St 2nd Floor
Delio Anna 631 Chestnut St #2
Down Town Silk Screening 734 Cumberland St Rear
Drum Ronald 24 Hickory Blvd
Ebersole Andrew 604 Pondsides Ln
Fisher Kathleen M, Miriam K 22 E Locust St
Foltz Donald 123 South Mill St Cleona Pa 17042
Forti Victor R 101 W Penn Ave
Gerber Doris C 1394 Horseshoe Pike
Gettle Chi Eugene T 900 Tuck St
Getz Paul E 2 Eve Ave
Golgowski Craig M, Bruce 1216 Greiner St
Greer John V 105 Greentree Village
Guardiola Bethsaida G 633 Mount Wilson Rd
Hain Michael 100 Maple Ln
Hedges Loretta F 621 S 6th St Apt 1
Heerdt Jacob D, David R 247 Weymouth Dr
Herr Eugene 433 Crest Rd
High Concrete Innovations 3050 State Dr
Hill Emma K 139 S 9th St
Hoffman John B Living Trust, 612 Horseshoe Trail
Dr

Holstein Sally Est 1505 Oak St
Horne Margaret 590 South 5th Ave c/o Cedar Haven
Horohov Nikolai 231 Walnut St
Jackard Richard A 614 Aspen Ln
John Mar Inc 155 Maple Ln
Jones John D 243 S 10th St Apt 3
Judovics Aleksandrs 2201 Cornwall Rd
Juppenlatz Ethel 316 E Chestnut St
Karazia Gregory, Cynthia 20 Pine Ave
Kettering Paul H Hearthstone Manor 1125 Birch Rd
Kirk Peter 1506 Plaza Apartments
Kline Evelyn F Cedarway 590 S 5th Ave
Kline George 590 S 5th Ave
Kohr Paul J 1553 Oak St
Kuhle James J 983 Daffodil Dr
Lafferty Katie E 260 S Garfield St
Laicha Patricia 25 S 9th St American House
Lancaster Aluminum 24 Keystone Dr
Lasure Brianna L 2022 Kline St
Leffler John 42 Cumberland St
Leffler Sterling E 42 Cumberland St
Lerch Glenn 42 S 9th St Apt 4
Light Clifford, Dale 2120 Kline St
Lyter Chester E 801 S 6th St
M&S Towing 20 E Walton St
Maldonado Joselyn M 227 East Cumberland St
Margut Junior L 519 S Brd St
Matynka Raymond W 52 Clover Dr
Mccord Shawn 702 Green Tree Village
Moore Ralph Est RFD 2
Nardelli Mildred T 1125 Nowlen St
Neuman Richard 320 S 3rd St
Nye Shannon 1308 Mt Wilson Rd
Odell Douglas Joseph C, Genevieve Lane 316 S
Lincoln Ave
Perez Joann PO Box 1303
Phillips Virginia 10 Stoneleigh Dr
Pizzone Nicholas, Gerlinda 651 Aspen Ln
Preston James Lebanon Va Medical Ctr 1700 S
Lincoln Ave
Progin Michael P 409 Meadowview Dr
Pyles Dorothy M, Preston F 138 South 5th
Raymond James & Asso 340 E Locust St
Reber Jane L 1407 Oak St
Reicker William 954 Quentin Rd
Reppert Michael D 49 S 8th St Apt 5
Richards Elizabeth 321 S 23rd St
Roof James W 48 South Fifth Ave
Rothenbach Andrew 229 S 3rd Ave
Rotunda Francis 625 Progress Ave
Roush Eloise, Lloyd 738 S 4th Ave

