

Lawrence Law Journal

USPS 306-600

VOL. 31

October 12, 2021

No. 250

Commonwealth
v.
Ruffaner

Owned and Published By
THE LAWRENCE COUNTY BAR ASSOCIATION

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Phone 724-656-2136

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The Lawrence Law Journal is published every Monday. Legal notices, court opinions and advertising copy must be received at the Lawrence County Court House by noon of the preceding Wednesday. Postmaster, please send change of address to Lawrence Law Journal, 430 Court Street, New Castle, PA 16101.

Subscription Price \$30.00. Single copies 50¢

Periodical postage paid at New Castle, Pennsylvania 16101

Lawrence Law Journal

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OCTOBER 12 - 18, 2021

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ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

FIRST PUBLICATION

Folino, Xavier W.

Late of Slippery Rock Township, Lawrence County, Pennsylvania

Executrix: Sara A. Balough

Attorney: John J. DeCaro, Jr., Cusick, DeCaro & Langer, P.C., 100 Decker Dr., P.O. Box 5137, New Castle, PA 16105, 724-658-2525

Marino, Concetta M.

Late of Volant, Lawrence County, Pennsylvania

Executor: Daniel E. Marino

Attorney: Amy D. Reese, Sechler Law Firm LLC, 20206 Route 19, Suite 300, Cranberry Twp., PA 16066

Masters, Charles, Jr.

Late of New Castle, Lawrence County, Pennsylvania

Executor: Phillip Masters, 628 Johns St., New Castle, PA 16101

Attorney: Bradley G. Olson, Jr., 125 E. North St., New Castle, PA 16101, 724-656-6633

Taranto, Joseph T. Jr.

Late of Wayne Township, Lawrence County, Pennsylvania

Executor: Joseph T. Taranto III, 1824 Hassam Rd., Coraopolis, PA 15108

Attorney: Gene G. Dimeo, Dimeo Law Group PLLC, 120 Fourth St., Ellwood City, PA 16117

Trimble, John I.

Late of Shenango Township, Lawrence County, Pennsylvania

Executrix: Lori L. Mort, 512 Shenango Park Dr., New Castle, PA 16101

Attorney: Michael C. Bonner, 713 Wilmington Ave., New Castle, PA 16101

SECOND PUBLICATION

Bates, Margaret Ann

Late of Union Township, Lawrence County, Pennsylvania

Executrix: Sherry Magee

Attorney: Deborah A. Shaw, 1906 Wilmington Rd., New Castle, PA 16105, 724-856-9894,

dshaw@dshawlaw.com

Blackwell, Barbara Morton Allen

Blackwell, Barbara A.

Late of Athens, Clarke County, Georgia

Executor: Sarah E. Blackwell

Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

Cosgrove, Robert J.

Late of Little Beaver Township, Lawrence County, Pennsylvania

Executrix: Stacy Cosgrove, 1674 State Route 551, Enon Valley, PA 16120

Attorney: Michele P. Conti, Conti Law, 986 Brodhead Rd., Moon Township, PA 15108

Craig, Clara Mae

Late of Lawrence County, Pennsylvania

Executor: Brian K. Craig, 181 Sunnyside Dr., New Castle, PA 16102

Attorney: Larry J. Puntureri, 2102 Wilmington Rd., New Castle, PA 16105

Fellner, Ursula D.

Late of New Gaililee, Lawrence County, Pennsylvania

Executor: Paulette Schaefer, 467 Moravia Rd., New Gaililee, PA 16141

Attorney: Philip W. Berezniak, 603 Hazel Ave., Ellwood City, PA 16117

Flamino, David N.

Late of Neshannock Township, Lawrence County, Pennsylvania

Executor: Dhyana Wade

Attorney: Adrienne A. Langer, Cusick, DeCaro & Langer, P.C., 100 Decker Dr., P.O. Box 5137, New Castle, PA 16105, 724-658-2525

Fox, Linda L.

Late of Lawrence County, Pennsylvania

Executrix: Beth Ann Fox Kerry, 1651 Fairview School Rd., Ellwood City, Lawrence County, Pennsylvania

Attorney: Susan M. Papa, Papa & Papa, 439 Court St., New Castle, PA 16101

Hogue, Roger A.

Late of Perry Township, Lawrence County, Pennsylvania

Administratrix: Denise M. Hogue, 311 Hilltop Lane, Portersville, PA 16051

Attorney: Amy E. Molloy, S.R. Law, LLC, 631 Kelly Blvd., P.O. Box 67, Slippery Rock, PA 16057

Pacella, Mina Mae

Late of New Castle, Lawrence County, Pennsylvania

Executor: Mark A. Pacella, 3920 Emil Ridge Dr., Mechanicsburg, PA 17050, 412-303-8965

Attorney: none

Wish, Edward P., Jr.

Late of Neshannock Township, Lawrence County, Pennsylvania

Executors: Michael Wish, Merit Wish Phillips, c/o Jillian F. Zacks

Attorney: Jillian F. Zacks, McAndrews, Mehalick, Connolly, Hulse and Ryan, P.C., 429 Fourth Ave., Suite 1600, Pittsburgh, PA 15219

THIRD PUBLICATION

Kitzko, Felix S.

a/k/a Kitzko, Felix S., Jr.

Late of the City of New Castle, Lawrence County, Pennsylvania

Executor: Richard S. Kitzko, 715 Brooklyn Ave., New Castle, PA 16101

Attorney: Anthony Piatek, 414 N. Jefferson St., New Castle, PA 16101

Minner, Joann E.

Late of Union Township, Lawrence County, Pennsylvania

Executor: Judith A. Wellman, 620 W. Clayton St., New Castle, PA 16102

Attorney: John R. Seltzer, 713 Wilmington Ave., New Castle, PA 16101, 724-652-0821

Saginak, Michael R.

