

# FAYETTE LEGAL JOURNAL

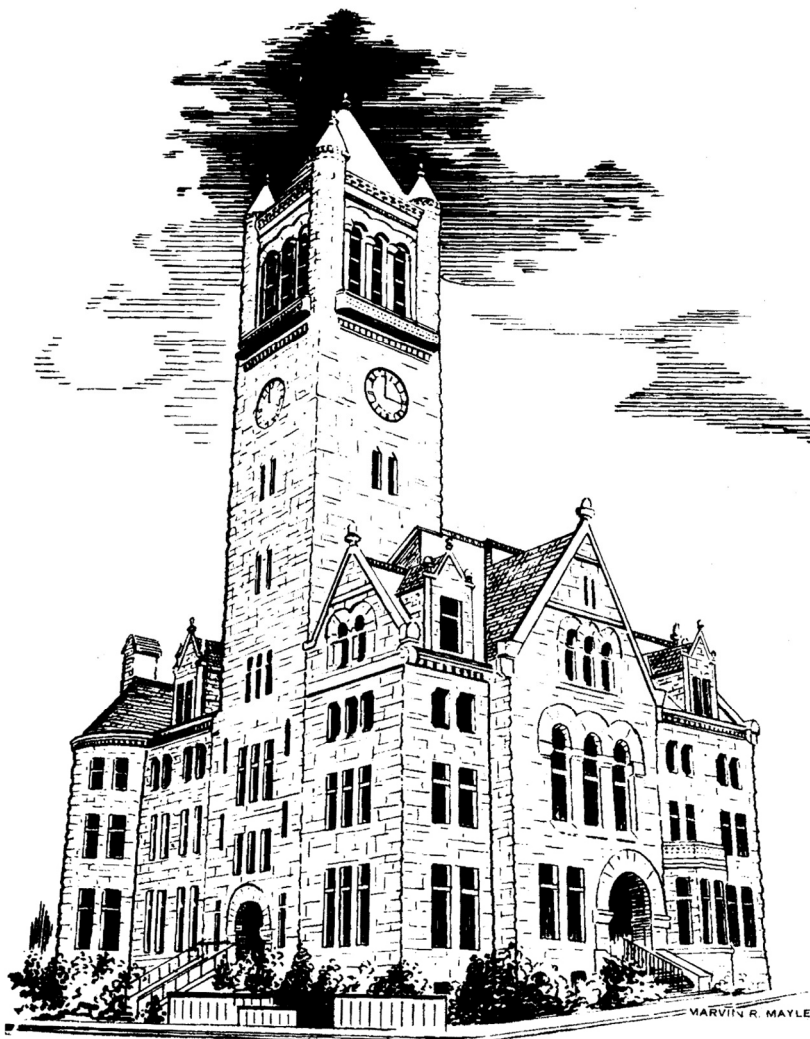
---

VOL. 87

DECEMBER 14, 2024

NO. 50

---



## FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at [www.fcbar.org](http://www.fcbar.org) no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

**Co-Editors:** Garnet L. Gordon and Melinda Deal Dellarose

*Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA*

## FAYETTE COUNTY BAR ASSOCIATION Board of Directors

**President:** Gretchen A. Mundorff

**President Elect:** Sheryl R. Heid

**Vice-President:** Michelle L. Kelley

**Secretary:** Anne N. John

**Treasurer:** Louise D. Monaghan

**Past President:** John A. Kopas, III

**Executive Director:** Garnet L. Gordon

### *Directors*

Jennifer M. Casini

Rachel A. Clark

Sarah E. Connelly

Jeremy J. Davis

James E. Higinbotham, Jr.

Sean M. Lementowski

### ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

### LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,  
non-judgmental, safe, and effective

To talk to a lawyer today, call:

1-888-999-1941

717-541-4360

## 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

**MABEL LORRAINE BURNWORTH, a/k/a LORRAINE BURNWORTH**, late of North Union Township, Fayette County, PA (3)

*Executrix:* Judith R. Thomas  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**RONALD W. HARDY**, late of Connellsville, Fayette County, PA (3)

*Executrix:* Margaret L. Hardy  
c/o 208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**STEPHEN D. STRAUCH**, late of Grindstone, Fayette County, PA (3)

*Executor:* William Edward Johnson, Sr.  
428 Quail Hill Road  
Normalville, PA 15469  
c/o P.O. Box 310  
902 First Street  
Hiller, PA 15444  
*Attorney:* Herbert G. Mitchell, Jr.

