

# Lawrence Law Journal

USPS 306-600

---

VOL. 31

July 11, 2022

No. 289

---

COMMONWEALTH  
V.  
HEVERLEY

---

Owned and Published By  
**THE LAWRENCE COUNTY BAR ASSOCIATION**

Peter E. Horne, *President*

Phone 724-656-2136

LAW JOURNAL COMMITTEE

Richard E. Flannery

Carmen F. Lamancusa

James W. Manolis

Frank G. Verterano

James W. Manolis, *Opinion Editor*

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

---

## COUNTY OF LAWRENCE, PENNSYLVANIA CIVIL TRIAL LIST - GENERAL

New Wilmington Borough v. Wilmington Township Sewer Authority and Wilmington Township	11727 of 10 CA	Verterano, Sapienza, Keith, Perrotta
City Trailer Mfg Inc. v. Marinelli Realty Inc. et al	10439 of 13 CA	Lamancusa, A. Papa
Miriam Ortiz as Executrix v. Edison Manor Nursing & Rehab	11239 of 13 CA	Collis, Bass
Judy Trott & Cathy Weller et al v. Saber Healthcare Group et al	10640 of 13 CA	Collis, Bass
Robert Doss v. Saber Healthcare et al.	11108 of 13 CA	Collis, Bass
Rose Conti v. Saber Healthcare Group LLC	30010 of 14 CA	Collis, Bass
Lisa Marie Misel and James Edwin Kuhn Jr. v. Saber Healthcare Group, LLC et al	30002 of 15 CA	Collis, Bass, Young, Monaco
Leanne Miller v. Jerry Kennedy, Kennedy Home Repair, LLC	11225 of 17 CA	Saad, Bonner
Rosemary Mcllrot v. William N Gilleland Jr MD	30006 of 17 CA	Sullivan, Baum
Candy Braniff v. Danielle Hartje	11022 of 17 CA	Simon, Loch
Michelle Cialella v. Allstate Property & Casualty	10469 of 18 CA	Simon, Siegfried
John T Payne v. Susan L & Dana W Bobbert	10737 of 18 CA	Perrotta, Wainright
Vista South & Sheridan Estates v. Kathaleen Wimer	10406 of 19 CA	O'Leary, Anderson
Michael McMullen v. Castle Asphalt & Construction	10240 of 19 CA	S. Papa, P. Lynch
Housing Authority of Law Co v. Waddy J Moses Jr	11160 of 19 CA	Perrotta
Dan Cook et al v. T.C. Redi-Mix	10211 of 19 CA	Perrotta, Horne
Donna L. Smith v. Molly Kearns	10954 of 19 CA	Licata, Decker Jr.
Paul Morrone v. Route 65 Auto, Inc.	10534 of 19 CA	Sturm, Verterano, Lamancusa
Shawn Cox, Jr. v. Tyler Donnelly	10795 of 19 CA	Bowers, Summers
John R. Presnar et al. v. Darren Skurcenski et al	10655 of 20 CA	Manolis, Pro Se
Marcyne Flak v. Medical Arts Building	10729 of 20 CA	Natale, Eisenberg
Nancy Smith v. Donald McCormick, et al.	10252 of 20 CA	Perrotta, Puntureri
David J Ioanilli et al v. Nicholas J Carnovale	10473 of 20 CA	Puntureri, Fives
Sandy Moyer v. Jeremy Clemmer & Ashley Craft	10746 of 21 CA	Puntureri, Creighton

---

## FAMILY MOTION COURT

Family Motion Court will be held on emergency basis only the following dates. Please contact Lisa Hazen, Assistant Court Administrator.  
August 5, August 12, November 8 through 15.

---

## 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

#### **Pratt, Raymond**

Late of Ellwood City Borough, Lawrence County, Pennsylvania  
Executrix: Angela R. Horgan, 315 Camden Dr., Zelienople, PA 16063  
Attorney: Gene G. Dimeo, Dimeo Law Group PLLC, 120 Fourth St., Ellwood City, PA 16117

### SECOND PUBLICATION

#### **Downing, Irene G.**

Late of Lawrence County, Pennsylvania  
Executor: Jay Richard Downing, 3824 Frew Mill Rd., Lawrence County, Pennsylvania  
Attorney: Shawn A. Sensky, 809 Wilmington Ave., New Castle, PA 16101

#### **Fazzone, Nancy M.**

Late of Lawrence County, Pennsylvania  
Executrix: Beth Fazzone, 119 West Fairmont Ave., New Castle, PA 16105  
Attorney: Larry J. Puntureri, 2102 Wilmington Rd., New Castle, PA 16105

