

Lawrence Law Journal

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VOL. 31

February 6, 2023

No. 319

Commonwealth
v.
Forkey

Owned and Published By

THE LAWRENCE COUNTY BAR ASSOCIATION

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Lawrence Law Journal

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MOTION COURT

Civil, Criminal and Family Motion Court will be held on an emergency basis only the following dates:

February 22, 23 and 24, 2023

Please contact Court Administration.

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

Hoye, Anna K.

Late of Lawrence County, Pennsylvania
Executrix: Amy H. Warner
Attorney: Phillip L. Clark, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

Marzula, Wanda W.

Late of the City of New Castle, Lawrence County, Pennsylvania
Executor: Samuel A. Marzula, Jr., 190 Ridgeview Drive, Wexford, PA 15090
Attorney: William J. Manolis, Verterano & Manolis, 2622 Wilmington Rd., New Castle, PA 16105-1530

Scocchera, Jodi L.

Late of New Castle, Lawrence County, Pennsylvania
Executor: Eric Scocchera, 783 Ridge Rd., Wethersfield, CT 06109
Attorney: Louis Pomerico, 2910 Wilmington Rd., New Castle, PA 16105, 724-658-7759

SECOND PUBLICATION

Gillespie, James F.

Late of Perry Township, Lawrence County, Pennsylvania
Executrix: Jayne S. Bates, 117 Heinz Camp Rd., Portersville, PA 16051
Attorney: Gene G. Dimeo, Dimeo Law Group PLLC, 120 Fourth St., Ellwood City, PA 16117, 724-752-9955

Jones, Shirley Mae

Late of New Castle, Lawrence County, Pennsylvania
Executrix: Paula Rae Thompson
Attorney: Joseph J. Oliva, 414 N. Jefferson St., New Castle, PA 16101

Kaufman, Dorothy Jean a/k/a Kaufman, Dorothy J.

Late of Wilmington Township, Lawrence County, Pennsylvania
Executor: Earl Kaufman
Attorney: Clark & Clark Law, P.C., 201 N. Market St., New Wilmington, PA 16142

Martin, Sally a/k/a Martin, Sally L.

Late of North Beaver Township, Lawrence County, Pennsylvania
Executor: Kathleen Lang and Ronald Martin
Attorney: Clark & Clark Law, P.C., 201 N. Market St., New Wilmington, PA 16142

Rouse Dona F. a/k/a Rouse, Dona

Late of New Wilmington Borough, Lawrence County, Pennsylvania
Executors: Jeffrey C. Webster and Lynell D. Piccirillo
Attorney: Clark & Clark Law, P.C., 201 N. Market St., New Wilmington, PA 16142

Thomas, Linda J.

Late of New Castle, Lawrence County, Pennsylvania
Executor: Ian Rosthauser
Attorney: Amy D. Rees, Sechler Law Firm LLC, 20206 Route 19, Suite 300, Cranberry Twp., PA 16066

Velie, Harold Townsend, Jr a/k/a Velie, Harold T.

Late of New Castle, Lawrence County, Pennsylvania
Executor: Scott T. Velie
Attorney: Amy D. Rees, Sechler Law Firm LLC, 20206 Route 19, Suite 300, Cranberry Twp., PA 16066

Wimer, Claudia J. a/k/a Wimer, Claudia Jean

Late of Lawrence County, Pennsylvania
Executrix: Rae Lynn Smith Misco
Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

THIRD PUBLICATION

Kennedy, Sandra M.

Late of Union Township, Lawrence County, Pennsylvania
Executor: Joseph P. Kennedy
Attorney: Deborah A. Shaw, 1906 Wilmington Rd., New Castle, PA 16105, 724-856-9894

Maietta, Peter J.

Late of New Castle, Lawrence County, Pennsylvania
Executrix: Mary Jo Capone, 308 Mt. Vernon Dr., Ellwood City, PA 16117
Attorney: Charles P. Sapienza, 713 Wilmington Ave., New Castle, PA 16101

Mayer, William M., Jr. a/k/a Mayer, William Martin, Jr.

