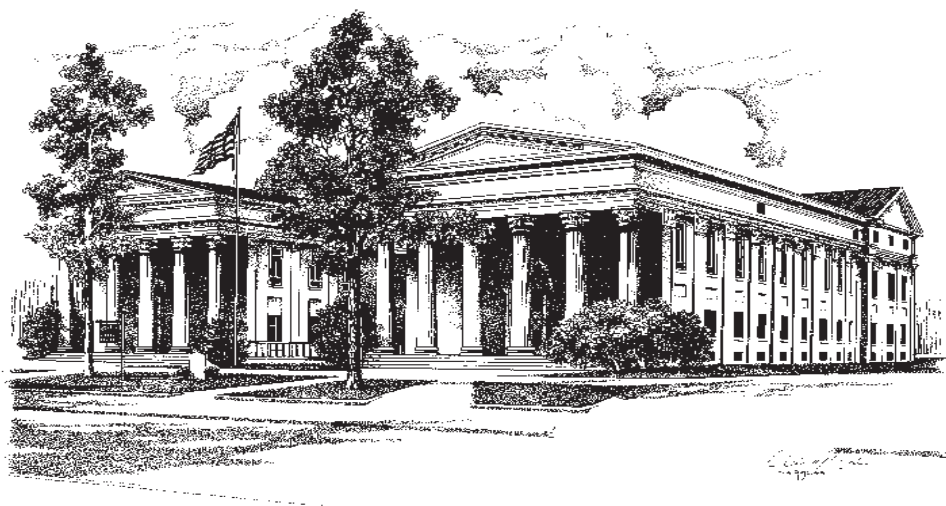


Erie County Legal Journal

Vol. 100 No. 6

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Commonwealth v. Klingensmith

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Michael Yonko
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Erie County Bar Association

Calendar of Events and Seminars

MONDAY, FEBRUARY 13, 2017

Workers' Compensation Section Meeting
12:00 p.m.
ECBA Headquarters

THURSDAY, FEBRUARY 16, 2017

ECBA Live Lunch-n-Learn Seminar
*ADR in Western Pennsylvania's Federal Court:
Past, Present and Future*
U.S. District Court - 17 South Park Row, Erie, PA
10:45 a.m. - 1:00 p.m. (registration - 10:30 a.m.)
\$94 (ECBA members and non-members admitted to
the Western District Court)
2 hours substantive

FRIDAY, FEBRUARY 17, 2017

Law Day Committee Meeting
8:30 a.m.
ECBA Headquarters

WEDNESDAY, FEBRUARY 22, 2017

Criminal Defense Meeting
4:00 p.m.
ECBA Headquarters

FRIDAY, FEBRUARY 24, 2017

ECBA Live Seminar
*A Fresh Start: Expungements, Pardons, and Sealing
Criminal Records Under Act 5*
Bayfront Convention Center
2:30 p.m. - 4:00 p.m. (registration 2:15 p.m.)
Cocktails (cash bar) 4:00 - 5:00 p.m.
\$70 (ECBA member/non-attorney staff)
\$90 (nonmember)
\$49 (member judge not needing CLE)
1.5 hours substantive

MONDAY, FEBRUARY 27, 2017

Bankruptcy Section Meeting
12:00 p.m.
Plymouth Tavern

TUESDAY, FEBRUARY 28, 2017

WEDNESDAY, MARCH 1, 2017

Mock Trial Competition
1:00 & 3:00 p.m. on Tuesday
3:00 p.m. on Wednesday
Erie County Court House

FRIDAY, MARCH 3, 2017

Law Day Run Meeting
8:30 a.m.
ECBA Headquarters

FRIDAY, MARCH 3, 2017

Real Estate LC Meeting
12:00 p.m.
ECBA Headquarters

FRIDAY, MARCH 24, 2017

*The Isis Age: From Nuremberg to
Religious Freedom for All?*
Manufacturer & Business Association
Conference Center
4:00 p.m. - 5:30 p.m. (Registration - 3:45 p.m.)
\$70 (ECBA member/non-attorney staff)
\$90 (nonmember)
\$49 (Member Judge not needing CLE)
1.5 Hours Substantive

To view PBI seminars visit the events calendar
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In Memoriam



Hon. John R. Falcone

October 23, 1930 - February 3, 2017

The Honorable John Richard Falcone, 86, of Erie, passed away on Friday, February 3, 2017. He was born on October 23, 1930 in Erie, son of the late John P. and Harriet (Arters) Falcone.

John was interested in scouting, joining the BSA's Troop 72, achieving the rank of Eagle Scout, and was inducted into the Order of the Arrow. He served in both the U.S. Navy and U.S. Army in Korea and Japan during the Korean War. He was a counter-intelligence corps Intelligence Analyst. He received the Korean Service Medal from the Government of South Korea, the National Defense Service Medal and Meritorious Union Citation from the United States and the United Nations Service Medal.

He was a student in the very first class at Behrend Center in 1946; a graduate of Penn State University with a Bachelor of Arts degree and the Dickinson School of Law. While attending Dickinson, he served as President of the Sadler Club, on the SBA Board of Governors and as the Third Circuit Assistant Vice President. He was admitted to practice law in Pennsylvania's State and Federal Courts, including the Pennsylvania Supreme Court in 1960. John served on the Pennsylvania Attorney General's staff in 1981 and was appointed to a one-year term as Judge of the Erie County Court of Common Pleas in 1989. He was a member of the Pennsylvania and Erie County Bar Associations, serving on the ECBA's Board of Directors and being elected its President in 1980.

John and his wife Carolyn owned and operated Carolyn's Homemade Ice Cream in Erie. Both he and Carolyn also loved to travel. John was an avid golfer and long-time member of the Lawrence Park Golf Club, he scored 4 holes-in-one during his lifetime and won the Erie District Golf Association Senior Handicap Championship. He was a member of the Friars Golf Club, traveling with friends and golfing several times a week when he was able. John also enjoyed bowling, having served as Director of the Erie District Bowling Association and was awarded the 700 Club membership with a score of 740. He also enjoyed tennis, skiing and other sports.

John was active with Big Brothers and Big Sisters of America, had served as a Board Member of the Erie Community Foundation, was a longtime member of the Wolves Club and founding member of the Mazzini Association, The Sons of Italy, Erie Maennerchor Club and Siebenbuerger Club. He was instrumental in establishing St. Paul's Neighborhood Free Clinic and served on its Board of Directors.

In addition to his parents, he was preceded in death by his wife, Carolyn Jean (Moore) Falcone.

Survivors include his children, John R. Falcone, II (Mary) of Conneaut, OH, Shawn Marie Gorrington (Scott) of Erie and Robert G. Falcone (Susan) of Clermont, FL; six grandchildren, Emily and Abigail Falcone, Scotty Gorrington, Casey DiGange (Todd), Robert "R.J." Falcone and Neal Miller; first-time great-grandfather to Sophia DiGange; two brothers, James Falcone (Jackie) of NC and Fred Arters (Barb) of OH. John had many close friends including James F. Toohey, Cam and Jay Cimino; the Dimattio, Divecchio, Barbato, Bellomini, Damore Families and many more.

A funeral mass was held at St. Paul Church followed by entombment with military honors in the Holy Family Mausoleum in Gate of Heaven Cemetery.

Memorials may be made to the Erie Community Foundation, 127 W 6th St, Erie, PA 16501 or Alzheimer's Association, 1600 Peninsula Dr., Ste. 15, Erie, PA 16505.



FOR SALE - 551 West 8th Street, Erie, PA - Off Street Parking for 30 cars
Offered for Sale @ \$459,000 Contact: Robert Snyder, Howard Hanna Realtors Commercial
Real Estate Services, 4244 West 12th Street, Erie, PA 16505, 814-480-8400

Jan. 27, Feb. 3, 10, 17

NOTICE OF RECORDING FEE INCREASE - EFFECTIVE MARCH 1, 2017

Due to the passage of Erie County Ordinance No. 135.2016 on December 13, 2016, amending the Erie County Affordable Housing Fund Ordinance, THE BASE RECORDING FEE TO RECORD ALL DEEDS AND MORTGAGES WILL BE: \$66.00.

Feb. 10, 17



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CHRISTOPHER KLINGENSMITH
v.
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

TRANSPORTATION LAW / OPERATOR'S LICENSE / SUSPENSION / REFUSAL

To sustain a suspension of operating privileges under 75 Pa. C. S. §1547, PennDOT must establish that the licensee: (1) was arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating or was in actual physical control of the movement of the vehicle while under influence of alcohol; (2) was asked to submit to a chemical test; (3) refused to do so; and (4) was warned that refusal might result in a license suspension. Once PennDOT meets this burden, the licensee must then establish that the refusal was not knowing or conscious or that the licensee physically was unable to take the test.