Roush Isora, Lloyd 738 S 4th Ave
 Roush Mackenzie Anastasia, Timothy Scott 1418
 Warren Dr
 Rudegeair Sandi L 5 Oak Knoll Cir
 Ruffner James F, Carol E 712 Chestnut St
 Ryland Daniel J 407 E Chestnut St
 Schmoyer Lori B 877 Wilhelm Ave
 Schneck Martin D Jr 1219 Elm St
 Seibert Fern 114 Plaza Apts
 Shaver Cassidy Dawson, Kristen Lape 101 Walden
 Rd
 Shaver Hayley Thompson, Kristen Lape 101 Walden
 Rd
 Shaver Scott 228 Cumberland St
 Shirk Marian R, Allen Rt 20
 Shirk Beverly J Elmcroft of Lebanon 860 Norman Dr
 Rm 127
 Snody Dori A, Gary A 1394 Horseshoe Pike
 Snyder George W Rexmont Rd
 Soliday Amanda 811 South 3rd St
 South Hills Park 1630 S Lincoln Ave
 Spang Crest Nursing Home 945 Duke St
 Spangler Janet J 224 S 10th St
 Spangler Larry Cedar Crest Auto Sales 108 Old
 Ebenezer Rd
 Springborn Barbara A 322 S 8th St
 Stichler Grace 1208 E Lehman St
 Sudbury Beatrice A 1407 Oak St
 Sycamore Park Inc 925 Noble St
 Tanawath Alexander 622 Hazel St
 Tanno Joseph M 1601 Cornwall Rd
 Thomas Vernon A 2633 Northfield Dr
 TVC Comm 800 Airport Rd
 Valetta Walter Est Theresa Cheresine 1030 Orchard
 Ave
 Video Update 1715 Quentin Rd
 Vision Imaging of Lebanon 805 Helen Dr
 Walmer James F, Mary L 1201 W Crestview Dr
 Waltermyer Alma 590 S Fifth Ave
 Weiss Cecelia 340 E Locust St
 Wildermuth Harold L 260 S Garfield St
 Williams Harry D, Brenda 638 Oak St Apt 2
 Wise Ruth 1522 Mount Wilson Rd
 Witmer Jean M 1208 E Lehman St
 Wolf Mashonna 114 N 10th St Apt 1
 Womer Robert D 850 Cornwall Rd
 Woodruff Angelina 40 E Pine St
 Yang Kwang J 1205 Heritage Ln Apt 239
 Young Andrew P 1804 Walnut St
 Zerbe Joseph M, Herman 342 S 7th St

Zerby Olivia M 1612 Smt St

Lebanon Pa 17046

Abbey Helen R c/o Kathleen Haberkost 929 Willow
 Ln
 American Legion Home Asso Post 158 1410 Lehman
 St
 Arnold Sandra E 385 Narrows Dr
 Bechtold Autumn 2309 Lehman St
 Billingham John H 2309 Church St
 Blouch Debra 108 E Maple St
 Boyer Carl E 101 Northcrest Acres
 Boyer Lloyd W 918 Meily St
 Brewer June 705 N 3rd Ave
 Brown Edward 42 N 9th St #2
 Brown Richard P Jr 131 Mifflin St
 Chadwick Eugene 24 Oak St
 Choncua Heriberto 401 N 10th St Apt 3
 Clay Suzanne Marie 1205 Lehman St
 Computer Problems Resolved 20 N 9th St
 Croce Joan M 2132 Cloverfield Dr
 Crockett David 50 N 9th St
 Cruz Julio A 613 Lehman St
 D K Moyer & Sons Trucking 985 Mount Zion Rd 1
 Dohner Gladys 442 North 7th St
 Dotter Elsie 603 Canal St
 Duprez Stephen 612 N Partridge St
 Eivicarest William A 620 Miller St
 Emswiler Douglas M 915 Church St
 Fake Sharon C 514 N 11th St
 Fitzkee David S 920 East Lehman St
 Fredericks Chevy Body Shop 2309 Lehman St
 Fritz Stella 1105 Lehman St
 Fritz Marguerit Est 317 N 5th St
 Fritz James H 545 Weidman St
 Fritz Stella 1105 Lehman St
 Getty Mart c/o Farhat B Seyda 1416 Sholly Ave
 Givler Eric 361 N 8th St
 Gross Mary Lee 2723 Tunnelhill Rd
 Heck Loretta E 1749 Garfield Ave
 Heck Ralph N Sr 1749 Garfield Ave
 Heilman Samuel R 3102 Tunnelhill Rd
 Helsel Eliza K RD 3
 Herr Mildred Est, Paul 912 Maple Ln
 Hipolito Sabdiel Seda Diaz 356 North 7th St Apt 1
 Janesko Robert L 500 Canal St
 Jonestown KOA 600 North 22nd St
 Keisch Anna J 800 Willow St Apt 7d
 Kleinfelter Lillie 17 Shellie St
 Klopp Mary A 506 Jones St