Late of New Castle, Lawrence County, Pennsylvania

Executrix: Lori A. Saginak, 2110 N.E. 39th Street, Fort Lauderdale, FL 33308

Attorney: Carmen F. Lamancusa, 414 N. Jefferson St., New Castle, PA 16101

ESTATE NOTICE

Ancillary Letters of Administration have been granted on the estate of the following decedent to the personal representative named, File No. 37-21-0492, who requests all persons having claims against the estate of the decedent to make known the same in writing to her or her attorney, and all persons indebted to the decedent make payment without delay:

Bonnie W. Ataman, a/k/a Bonnie Ataman, deceased, of Masury, Ohio, and owning a certain parcel of real estate located at 214 East Edison Avenue in New Castle, Pennsylvania, 16101. Anna M. Ciambotti,

Admrx, 6 Federal Plaza Central, Ste 1300, Youngstown, Ohio.

Keith Hodgens, Esq.

Henderson, Covington, Messenger, Newman & Thomas, Co., L.P.A.

6 Federal Plaza Central, Ste. 1300
Youngstown, Ohio

(330) 744-1148

L.C.L.J. - October 4, 12, and 18, 2021

NOTICE OF CERTIFICATE OF ORGANIZATION DOMESTIC LIMITED LIABILITY

Notice is hereby given that a Certificate of Organization Domestic Limited Liability Company was filed with the Department of State, Commonwealth of Pennsylvania with respect to a Limited Liability Company which has been organized under the provisions of the Pennsylvania Uniform Limited Liability Company Act of 2016 as amended. The name of the Limited Liability Company is **Phil-Cin LLC**, and it was organized August 24, 2021.

Clark & Clark Law, P.C.

Robert D. Clark, Jr.

201 N. Market St.

New Wilmington, PA 16142

L.C.L.J. - October 12, 2021

IN THE COURT OF COMMON PLEAS LAWRENCE COUNTY, PENNSYLVANIA NO. 90076 OF 2021, A.D.

In Re: Notice of Proposed Termination of Inactive Cases

ORDER OF COURT

AND NOW, this 30th day of September, 2021, the Prothonotary is directed to publish in the Lawrence County Law Journal notice of the intent of the Court to terminate civil cases without further notice where the docket shows no activity in the case for a period of two (2) years, such notice to advise that a party may stop the Court from terminating the case by filing a statement of intention to proceed with the Prothonotary on or before November 16, 2021, such publication to be made where the Prothonotary has been unable to make service by personal service, certified mail or ordinary U.S. mail.

BY THE COURT:

Dominick Motto, President Judge

Rule 1901 Notice to Terminate Cases Civil Actions

Lawrence Law Journal

2009-11738 WILLIAM ROOT (VS) AUTOMOBILE INSURANCE CO.

2011-10227 KAREN ROOT (VS) WILLIAM O. ROOT

2011-11428 PULASKI TWP. MUNICIPAL AUTHORITY (VS) ROBERT L. DAVIS, ET AL

2015-10713 TWH OF PA., LLC. (VS) SHAWN & KHRISTINA FORESHU, ET AL

2015-11165 NICHOLAS PISOR (VS) GEORGE W. BURNS, III, ET AL

2016-10773 SHERRY R. BROWNING (VS) JERRY LEE BROWNING

2017-10314 NIELS JORGENSEN (VS) MICAH SAWYER, ET AL

2017-10789 ANGELO A. PAPA, ESQ. (VS) ROBERT BONACCOLTA, ET AL

2018-10538 TAMMY L. PATTON, ET AL (VS) LEEANNE MILLER

2018-10681 CARL D. WETZEL (VS) JAMES RUGH

2018-10686 WAYNE E. MCNUTT (VS) COMMONWEALTH OF PA.

2018-10741 FIFTH THIRD BANK (VS) KEVIN J. BURICK, ET AL

2018-10743 JENTO MANAGEMENT, LLC. (VS) DAVE WADDING, ET AL

2018-10924 DSV SPV I, LLC. (VS) ELONZO L. MATTHEWS, SR., ET AL

2019-10066 BELLA CIBO, LLC. (VS) EMPIRE PALACE 3, INC.

2019-10134 US BANK NA (VS) BOK Y. YEO, ET AL

2019-10147 LAKEVIEW LOAN SERVICING, LLC (VS) BRYAN L. TORSELLO

2019-10207 FANNIE MAE (VS) BENJAMIN KOSCIUSZKO

2019-10332 MMG INSURANCE CO. (VS) JESSE M. HOLLIDAY

Rule 1901 Notice to Terminate Cases Divorces

2009-11800 BETTY M. SUI SI (VS) LOUIS C. SUI SI

2014-10384 KIMBERLY M. CAMINITI (VS) JAMES A. CAMINITI

2016-10199 MADISON NEAL BYLER (VS) STEPHEN J. BYLER, JR.

2018-10136 RYAN C. HOLLINGSWORTH (VS) ALISHA M. SAVIN HOLLINGSWORTH

2018-10282 KARI L. STOUT (VS) ADAM B. STOUT

2018-10710 SHERRY MILLER (VS) RONALD L. MILLER

2018-10832 NORMAN T. LOHR (VS) EMMALIE K. LOHR

2018-10916 LESLIE JO BOOTS (VS) KENNETH E. BOOTS

2018-10986 MICHAEL SHAVER (VS) AUTUMN SHAVER

2018-11011 ASHLEY HUBBARD (VS) ARTHUR HUBBARD

2018-11154 WILLIAM MYERS (VS) AUTUMN MYERS

2019-10138 SAMANTHA ASSID (VS) JAMES ASSID

2019-10230 JAMES A. TAYLOR (VS) MIKAL L. TAYLOR

L.C.L.J. - October 12, 2021

NOTICE

COMPLAINT TO QUIET TITLE BY ADVERSE POSSESSION

CASE NO. 10748 OF 2021, C.A.