TRANSPORTATION LAW / OPERATOR'S LICENSE / SUSPENSION / REFUSAL

The law is well established that anything less than a licensee's unqualified, unequivocal assent to submit to chemical testing constitutes a refusal under 75 Pa. C. S. §1547. A refusal need not be expressed in words, but can be implied from a motorist's actions.

TRANSPORTATION LAW / OPERATOR'S LICENSE / SUSPENSION / REFUSAL

Police officers are not required to spend effort either cajoling the licensee or spend time waiting to see if the licensee will ultimately change his mind. Before a refusal may be recorded, police officers must fulfill their affirmative duty to convey to a licensee the certainty of a suspension upon his refusal to submit to a chemical test, but police officers have no duty to ensure that a licensee understands the consequences of refusing a chemical test.

TRANSPORTATION LAW / OPERATOR'S LICENSE / SUSPENSION / REFUSAL

Only when PennDOT meets its burden of proving that a motorist was given a "meaningful opportunity" or a "reasonable and sufficient opportunity" to comply with the chemical testing requirement of the Implied Consent Law may a court conclude that a motorist's failure to complete the requested test constitutes a refusal.

TRANSPORTATION LAW / REFUSAL / KNOWING AND CONSCIOUS

A hearing impairment can prevent a licensee from knowingly and consciously refusing to submit to chemical testing. While the Pennsylvania Commonwealth Court has acknowledged that a hearing impairment can prevent a knowing and conscious refusal, the Commonwealth Court has also held that if a licensee has a medical condition which could affect his ability to consent to or perform the test, if police officers are not notified of the medical condition, the licensee is precluded from relying upon that condition or inability as an affirmative defense to the license suspension. Simply put, when the police officer cannot usually ascertain a medical problem, the licensee has a duty to advise the officer of the medical problem.

SEARCH AND SEIZURE / REASONABLENESS / CONSENT

The United States Supreme Court's prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply.

SEARCH AND SEIZURE / EXCLUSIONARY RULE

Violations of privacy interests under the Fourth Amendment mandates suppression of evidence under the “Exclusionary Rule,” a judicially-created sanction specifically designed as a “windfall” remedy to deter **future** Fourth Amendment violations. The sole purpose of the exclusionary rule is to deter misconduct by law enforcement.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
No. 11060 - 2016

Appearances: Elliot J. Segel, Esq. for the Plaintiff
Denise H. Farkas, Esq. for the Defendant

OPINION

Domitrovich, J., December 19, 2016

The instant matter is before this Trial Court on Christopher N. Klingensmith’s (hereafter referred to as “Appellant”) appeal from the Pennsylvania Department of Transportation’s (hereafter referred to as “PennDOT”) suspension of his operating privileges for a period of twelve (12) months by Notice dated March 17, 2016 as a result of Appellant’s refusal to submit to chemical testing, pursuant to 75 Pa. C. S. §1547(b)(1)(i). As to the three (3) issues raised by Appellant in his license suspension appeal, this Trial Court concludes: (1) Appellant’s conduct did constitute a refusal to submit to chemical testing; (2) Appellant’s refusal to submit to chemical testing was a knowing and conscious refusal, and Appellant cannot rely on his hearing loss as an affirmative defense to the license suspension as Appellant had a duty to inform and advise the police officers of his hearing loss; and (3) the United States Supreme Court’s decision in *Birchfield* does not apply to civil penalties imposed under Pennsylvania’s implied consent law for a refusal to submit to chemical testing.

After this Trial Court heard testimony before the Court and reviewed the Memoranda of Law from counsel, this Trial Court makes the following Findings of Fact and Conclusions of Law:

On February 27, 2016 around 3:30 a.m., City of Erie Police Patrolman Christopher O’Connell, together with Patrolman Shields in a two-man police unit, was dispatched to a motor vehicle accident at 330 East 29th Street, Erie, Pennsylvania 16504. Specifically, the dispatch operator indicated a vehicle had struck the side of a house, causing minor damage. As Patrolman O’Connell and Patrolman Shields arrived at the scene, the police officers observed the driver of the vehicle, identified as Appellant Christopher N. Klingensmith, in the area. When Appellant approached Patrolman O’Connell and Patrolman Shields, Appellant admittedly and verbally stated: “I’m sorry, guys. I was driving. I’m drunk, but I’m only a block away from my house.” Patrolman O’Connell observed signs of Appellant’s intoxication, including a strong odor of alcoholic beverages, bloodshot, glassy eyes, slurred speech and unsteady balance. Appellant did not advise either Patrolman O’Connell or Patrolman Shields in any manner that he [Appellant] had any hearing loss or any similar medical condition.

Shortly thereafter, City of Erie Police Patrolman John Wilson, having received the same dispatch Patrolmen O’Connell and Shields received, arrived on the scene. Patrolman

Wilson also observed signs of Appellant's intoxication, including a strong odor of alcoholic beverages, bloodshot, glassy eyes, slurred speech and unsteady balance. Patrolman Wilson requested Appellant submit to field sobriety testing, including the "one leg stand" test, the "walk-and-turn" test, and the "finger-to-nose" test, to which Appellant complied. Appellant did not inform Patrolman Wilson prior to or during the field sobriety tests in any manner that he [Appellant] had any hearing loss or any similar medical condition. Patrolman Wilson instructed Appellant verbally on each test and demonstrated each test personally; however, Appellant did not wait until he was instructed to start, but started performing each test before the instructions and demonstrations were completed. Dr. Rick A. Fornelli, M.D., acknowledged, in his November 3, 2016 deposition, Appellant's conduct of starting a field sobriety test before Patrolman Wilson instructed Appellant to begin is potentially a sign of intoxication. *See Notes of Testimony, Deposition of Rick A. Fornelli, M.D., November 3, 2016, page 48, lines 14-19.* Based upon Patrolman Wilson's training and experience, his initial observations of Appellant's demeanor and Appellant's performance of each field sobriety test, Patrolman Wilson concluded Appellant was under the influence of alcohol. Appellant was then placed under arrest for Driving under the Influence of Alcohol by Patrolman O'Connell at the request of Patrolman Wilson.

Appellant was placed in the back of a patrol vehicle and Patrolman O'Connell read Appellant the DL-26 "O'Connell Warnings" form verbatim in its entirety. During Patrolman O'Connell's reading of the DL-26 "O'Connell Warnings" form, Appellant interrupted Patrolman O'Connell, who had to speak over Appellant. After reading the DL-26 "O'Connell Warnings" form, Patrolman O'Connell requested Appellant submit to a chemical test of blood, to which Appellant stated: "No, I don't understand." Appellant did not inform Patrolman O'Connell prior to or during the reading of the DL-26 "O'Connell Warnings" form that he [Appellant] had any hearing loss or any similar medical condition. Patrolman O'Connell then radioed to dispatch and reported that Appellant refused to submit to chemical testing.

Thereafter, Appellant was taken to the City of Erie Police Department booking center to be processed. Patrolman O'Connell, who was present for Appellant's questioning, stated Appellant verbally answered every question and did not indicate in any manner that he [Appellant] had any hearing loss or any similar medical condition.

By Notice dated March 17, 2016, PennDOT suspended Appellant's operating privileges for a period of twelve (12) month due to his refusal to submit to chemical testing, pursuant to 75 Pa. C. S. §1547(b)(1)(i). Appellant, by and through his counsel, Elliot J. Segel, Esq., filed a Petition for Appeal from a Suspension of Operating Privilege/Denial of Driver's License/Suspension of Motor Vehicle Registration on April 14, 2016. A hearing was scheduled for June 29, 2016. Attorney Segel filed a Motion for Continuance of License Suspension Appeal Hearing on June 16, 2016, which was granted by this Trial Court the same day, continuing the License Suspension Appeal hearing to September 28, 2016. Appellant filed an Addendum to License Suspension Appeal on July 18, 2016. Attorney Segel filed a second Motion for Continuance of License Suspension Appeal Hearing on September 26, 2016, which was granted by this Trial Court on September 27, 2016, continuing the License Suspension Appeal hearing to November 21, 2016.

A deposition of Rick A. Fornelli, M.D., an otolaryngologist, was scheduled for November 3, 2016, at which Elliot J. Segel, Esq., appeared on behalf of Appellant Christopher N.