Knoche Shari A 229 Mifflin St
 Krug Benjamin D 190-B Pine Meadow Rd
 Lane Jesse J 214 Maple St
 Laudermilch Michael 525 N 8th St
 Laureano Agueda B 19 1/2 6th
 Lebanon United Jobbers Inc 1255 Bitner Blvd
 Ledbetter Lori Ann 1106 Meily St
 Light Sandra M 2173 Long Ln
 Lopez Jaime 363 N 9th St
 Lopez Valencia Jesus 1117 Chunr St
 Maurer Barbara, Clair T 1111 Reinoehl St Apt 321
 Mohn Clifford S 126 E Weidman St
 Mumford Robert, Mary 306 Lehman St
 Neal Sue Est 1910 1/2 Water St
 Noggle Thomas 1012 Mifflin St
 Pagan Floranda 361 N 11th St
 Petak Mary 103 E Weidman St
 Pichardo Orlando 438 Lehman St Apt 1
 R Field & Stream Asso 1575 Weavertown Rd
 Rivera Maria I Apt E4 368 N 8th St
 Rodriguez Prudencia 426 N 9th St
 Royer Eugene 1111 Reinoehl St Apt 213
 Rutt Lynn 240 E Maple St
 Santos Emilio 1128 Brandywine St
 Schott Charles L, Evelyn L 6 Canal St
 Seasholtz Robert F 355 N 8th St
 Shepler Marlin R Est 430 N 13th St
 Simpson Crystal 431 Willow St 1fl
 Smith Kathy C 920 East Lehman St
 Snowden Antonia 36 N 13th St
 Spangler Pegianne, Janice 800 Willow St Apt 6
 Spangler Grace 7 Mifflin St
 Spangler Harold 221 E Guilford St
 Sythong Soreeya S 10 Laurel Ln
 Thomas Betty L 418 N 15th Ave
 Tice Harold J 615 Prescott Dr
 Tinnin Jessica L 1305 Sandhill Rd
 Truntich Susan 33 North 10th St
 Vazquez Olga 246 E Weidman St
 Vernon Carol A 2132 Cloverfield Dr
 Vicente Miguel 4 E Brookfield Dr
 Volk Robert J 339 N 5th St
 Waltz Janet L 1515 Sandhill Rd
 Wandell Edward J 924 Water St
 Willman Barbara 711 N 3rd Ave
 Willman Stephen 730 N 3rd Ave
 Womens Health Center of Lebanon 300 Willow St
 Wright Rose F, Rose M 1411 Willow St
 Wright David A 656 Guilford St
 Yordy Pamela S 341 E Maple St

Zavala Rosio 428 N St 11
 Zellers Elmer M 1761 Frances Ann Dr

Mount Gretna Pa 17064

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 Dissinger Mary Box 67 3 Kauffman Ave
 Horney Alanna Jo 33 Birch Ave
 Jones Catherine L, Michael 120 Columbia Ave
 Mason Warren Est 304 Pine Ave
 Mayercik David J 219 Village Ln
 Porter Lynee PO Box 69
 Reistad Arne 167 Timber Ln
 Schmitt Dorothy M 206 Boehm Ave
 Talmadge Fredrick L, Joan D Box 256

Myerstown Pa 17067

Autoland International 660 Lincoln Ave
 Bare William C 17 S Cherry St
 Barnard Thomas G 450 Stoneridge Village
 Bartholomew Raymond 7 West Park Ave Rm18 ECC
 Retirement Village
 Case Harold D 641 S Ramona Rd
 Debelius Brian 214 N Race St
 Dubble Rose, H 619 S Railroad St
 Dulabohn Robert S Sr 401 E Rosebud Rd
 Dutch Valley Food Dist c/o Michael Longenecker PO
 Box 465 Rte 501 North
 Elk Corporation of Texas 401 Weavertown Rd
 Elton Mary RTE 4
 Fiedler Patricia 45 Springhouse Dr
 Fuller John 16 Wheatland Dr
 Funck Elva R 26 W Main Ave
 Grumbine Daniel E 1917 Prescott Rd
 Heffner Irvin G 55 Camp Swatara Rd
 Hentz Thomas R Jr 29 Firefly Dr
 Houtz Paul E 414 Yeagley Rd
 Jackson Township 31 Krall Rd
 Kamp John D 26 W Main Ave
 Klahr John R 338 Yeagley Rd
 L&P Transport Inc 2395 Camp Swatara Rd
 Lang William J III 604 S Railroad St
 Leffler Ryan 93 Mill Rd
 Leisey Edward 124 W Carpenter Ave 081
 Light Karen L 650 Brown Rd Apt H
 Lineweaver Warren F 1300 E Kercher Ave Lot 3
 Moore Yvonne J 201 W Washington Ave Apt
 Moyer Keri Lynne E 151 Frystown Rd
 Orourke Frances L, James 480 Brown Rd
 Richard I Hart Inc t/a NG Marks Ins A 332 King St
 Salem Ronald 22 N Butterfly Dr