COURT OF COMMON PLEAS, LAWRENCE COUNTY, PENNSYLVANIA

TAKE NOTICE that on September 22, 2021, New Castle Industrial Railroad, Inc. filed a Complaint to Quiet Title by Adverse Possession claiming that it has acquired title to that parcel of real estate lying and situate in the City of New Castle, known as tax map and parcel number 08-0075-0603, and bearing Parcel Identification No. 08-101600. If you claim an interest in this property, you must respond to and defend this lawsuit within twenty (20) days from the date of this notice.

If you wish to defend, you must enter written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you for any other claim or relief requested in these papers by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION

Lawrence Law Journal

ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawrence County Lawyers' Referral Service
Lawrence County Government Center
430 Court St.
New Castle, PA 16101
724-656-1921

John J. DeCaro, Jr., Esquire
Cusick, DeCaro & Langer, P.C.
P.O. Box 5137
New Castle, PA 16105
724-658-2525
Attorney for Plaintiff, New Castle Industrial Railroad, Inc.

L.C.L.J. - October 12, 2021

SHERIFF SALES

Wednesday, November 10, 2021 at 10:00 AM

By virtue of various Writs of Execution issued out of the Court of Common Pleas of Lawrence County, Pennsylvania, there will be exposed to sale by public auction at the Lawrence County Government Center, Commissioners Meeting Room, First Floor, 430 Court St., New Castle, PA 16101 at the above date and time, the following described real estate, subject to the following TERMS OF SALE:

The following terms shall be complied with for each sale or continuation thereof:

1. All bidders must identify themselves prior to submitting a bid. Attorneys of record shall be presumed to be bidding for their client(s). No bid may be withdrawn.
2. If the defendant intends to bid, prior to the bidding they must submit to the Sheriff satisfactory proof that they will be able to comply with the bid. No bids will be accepted in excess of the submitted proof.
3. At the request of the plaintiff, any sale may be continued, postponed or cancelled.
4. All bids must be paid in full. The successful bidder shall pay unto the Sheriff, by cash, certified or cashiers' check, 10% within one hour after the sale and the balance within 7 days thereafter. If terms of sale are not met within the required time period, the property will be resold at 12:00 noon on the

Third business day following the payment deadline at the Lawrence County Sheriff's Office, Government Center, 430 Court Street, New Castle, PA at the expense and risk of the person to whom it was struck off, who in case of deficiency on such sale shall make good the same.

5. Prior to the delivery of the Sheriff's deed, a successful bidder may assign their bid to a third party, in which case the realty transfer taxes shall be paid as if the assignee were the original successful bidder.

6. If a Third Party is the successful bidder, a Schedule of Distribution will be filed by the Sheriff in the Prothonotary's Office on the Wednesday following the date of sale and that distribution will be made in accordance with the Schedule unless exceptions are filed within TEN days thereafter.

7. Anyone placing a bid should check with an attorney for legal advice. The property you are bidding upon may be subject to unpaid taxes, liens or mortgages.

8. Any current & delinquent real estate taxes will be paid as part of the costs and before distribution to the plaintiff or any other party.

Sale No. 1

No. 10433-2021; Freedom Mortgage Corporation, Plaintiff vs. Jennifer Winkler, Solely in her capacity as Heir to Terrie Stoops, Deceased, Defendants. Improvements consist of a residential dwelling. Property address: 1318 Darlington Road, Wampum, PA 16157. Parcel ID: #21-027600. (Wampum Borough) Judgment amount: \$77,356.52 plus interest, costs and attorney fees. Attorney: KML Law Group, P.C.

Sale No. 2

No. 10024-2019; First National Bank of Pennsylvania, successor to First National Bank of Slippery Rock, Plaintiff vs. Randy J. Ryan and Judith M. Ryan, Defendants. All the following described real estate situated in the Second Ward, City of New Castle, County of Lawrence, and Commonwealth of Pennsylvania. Having erected thereon a dwelling. Property address: 313 Sumner Avenue, New Castle, PA 16105. Parcel ID: #02-051200. Deed Book Volume 1679, page 557. (2nd Ward City of New Castle) Judgment amount: \$74,203.44 plus interest, costs and attorney fees. Attorney: Grenen & Birsic PC

Sale No. 3

No. 10369-2021; M & T Bank, Plaintiff vs.

Javon M. Moody, Defendant. Improvement consists of a residential dwelling. Property address: 427 East Euclid Avenue, New Castle, PA 16105. Parcel ID: #02-031000. (2nd Ward City of New Castle) Judgment amount: \$75,793.86 plus interest, costs and attorney fees. Attorney: KML Law Group

Sale No. 4

No. 10604-2020; Wilmington Trust, National Association, not in its individual capacity, but solely as Owner Trustee for Bravo Residential Funding Trustee 2021-A, Plaintiff vs. Patricia Cartwright, Defendant. Improvement: single family dwelling. Property address: 707 Oak Street, New Castle, PA 16101. Parcel ID: #03-023400. (3rd Ward City of New Castle) Judgment amount: \$33,500.90 plus interest, costs and attorney fees. Attorney: Emmanuel J. Argentieri, Esq.