Klingensmith, and Denise H. Farkas, Esq., appeared on behalf of PennDOT. Dr. Fornelli first acknowledged Appellant had no complaints with hearing in his left ear and audiometric testing indicated normal hearing in Appellant's left ear. *See N.T., November 3, 2016, page 14, lines 16-18; page 17, lines 1-3; page 29, lines 13-14.* Dr. Fornelli indicated his assessment was Appellant had developed sudden hearing loss in his right ear, which is considered an "otolaryngic emergency," and is sometimes viral in nature. *See id, page 20, lines 2-6.* Dr. Fornelli commented that not only does Appellant have hearing loss, but has loss of sensitivity for speech and to understand words. *See id, page 31, lines 4-9.* Dr. Fornelli indicated, based upon the documented treatment, examination and testing of Appellant, Appellant's statement that he [Appellant] "did not understand" could be consistent with hearing loss or impairment. *See id, page 37, lines 17-23.* However, Dr. Fornelli acknowledged Appellant had only "ringing" and a reduction of hearing in his right ear. *See id, page 39, lines 2-5.* Based upon a review of the December 10, 2012 test results, Dr. Fornelli stated Appellant's hearing in his right ear had improved. *See id, page 43, line 24 – page 45, line 3.* Dr. Fornelli admitted he did not observe Appellant on February 27, 2016, including how much alcohol Appellant had consumed that evening. *See id, page 47, lines 8-14.* Dr. Fornelli acknowledged Appellant's actions of starting the field sobriety tests before being instructed to do so can be a sign of intoxication. *See id, page 48, lines 14-19.* Ultimately, Dr. Fornelli could not state with reasonable medical certainty that Appellant's actions on the night of February 27, 2016 were not caused by Appellant's intoxication. *See id, page 49, lines 6-9.*

This Trial Court conducted a full hearing on September 28, 2016. Thereafter, Appellant's counsel, Elliot J. Segel, Esq., agreed to submit a Memorandum of Law within ten (10) days from the date of the hearing, and counsel for PennDOT, Denise H. Farkas, Esq., agreed to submit a Responsive Memorandum of Law within ten (10) days after receipt of Attorney Segel's Memorandum. Attorney Segel submitted his Memorandum of Law on November 28, 2016. Attorney Farkas submitted her Responsive Memorandum of Law on December 8, 2016. Attorney Segel submitted a Reply to Commonwealth's Brief in Support of License Suspension on December 12, 2016. Attorney Farkas submitted a Reply to Attorney Segel's Reply on December 14, 2016.

1. PennDOT has satisfied all four (4) prongs of its burden of proof, and Appellant has failed to rebut PennDOT's evidence.

To sustain a suspension of operating privileges under 75 Pa. C. S. §1547, PennDOT must establish that the licensee: (1) was arrested for driving under the influence by a police officer who had reasonable grounds to believe that the licensee was operating or was in actual physical control of the movement of the vehicle while under influence of alcohol; (2) was asked to submit to a chemical test; (3) refused to do so; and (4) was warned that refusal might result in a license suspension. *Finney v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 721 A.2d 420, 423 (Pa. Commw. Ct. 1998).

PennDOT has met the first prong of its burden based upon the statements made by Appellant that he [Appellant] "was driving" and "was drunk," Patrolman O'Connell's and Patrolman Wilson's observations of Appellant's intoxication and Appellant's unsatisfactory performance of the field sobriety tests. Furthermore, Appellant does not contest he was asked by Patrolman O'Connell to submit to a chemical test and was warned by Patrolman

O'Connell that refusal might result in a license suspension; therefore, PennDOT has satisfied the second and fourth prong of its burden. However, Appellant argues his conduct did not constitute a refusal to submit to chemical testing.

The law is well established that anything less than a licensee's unequivocal assent to submit to chemical testing constitutes a refusal under 75 Pa. C. S. §1547. *See id at 423*. A refusal need not be expressed in words, but can be implied from a motorist's actions. *See id*. Furthermore, "police officers are not required to spend effort either cajoling the licensee or spend time waiting to see if the licensee will ultimately change his mind." *McKenna v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 72 A.3d 294, 300 (Pa. Commw. Ct. 2013). Before a refusal may be recorded, police officers must fulfill their affirmative duty to convey to a licensee the certainty of a suspension upon his refusal to submit to a chemical test, but police officers have no duty to ensure that a licensee understands the consequences of refusing a chemical test. *See id*.

After Appellant was arrested for Driving under the Influence of Alcohol on February 27, 2016, Patrolman O'Connell read to Appellant the DL-26 "O'Connell Warnings" form verbatim in its entirety. *See Dr. Fornelli Exhibit 3, page 3*. The DL-26 "O'Connell Warnings" form read to Appellant on February 27, 2016 conformed with the requirements of 75 Pa. C. S. §1547(b)(2), as it informed Appellant that if he refused to submit to chemical testing, his operating privileges would be suspended and he would be subject to the criminal penalties pursuant to 75 Pa. C. S. §3804(c). *See 75 Pa. C. S. §1547(b)(2)(i)-(ii)*. By virtue of reading the DL-26 "O'Connell Warnings" form to Appellant, Patrolman O'Connell fulfilled his affirmative duty as required by the case law. *See McKenna*, 72 A.3d at 300. When asked to submit to chemical testing, Appellant stated "No, I don't understand." At this point, based upon the relevant case law, Patrolman O'Connell had no responsibility to "cajole" Appellant into submitting to chemical testing, nor did Patrolman O'Connell have any responsibility to ensure Appellant fully understood the consequences listed in the DL-26 "O'Connell Warnings" form. *See id*. As Appellant's conduct did not demonstrate an "unqualified, unequivocal assent to submit to chemical testing," Appellant's conduct constituted a refusal to submit to chemical testing.

Appellant also argues he was not provided a "meaningful opportunity" to submit to chemical testing and, therefore, his conduct cannot constitute a refusal. Only when PennDOT meets its burden of proving that a motorist was given a "meaningful opportunity" or a "reasonable and sufficient opportunity" to comply with the chemical testing requirement of the Implied Consent Law may a court conclude that a motorist's failure to complete the requested test constitutes a refusal. *Nardone v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 130 A.3d 738, 749 (Pa. 2015). Appellant cites to *Nardone*, to *Solomon v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 966 A.2d 640 (Pa. Commw. Ct. 2009), and to *Todd v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 723 A.2d 655 (Pa. Commw. Ct. 1999), in support of this argument.

In *Nardone*, the appellant, after being requested by police officers to submit to a chemical test of blood, requested alternative tests of breath and/or urine due to an injury to his arm. *Nardone*, 130 A.3d at 741-742. The encounter between the appellant and police officers was no more than sixty (60) seconds. *See id at 751*. The Pennsylvania Supreme Court held

the appellant's conduct constituted a refusal as the appellant "demonstrated an intractable unwillingness to consent to the official request that he submit to a chemical test of his blood." *See id* at 751. Furthermore, in *Solomon*, the appellant, after being requested by police officers to submit to a chemical test of blood, responded with a short expletive and stated "Do what you've got to do," after which he was deemed to have refused. *See Solomon*, 966 A.2d at 641. The Pennsylvania Commonwealth Court held the appellant was not provided a "meaningful opportunity," stating:

Although Solomon's expletives were inappropriate, his response as a whole was certainly ambiguous and not an explicit refusal. Solomon's response could have been fairly taken to mean go ahead with the chemical test. The officer should have made an attempt at that point to confirm whether Solomon would submit to testing. Instead, the officer escorted him out of the room and immediately deemed a refusal. This fact further illustrates PennDOT's failure to prove that Solomon was offered "a meaningful opportunity to comply."

Id at 643. Finally, in *Todd*, the appellant submitted to a chemical test of breath, but was deemed by police officers to have refused after failing to give an adequate breath sample following three (3) attempts. *See Todd*, 723 A.2d at 656. The Pennsylvania Commonwealth Court held the appellant's conduct constituted a refusal where the appellant was given a reasonable opportunity to provide an adequate breath sample. *See id* at 659.