#### **Lalama, Pauline A.**

Late of New Castle, Lawrence County, Pennsylvania  
Administrator: Peter J. Lalama, 514 W. Madison Ave., New Castle, PA 16102  
Attorney: Louis M. Perrotta, Louis M. Perrotta, P.C., 229 S. Jefferson St., New Castle, PA 16101, (724) 658-9980

#### **Lamorella, Joseph Michael**

Late of Lawrence County, Pennsylvania  
Administrator: Brian F. Levine  
Attorney: Brian F. Levine, 22 E. Grant St., New Castle, PA 16101-2279

#### **Leight, Carl Eugene**

Late of Lawrence County, Pennsylvania  
Executor: Todd Leight  
Attorney: Brian F. Levine, 22 E. Grant St., New Castle, PA 16101-2279

#### **Liposky, Cecelia Judith**

Late of New Castle, Lawrence County, Pennsylvania  
Administratrix: Danielle McDevitt, 3123 Old

Highway 322, Cochranon, PA 16314  
Attorney: Louis M. Perrotta, Louis M. Perrotta, P.C., 229 S. Jefferson St., New Castle, PA 16101, (724) 658-9980

#### **Menges, John K.**

Late of Neshannock Township, Lawrence County, Pennsylvania  
Administratrix: Madison T. Johnson, 6118 S. Langley Ave., Chicago, IL 60637  
Attorney: Peter E. Horne, 713 Wilmington Ave., New Castle, PA 16101

#### **Mraz, Betty C.**

Late of New Castle, Lawrence County, Pennsylvania  
Executrix: Kimberly Stewart, 1739 Eastbrook, New Castle, PA 16101  
Attorney: Charles P. Sapienza, 713 Wilmington Ave., New Castle, PA 16101

#### **Schultz, John J.**

#### **a/k/a Schultz, John J., Sr.**

#### **a/k/a Schultz, John**

Late of New Castle, Lawrence County, Pennsylvania  
Executrix: Jennifer Stalnecker, 314 Norwood Ave., New Castle, PA 16105  
Attorney: Michael S. Butler, Heritage Elder Law & Estate Planning, LLC, 318 South Main St., Butler, PA 16001

### THIRD PUBLICATION

#### **Brenner, Sean W.**

Late of Lawrence County, Pennsylvania  
Executrix: Angela Natale, 1715 E. Poland Ave., New Castle, Lawrence County, Pennsylvania  
Attorney: Susan M. Papa, Papa & Papa, 439 Court St., New Castle, PA 16101

#### **Hancher, Muriel Eleanor**

Late of New Castle, Lawrence County, Pennsylvania  
Executrix: Darla J. Hancher, Esquire, 101 North Green Lane, Zelienople, PA 16063  
Attorney: Darla J. Hancher, 101 North Green Lane, Zelienople, PA 16063

#### **Killmer, Gretchen Ann**

#### **a/k/a Killmer, Gretchen F.**

Late of Wilmington Township, Lawrence County, Pennsylvania  
Executor: Kimberlee K. Christofferson  
Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

#### **Parish, Phoebe J.**

Late of Volant, Lawrence County,

Pennsylvania

Co-Executors: Robyn E. Guarnieri, 2878 Leesburg Volant Rd., Volant, PA 16156 and Jeffrey R. Parish, 4430 State Route 168, Volant, PA 16156

Attorney: none

## Pickel, Lauren

Late of New Castle, Lawrence County, Pennsylvania

Executor: Jason J. Pickel, 1093 Brandy Way, New Castle, PA 16105

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

---

## TRUST ADMINISTRATION

Notice is hereby given of the administration of the Olive Elaine Kos Revocable Living Trust. Olive Elaine Kos, Grantor of the trust, of Shenango Township, Lawrence County, Pennsylvania, died on May 4, 2022. All persons having claims against Olive Elaine Kos are requested to make known the same to the trustee or attorney named below. All persons indebted to Olive Elaine Kos are requested to make payment without delay to the trustee or attorney named below.

Marsha C. Badger, Trustee  
c/o Amy D. Rees, Esquire  
Sechler Law Firm LLC  
20206 Route 19, Suite 300  
Cranberry Twp, PA 16066

Amy D. Rees, Esquire  
Sechler Law Firm LLC  
20206 Route 19, Suite 300  
Cranberry Twp, PA 16066

L.C.L.J. - June 27, July 4 and 11, 2022

---

## CHANGE OF NAME NOTICE

No. 70086 of 2022, M.D.