Sando George G, Matilda 118 South Cherry St
 Shaak David L 31 Krall Rd
 Smith Randy 617 N Railroad St
 Spangler David W 111 N Ramona Rd Lot 19
 Spangler George 10 W Main St
 Steiner Verna RR 3
 Tomco Michelle 500 Houtztown Rd Lot 48
 Vo Doi V 663 W Lincoln Ave
 Wenger Samuel K 222 Gibble Rd
 Zechman Agnes F 440 E Lincoln Ave
 Zerbe Mike 452 W Lincoln Ave
 Zook Anna K 529 Woleber Rd
 Zukowski Charles E 7 W Park Ave

Sheridan Pa 17073

Bennetch Maurice, Amy RD 1

Newmanstown Pa 17073

Brogan Kenneth F RR 1
 Burgos Erica C 108 Treeline Dr
 Bushong Margaret B 5 Beard Ln
 Clauser Funeral Home PO Box 97
 Double D Constuction Dylan Laysyer 1002 St Rt 501 South
 Fabricius Michele G 124 W Park St
 Firestone Verna E 203 N Sheridan Rd
 Fox Shirley A 91 N Sheridan Rd
 Horst Anthony 255 Millbach Rd
 Mckelvey John R 4 W Main St Apt A PO Box 230
 Ofray Erika L 903a State Rte 501 South
 Riehl Roger S, Helen M 133 W Main St Box 235
 Southworth Patricia A 19 Central Dr
 Tracey Jane N PO Box 97
 White Mary E RR 1

Ono Pa 17077

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 Ono Truck Center US 22 Lincoln School Rd

Palmyra Pa 17078

Agile Evolution Inc 558 Royal Rd
 Alger Daryl L 490 Campbelltown Rd
 Andrews Matthew B 45 N College St
 Arnold Logistics LLC PO Box 626
 Atkinson Kathryn M 103 N Larkspur Dr
 Auman Patricia RD 1 Box 500a
 Barb Gilbert L RD 1
 Battin Florence, Leslie 2046 S Forge Rd
 Casantini Joseph 222 Kreider Rd
 Cook Richard T Jr 1847 Wexford Rd

Corl R T 100 N Londonderry Sq
 Dunn Barbara 718 Pajabon Dr
 Eberly Karen L 329 S Lincoln St
 Ehlers Ursula PO Box 301
 Enid Liesey Est 341 N Railrd St
 Evitts Ronald C 193 Tannenbaum Way
 Fastrich Gregory 914 Cambridge Ct
 Ferguson Rose L 175 E Market St Apt A
 Gingrich Gladys L 25 W Pine St
 Harris Carolyn G, Robert E 21 Hickory St
 Hazard Danielle B 1823 Wexford Rd
 Herr Electric Inc 232 W Main St Attn: Kirk
 Hoerner Marie P 202 E Cherry
 Hoerner Marie P 245 West Main St
 Hull Helen E 107 N Forge Rd
 Jet Enterprises Inc 320 Plaza Dr
 Kalbach Robert W, Ellen 28 Holly Dr
 Kinkley Michael J 529 Pine Rd
 Kissinger Carol J 103 N Larkspur Dr #6
 Lara Maria M 6 Truman St
 Latsha Aaron 125 Highland Cir
 Lesher Bethany 224 North Harrison St
 Lewis Motor Co c/o Greg Lewis 599 Sweetwater Dr
 Liddell Laura 379 W Spruce St
 Lingle Carole L 202 E Cherry
 Lingle Carole L 245 West Main St
 Londonderry Limousines Ltd 320 Plaza Dr
 Long John Robert Sr 1100 E Maple St
 Longencker Elwood 357 W Cedar St
 Longenecker Effie M 357 W Cedar St
 Lucas Marion G Bell Rd Apt 377
 Mcg Eunice O 537 S Forge Rd
 Mease Stella H 985 E Maple St
 Meyerhoffer Ruth E 600 W Pine St
 Miller Hazel M 1200 E Main St
 Miller Lisa A 510 N Railroad St
 Nagle Susan R 235 E Cherry St
 Nazzaro Carmela 1411 E Maple St
 Norton Aaron 1335 South Prince St
 Petrina Edward P 255 W North Ave
 Rago Viorica Stella, Viorica Irene 406 Cambridge Ct
 Rothermel Funeral Home 25 W Pine St
 Rudy J Richard RR 1
 Shelby William Jr 390 Springbrook Dr
 Shori Bandna 1331 Park Dr
 Slobozien Robert All 206 Royal Rd
 Smith Carolene B, Keith R 2046 Wexford Rd
 Smith Charles W 28 Carriage Rd
 Staples Attn: Leslie Wooley 417 Royal Rd
 Suter Gwendoly D, Ward W 402 N Railroad St