The cases cited by Appellant are distinguishable from the instant license suspension appeal. Appellant in the instant license suspension appeal did not submit to any chemical testing. *See id*. Furthermore, Appellant in the instant license suspension appeal did not give an ambiguous response requiring further attempts by police to confirm the meaning of the response. *See Solomon*, 966 A.2d at 643. Finally, Appellant in the instant license suspension appeal did not cite a medical condition and request an alternative chemical test. *See Nardone*, 130 A.3d at 741. In the instant license suspension appeal, Appellant, after being read the DL-26 "O'Connell Warnings" form verbatim in its entirety and being requested to submit to a chemical test of blood, stated explicitly "No, I don't understand." As stated above, Patrolman O'Connell had no responsibility to ensure Appellant understood the consequences of a refusal. *See McKenna*, 72 A.3d at 300. Appellant's response of "No" to chemical testing was an unambiguous, explicit refusal to submit to chemical testing, and Patrolman O'Connell properly recorded Appellant's conduct as a refusal and had no duty to further explain the consequences of the refusal when Appellant stated "I don't understand."

Based upon the testimony and evidence presented, as well as relevant statutory and case law, this Trial Court concludes Appellant's conduct did constitute a refusal to submit to chemical testing; therefore, PennDOT has satisfied the third prong of its burden.

2. Appellant's refusal to submit to chemical testing was a knowing and conscious refusal, and Appellant cannot claim his hearing loss as an affirmative defense to a knowing and conscious refusal as Appellant had a duty to inform and advise the police officers of his hearing loss.

A hearing impairment can prevent a licensee from knowingly and consciously refusing to

submit to chemical testing. *Landsberger v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 717 A.2d 1121, 1124 (Pa. Commw. Ct. 1998). While the Pennsylvania Commonwealth Court has acknowledged that a hearing impairment can prevent a knowing and conscious refusal, the Commonwealth Court has also held that if a licensee has a medical condition which could affect his ability to consent to or perform the test, if police officers are not notified of the medical condition, the licensee is precluded from relying upon that condition or inability as an affirmative defense to the license suspension. *See id.* Simply put, when the police officer cannot usually ascertain a medical problem, **the licensee has a duty to advise the officer of the medical problem.** *Larkin v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing*, 531 A.2d 844, 847 (Pa. Commw. Ct. 1987).

Appellant argues he has significant hearing loss in his right ear, which prevented him on February 27, 2016 from understanding the consequences of refusing to submit to chemical testing, thereby preventing him from making a knowing and conscious refusal. However, during the entire encounter, Appellant never indicated to Patrolman O'Connell, Patrolman Shields or Patrolman Wilson he [Appellant] had any hearing loss which would prevent him from understanding the consequences of a refusal to submit to chemical testing. When Patrolmen Wilson requested Appellant submit to field sobriety testing, Appellant complied, but did not indicate in any manner that he [Appellant] had any hearing loss or any similar medical condition. When Patrolman Wilson was instructing Appellant verbally and demonstrating personally each field sobriety test, Appellant again did not indicate in any manner that he [Appellant] had any hearing loss or any similar medical condition. When Appellant was arrested and Patrolman O'Connell read the DL-26 "O'Connell Warnings" form verbatim in its entirety, Appellant did not indicate in any manner that he [Appellant] had any hearing loss or any similar medical condition. Finally, when Appellant was taken to the City of Erie Police Station booking center, Appellant did not indicate in any manner that he [Appellant] had any hearing loss or any similar medical condition, even when asked by the booking officer. Hearing loss is not easily ascertainable and neither Patrolman O'Connell nor Patrolman Wilson noted any hearing issues from Appellant; therefore, Appellant had the duty to inform and advise the police officers expressly of his hearing loss. *See id.* As Appellant did not inform and advise the police officers expressly, Appellant cannot rely on his hearing loss as an affirmative defense to the license suspension.

Furthermore, at the deposition on November 3, 2016, although Rick A. Fornelli, M.D., a licensed otolaryngologist, testified Appellant's statement that he [Appellant] "did not understand" could be consistent with hearing loss, *see N.T., November 3, 2016, page 37, lines 17-23*, ultimately Dr. Fornelli could not state with reasonable medical certainty that Appellant's actions on the night of February 27, 2016 were not caused by Appellant's intoxication. *See id., page 49, lines 6-9.* On February 27, 2016, Appellant admitted to Patrolmen O'Connell and Shields that he "was drunk." Therefore, Appellant has not been proven definitively that his hearing loss, and not his intoxication, was the primary cause of Appellant's inability to understand the consequences of refusing to submit to chemical testing.

Based upon the testimony and evidence presented, as well as relevant statutory and case law, this Trial Court concludes Appellant had a duty to inform and advise Patrolman O'Connell,

Patrolman Shields and Patrolman Wilson of his hearing loss which would prevent him from understanding the consequences of a refusal to submit to chemical testing and Appellant failed to inform and advise either Patrolman O'Connell, Patrolman Shields or Patrolman Wilson in any manner that he [Appellant] had any hearing loss or any similar medical condition; therefore, Appellant cannot rely on his hearing loss as an affirmative defense to the license suspension.

3. The United States Supreme Court's decision in *Birchfield v. North Dakota* does not apply to civil penalties under Pennsylvania's implied consent law for a refusal to submit to chemical testing.

On June 23, 2016, the United States Supreme Court, in deciding the case of *Birchfield v. North Dakota*, 136 S. Ct. 2160 (U.S. 2016), held the Fourth Amendment requires a search warrant in order to draw blood for chemical testing and motorists cannot be punished criminally for refusing to submit to chemical tests of blood. Appellant argues the holding in *Birchfield* renders Appellant's alleged refusal as "unknowing and invalid."

First, the United States Supreme Court clearly indicated the *Birchfield* decision does not concern civil penalties under implied consent laws for a refusal to submit to chemical testing. As the United States Supreme Court stated in *Birchfield*: "Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply. Petitioners do not question the constitutionality of those laws, and nothing we say here should be read to cast doubt on them." *Id.* at 1285.

Furthermore, the traffic stop of Appellant's vehicle on February 27, 2016 occurred four (4) months before the United States Supreme Court's decision in *Birchfield* was entered on June 23, 2016. *Birchfield* has not been held to apply retroactively to cases occurring before June 23, 2016. To give *Birchfield* retroactive effect would be against long-standing judicial precedent in Pennsylvania. The issues decided in *Birchfield* involve privacy interests in one's blood and the need for protection of those interests by requiring police to obtain a search warrant before the taking of an individual's blood for chemical testing. Violations of privacy interests under the Fourth Amendment mandates suppression of evidence under the "Exclusionary Rule," a judicially-created sanction specifically designed as a "windfall" remedy to deter **future** Fourth Amendment violations. *See Davis v. United States*, 131 S. Ct. 2419, 2433-34 (U.S. 2011) [emphasis added]. The sole purpose of the exclusionary rule is to deter misconduct by law enforcement. *Id.* at 2432. In the instant license suspension appeal, the actions of Patrolman O'Connell did not constitute police misconduct; rather, Patrolman O'Connell requested Defendant submit to a chemical test of blood in reliance that his [Patrolman O'Connell's] actions were proper and lawful based on legal precedent as it existed on February 27, 2016. Exclusion of evidence in such a case is not warranted where the police were acting in reasonable reliance on binding legal precedent. *See id.* at 2429. The decision in *Birchfield* aims only to deter police misconduct in criminal cases, i.e. taking blood for chemical testing without securing a search warrant, from June 23, 2016 forward, and logically does not apply to police conduct occurring prior to *Birchfield*.

For all of the foregoing reasons, this Trial Court enters the following Order and reserves to add further Findings of Fact and Conclusions of Law if necessary:

ORDER

AND NOW, to wit, this 19th day of December, 2016, after consideration of the testimony and evidence received at the License Suspension Hearing on November 21, 2016, the Memoranda of Law filed by each counsel and an independent review of the relevant statutory and case law, and for all the reasons set forth above in this Trial Court's Opinion, it is hereby **ORDERED, ADJUDGED AND DECREED** that Appellant's License Suspension Appeal is hereby **DENIED** as this Trial Court finds (1) Appellant was arrested for Driving Under the Influence of Alcohol by a police officer who had reasonable grounds to believe Appellant was operating or was in actual physical control of the movement of a vehicle while driving under the influence of alcohol; (2) Appellant was asked to submit to a chemical test; (3) Appellant refused to submit to chemical testing; and (4) Appellant was specifically warned that a refusal to submit to chemical testing would result in the suspension of his operating privileges. Therefore, PennDOT has proven all four prongs of its burden, of which Appellant did not rebut. This Court also finds that the Appellant failed to sustain his burden of proof that the Appellant was incapable of making a knowing and conscious refusal. The Department of Transportation is hereby authorized to reinstate the twelve (12) month suspension of Appellant's operating privileges imposed by Notice dated March 17, 2016.