Late of Lawrence County, Pennsylvania
Executor: Robert Carl Johnson
Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

Miksza, Daniel V.

Late of New Castle, Lawrence County, Pennsylvania

Executrix: Leann A. Knox, New Castle, Lawrence County, Pennsylvania

Attorney: Ryan C. Long, Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

Podner, Jack Earl

Late of Wilmington Township, Lawrence County, Pennsylvania

Executor: Paul M. Rea and Erna Craig-Rea
Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

Pogozelec, David L.

Late of Wayne Township, Lawrence County, Pennsylvania

Administrator: Ray Kaminski, 602 Market St., Zelienople, PA 16063

Attorney: Gregory S. Fox, Fox & Fox, P.C., 323 Sixth St. Ellwood City, PA 16117

Tetmire, Connie Sue

Late of Lawrence County, Pennsylvania

Executrix: Autumn Marie Tetmire

Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

LEGAL NOTICE

Notice is given that **DeSanzo Properties, LLC**, has filed an application for a fictitious name to conduct business at Johnny's Pizza Shop, at 609 4th Street, Ellwood City, PA 16117.

Gregory S. Fox

Fox & Fox, P.C.

323 Sixth St.

Ellwood City, PA 16117

L.C.L.J. - February 6, 2023

NOTICE OF CERTIFICATE OF ORGANIZED DOMESTIC LIMITED LIABILITY COMPANY

Notice is hereby given that on November 23, 2022, a Certificate of Organization of a Domestic Limited Liability Company was filed with the Pennsylvania Department of State for **TCF Woodworks LLC**, which Domestic Limited Liability Company has been duly organized under the provisions of the PA Limited Liability Company Law of 1994, Dec. 7, P.L. 703, No. 106, §4, as amended. It is being organized as of November 23, 2022.

Shawn A. Sensky, Esquire
809 Wilmington Ave.

New Castle, PA 16101

L.C.L.J. - February 6, 2023

SHERIFF SALES

Wednesday, March 8, 2023 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. 2022-10721; Newrez LLC d/b/a Shellpoint Mortgage Servicing., Plaintiff vs. Taylor Boak-Burgess and Courteney Metts, Defendants. All those certain lots or pieces of ground situate in the Mahoning Township, Lawrence County, Pennsylvania. Property address: 275 Rich Avenue, Hillsville, PA 16132. Parcel ID: #24-007400 (Mahoning Township). Judgment amount: \$53,959.21 plus interest, costs and attorney fees. Attorney: RAS Citron

Sale No. 2

No. 2022-10788; Reliance First Capital, LLC, Plaintiff vs. Frances A. Huff, Defendant. Property address: 3453 Old Pittsburgh Rd, New Castle, PA 16101. Parcel ID: #31-170600 (Shenango Township); Improvements thereon: Residential Dwelling. Judgment amount: \$136,809.31 plus interest, costs and attorney fees. Attorney: Brock & Scott, PLLC

Sale No. 3

No. 2022-10699; Towd Point Mortgage Trust 2019-1, U.S. Bank National Association, as Indenture Trustee, Plaintiff vs. Robert J. Tanner, Defendant. Property address: 910 Vogan Street, New Castle, PA 16101. Parcel ID: #04-265300 (4th Ward New Castle); Improvements consist of a residential dwelling. Judgment amount: \$38,902.66 plus interest, costs and attorney fees. Attorney: KML Law Group P.C.

Sale No. 4

No. 2022-10402; Freedom Mortgage Corporation, Plaintiff vs. Darryl Yanssens, Defendant. Property address: 800 Todd Avenue, Ellwood City, PA 16117. Parcel ID: #14-067500 (4th Ward Ellwood City Borough); Improvements thereon: Residential Dwelling. Judgment amount: \$164,074.07 plus interest, costs and attorney fees. Attorney: Brock & Scott, PLLC