**PETER B. TALLERICO, a/k/a PETER B. TALLARICO**, late of Belle Vernon Borough, Fayette County, PA (3)

*Executrix:* Nancy Bartolotta  
95 Sunset Avenue  
Charleroi, PA 15022  
c/o 300 Fallowfield Avenue  
Charleroi, PA 15022  
*Attorney:* Richard C. Mudrick

## Second Publication

**RONALD J. BUKOWSKI**, late of Franklin Township, Fayette County, PA (2)

*Personal Representative:*  
Timothy P. Bukowski  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* David D. Tamasy

**NAOMI J. EICHER**, late of Springfield Township, Fayette County, PA (2)

*Executrices:* Linda Eicher, Sheila Porterfield, Marcia Miller and Susan May  
c/o 815 A Memorial Boulevard  
Connellsville, PA 15425  
*Attorney:* Margaret Z. House

**WILMA A. FRANKO**, late of Brownsville, Fayette County, PA (2)

*Executor:* John Ball  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Anthony S. Dedola, Jr.

**WINONA R. HIGINBOTHAM**, late of Georges Township, Fayette County, PA (2)

*Executrix:* Sharon Lee Higinbotham-Butchko  
c/o Higinbotham Law Offices  
68 South Beeson Boulevard  
Uniontown, PA 15401  
*Attorney:* James E. Higinbotham, Jr.

**PAUL KLINK, a/k/a PAUL E. KLINK, JR.**, late of Dunbar Township, Fayette County, PA (2)

*Administratrix:* Sue A. Klink  
163 Cow Rock Road  
Dunbar, PA 15431  
c/o Tremba Kinney Greiner & Kerr  
1310 Morrell Avenue, Suite C  
Connellsville, PA 15425  
*Attorney:* John Greiner

**HELEN MINIAFEE, a/k/a HELEN  
ELIZABETH MINIAFEE**, late of Fayette  
County, PA (2)

*Administratrix:* Kim Chandler  
80 Stewart Avenue  
Uniontown, PA 15401  
c/o Fieschko & Associates, Inc.  
300 Cedar Boulevard, Suite 202  
Pittsburgh, PA 15228  
*Attorney:* Joseph Fieschko

---

### First Publication

**MICHAEL A. FUGOZZOTTO, JR.**, late of  
Nicholson Township, Fayette County, PA (1)

*Administrator:* Michael Fugozzotto, III  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

---

**DEANNA CAROL HIXSON, a/k/a DIANA  
HIXSON**, late of Mesa, Maricopa County, AZ

*Executor:* Robert David Hixson (1)  
c/o Goodwin Como, P.C.  
108 North Beeson Boulevard, Suite 400  
Uniontown, PA 15401  
*Attorney:* Benjamin F. Goodwin

---

**DORIS ELAINE TANNER**, late of Georges  
Township, Fayette County, PA (1)

*Administratrix:* Christine L. Gipe  
1157 Georges-Fairchance Road  
Smithfield, PA 15478  
*Attorney:* Douglas S. Sholtis

---

## LEGAL NOTICES

\*\*\* NO LEGAL NOTICES \*\*\*

---

## WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE   E&O INSURED   WILL TRAVEL   ACCEPTING NEW CLIENTS



DiBella Weinheimer

Geer McAllister Best Coco Lloyd Whalen



Holly Whalen ◊ Amy Coco ◊ Bethann Lloyd

INSIST UPON OUR EXPERIENCED TEAM

### LAWYERS DEFENDING LAWYERS

- Disciplinary Board
- Legal Malpractice
- Security Fund / IOLTA
- Ethics & Conflict Analysis
- Subpoena Assistance
- Licensure
- Conflict Resolution

[WWW.DIBELLA-WEINHEIMER.COM](http://WWW.DIBELLA-WEINHEIMER.COM) 412 261-2900

**JUDICIAL OPINION**

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

COMMONWEALTH OF :  
PENNSYLVANIA :  
v. :  
SAYVONN KHALIL BROWN : No. 2061 of 2023  
APPELLANT. : President Judge Steve P. Leskinen

OPINION AND ORDER

Leskinen, P.J.