BY THE COURT:

/s/ Stephanie Domitrovich, Judge

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

1. Fictitious Name: Orthopaedic Solutions of Erie
2. Address of the principal place of business, including street and number: 2374 Village Common Drive, Suite 100, Erie, PA 16506, Erie County
3. The real names and addresses, including street and number, of the entities who are parties to the registration: Tri-State Pain Institute, LLC, 2374 Village Common Drive, Suite 100, Erie, PA 16506, Erie County.
4. An application for registration of a fictitious name under the Fictitious Names Act was filed on January 27, 2017, with the Department of State. Elliott J. Ehrenreich, Esq. Knox McLaughlin Gornall & Sennett, P.C. 120 West Tenth Street Erie, Pennsylvania 16501-1461

Feb. 10

LEGAL NOTICE

Notice is hereby given that any individuals, who have had weapons confiscated from January 1, 2013 through December 31, 2013, by Court Order from Protection from Abuse Order have thirty (30) days from the date of this publication to respond in person to take possession of their weapons. The Sheriff will dispose of all unclaimed weapons after thirty (30) days of the date of said notice. Sheriff John T. Loomis

Feb. 10, 17, 24

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located

at 4709 Cedar Drive, North East, PA 16428 being more fully described at Erie County Deed Book Volume 1153, Page 0607.

SAID SALE to be held at the Erie County Courthouse, Room 209, 140 W. Sixth Street, Erie, PA 16501 at 10:00 a.m. prevailing, standard time, on March 8, 2017.

All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Map No. 37041088016000 recorded in Erie County, Pennsylvania. Seized and taken in execution as the property of Jennifer Ann Hamills aka Jennifer A. Hamills, at the suit of the United States of America, acting through the Under Secretary of Rural Development, on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 16-200 Erie.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Steve Frank, United States Marshal. For additional

information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at www.resales.usda.gov.

Feb. 10, 17, 24, and Mar. 3

SHERIFF SALES

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**FEBRUARY 17, 2017
at 10:00 AM**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

John T. Loomis

Sheriff of Erie County

Jan. 27 and Feb. 3, 10

SALE NO. 1

**Ex. #12513 of 2016
NORTHWEST BANK f/k/a
NORTHWEST SAVINGS
BANK, Plaintiff,
v.**

**JOSHUA KUTZ and REBECCA
KUTZ, Defendants
SHERIFF'S SALE**

By virtue of a Writ of Execution filed at No. 2016-12513, Northwest Bank vs. Joshua Kutz and Rebecca Kutz, owners of property situate in the City of Erie, Erie County, Pennsylvania being: 1410 Lynn Street, Erie, Pennsylvania.

35' X 110' X 35' X 110'

Assessment Map Number: (14) 1105-120

Assessed Value Figure: \$38,420.00

Improvement Thereon: Residence
Kurt L. Sundberg, Esq.
Marsh Spaeder Baur Spaeder
& Schaaf, LLP
Suite 300, 300 State Street
Erie, Pennsylvania 16507
(814) 456-5301

Jan. 27 and Feb. 3, 10

SALE NO. 2

**Ex. # 12618 of 2016
NORTHWEST BANK f/k/a
NORTHWEST SAVINGS
BANK, Plaintiff,
v.**

**DIANNE K. MUNSON,
Defendant
SHERIFF'S SALE**

By virtue of a Writ of Execution filed at No. 2016-12618, Northwest Bank vs. Dianne K. Munson, owner of property situate in the City of Erie, Erie County, Pennsylvania being: 1847 West 22nd Street, Erie, Pennsylvania.

51' X 135' X 51' X 135'

Assessment Map Number: (19) 6210-213

Assessed Value Figure: \$79,200.00

Improvement Thereon: Residence
Kurt L. Sundberg, Esq.

Marsh Spaeder Baur Spaeder
& Schaaf, LLP

300 State Street, Suite 300
Erie, Pennsylvania 16507

(814) 456-5301

Jan. 27 and Feb. 3, 10

SALE NO. 3

**Ex. #11984 of 2016
LSF9 Master Participation Trust,
Plaintiff
v.**

**Duane Hunter and Jannette
Hunter, Defendants
SHERIFF'S SALE**

By virtue of a Writ of Execution filed at No. 2016-11984, LSF9 Master Participation Trust, Plaintiff vs. Duane Hunter and Jannette Hunter, owner(s) of property situated in Erie County, Pennsylvania being 2053 E. 19th Street, Erie, PA 16510

Assessment Map number: 15021028020700

Assessed Value figure: \$51,070.00

Improvement thereon: Single Family

Bradley J. Osborne, Esquire

Attorney for Plaintiff
Richard M. Squire & Associates, LLC
115 West Avenue, Suite 104
Jenkintown, PA 19046
(215) 886-8790

Jan. 27 and Feb. 3, 10

SALE NO. 4

**Ex. #10516 of 2016
Carrington Mortgage Services,
LLC, Plaintiff
v.**

**Jeffry L. Moorehead, Defendant
SHERIFF'S SALE**

By Virtue of Writ of Execution filed to No. 10516-16, Carrington Mortgage Services, LLC, Plaintiff v. Jeffry L. Moorehead, owner(s) of property situated in Erie County, Pennsylvania being 1860 E. 34th Street, Erie, PA 16510

Assessment Map Number: 31019071100201

Assessed Value figure: \$113,830.00

Improvement thereon: Residential Dwelling

Bradley J. Osborne, Esquire

Attorney for Plaintiff

Richard M. Squire & Associates, LLC
115 West Avenue, Suite 104

Jenkintown, PA 19046

(215) 886-8790

Jan. 27 and Feb. 3, 10

SALE NO. 5

**Ex. #12600 of 2016
NORTHWEST SAVINGS
BANK, Plaintiff
v.**

**ROBERT J. MORGAN and
COLIEN A. MORGAN,
Defendants**

LEGAL DESCRIPTION

ALL THAT CERTAIN piece or parcel of land situate in the City of Erie, County of Erie, and Commonwealth of Pennsylvania, bounded and described as follows, to wit

BEGINNING at the point of intersection of the south line of Seventh Street and the West line of Cherry Street; thence southwardly along the west line of Cherry Street 42 feet to a point; thence westwardly and parallel with Seventh Street, 121 feet to a point; thence northwardly parallel with Cherry Street, 42 feet to the south line of Seventh Street;

thence eastwardly along the south line of Seventh Street 121 feet to the place of beginning.

Having erected thereon a dwelling known as 601 West Seventh Street, Erie, Pennsylvania 16502 and bearing Erie County Tax Index No. (17) 4019-105.

BEING that same parcel or piece of land conveyed to Robert J. Morgan and Colleen H. Morgan, husband and wife, by Deed dated November 23, 1994, and recorded November 23, 1994 with the Erie County Recorder of Deed's Office in Erie County, Pennsylvania at Deed Book 364, Page 102, and bearing Erie County Index No. (17) 4019-105 and being commonly known as 601 West Seventh Street, Erie, PA 16502.

Mark G. Claypool, Esquire
KNOX McLAUGHLIN
GORNALL & SENNETT, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501
Telephone (814) 459-2800

Jan. 27 and Feb. 3, 10

SALE NO. 6

Ex. #12544 of 2015

**GREEN TREE SERVICING
LLC, Plaintiff**

v.

**Fatema Abuzebiba a/k/a Fatema
Abu-Zebiba, Defendant**

DESCRIPTION

ALL THAT CERTAIN piece or parcel of land situate in the City of Erie, County of Erie and State of Pennsylvania.

BEING KNOWN AS: 756 Rosedale Avenue, Erie, PA 16503

PARCEL #14-010-022.0-240.00

Improvements: Residential Dwelling.

Gregory Javardian, Esquire
Id. No. 55669

1310 Industrial Boulevard
1st Floor, Suite 101

Southampton, PA 18966
(215) 942-9690

Jan. 27 and Feb. 3, 10

SALE NO. 7

Ex. #11443 of 2016

**Ventures Trust 2013-I-H-R by
MCM Capital Partners, LLC, its
trustee, Plaintiff**

v.

**Heirs and Unknown Heirs of
David J. Tuzynski, deceased (et
al.), Defendant**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 11443-16, Ventures Trust 2013-I-H-R by MCM Capital Partners, LLC, its trustee vs. Heirs and Unknown Heirs of David J. Tuzynski, deceased (et al.)