Sale No. 5

No. 2022-10750; HSBC Bank USA, National Association as Trustee for Renaissance Home Equity Loan Asset-Backed Certificates, Series 2007-3, Plaintiff vs. Larry E. Wisor; Deborah L. Wisor, Defendants. Property

address: 2947 West State Street, New Castle, PA 16101. Parcel ID: #34-352600 (Union Township); Improvements thereon: Residential Dwelling. Judgment amount: \$99,867.93 plus interest, costs and attorney fees. Attorney: Brock & Scott, PLLC

Sale No. 6

No. 10429-2022; Flagstar Bank, FSB, Plaintiff vs. Justin A. Joseph, Defendant. All that certain lot or piece of ground situate in New Castle, County of Lawrence, and Commonwealth of Pennsylvania. Improvement: a Residential Dwelling. Property Address: 1215 Huron Avenue, New Castle, Pennsylvania 16101. Parcel ID: #04-110700 (4th New Castle). Judgment amount: \$36,179.46 plus interest, costs and attorney fees. Attorney: Powers Kim, LLC

Sale No. 7

No. 2020-10236; PNC Bank, National Association, Successor by Merger to National City Bank, Plaintiff vs. Kimberly J. Dengler as Executrix of the Estate of Marilyn J. Fye, Deceased, Defendant. Property address: 827 East Pearl Street, New Castle, PA 16101. Parcel ID: #04-173200 (4th Ward New Castle); Improvements consist of a residential dwelling. Judgment amount: \$29,006.49 plus interest, costs and attorney fees. Attorney: KML Law Group P.C.

Sale No. 8

No. 2022-10821; Pennsylvania Housing Finance Agency, Plaintiff vs. Megan Brown and Charles R. Brown, III, Defendants. Lots Nos. 19 and 20, Lawrence County Plot Book Volume 11, page 56. Property address: 115 South Lee Avenue, New Castle, PA 16101. Parcel ID: #34-241200 (Union Township); Improvements thereon: a residential dwelling house as identified above. Judgment amount: \$78,248.80 plus interest, costs and attorney fees. Attorney: Purcell, Krug & Haller

Sale No. 9

No. 10774-2022; The Huntington National Bank, Plaintiff vs. Timothy R. Widdowfield, Jr., Defendant. All that certain piece or parcel of land situate in the Borough of New Beaver, County of Lawrence and Commonwealth of Pennsylvania, bounded and described as follow to wit: Being the same property conveyed to Timothy R. Widdowfield, Jr., single, who acquired title, as tenants by the entirety, by virtue of a deed from Faith A. Mcanlis, Administratrix of the Estate of Howard L. Widdowfield, deceased, dated May 10, 2006, recorded May 11, 2006, at

Document Number 2006-005099, Office of the Recorder of Deeds, Lawrence County, Pennsylvania. Property Address: 136 Widdowfield Lane AKA Widow Field Lane, New Galilee, PA 16141. Parcel ID: #17-076600 (New Beaver Borough). Judgment amount: \$176,292.69 plus interest, costs and attorney fees. Attorney: Manley Deas Kochalski LLC

Sale No. 10

No. 10778-2022; Towd Point Mortgage Trust 2015-6, U.S. Bank National Association as Indenture Trustee, Plaintiff vs. Tracy L. lerino, Individually and as Administrator of the Estate of Suzanne lerino a/k/a Suzanne M. lerino, Deceased, Defendant. All that certain piece, parcel or tract of land situate in the Fifth Ward of the Borough of Ellwood City, Lawrence County, Pennsylvania, known and designated as Lot no. 41 in the Forest Hills Plan of Lots as the same is recorded on the Recorder's Office of Lawrence County in Plot Book Volume 10, page 39. Under and subject to all reservations, restrictions, easements, covenants, conditions, building lines, rights of ways, oil and gas leases, if any, as shown on prior instruments of record or on the recorded plan. Being the same premises which Suzanne lerino, by Deed dated November 3, 1997 and recorded November 13, 1997, in the Lawrence County Recorder of Deeds Office at Deed Book Volume 1389 at Page 045, as Instrument No. 199712164, granted and conveyed unto Suzanne lerino and Tracy L. lerino. The said Suzanne lerino departed this life on or about December 28, 2020. Decedent's Estate was raised and Letters of Testamentary were issued to heir Tracy L. lerino at File No. 37-21-0264 by the Lawrence County Register of Wills, appointing Tracy L. lerino as administrator of the Estate and as representative of the heirs of Suzanne lerino. Property address: 212 Evans Drive, Ellwood City, PA 16117. Parcel ID: #15-034700 (5th Ward Ellwood City Borough); Judgment amount: \$74,999.19 plus interest, costs and attorney fees. Attorney: Hladik, Onorato & Federman, LLP