NOTICE IS HEREBY GIVEN, that the Petition has been filed in the Court of Common Pleas of Lawrence County, Pennsylvania, seeking to change the name of **Aiden M. Kapchus** to **Aiden M. Bara Pearce**. A hearing on the Petition will be held on August 17, 2022 at 9:30 a.m. in Courtroom No. 4 of the Lawrence County Courthouse, 430 Court St., New Castle, PA, at which time any persons interested may attend and show cause, if any, why the prayer of the Petition should not be granted.

L.C.L.J. - July 11, 2022

## NOTICE OF CERTIFICATE OF ORGANIZED DOMESTIC LIMITED LIABILITY COMPANY

Notice is hereby given that on June 14, 2022, a Certificate of Organization of a Domestic Limited Liability Company was filed with the Pennsylvania Department of State for **ALCO Group, LLC**, which Domestic Limited Liability Company had been duly organized under the provisions for the PA Limited Liability Company Law of 1994 as amended. The primary membership interest in said business at time of filing was Regina Pcsolyar, 152 Oakhaven Drive, Freedom, PA 15042.

Carmen F. Lamancusa, Esquire  
414 N. Jefferson Street  
New Castle, PA 16101

L.C.L.J. - July 11, 2022

**Commonwealth v. Heverley****Prima Facie Case – Criminal Attempt – 18 Pa.C.S. § 901 – Robbery of a Motor Vehicle – 18 Pa.C.S. § 3702(a) – Possession and Control – Absence of Driving from Scene – Renunciation**

The forcible exercise of possession and control of a motor vehicle for a limited time constitutes attempted robbery of a motor vehicle, despite the failure of the actor to drive from the scene.

Renunciation of criminal activities is a question based upon a defendant's motivation and intent as demonstrated by his actions during an incident and a question of fact to be decided by a jury.

Petition for Writ of Habeas Corpus – Court of Common Pleas of Lawrence County, Pennsylvania, No. 255 of 2020, Criminal

*Emily R. Sanchez-Parodi*, Assistant District Attorney for the Commonwealth

*Lawrence J. Keith*, Public Defender for the Defendant

**OPINION**

Motto, P.J.

July 14, 2021

Before the Court for disposition is the Petition for Writ of Habeas Corpus filed on behalf of the defendant, Shawn M. Heverley, which contends the Commonwealth has failed to present sufficient evidence to establish a prima facie case concerning the charge of Criminal Attempt to Commit Robbery of a Motor Vehicle.

On April 14, 2020, F. Donald Duncan, an employee of Colonial Lanes bowling alley located at 3210 Wilmington Road, New Castle, Lawrence County, Pennsylvania, was trimming hedges at a bank directly in front of the bowling alley as part of his employment. Upon completing his hedge trimming, Mr. Duncan put his equipment in the bed of his truck when the driver's side door opened and closed. Mr. Duncan then opened the door and ordered the occupant, identified as Defendant, to exit the vehicle. Defendant responded by saying, "I got to do this, I got to do this." Mr. Duncan again urged Defendant to exit the vehicle. He attempted to retrieve his keys<sup>1</sup> and pull Defendant from the vehicle, but Defendant closed the door. Mr. Duncan opened the door again and they began to jostle with each other. At some point during this incident, Defendant obtained a key ring, which Mr. Duncan had in his possession. As a result of the altercation, Mr. Duncan lost his balance, stumbled backward and fell onto the concrete. Mr. Duncan struck his head and was rendered unconscious. As Mr. Duncan was lying on the concrete, Defendant threw keys in the direction of Mr. Duncan and apologized for his actions. Defendant eventually walked

away from the vehicle and fled the parking lot area of Colonial Lanes.

Officer Matt Seamans of the Neshannock Township Police Department responded to Colonial Lanes concerning the aforementioned incident. Upon his arrival, he noticed Mr. Duncan had two cuts on the back of his head and he remained “a little bit unstable on his feet”. Officer Seamans then received information from the New Castle Police Department indicating they were searching for Defendant regarding another incident. Shortly thereafter, an individual reported observing a male matching Defendant’s description hiding in weeds alongside a building in the vicinity of Colonial Lanes. Officer Seamans ordered Defendant to walk away from the weeds and he was placed under arrest.

On May 18, 2020, the Commonwealth filed an Information charging Defendant with Criminal Attempt to Commit Robbery of a Motor Vehicle<sup>2</sup> and Simple Assault<sup>3</sup>. Defendant filed a Petition for Writ of Habeas Corpus on April 19, 2021, which asserts the Commonwealth lacks sufficient evidence to establish a prima facie case for the charge of Criminal Attempt to Commit Robbery of a Motor Vehicle.