David J. Tuzynski (deceased), owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 1150 East 27th Street, Erie, PA 16504

1,728 square feet, 0.1331 acres
Assessment Map number: (18) 5044-235

Assessed Value figure: 73,400.00

Improvement thereon: Residential
Michael J. Shavel, Esquire

(I.D. No. 60554)

HILL WALLACK LLP

777 Township Line Rd, Suite 250

Yardley, PA 19067

(215) 579-7700

Jan. 27 and Feb. 3, 10

SALE NO. 8

Ex. #12466 of 2016

**U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE
FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,
Plaintiff**

v.

LINDA P. NGUYEN, Defendant

SHERIFF'S SALE

By virtue of a Writ of Execution No. 2016-12466, U.S. Bank National Association, as Trustee for the Pennsylvania Housing Finance Agency, Plaintiff vs. Linda P. Nguyen, Defendants

Real Estate: 470 DALE DRIVE, ERIE, PA 16511

Municipality: Township of Harborcreek, Erie County, Pennsylvania

Dimensions: 70 x 128

See Deed Book 2013, page 18416

Tax I.D. (27) 6-97-13

Assessment: \$29,500 (Land)

\$90,460 (Bldg)

Improvement thereon: a residential dwelling house as identified above

Leon P. Haller, Esquire

Purcell, Krug & Haller

1719 North Front Street
Harrisburg, PA 17104

(717) 234-4178

Jan. 27 and Feb. 3, 10

SALE NO. 9

Ex. #12677 of 2016

**U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE
FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,
Plaintiff**

v.

**RICHARD C. ROSS, Defendant
SHERIFF'S SALE**

By virtue of a Writ of Execution No. 12677-16, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff VS. RICHARD C. ROSS, Defendant

Real Estate: 999 EAST MAIN STREET, CORRY, PA 16407

Municipality: First Ward, City of Corry, Erie County, Pennsylvania

Dimensions: 1.3 Acres +/-

See Deed Instrument #2011-018770
Tax I.D.: (5) 19-104-10

Assessment: \$ 7,500. (Land)
\$40,600. (Bldg)

Improvement thereon: a residential dwelling house as identified above

Leon P. Haller, Esquire

Purcell, Krug & Haller

1719 North Front Street

Harrisburg, PA 17104

(717) 234-4178

Jan. 27 and Feb. 3, 10

SALE NO. 10

Ex. #12375 of 2016

CIT Bank, N.A., Plaintiff

v.

**BRIAN S. CAMPBELL
DAWN A. CAMPBELL,
Defendant(s)**

DESCRIPTION

ALL THAT CERTAIN LOT OF LAND SITUATE IN BOROUGH OF ELGIN, ERIE COUNTY, PENNSYLVANIA:

BEING KNOWN AS 11525 E Pleasant St, Corry, PA 16407

PARCEL NUMBER: 12-9-3-5

IMPROVEMENTS: Residential Property

Morris A. Scott, Esquire

PA ID #83587

UDREN LAW OFFICES, P.C.
Woodcrest Corporate Center
111 Woodcrest Road, Suite 200
Cherry Hill, NJ 08003-3620
856-669-5400

Jan. 27 and Feb. 3, 10

SALE NO. 11

Ex. #11413 of 2016

**Reverse Mortgage Solutions, Inc.
Plaintiff**

v.

**ESTATE OF MARY ANN
HEAVEN, LES R. HEAVEN,
KNOWN HEIR OF MARY
ANN HEAVEN, STEVEN G.
HEAVEN, KNOWN HEIR OF
MARY ANN HEAVEN, TAMMY
LEE MERTZ, AS KNOWN
HEIR AND AS PERSONAL
REPRESENTATIVE OF THE
ESTATE OF MARY ANN
HEAVEN, UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS AND
ALL PERSONS, FIRMS OR
ASSOCIATIONS CLAIMING
RIGHT, TITLE OR INTEREST
FROM OR UNDER MARY ANN
HEAVEN, Defendant(s)**

SHERIFF'S SALE

ALL THAT CERTAIN LOT
OF LAND SITUATE IN
WATERFORD, ERIE COUNTY,
PENNSYLVANIA:

BEING KNOWN AS 226 East
4th Street, Waterford, PA 16441
PARCEL NUMBER: 46-007-
028.0-015.00

IMPROVEMENTS: Residential
Property

David Neeren, Esquire

PA ID #204252

UDREN LAW OFFICES, P.C.
Woodcrest Corporate Center
111 Woodcrest Road, Suite 200
Cherry Hill, NJ 08003-3620
856-669-5400

Jan. 27 and Feb. 3, 10

SALE NO. 12

Ex. #11870 of 2016

**PNC Bank, National Association
Plaintiff**

v.

**UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS AND
ALL PERSONS, FIRMS OR
ASSOCIATIONS CLAIMING
RIGHT, TITLE OR INTEREST**

**FROM OR UNDER MARY J.
THOMAS, UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS AND
ALL PERSONS, FIRMS OR
ASSOCIATIONS CLAIMING
RIGHT, TITLE OR INTEREST
FROM OR UNDER MICHAEL
E. THOMAS, Defendant(s)**

DESCRIPTION

ALL THAT CERTAIN LOT
OF LAND SITUATE IN CITY
OF ERIE, ERIE COUNTY,
PENNSYLVANIA:

BEING KNOWN AS 619 E 10TH
ST, Erie, PA 16503

PARCEL NUMBER: (15)2032-213
IMPROVEMENTS: Residential
Property

Sherri J. Braunstein, Esquire

PA ID #90675

UDREN LAW OFFICES, P.C.
Woodcrest Corporate Center
111 Woodcrest Road, Suite 200
Cherry Hill, NJ 08003-3620
856-669-5400

Jan. 27 and Feb. 3, 10

SALE NO. 13

Ex. #11378 of 2016

Beal Bank, Plaintiff

v.

**Bobby C. Braswell and Betty D.
Braswell, Defendant
SHERIFF'S SALE**

By virtue of a Writ of Execution
filed to No. 11378-16, Beal Bank
vs. Bobby C. Braswell and Betty
D. Braswell, owners of property
situated in Concord Township, Erie
County, Pennsylvania being 12621
Ormsbee Rd, Elgin, PA 16413

2.89 Acres

Assessment Map number:
03015035000102

Assessed Value figure: \$64,300.00
Improvement thereon: Residential
Dwelling

Robert W. Williams, Esquire

1 E. Stow Road

Marlton, NJ 08053

(856) 482-1400

Jan. 27 and Feb. 3, 10

SALE NO. 14

Ex. #10069 of 2016

Ditech Financial, LLC, Plaintiff

v.

**Thomas M. Fedorka a/k/a
Thomas Fedorka, Joyce Potter**

**and Kelly J. Fedorka a/k/a Kelly
Fedorka, Defendants
SHERIFF'S SALE**

By virtue of a Writ of Execution filed
to No. 10069-16, Ditech Financial,
LLC vs. Thomas M. Fedorka a/k/a
Thomas Fedorka, Joyce Potter
and Kelly J. Fedorka a/k/a Kelly
Fedorka, owners of property
situated in Le Boeuf Township, Erie
County; Pennsylvania being 3589
Route 6, Waterford, PA 16441

2 Acres

Assessment Map number: 30-20-8-
63.01

Assessed Value figure: \$152,370.00
Improvement thereon: Residential
Dwelling

Robert W. Williams, Esquire

1 E. Stow Road

Marlton, NJ 08053

(856) 482-1400

Jan. 27 and Feb. 3, 10

SALE NO. 15

Ex. #12150 of 2015

**Bayview Loan Servicing, LLC,
a Delaware Limited Liability
Company, Plaintiff**

v.

**Carl D. Lindy Original
Mortgagor and Craig J. Johnston
Real Owner, Defendant
SHERIFF'S SALE**

By virtue of a Writ of Execution
filed to No. 2015-12150, Bayview
Loan Servicing, LLC, a Delaware
Limited Liability Company vs.
Carl D. Lindy Original Mortgagor
and Craig J. Johnston Real
Owner, of property situated in
Millcreek Township, Erie County,
Pennsylvania being 5311 Helen St.,
Erie, PA 16505

.3444 Acres

Assessment Map number: 33-040-
13810-011.00

Assessed Value figure: \$97,530.00
Improvement thereon: Residential
Dwelling

Robert W. Williams, Esquire

1 E. Stow Road

Marlton, NJ 08053

(856) 482-1400

Jan. 27 and Feb. 3, 10

A Fresh Start: Expungements, Pardons, and Sealing Criminal Records Under Act 5

Friday, February 24
Bayfront Convention Center

Registration: 2:15 p.m.