Thomas Darlene 2157 Wexford Rd
West Coast Video 901 E Main St
Wildasin Elaine M 935 E Pine St
Woolever Bonnie 301 W Walnut St
Wright Walter 103 N Larkspur Dr #20
Zivkovich Mike 101 S Railroad St Apt 23

Rexmont Pa 17085

Carpenter Judith Anne Box 104 3 Water St
Fisher Business Forms 270 Rexmont Rd PO Box 26

Richland Pa 17087

Firesti Ruth 307 Poplar St
Hower John D 17 Ketterman Hill Rd Lot 22
Oswald Michael S, Kelly D 9 Norma Ln
West Side Auto Body 9 Norma Ln

Schaefferstown Pa 17088

Mcclellan Lisa A PO Box 35
Nuspahic Halid c/o The Franklin House 101 North
Market St
Werner Timothy PO Box 35

COMMONWEALTH VS. PECK NO. CP-38-CR-0854-2012

Crimes – Appeal – Sufficiency of Evidence – Required View of Evidence – Beyond a Reasonable Doubt – DUI – Actual Physical Control of Vehicle – No Movement Required – Circumstantial Evidence.

1. A claim challenging the sufficiency of the evidence is a question of law.
2. The evidence adduced at trial must be viewed in the light most favorable to the verdict winner to determine whether there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.
3. The Commonwealth is entitled to all reasonable inferences arising from the evidence and all facts which the Commonwealth's evidence tends to prove are treated as admitted. Only where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, is the evidence deemed insufficient as a matter of law.
4. The task of the appellate court in reviewing the sufficiency claim is to determine whether, accepting as true all the evidence and all reasonable inferences therefrom, upon which, if believed, the jury could properly have based its verdict, it is sufficient in law to prove beyond a reasonable doubt that the defendant is guilty of the crime or crimes of which he has been convicted.
5. An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.
6. In order for a defendant to be in "actual physical control", a vehicle need not be in actual movement. The Commonwealth may prove that a defendant was in "actual physical control" through circumstantial evidence. A determination as to whether a defendant was in "actual physical control" is based upon the totality of the circumstances.
7. The Court reviewed the numerous facts established at trial and held that this evidence, viewed in the light most favorable to the Commonwealth, was sufficient to support the finding that Defendant was in actual physical control of the vehicle.

Opinion. C.P. of Lebanon County, Criminal Action-Law, No. CP-38-CR-0854-2012.

COMMONWEALTH VS. PECK NO. CP-38-CR-0854-2012

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA

CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA: NO. CP-38-CR-0854-2012

v.

PHILLIP C. PECK

ORDER OF COURT

AND NOW, this 5th day of March, 2014, upon consideration of Defendant's Post-Sentence Motion and the Briefs submitted by the parties, it is hereby Ordered that said Motion is denied.

Pursuant to Pa.R.Crim.P. 720(B), Defendant is advised that he has the right to appeal from this denial to the Superior Court of Pennsylvania. An appeal must be filed in writing no later than thirty (30) days from the date of this Order. Defendant has the right to the assistance of counsel in the preparation of an appeal. In the event that Defendant is indigent, he has the right to appeal *in forma pauperis* and to proceed with assigned counsel as provided by Pa.R.Crim.P.

122. Defendant has the qualified right to bail under Pa.R.Crim.P. 521(B).

BY THE COURT:

JOHN C. TYLWALK, P.J.

APPEARANCES:

**SARAH K. HART, ESQUIRE
DISTRICT ATTORNEY**

FOR THE COMMONWEALTH

**TIMOTHY M. BARROUK, ESQUIRE
THE MCSHANE FIRM, LLC**

FOR PHILLIP C. PECK

COMMONWEALTH VS. PECK NO. CP-38-CR-0854-2012

OPINION, TYLWALK, P.J., MARCH 5, 2014.