Where a criminal defendant seeks to challenge the sufficiency of the evidence presented at his preliminary hearing, he may do so by filing a Writ of Habeas Corpus. Commonwealth v. McBride, 528 Pa. 153, 595 A.2d 589 (1991); Commonwealth v. Carmody, 799 A.2d 143 (Pa. Super. 2002). The purpose of a preliminary hearing is to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish a crime was committed and the probability the defendant could be connected with the crime. Commonwealth v. Fox, 422 Pa. Super. 224, 234, 619 A.2d 327, 332 (1993), appeal denied, 535 Pa. 659, 634 A.2d 222 (1993) (quoting Commonwealth v. Tyler, 402 Pa. Super. 429, 433, 587 A.2d 326, 328 (1991), appeal denied, 533 Pa. 39, 617 A.2d 1263 (1992)).

In evaluating an accused’s entitlement to pre-trial habeas corpus relief, a trial court must determine when there is sufficient evidence to make out a prima facie case that the defendant committed the crime with which he or she is charged. Commonwealth v. Hock, 556 Pa. 409, 728 A.2d 943 (1999). In a pre-trial habeas corpus proceeding, as in a preliminary hearing, the Commonwealth has the burden of establishing a prima facie case, offering some proof to establish each material element of the offense as charged. Commonwealth v. Owen, 397 Pa. Super. 507, 580 A.2d 412 (1990). This does not mean that the prosecution must prove the accused guilty beyond a reasonable doubt, but rather, the prosecution must establish “sufficient probable cause” that the accused has committed the offense. Commonwealth v. Prosdocimo, 331 Pa. Super. 51, 479 A.2d 1073 (1984). The standard in determining whether a defendant is properly held for Court is: (a) that the record reveals a prima facie showing that a crime

or crimes have been committed; and (b) that the defendant was in some way legally responsible. Liciaga v. Court of Common Pleas of Lehigh County, 523 Pa. 258, 566 A.2d 246 (1989).

The Commonwealth establishes a prima facie case when it produces evidence that, if accepted as true, would warrant the trial court to allow the case to go to a jury. Commonwealth v. Marti, 779 A.2d 1177 (Pa. Super. 2001). The Commonwealth need not prove the elements of the crime beyond a reasonable doubt. Id. The prima facie case merely requires evidence of the existence of each element of the crime charged. Id. This is not the junction of the proceeding to make credibility and weight determinations. Commonwealth v. Williams, 911 A.2d 548, 551 (Pa. Super. 2006) (citing Commonwealth v. Wojdak, 502 Pa. 359, 466 A.2d 991, 997 (1983)). As a result of the Commonwealth bearing the minor burden of establishing a prima facie case, a witness's credibility is not an issue at a preliminary hearing. Fox, supra. The Court must "view the evidence in the light most favorable to the Commonwealth" and "consider the reasonable inferences based on that evidence which could support a guilty verdict." Williams, supra. Although a habeas corpus hearing is similar to a preliminary hearing, in a habeas corpus proceeding the Commonwealth has the opportunity to present additional evidence to establish that the defendant has committed the elements of the offense charged. Commonwealth v. Karlson, 449 Pa. Super. 378, 674 A.2d 249 (1996).

Defendant is charged with Criminal Attempt, which is defined by 18 Pa.C.S.A. § 901. That statute states:

(a) Definition of attempt.—A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.

(b) Impossibility.—It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the crime attempted.

(c) Renunciation.—

(1) In any prosecution for an attempt to commit a crime, it is a defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if the mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

(2) A renunciation is not "voluntary and complete" within the meaning of this subsection if it is motivated in whole or part by:

- (i) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or
- (ii) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

The test to determine what constitutes a substantial step broadens the scope of attempt liability by concentrating on the acts of the defendant and not the acts remaining to be completed before the actual commission of the crime. Commonwealth v. Gilliam, 273 Pa. Super. 586, 589-590, 417 A.2d 1203, 1205 (1980) (citing Commonwealth v. Howard, 248 Pa. Super. 246, 375 A.2d 79 (1977)).

Defendant argues the Commonwealth has failed to present a prima facie case concerning the charge of Criminal Attempt to Commit Robbery of a Motor Vehicle as there is no evidence Defendant took the vehicle from Mr. Duncan's possession. Robbery of a Motor Vehicle is defined as "A person commits a felony of the first degree if he steals or takes a motor vehicle from another person in the presence of that person or any other person in lawful possession of the motor vehicle." 18 Pa.C.S.A. § 3702(a). The Commonwealth must establish the following elements: "(1) the stealing, taking or exercise of unlawful control over a motor vehicle; (2) from another person in the presence of that person or any other person in lawful possession of the vehicle; and (3) the taking must be accomplished by the use of force, intimidation or the inducement of fear in the victim." Commonwealth v. George, 705 A.2d 916, 920 (Pa. Super. 1998). It is not necessary for the defendant to forcibly eject the owner from the driver's seat in order for the crime to occur as the statute merely requires the defendant to exercise unlawful control over the operation of the vehicle by force or intimidation. Id., 705 A.2d at 920-921.