AND NOW, this 3rd day of October, 2024, before the Court is the Defendant's Omnibus Pretrial Motion requesting that the Commonwealth be compelled to provide the identity of the confidential informant and a motion to dismiss for pre-arrest delay.

BACKGROUND

In the case before the Court, James Tyler Garlick, an officer with the Fayette County Bureau of Investigation, testified to a controlled buy of crack cocaine that occurred on October 25, 2022 in Masontown Borough on Bowman Street. {N.T. of 10/25/23 at pg. 4). A confidential informant made a telephone call to an individual known as SaySay. Id. The informant was searched, provided with funds, and observed until the transaction was finalized. The transaction was observed by Officer Ward and Officer Garlick. The informant was fitted with an audio and video recording device but it failed and didn't record the transaction. During the hearing on the motion, Officer Garlick testified that the Defendant was observed leaning on a silver Mercedes during the transaction. Officer Garlick drove by the informant and the Defendant during the transaction. The transaction was also observed by Officer Ward who was on the sidewalk about fifty (50) feet from the transaction.

Officer Garlick testified that the informant did not have information about the name of the seller other than his nickname of SaySay. The officers obtained information from another officer, Alexis Metros, about the possible identity of the seller. After checking the name and photo on J-Net, the officers were able to confirm the name of the individual who was observed selling the drugs to the informant. One of the officers also confirmed that the Defendant was the owner of a 2015 Silver Mercedes. After the transaction, the informant was picked up by the officers, a search of the informant's person was conducted and the informant did not have the funds but, instead, had a baggie of crack cocaine. The baggie was subsequently tested and contained .42 grams of cocaine. The Defendant was charged with Delivery of a Controlled Substance and Possession of a controlled substance.

## DISCUSSION

## COUNT I - MOTION TO COMPEL IDENTITY OF CONFIDENTIAL INFORMANT

The Defendant asserts that the Commonwealth should be compelled to reveal the name of the confidential informant in this case. Pursuant to the Criminal Rules, the Commonwealth is required to divulge the names and addresses of all eyewitnesses where a defendant makes a showing of a material need and reasonableness. Pa.R.Crim.P. 573. The Commonwealth, however, possesses a qualified privilege to withhold the identity of a confidential informant. *Commonwealth v. Marsh*, 997 A.2d 318 (Pa. 2010). A defendant, to overcome this privilege, must establish that the information is material and reasonable. There is no fixed rule with respect to disclosure of an informant's identity, the determination should be made on the particular facts of each case, taking into consideration the crime charged, the possible defenses, the significance of the informant's testimony and other relevant factors essential to a full balancing of the competing interests involved. *Id.* The Defendant must establish that the information sought is material to the preparation of the defense and the request is reasonable.

In this case, the informant had prior contact with the Defendant, placed a call on speaker phone in the presence of the officers, then was observed by two officers who were present while the transaction occurred. Each officer was present and observed the transaction from two separate locations, obtained confirming information as to the seller's identity, provided testimony as to how they were able to identify the seller, and identified the seller in subsequent hearings. The officers expressed concern for the confidential informant's safety as the Defendant had prior charges involving guns. There is no requirement that a reasonably specific type of danger is required. *Commonwealth v. Scher*, 803 A.2d 1204 (Pa. 2002). The balancing test, with two officers identifying the Defendant as the seller in the transaction with the confidential informant, does not tip the balancing test in favor of disclosure. The safety of the informant is a controlling factor.

In this case, there is no necessity to disclose the confidential informant's identity.

Therefore, Count I of the motion must be DENIED.