Seminar: 2:30 – 4:00 p.m.

Cocktails (cash bar): 4:00 – 5:00 p.m.



Cost

\$70 - ECBA Member & Non-Attorney Staff

\$90 - Non-Member

\$49 - Member Judge not needing CLE

1.5 hours Substantive CLE

Attend this seminar for an overview of Pennsylvania law related to:

- Expungements
- Pardons
- The New Act 5 “sealing” law

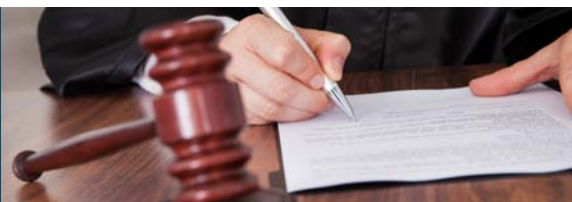
Whether you practice in civil areas, including employment law, or criminal areas, this program will be of interest and relevance.

Knowledge of these topics can also allow you to expand your practice by assisting clients who are now productive community members, needing to put their pasts behind them. This is a burgeoning field in an era of mass incarceration and over criminalization.

After the topic overviews, Attorney Bob Catalde will address the Clerk of Record’s procedures in these areas.

Seminar Speakers:

Jacqueline Wilson Lager, Esquire
Northwestern Legal Services
Robert J. Catalde, Esquire
Clerk of Courts



***Reservations due to the ECBA
office by Thursday, February 16***

Cancellation Policy for ECBA Events/Seminars:

Cancellations received on or before the last reservation deadline will be fully refunded. Cancellations received after the deadline or non-attendance will not be refunded. If you register for an event without payment in advance and don't attend, it will be necessary for the ECBA to send you an invoice for the event.

Online!
REGISTRATION
Available at
www.eriebar.com



SALE NO. 16

Ex. #13369 of 2014

**Wells Fargo Bank, NA Successor
by merger with Wells Fargo
Home Mortgage, Inc., Plaintiff
v.**

**Teri L. Madden, Unknown
heirs, successors, assigns, and
all persons, firms or associations
claiming right, title, or interest
from or under William A.
Madden, Deceased Mortgagor
and Real Owner, Bernice Y.
Wieczorek, heir of William A.
Madden, Deceased Mortgagor
and Real Owner and Tom
Casner, heir of William A.
Madden, Deceased Mortgagor
and Real Owner, Defendants**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 13369-14, Wells Fargo Bank, NA successor by merger with Wells Fargo Home Mortgage, Inc. vs. Teri L. Madden, Unknown heirs, successors, assigns, and all persons, firms or associations claiming right, title, or interest from or under William A. Madden, Deceased Mortgagor and Real Owner, Bernice Y. Wieczorek, heir of William A. Madden, Deceased Mortgagor and Real Owner and Tom Casner, heir of William A. Madden, Deceased Mortgagor and Real Owner, owners of property situated in Erie City, Erie County, Pennsylvania being 2639 E. 28th St., Erie, PA 16510
Assessment Map number: (18) 5144-204

Assessed Value figure: \$78,170.00
Improvement thereon: Residential Dwelling
Robert W. Williams, Esquire
1 E. Stow Road
Marlton, NJ 08053
(856) 482-1400

Jan. 27 and Feb. 3, 10

SALE NO. 17

Ex. #10291 of 2016

**Wilmington Savings Fund
Society, FSB, d/b/a Christiana
Trust, as indenture trustee, for
the CSMC 2015-RPL1 Trust,
Mortgage-Backed Notes, Series
2015-RPL1, Plaintiff
v.**

Scott D. Van Buskirk a/k/a

**Scott Van Buskirk, Defendant
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 10291-16, Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, as indenture trustee, for the CSMC 2015-RPL1 Trust, Mortgage-Backed Notes, Series 2015-RPL1 vs. Scott D. Van Buskirk a/k/a Scott Van Buskirk, owner of property situated in Erie City, Erie County, Pennsylvania being 1027 W 29th St, Erie, PA 16508

0.1085 Acres
Assessment Map number: 19-6038-313

Assessed Value figure: \$78,800.00
Improvement thereon: Residential Dwelling

Robert W. Williams, Esquire
1 E. Stow Road
Marlton, PA 08053
(856) 482-1400

Jan. 27 and Feb. 3, 10

SALE NO. 18

Ex. #12368 of 2016

**U.S. Bank National Association,
as Trustee, for Residential Asset
Securities Corporation, Home
Equity Mortgage Asset-Backed
Pass-Through Certificates, Series
2006-Emx3, Plaintiff
v.**

**Jeffrey E. Flagg a/k/a Jeffrey
Flagg Defendant(s)
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 12368-16, U.S. Bank National Association, as Trustee, for Residential Asset Securities Corporation, Home Equity Mortgage Asset-Backed Pass-Through Certificates, Series 2006-Emx3 vs. Jeffrey E. Flagg a/k/a Jeffrey Flagg

Amount Due: \$88,456.43
Jeffrey E. Flagg a/k/a Jeffrey Flagg, owner(s) of property situated in ERIE CITY, 3RD, Erie County, Pennsylvania being 922 West 9th Street, Erie, PA 16502-1129

Dimensions: 414.5' x 165'
Acreage: 0.1553
Assessment Map number: 16030047023700
Assessed Value: \$83,430.00
Improvement thereon: residential

Phelan Hallinan Diamond & Jones, LLP
One Penn Center at Suburban
Station, Suite 1400
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1814
(215) 563-7000

Jan. 27 and Feb. 3, 10

SALE NO. 19

Ex. #12541 of 2016

**The Bank of New York Mellon
f/k/a The Bank of New York,
as Trustee on Behalf of Cit
Mortgage Loan Trust 2007-1,
Plaintiff
v.**

**Jennifer Mcgarvie, Defendant(s)
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 12541-16, The Bank of New York Mellon f/k/a The Bank of New York, as Trustee on Behalf of Cit Mortgage Loan Trust 2007-1 vs. Jennifer Mcgarvie

Amount Due: \$70,672.77
Jennifer Mcgarvie, owner(s) of property situated in WESLEYVILLE BOROUGH, Erie County, Pennsylvania being 3514 Edison Avenue, Wesleyville, PA 16510

Square Feet: 1,042
Assessment Map number: 50002036000600
Assessed Value: \$71,180.00
Improvement thereon: residential
Phelan Hallinan Diamond & Jones, LLP
One Penn Center at Suburban
Station, Suite 1400
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1814
(215) 563-7000

Jan. 27 and Feb. 3, 10

SALE NO. 20

Ex. #11043 of 2016

**Wells Fargo Bank, NA, Plaintiff
v.**

**Cori M. Miller a/k/a Cori Miller
Albert R. Isiminger a/k/a Albert
Isiminger, Defendant(s)
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 11043-2016, Wells Fargo Bank, NA vs. Cori M. Miller a/k/a Cori Miller, Albert R. Isiminger a/k/a Albert Isiminger
Amount Due: \$95,444.34
Cori M. Miller a/k/a Cori Miller,

Albert R. Isiminger a/k/a Albert Isiminger, owner(s) of property situated in UNION TOWNSHIP, Erie County, Pennsylvania being 9100 Concord Road, Union City, PA 16438-7926

Acreage: 4.2500

Assessment Map number:

43014041000100

Assessed Value: \$92,020.00

Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban Station, Suite 1400

1617 John F. Kennedy Boulevard Philadelphia, PA 19103-1814

(215) 563-7000

Jan. 27 and Feb. 3, 10

SALE NO. 21

Ex. #12766 of 2015

**U.S. Bank National Association
f/k/a Firststar Bank, N.A. fka
Star Bank, N.A. s/b/m to Great
Financial Bank, FSB s/b/m to
Lincoln Service Corporation,
Plaintiff**

v.

**Ralph Maloney, in His Capacity
as Executor of The Estate of
Caroline Maloney, Deceased,
Defendant(s)**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 2015-12766, U.S. Bank National Association f/k/a Firststar Bank, N.A. f/k/a Star Bank, N.A. s/b/m to Great Financial Bank, FSB s/b/m to Lincoln Service Corporation vs. Ralph Maloney, in His Capacity as Executor of The Estate of Caroline Maloney, Deceased

Amount Due: \$22,409.68

Ralph Maloney, in His Capacity as Executor of The Estate of Caroline Maloney, Deceased, owner(s) of property situated in ERIE CITY, 2ND, Erie County, Pennsylvania being 549 East 13th Street, Erie, PA 16503-1229

Dimensions: 33.5 X 105

Acreage: 0.0808

Assessment Map number:

15020028020400

Assessed Value: \$36,500

Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban

Station, Suite 1400
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1814

(215) 563-7000

Jan. 27 and Feb. 3, 10

SALE NO. 22

Ex. #13181 of 2015

**The Bank of New York Mellon
f/k/a The Bank of New York
as Successor in Interest to
JPMorgan Chase Bank, National
Association, as Trustee for
C-Bass Mortgage Loan Asset-
Backed Certificates, Series 2006-
Rp1, Plaintiff**

v.