While the Court was unable to locate any appellate case law specifically addressing the current situation, guidance can be found in the Superior Court's analysis in Commonwealth v. Wade, 33 A.3d 108, 117 (Pa. Super. 2011), which stated:

[I]magine for example that Appellant was unable to get the car started after threatening the victim and exited the vehicle ten to fifteen minutes later, leaving the car parked. Would the Commonwealth not have charged Appellant with robbery of a motor vehicle? Perhaps not, but we believe that it would have been within its authority to charge Appellant based on those facts. This is because Appellant took physical control over the vehicle in the presence of the victim. While in this hypothetical he did not drive the vehicle away, he nonetheless maintained



illegal possession of the car from its rightful possessor in that person's presence. The fact that the car had not yet been removed does not indicate that a taking had not occurred.

In the current case, the Commonwealth presented testimony and evidence to indicate Defendant entered Mr. Duncan's pickup truck parked in the Colonial Lanes parking lot while Mr. Duncan was trimming hedges at a nearby bank. Mr. Duncan returned to the vehicle to place his equipment in the bed of his vehicle when Defendant opened the door then closed it. Mr. Duncan attempted to remove Defendant from the vehicle by opening the door and grabbing him on at least two occasions. Defendant was struggling with Mr. Duncan to remain inside and to prevent Mr. Duncan from gaining control of the vehicle. During their altercation, Mr. Duncan was forced backwards and lost his balance. As a result, Mr. Duncan fell to the concrete, struck his head and lost consciousness.

The evidence presented indicates Defendant used force to take possession of the subject vehicle as he struggled with Mr. Duncan when Mr. Duncan attempted to remove him from the vehicle. He was able to fend off Mr. Duncan causing him to lose his balance and fall to the ground. Defendant remained inside of the vehicle and continued to exercise control over the same while Mr. Duncan was unconscious on the ground. The Court acknowledges Defendant only remained in the vehicle for a limited period of time before exiting and fleeing the scene on foot. However, that has no bearing on whether the Commonwealth has established a prima facie case for the charge of Criminal Attempt to Commit Robbery of a Motor Vehicle. As the Wade Court<sup>4</sup> explained in its hypothetical, Defendant's failure to drive from the scene in the vehicle does not preclude the Commonwealth from charging him with Criminal Attempt to Commit Robbery of a Motor Vehicle as he exercised unlawful possession of the vehicle and he struggled with Mr. Duncan to maintain that possession.

Defendant further contends his actions constituted a renunciation of his criminal activities. However, renunciation is an issue to be decided at trial as it involves questions of fact, which are likely to hinge upon the credibility of witnesses. Commonwealth v. Higley, 70 Pa. D. & C. 2d 142, 150 (Com. Pl. Dauphin 1975) (quoting People v. Nassar, 301 N.Y. Supp. 2d 671, 677 (1969)). It is for a jury to determine Defendant's motivation and intent as demonstrated by his actions during this incident. Id. It would be improper for the Court to render a decision on the issue of renunciation as it produces several questions of fact to be decided a jury at trial.

Based upon the foregoing, Defendant's Petition for Writ of Habeas Corpus is denied in its entirety.

<sup>1</sup> Mr. Duncan testified that keys for his pickup truck were located in the sun visor of the vehicle when Defendant was inside.

---

<sup>2</sup> 18 Pa.C.S.A. § 901(a).

<sup>3</sup> 18 Pa.C.S.A. § 2701(a)(1).

<sup>4</sup> Defendant correctly contends the Wade case specifically addresses the issue of merger relating to the charges of Robbery and Robbery of a Motor Vehicle. As such, the Court recognizes the cited portion of the Wade Court's analysis constitutes dicta; however, it is being cited for its persuasive value as the Superior Court was providing insight as to how it would rule based upon similar facts as presented in the current case.

### ORDER OF COURT

AND NOW, this 14th day of July, 2021, in accordance with the accompanying Opinion of even date herewith, it is ORDERED, ADJUDGED, and DECREED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

This case is stricken from the July, 2021 Trial List and rescheduled for the August, 2021 Trial Term.

The Clerk of Courts shall serve a copy of this Order of Court and attached Opinion to counsel of record by way of appropriate service.

BY THE COURT:  
Dominick Motto  
President Judge