Defendant Phillip C. Peck was charged with one count of Driving Under the Influence: Highest Rate of Alcohol – Third Offense, one count of Driving Under the Influence: General Impairment – Third Offense¹ for an incident which occurred on March 2, 2012. After being found guilty of these offenses following a jury trial on August 8, 2013, he was sentenced to a term of incarceration of one to five years on October 30, 2013. On November 6, 2013, Defendant filed a timely Post Sentence Motion in Arrest of Judgment contending that the verdict was against the weight of the evidence on both counts of Driving under the Influence.² He contends that the finding that he was “in actual physical control” of his vehicle is contrary to the evidence presented at trial. Both parties have submitted Briefs and the Motion is presently before us for disposition.

Challenges to the weight of the evidence and sufficiency of the evidence are discrete inquiries. *Commonwealth v. Davis*, 799 A.2d 860 (Pa.Super. 2002). A motion for a new trial on the grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain a verdict but contends that the verdict is against the weight of the evidence. *Id.* The decision whether to grant a new trial on this basis rests within the discretion of the trial court. *Commonwealth v. Holmes*, 663 A.2d 771 (Pa. Super. 1995). In reviewing the weight of the evidence, all the evidence should be examined. *Commonwealth v. Gonce*, 466 A.2d 1039 (Pa.Super. 1983).

The role of the trial judge in reviewing claims that the verdict is against the weight of the evidence is to determine that “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore that or to ignore them or to give them equal weight with all the facts is to deny justice.” *Commonwealth v. Widmer*, 744 A.2d 745, 752 (Pa. 2000). A trial court should award a new trial on the ground that the verdict is against the weight of the evidence only when the verdict is so contrary to the evidence as to shock one’s sense of justice and make the award of a new trial imperative so that right may be given another opportunity to prevail. *Commonwealth v. Gonce*, *supra*. The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. *Commonwealth v. Simmons*, 662 A.2d 621,

¹ 75 Pa.C.S.A. §3802(c) and 75 Pa.C.S.A. §3802(1)(a), respectively. In addition, Defendant was charged with the summary offenses of Disorderly Conduct – Unreasonable Noise, and 18 Pa.C.S.A. §5503(a)(2), and Careless Driving, 75 Pa.C.S.A. §3714(a).

² The Commonwealth argues that Defendant’s Motion is defective in that he moves for arrest of judgment, which properly challenges the sufficiency of the evidence, and should have moved for a new trial as he advances a weight of the evidence argument. Since Defendant’s Brief addresses only the weight of the evidence argument, we limit our discussion to that issue.

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630 (Pa. 1995). The function of the trier of fact is to pass on the credibility of witnesses and determine the weight to be accorded to a particular piece of evidence. *Id.* After reviewing the evidence in this case in its entirety, we find that the jury's finding as to Defendant's guilt was not contrary to the weight of the evidence.

The Driving Under the Influence offenses with which Defendant was charged are defined in the Pennsylvania Vehicle Code as follows:

§ 3802. Driving under influence of alcohol or controlled substance**(a) General impairment.--**

(1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(c) Highest rate of alcohol.--An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

75 Pa.C.S.A. §3802(a)(2), (c).

In order for a defendant to be in "actual physical control," a vehicle need not be in actual movement. *Commonwealth v. Byers*, 650 A.2d 468 (Pa. Super. 1994). The Commonwealth may prove that a defendant was in "actual physical control" through circumstantial evidence. *Commonwealth v. Williams*, 941 A.2d 14 (Pa. Super. 2008). A determination as to whether a defendant was in "actual physical control" is based upon the totality of the circumstances. *Commonwealth v. Brotherson*, 888 A.2d 901, 904 (Pa. Super. 2005)

Under Pennsylvania law, an eyewitness is not required to establish one was driving, operating, or in actual physical control of a motor vehicle, but, rather, the Commonwealth may establish the same through wholly circumstantial evidence. *Id.* "Our precedent indicates that a combination of the following factors is required in determining whether a