Sale No.11

No. 10688-2022; First National Bank of Pennsylvania, Plaintiff vs. Wendy Carey, Defendant. All the right, title, interest and claim of Wendy Carey of, in and to the following described property: 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. Deed Document No. 2019-000341. Property Address: 339 Laurel Boulevard, New Castle, Pennsylvania 16101. Parcel ID: #02-035100 (2nd New Castle). Judgment amount: \$34,733.67 plus interest, costs and attorney fees. Attorney: Grenen & Birsic PC

Sale No. 12

No. 2022-10749; U.S. Bank National Association, not in its individual capacity but solely as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-2, Plaintiff vs. Shelly Beatty-Davis aka Shelly Betty aka Shelly Davis, Defendant. Property address: 2402 State Rt 351, Enon Valley, PA 16120. Parcel ID: #23-003301 (Little Beaver Township); Improvements thereon: Residential Dwelling. Judgment amount: \$127,138.50 plus interest, costs and attorney fees. Attorney: Brock & Scott, PLLC

Sale No. 13

No. 2021-10841; The Huntington National Bank, Plaintiff vs. Aaron J. Bame, AKA Aaron Bame (deceased), Defendant. All that certain piece or parcel of land situate in the City of New Castle, County of Lawrence and Commonwealth of Pennsylvania, bounded and described as follow to wit: Being the same property conveyed to Aaron J. Bame, unmarried, who acquired title, by virtue of a deed from Julia J. Salamon, widow by her Agent, Eva Mazur, dated Mach 12, 2012, recorded March 19, 2012, at document Number 2012-004161, Office of the Recorder of Deeds, Lawrence County, Pennsylvania. Property Address: 1005 Warren Avenue, New Castle, PA 16101. Parcel ID: #04-227200 (New Castle 4th Ward). Judgment amount: \$23,008.91 plus interest, costs and attorney fees. Attorney: Manley Deas Kochalski LLC

Sale No.14

No. 10914-2022; U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust c/o U.S. Bank Trust National Association, Plaintiff vs. James F. Malinchak and LuAnn Malinchak, Defendants. Improvements thereon consist of a residential dwelling. Property address: 811 One Half Franklin Avenue, New Castle, PA 16101. Parcel ID: #04-144300 (4th Ward New Castle); Judgment amount: \$32,140.85 plus interest, costs and attorney fees. Attorney: Hladik, Onorato & Federman, LLP

Sale No. 15

No. 10433-2022; Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust as Trustee for PNPMS Trust III, Plaintiff vs. Patricia S. Quigley and William C. Quigley, Defendants. All that certain piece, parcel or tract of land situate, lying and being in the Seventh Ward of the City of New Castle, County of Lawrence, Commonwealth of Pennsylvania, known and designated as City Lot no. 259 on Section 92 of the Official Survey of the City of New Castle, and also known as Lot No. 68 in Raney's Fourth Addition to Mahoningtown, as recorded in the Recorder's Office of Lawrence County in Plot Book Volume 1, page 31, and being more particularly bounded and described as follows: Bounded on the Northeast by Clayton Street; ON the Southeast by Bolt Street; On the Southwest by a 15 foot alley; and ON the Northwest by land now or formerly Dominico DiBacco; having a frontage of 45 feet on the said Clayton Street and extending back of even width 125 feet to said alley. Being the same premises that James A. Krause, a/k/a James Arthur Krause, single individual by deed dated 2/28/2006 and recorded 3/1/2006 in the office of the Recorder of Deeds in the County of Lawrence, Commonwealth of Pennsylvania as Instrument No. 2006-002107, granted and conveyed to William C. Quigley and Patricia S. Quigley, his wife. Property address: 220 East Clayton Street, New Castle, PA 16102. Parcel ID: #07-055700 (7th Ward New Castle); Judgment amount: \$10,356.82 plus interest, costs and attorney fees. Attorney: Richard M. Squire & Associates, LLC