## COUNT II - MOTION TO DISMISS: VIOLATION OF DUE PROCESS

The Defendant asserts that the seven (7) month pre-arrest delay violated his due process rights under the Fifth Amendment of the United States Constitution or Article 1, Section 9 of the Pennsylvania Constitution. The Defendant's claim is concerned with the delay between the commission of the alleged criminal offense and the accusation of the defendant by means of a complaint or indictment. He asserts that the lapse of time prevented him from establishing or obtaining any video surveillance footage, potential witnesses, or to assert an alibi.

The statute of limitations does not provide the sole protection for an accused who complains of delay prior to formal accusation and the Due Process Clause would require dismissal of the indictment if it were shown that the pre-indictment delay in this case caused substantial prejudice to the accused's right to a fair trial and that the delay was an

intentional act to gain tactical advantage over the accused. *Id.* In order to prevail on a due process claim based on pre-arrest delay, the defendant must first show that the delay caused him actual prejudice and that the prosecution lacked sufficient and proper reasons for postponing the prosecution. *Commonwealth v. Scher*, 803 A.2d 1204, 1217 (Pa. 2002). Due process questions of this nature have been resolved by employing a balancing test in which the need for the delay is measured against the prejudice to the accused's interest in a reliable process to determine guilt. *Id.*

The Commonwealth asserts that it delayed filing the charges due to continuing investigation, protection of the confidential informant, and the time required for examination of the drugs by the crime lab.

There are legitimate purposes for the police to delay arrests in order to conduct full criminal investigations. The courts have ruled in some cases that a one-year delay was insufficient and did not result in prejudice when there was no effort by the prosecution to gain a tactical advantage. *Id.* In this case the Defendant was not able to substantiate his claim that he suffered any prejudice by the loss of possible surveillance videos, even though the Court granted him additional time after the hearing on the motion to locate any possible camera locations in the area of the transaction. The few months delay that occurred in this case is not so long as to prevent the Defendant from locating witnesses or remembering his actions.

Therefore, Count 2 of the motion must be DENIED.

Therefore, the Court issues the following order:

ORDER

AND NOW, this 3rd day of October, 2024, upon consideration of the Defendant's Omnibus Pretrial Motion, for the reasons stated in the above Opinion, the Motion is hereby DENIED.

The District Attorney is directed to place this case on the trial list.

All delay attributable to this motion is "delay caused by" the defense, and it is excluded from computation under Rule 600 through to the November Trial Term that ends on November 8, 2024 so that the Commonwealth will have a reasonable time to prepare for trial if necessary.

STEVE P. LESKINEN  
PRESIDENT JUDGE

ATTEST:  
Clerk of Courts





## LUNCH & LEARN SERIES

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

- Date: **Wednesday, December 18th from 12:00 p.m. to 1:30 p.m.**
- Location: **Courtroom No. 2 of the Fayette County Courthouse**
- Discussion topics: **Be it Resolved... Striving for a (Realistic) Work/Life Balance in 2025**
- Presenter: **Brian S. Quinn, Esq. – Lawyers Concerned for Lawyers**

### **CLE Credit**

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

#### Members of the FCBA

- \$5 fee for attendance without CLE Credit
- \$15 fee for attendance with CLE Credit

#### Attorneys admitted to practice in Pennsylvania after January 1, 2019

- \$5 fee for attendance with CLE Credit

#### Non-members of the FCBA

- \$15 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 email to [cindy@fcbar.org](mailto:cindy@fcbar.org) on or before Monday, December 16th.

---

## **ANNUAL MEMBERSHIP MEETING**

The Annual General Membership meeting of the Fayette County Bar Association will be held on Wednesday, December 18, 2024, at 1:30 pm in Courtroom No. 2 at the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401. Members are invited to present topics of concern or interest to the Association.

*Quality... Experience... Results...  
It's what your clients deserve.*

*Medical Malpractice • Auto Accidents • Personal Injury*



# GISMONDI

& ASSOCIATES

412-281-2200

[www.gislaw.com](http://www.gislaw.com)

700 Grant Bldg., 310 Grant St., Pgh., PA 15219