Sale No. 5

No. 10828-2020; CL45 MW Loan I, LLC, Plaintiff vs. Ronald Lagana, Jr., Defendant. All that piece parcel and lot of land situate lying and being in the City of New Castle, Lawrence County, Pennsylvania, bounded and described as follows to-wit: Being at the Northeast corner thereof at a point on the West line of Highland Avenue, where the South line of land of New Castle School District, now or formerly of Anthony J. Staph, et ux, intersects the West line of Highland Ave; thence South along the West line of Highland Avenue, a distance thirty-nine and eighty-five hundredths (39.85) feet to lands now or formerly of Samuel L. Cornelius, et ux, thence North fifty-five degrees twenty-one minutes West (N 55-21' W) a distance of one hundredth twenty-two and thirty-nine hundredth (122.39) feet to a point; thence North twenty-three degrees and nineteen minutes East (N 23-19' E) a distance of forty-four and eighty-seven hundredths (44.87) feet to the lands now or formerly of New Castle School District; thence South fifty-three degrees four minutes East (S 53-04' E) a distance of one hundred twenty-three and forty-seven hundredths (123.47) feet to the place of beginning, said premises being known as designated as Lot No. 505 in Section 22 of the Official Survey as now constituted. For chain of title see Lawrence County Deed Book Volume 1718. Page 785. Being the same premises which John Albano, by his Deed dated November 30, 2012 and recorded December 5, 2012, in and for Lawrence County as Document Number 2012-015935, granted and conveyed unto Ronald Lagana, Jr., unmarried. Property address: 707 Highland Avenue, New Castle,

PA 16105. Parcel ID: #02-147800. (2nd Ward City of New Castle) Judgment amount: \$49,678.22 plus interest, costs and attorney fees. Attorney: JSDC Law Offices.

Sale No. 6

No. 11041-2019; The Huntington National Bank, Plaintiff vs. Justin D. Matuz, Defendant. All that certain piece, parcel or lot of land situate, in the Township of Neshannock, County of Lawrence, Commonwealth of Pennsylvania, bounded and described as follows to wit: Being the same property conveyed to Justin D. Matuz, unmarried who acquired title by virtue of a deed from William R. Enscoe, unmarried and Merit W. Enscoe nka Merit W. Phillips and Ronald Phillips, wife and husband, dated September 2, 2011, recorded September 7, 2011, at Document ID 2011-007380, Office of the Recorder of Deeds, Lawrence County, Pennsylvania. Property address: 1092 Valley Road, New Castle, PA 16105. Parcel ID: #25-444400. (Neshannock Township) Judgment amount: \$54,000.25 plus interest, costs and attorney fees. Attorney: Manley Deas Kochalski, LLC.

Sale No. 7

No. 10333-2017; Reverse Mortgage Solutions, Inc., Plaintiff vs. Martin E. Vigne Individually and as Trustee of the Martin E. Vigne Family Trust, dated September 14, 2007, Defendant. All those certain lots or pieces of ground situate in the Neshannock Township, Lawrence County, Pennsylvania: Improvements: Residential Property. Property address: 157 Shannon Drive, New Castle, PA 16105. Parcel ID: #25-274100. (Neshannock Township) Judgment amount: \$197,248.76 plus interest, costs and attorney fees. Attorney: Robertson, Anschutz, Schneid, Crane & Partners, PLLC.

Sale No. 8

No. 10530-2021; First National Bank of Pennsylvania, Plaintiff vs. Larry J. Puntureri, Esq. In Capacity as Administrator of Estate of Keith E. Jackson, Sr. a/k/a Keith E. Jackson, Defendant. All the right, title interest and claim of: Larry J Puntureri, Esq. in capacity as administrator of Estate of Keith E. Jackson, Sr. a/k/a Keith E. Jackson of, in and to: A parcel of land situate in the City of New Castle, Second Ward, County of Lawrence, State of Pennsylvania. Being the same premises which Keith E. Jackson and Margo B. Jackson, his wife granted and conveyed to Keith E. Jackson and Margo B. Jackson, his wife, by Deed dated October 5, 1979, and recorded in the Office of the Recorder

of Deeds of Lawrence County on September 12, 1980, at Deed Book Volume 638, Page 183. Improvements: Residential dwelling. Property address: 414 Park Avenue, New Castle, PA 16101. Parcel ID: #02-131600. (2nd Ward City of New Castle) Judgment amount: \$58,685.75 plus interest, costs and attorney fees. Attorney: David W. Raphael

Sale No. 9

No. 10072-2021; Pennsylvania Housing Finance Agency, Plaintiff vs. Randall B. Zieber, Defendant. Designated as Lot No. 30 in the addition to the Plot of Lots called "Carriage Hill" Plan of Lots, Plot Book 13, page 40. Addition to the Plot of Lots, Plot Book 14, page 23. See Instrument: 2015-006896. Improvement thereon: a residential dwelling house. Property address: 132 Landau Drive, Pulaski, PA 16143. Parcel ID: #29-024400 (29-3720-130). (Pulaski Township) Judgment amount: \$201,401.92 plus interest, costs and attorney fees. Attorney: Leon P. Haller, Esq.