Sworn to and subscribed before me
this 30th day of January 2023.
Perry L. Quahliero, Sheriff

L.C.L.J.: February 6, 13 & 20, 2023

Commonwealth v. Forkey**Motion to Suppress – “Welfare Check” – Curtilage of Residence –
Emergency Aid Exception – Fourth Amendment
Warrant Requirement**

A police officer may not enter the curtilage of a residence to question a defendant about a suspected crime without a warrant where the premises are posted with a visible “no trespassing” sign, the defendant immediately directs the officer to leave the premises, and no need for emergency aid is apparent or the focus of the encounter.

Motion to Suppress – Court of Common Pleas of Lawrence County, Pennsylvania, No. 791 of 2021, C.R.

Kylie B. Shevetz, Assistant District Attorney for the Commonwealth

Sean Logue, attorney for Defendant

OPINION

MOTTO, P.J.

November 8, 2022

Before the Court for disposition is the Motion to Suppress filed on behalf of the defendant, Ronald Eugene Forkey, which asserts the police officer unlawfully entered Defendant’s real property in violation of the United States and Pennsylvania Constitutions and all evidence obtained from that unlawful entry should be suppressed.

At 8:10 p.m. on August 13, 2021, Officer Devin Murphey of the Mahoning Township Police Department was dispatched to a motorcycle accident. He was also advised by the Lawrence Emergency Operations Center (hereinafter “LEOC”) the driver of the motorcycle was driven from the scene in a silver truck. Upon his arrival at the scene, Officer Murphey observed a Harley Davidson motorcycle wrecked and lying on its side between two signs on the median. He then researched the registration plate for the motorcycle and learned it was owned by Defendant who resided approximately two miles away at 108 Ambrosia Road, Mahoning Township, Lawrence County, Pennsylvania. Officer Murphey was informed Defendant may have sustained injuries as a result of the motorcycle accident.

Officer Murphey proceeded to Defendant’s residence to conduct a “welfare check”. Upon his arrival, he observed Defendant speaking with a female, later identified as Julia Forkey, and they were located between the house and garage. As soon as Officer Murphey exited his vehicle, Defendant ordered him to leave the premises. However, Officer Murphey did not comply with that request and asked Defendant if he required medical attention while he began to traverse the driveway toward Defendant. Defendant refused the need for medical attention despite Officer Murphey’s observations Defendant had a laceration on his head and injuries to his hand. Officer Murphey walked to where Defendant was located and asked

Defendant what occurred that night. When Defendant responded, Officer Murphey could smell the odor of alcohol emanating from his breathe. Defendant stated he was returning from getting dinner where he had a “couple beers” and he lost control of his motorcycle resulting in the accident.

At that time, Officer Murphey asked Defendant to perform field sobriety tests due to his observations Defendant had slurred speech, bloodshot, glassy eyes and was combative during their interaction. Defendant agreed to perform the finger dexterity test, which was explained to him by Officer Murphey. According to Officer Murphey, Defendant performed poorly on that test as he did not properly sequence the numbers, lacked conversion between each number and had to think before counting the numbers on his fingers. Defendant refused to perform any other field sobriety tests and he was placed under arrest for driving under the influence of alcohol. Officer Murphey transported Defendant to UPMC Jameson where he read the DL-26 form to Defendant and Defendant refused to submit to a blood alcohol test.

On January 4, 2022, the Commonwealth filed an Information charging Defendant with Driving Under the Influence: General Impairment¹, Accidents Involving Damage to Unattended Vehicle or Property² and Immediate Notice of Accident to Police Department³. Defendant then filed his Motion to Suppress on June 3, 2022, which contends Officer Murphey unlawfully entered Defendant’s real property in violation of the United States and Pennsylvania Constitutions and all evidence obtained from that unlawful entry should be suppressed.