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person had ‘actual physical control’ of an automobile: the motor running, the location of the vehicle, and additional evidence showing that the defendant had driven the vehicle.” *Commonwealth v. Brotherson*, 888 A.2d 901, 904 (Pa.Super.2005) *citing Commonwealth v. Woodruff*, , 668 A.2d 1158, 1161 (1995)). In addition, when the location of the vehicle supports an inference that it was driven, this inference will serve as a key factor in a finding of actual control; conversely, where the location of a vehicle supports an inference that it was not driven, this Court has rejected the inference of actual control. *Brotherson*, 888 A.2d at 905. In *Brotherson*, we determined that “[t]he highly inappropriate location of the car—on the basketball court of a gated children’s playground—created a strong inference that it was an already intoxicated [a]ppellant who had driven the car to that spot.” *Id.*

The Commonwealth may sustain its burden of proving every element of the charged crimes beyond a reasonable doubt by means of wholly circumstantial evidence. *Johnson*, 833 A.2d at 263.

Commonwealth v. Young, 904 A.2d 947, 954-955 (Pa. Super. 2006), appeal denied 916 A.2d 633 (Pa. 2006).

At trial, Scott Herneisey testified that during the early morning hours of March 2, 2012, he was at home in his apartment at 224 West Main Avenue in Annville. (N.T. 11)³ He was attempting to sleep but was kept awake by loud music blaring outside of his apartment. (N.T. 11) After twenty to thirty minutes, he went downstairs to the street and approached the vehicle from which the music was coming. (N.T. 12) The vehicle’s engine was running and Defendant was sitting in the driver’s seat. (N.T. 12) When Herneisey knocked on the driver’s side window and motioned for Defendant to turn down the music, Defendant looked at Herneisey for a few seconds but did not turn the music down. (N.T. 12) Herneisey testified that since Defendant appeared to be “drunk or messed up” and Herneisey did not want any trouble, he contacted the police. (N.T. 12, 13)

On cross-examination, Herneisey testified that he only knew that the vehicle had been parked in the street for as long as the music had been playing and that he had noticed that the brake lights were on. (N.T. 15)

Corporal Steven Werner of the Pennsylvania State Police testified that he and Trooper Day were dispatched for a report of a vehicle parked on West Main Street with loud music playing and that they arrived at the scene at approximately 3:27 that morning. (N.T. 18) Upon arriving at the scene, they found Defendant’s vehicle facing east on Main Street with

³ All references are to the Notes of Testimony of the jury trial conducted on August 8, 2013.

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the engine running, the headlights and brake lights⁴ on, and Defendant sitting in the driver's seat slumped over. (N.T. 19-20) The Troopers parked directly in front of Defendant's vehicle and activated the overhead lights of the cruiser. (N.T. 20-21) When they approached the vehicle, Trooper Werner observed that the music was very loud, that the windows were rolled up, and that Defendant was the sole occupant. (N.T. 21) Defendant was slumped over holding a cigarette in his hand. (N.T. 21) When Corporal Werner knocked on the driver side window, Defendant woke up, appeared disoriented, and stared at Trooper Day, who was on the other side of the vehicle. (N.T. 22) When Corporal Werner told him to turn the radio down, Defendant continued to look at the Trooper "with a blank stare." (N.T. 22) Corporal Werner was able to open the door, reach in to turn off the engine, and remove the key from the ignition. (N.T. 23)

After a time, Corporal Werner was able to awaken Defendant and have him step out of the car. (N.T. 26) When Corporal Werner asked Defendant where he was coming from, Defendant looked in an easterly direction. (N.T. 26) Upon further questioning, Defendant told Corporal Werner that he had been drinking beer and shots at the Corvette Bar, which was located a short distance away, until between 1:30 and 2:30 a.m. (N.T. 41, 46) He informed Corporal Werner that he had intended to walk home from the bar, but that he was sitting in his car to keep warm. (N.T. 41) Trooper Werner also recalled Defendant informing him that he had a colostomy bag and a bag to catch his urine, that he had decided he couldn't walk home and was going to "sleep it off" in his car. (N.T. 49) Corporal Werner testified that the temperature was cold that morning. (N.T. 48)

Defendant first gave his address as 720 Main Street in Annville. (N.T. 27) However, when Corporal Werner obtained his license, Defendant's address was indicated as being on Railroad Street in Annville. (N.T. 28) Corporal Werner testified that Railroad Street was close by, almost directly across the street from where Defendant's car was parked. (N.T. 28, 43) Corporal Werner also noted that both the addresses on Main Street and Railroad Street were in walking distance of the bar where Defendant had been drinking. (N.T. 47)