Sale No. 10

No. 10436-2021; Michael R. Piccirillo, Ancillary Administrator of the Estate of Gene A. Millione, a.k.a Gene Millione, a.k.a Gino Millione, Plaintiff vs. Ernest F. Johnston, Jr., and Robert A. Nestasie, Defendants. Improvements consist of land and building(s). Property address: 5095 West State Street, Edinburg, PA 16116. Parcel ID: #24-098600 & 24-098700. (Mahoning Township) Judgment amount: \$338,747.76 plus interest, costs and attorney fees. Attorney: Verterano & Manolis

Sale No. 11

No. 10422-2018; FNB Properties Company, Inc., Plaintiff vs. David Moffatt a/k/a David D. Moffatt, Defendant. All that certain piece, parcel or lot, of land situate, lying and being in the Fourth Ward of the City of New Castle, County of Lawrence and Commonwealth of Pennsylvania, being more particularly bounded and described as follows, to-wit: Beginning at the southwest corner of the lands herein described, being the northeast corner of the intersection of Warren Avenue with Stanton Avenue: Thence by the East line of Stanton Avenue, North 33 degrees 17-1/2' West, 142.98 feet to a stake at line of lands of Louis A. Mooney; Thence by lands of said Louis A. Mooney, North 57 degrees 3/4' East, 60 feet to a stake at line of other lands of Grantors: Thence by other lands of grantors, South 33 degrees 17-1/2' East,

143.67 feet to the northerly line of Warren Avenue; Thence by northerly line of Warren Avenue, South 57 degrees 40-1/2 West, 60 feet to the easterly line of Stanton Avenue, the place of beginning. And being Lot No. 303 on Section 69 of the Official Survey of the City of New Castle as a present constituted. Improvements: One Story Dwelling in Fair Condition. Property address: 1001 Warren Avenue, New Castle, PA 16101. Parcel ID: #04-023900. (City of New Castle 4th Ward) Judgment amount: \$48,807.44 plus interest, costs and attorney fees. Attorney: William J. Moder III, Esq.

Sale No. 13

No. 11157-2018; Pennsylvania Housing Finance Agency, Plaintiff vs. Jennifer N. Weaver fka Jennifer N. Brudege, Defendant. See Instrument # 2011-003383, 1.06 acre +/- land & res. and .11 acre vacant land. Improvement thereon: a residential dwelling house and adjoining vacant lot. Property address: 442 Fairgreen Avenue, New Castle, PA 16105 and Vacant Adjoining Lot also identified as 442 Fairgreen Avenue, New Castle, PA 16105. Parcel IDs: #25-185700 & 25-116000. (Neshannock Township) Judgment amount: \$115,379.82 plus interest, costs and attorney fees. Attorney: Leon P. Haller, Esq.

Sworn to and subscribed before me this 22nd day of September 2021.
Perry L. Quahliero, Sheriff

L.C.L.J.: October 4, 12 and 18 of 2021

Commonwealth

v.

Ruffaner

**Motion for Habeas Corpus – Driving Under the Influence – ATV –
“Vehicle” – Private Gravel Trail – “Trafficway”**

1. An ATV is a “vehicle” for purposes of the driving under the influence law.
2. The substantial public use of a gravel trail as a transportation conduit between a recreation area and a street system qualifies it as “trafficway.”

Motion to Dismiss (Motion for Habeas Corpus Relief) – Court of Common Pleas of Lawrence County, Pennsylvania, No. 931 of 2019, Criminal

Deanna Emerich, Assistant District Attorney for the Commonwealth

Sean T. Logue, attorney for Defendant

OPINION

Hodge, J.

June 30, 2020

Presently before the Court is the Motion to Dismiss¹ filed by Defendant Erica D. Ruffaner. Argument on this motion was heard on June 8, 2020, and after careful consideration of those arguments and the circumstances of this case, the Court will deny this motion for the reasons set forth herein.

Following an incident that occurred on July 28, 2019, Defendant has been charged via Information with the following three offenses under the Pennsylvania Vehicle Code, 75 Pa. C.S. §101 et seq.: 1. Driving under the influence with a high rate of alcohol, a misdemeanor and violation of 75 Pa. C.S. §3802(b); 2. Driving under the influence, general impairment, a misdemeanor and violation of 75 Pa. C.S. §3802(a)(1); and 3. Operation of an all-terrain vehicle (ATV) on streets and highways, a summary offense and violation of 75 Pa. C.S. §7721(a).

Factual Background

The following factual allegations are taken from the testimony of Officer Richard Conti of the New Castle Police Department (NCPD), who testified for the Commonwealth at the preliminary hearing held on October 23, 2019.

On July 28, 2019, Officer Conti was on duty and dispatched to an accident in West Pittsburg, an unincorporated community in Taylor Township, Lawrence County, Pennsylvania, which is patrolled by the NCPD. Shortly thereafter, Officer Conti arrived at the accident scene on Roosevelt Avenue between 13th and 14th Streets in West Pittsburg, while emergency services, including the fire department and ambulance, had already responded. Officer Conti came upon an accident scene that featured two ATVs, one of which was in the middle of the roadway and one of which was off to the side. While other first responders tended to Thomas Ketter, who had

apparently been operating one of the ATVs before suffering a fall in the middle of Roosevelt Avenue, Officer Conti saw and decided to approach the operator of the other ATV, Defendant, who was sitting in the grass on the side of the road.

Officer Conti engaged Defendant and asked her some questions about the events leading up to the accident. Defendant explained that she and Ketter had been riding their ATVs along the network of trails honeycombing the expansive undeveloped property owned by the Cemex Corporation. Eventually, they came upon a connector trail linking the Cemex property with the Lewis J. Papa Memorial Park, a public recreational facility with tennis courts and ballfields. The two riders took this connector trail down to the park's gravel access road and then followed the gravel road's path toward Roosevelt Avenue. After reaching Roosevelt Avenue, the duo began to cross, with Ketter in the lead, but he lost control and tumbled from his ATV onto the pavement at the street's midway point. Defendant rushed to help Defendant by positioning her ATV to block traffic and calling 911 for emergency help, which led to the parade of first responders that eventually included Officer Conti.