A hearing on the Motion to Suppress was held on July 22, 2022, in which the Commonwealth presented the testimony of Officer Murphey and Defendant presented the testimony of Ms. Forkey who is Defendant’s ex-wife. Ms. Forkey reiterated she was present with Defendant when Officer Murphey arrived at 108 Ambrosia Road. Ms. Forkey testified Defendant immediately instructed the police officer to leave the premises, but Officer Murphey did not comply with that request. Moreover, Ms. Forkey indicated Defendant sustained injuries as a result of the accident which included bleeding from his head and he was having difficulty walking due to an injury to his hip. When he arrived at the residence, Defendant immediately went to the garage and retrieved a beer. Ms. Forkey further explained Defendant maintained a “No Trespassing” sign on a tree visible when traversing the driveway. According to Ms. Forkey, Defendant asked Officer Murphey to leave the premises on two occasions.

The Court must examine whether Officer Murphey unlawfully entered Defendant’s real property in violation of the United States and Pennsylvania Constitutions.

The Fourth Amendment’s protections against unreasonable searches extends to the curtilage of one’s own home as it is a location where the

occupants would have a reasonable expectation of privacy that society is prepared to accept. Commonwealth v. Rood, 686 A.2d 442, 447 (Pa. Cmwlth. 1996). “Curtilage is defined as the land or structures immediately adjacent to a dwelling or within close proximity thereto, an area which is typically enclosed in some manner by a fence, shrubs, or the like.” Id. In general, warrantless searches of a private home and the curtilage are prohibited by the Fourth Amendment; however, a police officer may enter onto the curtilage in the course of an investigation but is limited to areas where visitors would be expected to go. Commonwealth v. Eichler, 133 A.3d 775, 783 (Pa. Super. 2016). This includes the authority to knock on doors for investigatory purposes without probable cause. Id., 133 A.3d at 784 (A police officer was permitted to enter the curtilage of the residence as it was accessible to the public through the lack of fencing, gates or signs excluding trespassers or prohibit public entry). Conversely, a police officer is not permitted to enter onto the curtilage of an individual’s residence where there is a fence, a gate and there are numerous signs indicating the area is off-limits to the general public. See Commonwealth v. Bowmaster, 101 A.3d 789, 792-793 (Pa. Super. 2014). However, the inquiry does not end at that point, the Court must then examine whether there were both probable cause and exigent circumstances to support the police officer’s warrantless entry onto the property. Id., 101 A.3d at 793.

In Eichler, the appellant was convicted of driving under the influence and accident involving death or personal injury following a hit and run accident in which he struck the victim, who used a wheelchair, resulting in the victim’s death. During the investigation, a police officer was advised the victim was struck by a black Nissan Titan pickup truck. A police officer then observed a black pickup truck at the appellant’s residence. The police officer pulled in the driveway and parked behind the pickup truck. There were no fences nor signs excluding visitors from using the driveway. He exited his vehicle and walked around the pickup truck, which had a large amount of damage. The police officer also spoke with the appellant, who stated he left the scene of the accident because he was drinking alcohol before driving. The appellant filed a motion to suppress asserting he was subjected to an unlawful search of the curtilage of his property, which was denied by the trial court. He appealed to the Superior Court of Pennsylvania asserting the same argument.

The Eichler Court explained police officers have the authority to enter curtilage for the purpose of conducting an investigation without violating the Fourth Amendment of the United States Constitution or Article I, Section 8 of the Pennsylvania Constitution as long as that area is accessible to the public. Eichler, 133 A.3d at 784. The Court reasoned the police officer was investigating a serious hit-and-run accident and he had a belief the pickup truck involved belonged to the appellant providing him with a basis to conduct an investigation on the appellant’s property. Id., 133 A.3d

at 785. Moreover, the appellant's property did not have any fences, gates or no trespassing signs limiting the public's access to the driveway where the pickup truck was parked, which indicated it was available for public use. Id. The police officer observed the black pickup truck as he drove up the driveway. He parked behind the pickup truck, exited his vehicle and walked several feet to observe any damage to the vehicle. The Eichler Court determined the police officer's actions were reasonable under those circumstances and his inspection of the appellant's vehicle was lawful despite the vehicle having been parked on the curtilage of the appellant's residence. Id.