Defendant contends that the jury's verdict with regard to both counts of Driving Under the Influence is against the weight of the evidence because the Commonwealth's only evidence of his being in actual physical control of his vehicle was Corporal Werner's testimony that the engine was running. He relies on *Commonwealth v. Byers*, 650 A.2d 468 (Pa. Super. 1994), arguing that this matter is factually identical to the situation at issue in that case. In *Byers*, the defendant was found asleep in the driver's seat of his car in the parking lot of a bar. The motor of the car was running, the doors were locked, and the headlights were on, but the car was not moving. He testified that after he left the bar where

⁴ Corporal Werner testified that the left brake light was out.

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he had been consuming alcohol, he went out into the parking lot, got into his car and fell asleep. When he woke up, he started the engine to turn on the air conditioner. He testified that he turned on the headlights in order to see the knobs for the air conditioner. He then fell asleep again until the police knocked on the car window and woke him up. The engine was still running, the doors were still locked, and the headlights were still on. A panel of the Superior Court held that the Commonwealth did not introduce enough evidence to show actual physical control and that the Commonwealth was required to show some additional facts to demonstrate that the defendant was a danger to public safety beyond having merely started a parked car. After noting that the purpose of the Driving Under the Influence laws is to keep intoxicated drivers off of the road and to protect the public at large, the court stated: “In the present case, Byers never got onto the road and was not a threat to public safety. The Commonwealth is trying to encourage intoxicated people to ‘sleep it off’ before attempting to drive, yet it wants us to punish Byers for doing just that.” *Id.* at 471.⁵

We find that *Byers* is distinguishable on its facts. As in *Byers*, Defendant here was in the driver’s seat of a parked car with the engine running and headlights on. When asked where he had been coming from, Defendant looked in an easterly direction and later informed Corporal Werner that he had been at the Corvette Bar which was a short distance

⁵ The holding in *Byers* was discussed in *Commonwealth v. Toland*, 995 A.2d 1242 (Pa. Super. 2010), appeal denied 29 A.3d 797 (Pa. 2011):

While not overruled, the approach in *Byers* was strongly criticized by the Pennsylvania Supreme Court in *Commonwealth v. Wolen*, 685 A.2d 1384 (Pa. 1996) (plurality):

Under the circumstances of that case, the Superior Court held that there were insufficient facts to prove that the defendant posed a safety hazard to the public, and therefore the Commonwealth had failed to establish that he was in actual physical control of the vehicle. [*Byers*], 650 A.2d at 470. The *Byers* Court reasoned that penalizing a person for “sleeping it off” with the engine running for a purpose other than driving the vehicle (for example, to provide heat, operate the radio or power a car phone) would defeat this laudable purpose. [*Id.*] at 471. However, nowhere in the statute is there a requirement that the fact-finder should consider whether or not one in actual physical control of a vehicle and under the influence of alcohol or controlled substances poses a threat to public safety. The legislature has reasonably determined that one driving a motor vehicle on the public streets and highways of the Commonwealth while under the influence of alcohol or controlled substances constitutes a threat to public safety *per se*, even if there are no other members of the public immediately endangered. While it may be laudable that one who realizes that he is incapable of safe driving pulls over to “sleep it off,” the legislature has made no exception to the reach of the statute to such individuals. Accordingly, such a person’s threat to public safety is not a relevant consideration under the drunk driving statutes.

Wolen, 685 A.2d at 1386 n. 4. Although *Wolen*, as a plurality decision, is not binding on this court, the soundness of the reasoning in *Byers* has been called into question.

Commonwealth v. Toland, *supra* at 1246-1247.

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away. Unlike *Byers*, Defendant here was not in the parking lot of the bar, but was pulled over on the side of a street heading in the direction from the bar toward his home on Railroad Street with his one working brake light illuminated. These are all facts which indicate use of the vehicle. Also, unlike *Byers*, Defendant had left the vehicle doors unlocked. It is reasonable to assume that Defendant would not have had the radio blaring, would not have left the doors unlocked and would not have been smoking a cigarette if he had been simply sleeping off his intoxication.

Under these circumstances, there was ample evidence of Defendant being in actual physical control of his vehicle. Although this type of situation may present a close call, the jury obviously found the Commonwealth's evidence to be credible and attributed greater weight to that evidence. Its finding does not shock our conscience and we will therefore deny Defendant's Post Sentence Motion.