As Defendant relayed her story, Officer Conti quickly noticed she exhibited indicia of intoxication, including bloodshot eyes, an unsteady gait, slurred speech, and the smell of alcohol emanating from her person. Officer Conti, becoming increasingly suspicious that Defendant had been operating her ATV while under the influence of alcohol, then requested Defendant to perform field sobriety tests, specifically the horizontal gaze nystagmus (HGN). Defendant agreed but cautioned Officer Conti that any difficulties exhibited by her could be attributable to her long history of head trauma. Having observed Defendant's demeanor, and inferring her ability to operate an ATV prior to the accident, Officer Conti concluded that Defendant displayed no outward signs of head trauma and would not have difficulty with the HGN. Officer Conti then administered the HGN, and Defendant exhibited the six clues used by that test to indicate intoxication. Accordingly, Officer Conti placed Defendant under arrest and transported her to UPMC Jameson Hospital for a blood test. Defendant cooperated with the blood test, which later showed she had a blood alcohol concentration of 0.153%, nearly twice the legal limit.

In her Motion to Dismiss, Defendant makes the relevant factual averment that, upon witnessing Ketter fall from his ATV onto Roosevelt Avenue, she dismounted before actually reaching the street and then pulled her ATV by hand onto the roadway to position it to block traffic.

Legal Discussion

In her Motion to Dismiss, Defendant challenges the Commonwealth's ability to prove an essential element of all three charges, namely that she operated her ATV on a "highway" for purposes of the Vehicle Code. In

support, Defendant includes several photographs of the accident scene and of the intersection of the connector trail with the gravel access road in Lewis J. Papa Memorial Park, ostensibly for the purpose of contrasting the “highway” of Roosevelt Avenue with the crude trails on which she had been operating the ATV.

In brief, the Court notes the standards governing requests for habeas corpus relief. At this stage of the proceedings, in order to overcome a defendant’s request for habeas corpus relief, the Commonwealth must present a prima facie case that the defendant committed each crime with which he/she is charged. Commonwealth v. Williams, 911 A.2d 548, 550 (Pa. Super. 2006). The Commonwealth need not prove the defendant’s guilt beyond a reasonable doubt at this stage, but still must adduce some proof as to each material element of the crimes charged. Commonwealth v. Landis, 48 A.3d 432, 444 (Pa. Super. 2012). The quantum of proof presented as to these material elements must be enough that if it were presented at trial, the judge would be warranted in allowing the jury to commence deliberations on that particular offense. Commonwealth v. Winger, 957 A.2d 325, 328 (Pa. Super. 2008).

Further, the Commonwealth is entitled to all reasonable inferences and benefits to be drawn from the evidence presented, and assessments of the weight and credibility of the evidence are impermissible at this stage. Id.; Landis, supra, at 444. Lastly, the Commonwealth may rest entirely on evidence submitted at the defendant’s preliminary hearing, if one took place, but is not barred from presenting additional evidence. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016) (en banc).

Put simply, the Court must decide whether a prima facie case has been made that Defendant committed the three aforementioned crimes. By far, the more serious of the offenses are the charges of driving under the influence (DUI), which the Vehicle Code itself explicitly identifies as “Serious Traffic Offenses.” 75 Pa. C.S. §3101(b). Significantly, this designation means that DUI laws under Chapter 38 of the Vehicle Code, including 75 Pa. C.S. §3802, apply to the operation of vehicles on “highways” and “trafficways” throughout the Commonwealth. Accordingly, to make a prima facie case for DUI, the Commonwealth must present evidence the accused committed the offense on a “highway” or “trafficway.” Commonwealth v. Lees, 135 A.3d 185, 190 (Pa. Super. 2016). The Court will discuss these essential elements in more detail shortly, as their definitions form the basis of Defendant’s argument.

First, however, we note the remaining elements of the DUI charges Defendant faces. The statute under which Defendant is charged with DUI, 75 Pa. C.S. §3802, sets forth the elements of the crimes as follows:

(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.

(b) High 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 breath or blood is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

As to establishing a violation of Section 3802(a)(1), the Commonwealth must present evidence of the following in addition showing that the offense took place on a “highway” or “trafficway:” the accused was driving, operating, or in actual physical control of a vehicle at a time when he or she was incapable of safely doing so due to the consumption of alcohol. Commonwealth v. Segida, 985 A.2d 871, 879 (Pa. 2009). The Commonwealth is permitted to present a broad array of evidence in prosecutions brought under this section, including the defendant's demeanor and behavior at the crime scene, results of field sobriety tests, physical signs of intoxication, and blood alcohol concentration. Id. Importantly, however, the Commonwealth need not have direct evidence that a defendant drove a vehicle; circumstantial evidence can be sufficient to show this element. Commonwealth v. Teems, 74 A.3d 142, 146 (Pa. Super. 2013).

As for establishing a violation of Section 3802(b), the evidence that may be presented is the same, and the elements that must be shown are very similar: the accused was driving, operating, or in actual physical control of a vehicle when he or she was incapable of safely doing so due to alcohol consumption that reached a blood alcohol concentration of 0.10% or higher within two hours of the individual's driving, operation, or control of the vehicle. Commonwealth v. Johnson, 833 A.2d 260, 263 (Pa. Super. 2003).

Beyond taking place on a “highway” or “trafficway” and the impairment created by alcohol consumption, it is clear that any prosecution for DUI must include evidence that the driver drove, operated, or exhibited actual physical control of a “vehicle.” These terms may have commonly accepted meanings when used in everyday conversation, but for present purposes, the Court is bound by and must apply the prescriptive meanings set forth in the Vehicle Code. 75 Pa. C.S. §102. First, the term “Vehicle” is defined by the statute as:

Every device in, upon or by which any person or property

is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks. The term does not include a self-propelled wheelchair or an electrical mobility device operated by and designed exclusively for the use of a person with a mobility-related disability.

Next, the term “Highway” is defined as:

The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. The term includes a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historical park.

Lastly, the term “trafficway” is defined as:

The entire width between property lines or other boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom.