In Bowmaster, two Pennsylvania State Troopers received information a handgun was stolen during a burglary. The troopers immediately went to the appellant's residence to investigate and arrived there at approximately 3:15 a.m. The appellant resided in a trailer park and his yard was surrounded by a chain-link fence, a closed gate and signs declaring, "Private Property" and "Beware of Dog". Upon arriving at the appellant's residence, the troopers observed the glow of lights and a television through a window. They knocked on the door to the residence and observed the appellant and another person sitting on the couch. The appellant answered the door and the other person moved quickly to the rear of the trailer. One of the troopers observed a large knife and heroin packets on the coffee table. There was also a rifle in the corner of the room.

Shortly after the appellant answered the door, the troopers conducted a protective sweep of the residence and observed the large knife, the rifle and packaged drugs in plain view. The appellant was arrested and charged with multiple offenses arising from the search of his home. He filed a motion to suppress the evidence and a hearing was held by the trial court. At the conclusion of the hearing, the trial court denied the appellant's motion. After a bench trial, the appellant was convicted and he filed a timely appeal to the Superior Court. The appellant argued the trial court erred in denying his motion to suppress as the side yard of his home constituted curtilage and the police officers were unlawfully in that area when they viewed the interior of his residence.

The Court recognized, absent probable cause and exigent circumstances, a warrantless search of a private home and the curtilage thereto violates the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. Bowmaster, 101 A.3d at 792. The curtilage typically includes the areas immediately adjacent to the home and places the occupants have a reasonable expectation of privacy which society is prepared to accept. Id. The Court emphasized the appellant's property was fenced and gated at the time of the incident and was adorned with signs indicating it was not accessible by the general public. Id. Hence, the Bowmaster Court agreed with the appellant the side yard constituted curtilage and was subject to a reasonable expecta-

tion of privacy. Id.

The Court then examined whether there was probable cause and exigent circumstances to search the residence or curtilage. Resultantly, the Bowmaster Court examined numerous factors to determine whether there was an exigency present to permit the troopers to be lawfully present on the appellant's side yard. Id., 101 A.3d at 793. The Court assumed the gravity of the offense was high, based upon the possibility there being a stolen firearm present, but there was no reason to believe the occupants were aware of the presence of law enforcement obviating any risk for the destruction of evidence, escape or violence. Those factors weighed heavily in favor of the appellant's contention the troopers should have obtained a search warrant. Id. The Court explained, "Instantly, there was no exigency or urgency established by the testimony presented that would support the Commonwealth's argument that this search could not wait until morning or until a warrant was procured." Id. Thus, the Bowmaster Court determined the appellant had a reasonable expectation of privacy in the curtilage of his home and the Commonwealth failed to demonstrate the existence of exigent circumstances to justify a warrantless entry onto the appellant's property in the middle of the night. Id.

In the current case, Officer Murphey was investigating a motorcycle accident and learned the vehicle was owned by Defendant who lived approximately two miles away from the scene. Officer Murphey traveled to Defendant's residence. Upon his arrival, he observed Defendant and Ms. Forkey between the garage and residence. When he exited his vehicle, Defendant immediately demanded Officer Murphey leave the premises. It is important to note the premises also contained a "No Trespassers" sign visible from the driveway. Officer Murphey noticed Defendant had a laceration on his head and injuries to his hand. He proceeded to walk toward Defendant and asked if he needed medical assistance. Defendant immediately refused medical assistance. Officer Murphy continued toward Defendant until he was in close proximity and asked about the sequence of events from that evening. When Defendant provided his response, Officer Murphey noticed the odor of alcohol on his breathe. Defendant then admitted to drinking a "couple beers" before operating the motorcycle and being involved in the accident. Officer Murphey requested Defendant perform a field sobriety test which Defendant failed. Thus, Defendant was placed in custody for the charge of Driving Under the Influence.