To start, the Court examines whether the ATV observed at the scene qualifies as “vehicle” for purposes of this prosecution. The status of all-terrain vehicles (ATVs) under the Vehicle Code appears to be floating and dynamic, and it morphs based on the particular legal question at hand. For purposes of the Motor Vehicle Financial Responsibility Law (MVFL), 75 Pa. C.S. §1701 et seq., our appellate courts have repeatedly held that ATVs do not qualify thereunder as “vehicles” because they are governed by the more specific provisions of the Snowmobile All-Terrain Vehicle Law, 75 Pa. C.S. §7701 et seq. Nationwide Mut. Ins. Co. v. Yungwirth, 940 A.2d 523 (Pa. Super. 2008) (en banc); Pelter v. Commonwealth, Dept. of Transp., 663 A.2d 844 (Pa. Cmwlth. 1995). On the other hand, ATVs have been considered “vehicles” for purposes of driving with a suspended license. Commonwealth v. Eliason, 509 A.2d 1296 (Pa. Super. 1986).

Our research has revealed that ATV operators may be prosecuted under the DUI statute. This proposition was implied by the Pennsylvania Superior Court in Commonwealth v. Kerry, 906 A.2d 1237 (Pa. Super. 2006) and stated outright by one of our sister courts of common pleas in Commonwealth v. Rodgers, 2015 WL 3537556 (Pa. Com. Pl. Chester, Jan. 12, 2015) (holding an ATV qualified as a “vehicle” under 75 Pa. C.S. §102 for purposes of, *inter alia*, a DUI prosecution), affirmed, 121 A.3d 1124 (Pa. Super. 2015), appeal denied, 125 A.3d 777 (Pa. 2015).

The Court agrees with and adopts the holding of Rodgers on this point, because this interpretation best advances the overall purposes of the DUI statute: keeping drunk drivers off the road and protecting the Commonwealth’s citizens from harm. Commonwealth v. James, 863 A.2d

1179, 1184 (Pa. Super. 2004) (citing Commonwealth v. Kallus, 243 A.2d 483 (Pa. Super. 1968)). Although ATVs are smaller than a typical passenger automobile, such craft, when placed in the hands of an intoxicated driver, are still capable of terrible mayhem and destruction, such as colliding with pedestrians, other vehicles, or fixed objects, causing significant property damage and public disorder, and posing unacceptable risks of bodily harm to all in their path. The Court would deem it an absurd result if the legislature intended for ATVs to fall outside the realm of vehicles covered by the DUI statute. 1 Pa. C.S. §1922(1).

Next, we briefly review the case law in this Commonwealth on the subject of “highways” and “trafficways” for purposes of prosecuting DUI. In most cases, when the defendant is caught along a roadway or thoroughfare obviously open to the public and maintained for the common good by either the state, county, or municipality, there are no questions that the DUI took place on a “highway.” Other, somewhat trickier questions have been raised over the years about DUI offenders caught in the act on purported “trafficways” on private property, such as restricted parking lots or parking garages.

Generally, if such areas are driven upon or traversed by more than a *de minimis* portion of the public, even if they are located on private property, then they are subject to the DUI statute. The Pennsylvania Superior Court has noted, “Pennsylvania law recognizes that roadways in private areas, or areas restricted to permit-holders, can still meet the ‘public use’ requirement for purposes of...the DUI statute.” Lees, 135 A.3d at 189; Commonwealth v. Zabierowsky, 730 A.2d 987, 989 (Pa. Super. 1999) (holding parking garage, even one requiring patrons to take a ticket and pay a toll to enter, was “trafficway” for purposes of DUI); Commonwealth v. Cameron, 668 A.2d 1163, 1164 (Pa. Super. 1995) (holding private parking lot adjacent to apartment qualified as a “trafficway” because there were a “sufficient number of public users”); Commonwealth v. Wilson, 553 A.2d 452, 454 (Pa. Super. 1989) (noting it would be an absurd and unreasonable result if private parking lots connected to public highways were considered “[DUI]-free zones”).

With this exploration of the statutory definitions and case law in mind, we now turn to Defendant’s chief argument: that she never operated her ATV upon a “highway” or “trafficway” as contemplated by the Vehicle Code. The Court, in light of the aforementioned authority, respectfully disagrees and rejects this argument.

First, when giving the benefit of all reasonable inferences to Officer Conti’s testimony, as the Court is required to do at this stage, the evidence shows that Defendant rode her ATV along the gravel pathway connecting the Lewis J. Papa Memorial Park with Roosevelt Avenue. As a roadway in a presumably *public* park connecting it with the public streets of the adjacent

neighborhood, this clearly qualifies as a “highway” under the last portions of the definition found in 75 Pa. C.S. §102, which, as noted, states “[a highway] includes a roadway open to the use of the public for vehicular travel on grounds of a...public...park.” Moreover, even if the park turned out to be private property, it is likely the gravel roadway would qualify as a “trafficway” due to the substantial public use of it as a transportation conduit between the recreation area and the West Pittsburg street system. Zabierowsky, supra; Cameron, supra; Wilson, supra. Accordingly, the Commonwealth has made a prima facie showing of this element. Lees, supra.