It was apparent Officer Murphey entered onto the curtilage of Defendant's property as the area was immediately adjacent to Defendant's residence and garage. Moreover, Defendant placed a "No Trespassers" sign on a tree near the driveway to prevent unwanted visitors from entering his property. Under the aforementioned circumstances, the Fourth Amendment required Officer Murphey to obtain a warrant to enter onto the curtilage of Defendant's residence similar to Bowman as Defendant demanded

he leave and the property was posted with a “No Trespassers” sign.

It appears as though Officer Murphey was attempting to invoke the emergency aid exception to the warrant requirement as he testified he entered Defendant’s real property to conduct a “welfare check”. The emergency aid exception for a warrantless entry onto private property is part of the more expansive community caretaking doctrine and was explained in Commonwealth v. Wilmer, 194 A.3d 564, 565 (Pa. 2018). “Pursuant to the community caretaking doctrine, certain warrantless actions of police officers do not offend constitutional principles because they are motivated by a ‘desire to render aid or assistance, rather than the investigations of criminal activity.’” Id. The Pennsylvania Supreme Court acknowledged the Fourth Amendment does not bar warrantless entries when a person is in need of immediate aid. Id., 194 A.3d at 571.

“Nevertheless, community caretaking activities must be performed in strict accordance with the Fourth Amendment.” Commonwealth v. Dav-enport, 266 A.3d 707, 710 (Pa. Super. 2021). Resultantly, the emergency aid exception must be independent from the detection, investigation and acquisition of criminal evidence. Id. The intrusion by law enforcement officers must be commensurate with and limited to the perceived need to provide immediate assistance. Id. “In other words, once the emergency that permitted the police officers to act without a warrant has ceased, their right to enter and search under the emergency aid exception has also ceased.” Id.

Prior to traveling to Defendant’s residence, Officer Murphey received information Defendant may have been injured in the motorcycle accident. When Officer Murphey arrived at Defendant’s residence and exited his vehicle, Defendant demanded he leave and further refused medical assistance. Moreover, Officer Murphey observed Ms. Forkey speaking with Defendant and she was there to obtain medical assistance for Defendant if it was necessary. Despite Defendant’s refusal of medical treatment, Officer Murphey proceeded to walk toward Defendant and ask him what happened in relation to the accident. In fact, Officer Murphey was close enough to Defendant to smell alcohol on his breathe despite the apparent abatement of the need for emergency aid. The testimony of record demonstrates Officer Murphey continued up the driveway to further his investigation as he did not ask any additional questions concerning Defendant’s medical condition or make any further overtures to the need for medical assistance. Officer Murphey, by his own testimony, continued to question Defendant about the sequence of events leading to the accident and Defendant’s alcohol consumption in furtherance of his investigation. Due to the cessation of the need for emergency aid, that exception to the Fourth Amendment warrant requirement also ceased and Officer Murphey’s continued warrantless entry upon Defendant’s real property violated the Fourth Amendment.

Based upon the foregoing, Defendant's Motion to Suppress is granted and all evidence obtained as a result of Officer Murphey's warrantless entry upon Defendant's real property is suppressed.

¹ 75 Pa.C.S.A. § 3802(a)(1).

² 75 Pa.C.S.A. § 3745(a).

³ 75 Pa.C.S.A. § 3746(a)(2).

ORDER OF COURT

AND NOW, this 8th day of November, 2022, this matter is before the Court for disposition of Defendant's Motion to Suppress, and in accordance with the accompanying Opinion of even date herewith, it is ORDERED, ADJUDGED, and DECREED as follows:

1. Defendant's Motion to Suppress is GRANTED and all evidence seized from the police officer's warrantless entry onto Defendant's real property is SUPPRESSED.

2. These cases shall remain on the December, 2022, Criminal Jury Trial Term.

3. 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