Now, we turn to the remaining elements of the DUI charges Defendant faces. As for the charge under Section 3802(a)(1), the Commonwealth provided evidence that Defendant drove, operated, or actually controlled a vehicle while intoxicated to a degree that prevented her from safely doing so. Specifically, the Commonwealth submitted evidence that Defendant had arrived at the scene on an ATV, which, as established above, is considered a vehicle for purposes of DUI. Rodgers, supra. Next, the Commonwealth provided circumstantial evidence that Defendant was the one who had driven that vehicle to the scene. Even though Officer Conti did not personally view Defendant operate the ATV, he noted that there were two ATVs in the street upon his arrival, one of which clearly belonged to the injured Ketter, and that no other parties stepped forward to admit that they had been responsible for getting the other one to the scene. Besides being the only non-emergency responder present at the scene, Defendant herself volunteered to Officer Conti that she had been the operator of the ATV prior to Ketter’s accident. Lastly, the Commonwealth provided evidence of Defendant’s inability to drive the vehicle safely due to alcohol intoxication. This was done through Officer Conti’s administration of field sobriety testing and his observations of Defendant’s demeanor and appearance at the incident scene, all of which indicated a significant degree of alcohol intoxication, let alone the results of the later blood test.

Accordingly, the Commonwealth has presented a prima facie case that Defendant drove, operated, and exercised physical control over a vehicle, her ATV, while under the influence of alcohol to an unsafe degree. Habeas corpus relief as to the charge for DUI under 75 Pa. C.S. §3802(a)(1) is denied.

For the charge under Section 3802(b), the evidence as to the vehicle itself and Defendant’s operation thereof is identical to that discussed under Section 3802(a)(1). The only difference is that the blood test takes on much increased importance in showing that her operation of the vehicle was unsafe due to her consumption of alcoholic beverages. Here, the blood test, which Defendant submitted to at UPMC Jameson Hospital within two hours, showed that she had a BAC of 0.153%, well above the legal limit and the statutory minimum of 0.10%. Accordingly, the Commonwealth has presented a prima facie case that Defendant committed DUI under 75 Pa.

C.S. §3802(b), and habeas corpus relief for this charge is denied.

Lastly, the Court considers the remaining charge under 75 Pa. C.S. §7721. The statute provides that, except for emergencies, bridge crossings, or crossing a street or highway at a 90-degree angle when safe to do so, ATVs may not be operated “on any street or highway which is not designated and posted as a snowmobile or an ATV road by the governmental agency having jurisdiction.” 75 Pa. C.S. §7721(a). There is no indication or evidence of record establishing that either Roosevelt Avenue or the connector road to the Lewis J. Papa Memorial Park have been or were at any time signed as an ATV road, whereas the evidence that was set forth established that Defendant operated her ATV on these two roadways absent such a designation. Accordingly, the Commonwealth has presented a prima facie case on this charge, and habeas corpus relief is denied as to the charge at 75 Pa. C.S. §7721(a).

The Court will now enter the following order.

ORDER OF COURT

AND NOW, this 30th day of June, 2020, this case having been before the Court for argument on Defendant’s Motion to Dismiss on June 8, 2020, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Defendant’s Motion to Dismiss is DENIED in its entirety for the reasons set forth in the attached opinion and habeas corpus relief is DENIED as to all charges.
2. This case shall be placed on the July 2020 trial list.
3. The Clerk of Courts of Lawrence County shall serve notice of this Order of Court and attached Opinion on all counsel of record.

BY THE COURT:

John W. Hodge, Judge

¹Although styled by the Defendant as a “Motion to Dismiss,” the Court considers the motion analogous to a motion for habeas corpus relief that is filed in any criminal case, because it seeks the same relief of the dismissal of the charges, and we will treat it accordingly.

Lawrence Law Journal

United States Postal Service Statement of Ownership, Management, and Circulation

1. Publication Title: Lawrence Law Journal
2. Publication Number: 306-600
3. Filing Date: 10/8/21
4. Issue Frequency: weekly
5. Number of Issues Published Annually: 52
6. Annual Subscription Price: \$30.00
7. Complete Mailing Address of Known Office of Publication: Lawrence Law Journal, Lawrence County Courthouse, 430 Court St., New Castle, PA 16101. Contact Person: JoEllen Thomas. Telephone: 724-656-2136
8. Complete Mailing Address of Headquarters or General Business Office of Publisher: Lawrence County Bar Association, Lawrence County Courthouse, 430 Court St., New Castle, PA 16101
9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor: Publisher: Lawrence County Bar Association, Lawrence County Courthouse, 430 Court St., New Castle, PA 16101. Editor: JoEllen Thomas, Lawrence County Bar Association, Lawrence County Courthouse, 430 Court St., New Castle, PA 16101. Managing Editor: JoEllen Thomas, Lawrence County Bar Association, Lawrence County Courthouse, 430 Court St., New Castle, PA 16101.
10. Owner: Lawrence County Bar Association, Lawrence County Courthouse, 430 Court St., New Castle, PA 16101.
11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent of More of Total Amount of Bonds, Mortgages, or Other Securities: None.
12. Tax Status: The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes: Has Not Changed During Preceding 12 Months.
13. Publication Title: Lawrence Law Journal.
14. Issue Date for Circulation Data Below: 10/12/21
15. Extent and Nature of Circulation

	Average No. of copies each issue during preceding 12 months	No. of copies of single issue published nearest to filing date
a. Total Number of Copies (net press run)	156	156
b. Paid Circulation		
(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541	40	40
(2) Mailed In-County Paid Subscriptions Stated on PS Form 3541	110	110
(3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS.	0	0
(4) Paid Distribution by Other Classes of Mail Through the USPS	0	0
c. Total Paid Distribution	150	150
d. Free or Nominal Rate Distribution		
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(2) Free or Nominal Rate In-County Copies included on PS Form 3541	0	0
(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS	0	0
(4) Free or Nominal Rate Distribution Outside the Mail	0	0
e. Total Free or Nominal Rate Distribution	0	0
f. Total Distribution	150	150
g. Copies Not Distributed	6	6
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17. Publication of Statement of Ownership

If publication is a general publication, publication of this statement is required. Will be printed in the 10/12/21 issue of this publication.

18. /s/ JoEllen Thomas Date: 10/8/21