Tracy M. Stuftt

Frank E. Wentling, Defendant(s)

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 13181-15, The Bank of New York Mellon f/k/a The Bank of New York as Successor in Interest to JPMorgan Chase Bank, National Association, as Trustee for C-Bass Mortgage Loan Asset-Backed Certificates, Series 2006-Rp1 vs. Tracy M. Stuftt, Frank E. Wentling Amount Due: \$75,127.06

Tracy M. Stuftt, Frank E. Wentling, owner(s) of property situated in ERIE CITY, Erie County, Pennsylvania being 3015 French Street, Erie, PA 16504-1066

Dimensions: 35 X 110

Acreage: 0.0884

Assessment Map number: 18-050-086.0-225.00

Assessed Value: \$75,020.00

Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban Station, Suite 1400

1617 John F. Kennedy Boulevard Philadelphia, PA 19103-1814

(215)563-7000

Jan. 27 and Feb. 3, 10

SALE NO. 23

Ex. #12464 of 2016

**Pennymac Loan Services, LLC,
Plaintiff**

v.

**Kristina L. Westcott,
Defendant(s)**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 2016-12464, Pennymac

Loan Services, LLC vs. Kristina L. Westcott

Amount Due: \$159,452.65

Kristina L. Westcott, owner(s) of property situated in ERIE CITY, Erie County, Pennsylvania being 236 Beverly Drive, Erie, PA 16505

Square Feet: 1,856

Assessment Map number:

17041033021200

Assessed Value: \$ 162,600.00

Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP One Penn Center at Suburban Station, Suite 1400 1617 John F. Kennedy Boulevard

Philadelphia, PA 19103-1814

(215) 563-7000

Jan. 27 and Feb. 3, 10

SALE NO. 24

Ex. #12094 of 2016

Nationstar Mortgage LLC

v.

**Eric J. Andrzejewski and
Alison L. Pope**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 12094-16, Nationstar Mortgage LLC vs. Eric J. Andrzejewski and Alison L. Pope, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 647 Payne Avenue, Erie, PA 16503

0.1446

Assessment Map number: 14011005011900

Assessed Value figure: \$49,800.00

Improvement thereon: a residential dwelling

Sarah K. McCaffery, Esquire

Shapiro & DeNardo, LLC

Attorney for Movant/Applicant

3600 Horizon Drive, Suite 150

King of Prussia, PA 19406

(610) 278-6800

Jan. 27 and Feb. 3, 10

SALE NO. 25

Ex. #10165 of 2016

**Nationstar Mortgage LLC,
Plaintiff**

v.

**Paul A. Bizzarro and Kathleen S.
Bizzarro and Angelo R. Bizzarro
and United States of America,
Defendant**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 10165-16, Nationstar Mortgage LLC vs. Paul A. Bizzarro and Kathleen S. Bizzarro and Angelo R. Bizzarro and United States of America, owner(s) of property situated in Township of Millcreek, Erie County, Pennsylvania being 1450 Nicholson Street, Erie, PA 16509
0.2663

Assessment Map number: (33) 100-431-18

Assessed Value figure: \$ 102,400.00
Improvement thereon: a residential dwelling

Sarah K. McCaffery, Esquire
Shapiro & DeNardo, LLC
Attorney for Movant/Applicant
3600 Horizon Drive, Suite 150
King of Prussia, PA 19406
(610) 278-6800

Jan. 27 and Feb. 3, 10

SALE NO. 26

Ex. #10954 of 2016

**Nationstar Mortgage LLC,
Plaintiff**

v.

Darrell L. Hall, Defendant

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 2016-10954, Nationstar Mortgage LLC vs. Darrell L. Hall, owner(s) of property situated in Township of Concord, Erie County, Pennsylvania being 13866 Stewart Road, Corry, PA 16407
1.000

Assessment Map number: 03004009000602

Assessed Value figure: \$107,780.00
Improvement thereon: a residential dwelling

Sarah K. McCaffery, Esquire
Shapiro & DeNardo, LLC
Attorney for Movant/Applicant
3600 Horizon Drive, Suite 150
King of Prussia, PA 19406
(610) 278-6800

Jan. 27 and Feb. 3, 10

SALE NO. 27

Ex. #11964 of 2016

**U.S. Bank National Association
as Indenture Trustee for CSMC
Trust 2014-CIM1 Mortgage-
Backed Notes, Series 2014-CIM1,
Plaintiff**

v.

**Cecil W. Sparks and Joetta
Sparks, Defendants
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 11964-16, U.S. Bank National Association as Indenture Trustee for CSMC Trust 2014-CIM1 Mortgage-Backed Notes Series 2014-CIM1 vs. Cecil W. Sparks and Joetta Sparks, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 704 Plum Street, Erie, PA 16502
0.0500

Assessment Map number: 17040028010700

Assessed Value figure: \$52,110.00
Improvement thereon: a residential dwelling

Sarah K. McCaffery, Esquire
Shapiro & DeNardo, LLC
Attorney for Movant/Applicant
3600 Horizon Drive, Suite 150
King of Prussia, PA 19406
(610) 278-6800

Jan. 27 and Feb. 3, 10

SALE NO. 28

Ex. #11102 of 2013

**Christiana Trust, a division of
Wilmington Savings Fund, et al,
Plaintiff**

v.

**Barry A. Brumett a/k/a Barry
Brumett and Melissa Brumett
a/k/a Melissa Brumett,
Defendants**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 11102-13, Christiana Trust, a division of Wilmington Savings Fund, et al vs. Barry A. Brumett a/k/a Barry Brumett and Melissa Brumett a/k/a Melissa A. Brumett, owner(s) of property situated in Township of Venango, Erie County, Pennsylvania being 14091 Route 8 a/k/a 14091 Route 8/89, Wattsburgh, PA 16442
2.15 acres; 1632 square feet

Assessment Map number: 44021033001501

Assessed Value figure: 129,990
Improvement thereon: Residential Dwelling

Stephen M. Hladik, Esq.
298 Wissahickon Ave
North Wales, PA 19454

215-855-9521

Jan. 27 and Feb. 3, 10

SALE NO. 29

Ex. #11770 of 2016

**PROF-2013-S3, et al, Plaintiff
v.**

**Wayne M. VanLuven, et al.,
Defendants**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 11770-16, PROF-2013-S3, et al vs. Wayne M. VanLuven, et al Wayne M. VanLuven a/k/a Wayne M. VanLuven and Cathy L. VanLuven a/k/a Cathy L. Van Luven, owner(s) of property situated in Borough of Wesleyville, Erie County, Pennsylvania being 1708 Market Street, Wesleyville Borough, PA 16510
0947 acres; 1440 square feet

Assessment Map number: 50001005000500

Assessed Value figure 75,120
Improvement thereon: Residential Dwelling

Stephen M. Hladik, Esq.
298 Wissahickon Ave
North Wales, PA 19454
215-855-9521

Jan. 27 and Feb. 3, 10

SALE NO. 30

Ex. #12487 of 2016

**Central Mortgage Company,
Plaintiff**

v.

**Amy B. Lowes n/b/m Amy B.
Weber and Frederick M. Weber,
Defendants**

DESCRIPTION

ALL THAT certain piece or parcel of land situate in the Township of Harborcreek, County of Erie and State of Pennsylvania, bounded and described as follows, to wit:

The residue of land on the east side of Wales Road as identified on a map recorded with the Erie County Recorder of Deeds on August 19, 1999 at Map Book 1999, page 264 consisting of 53.225 acres more or less and the residue of land on the west side of Wales Road consisting of .687 acres more or less.

Fee Simple Title Vested in Amy B. Lowes, now by marriage, Amy B. Weber and Frederick M. Weber,

husband and wife by deed from, Amy B. Lowes, now by marriage, Amy B. Weber and Frederick M. Weber, husband and wife, dated 5/16/2003, recorded 7/21/2003, in the Erie County Recorder of deeds in Deed Book 1038, Page 2112, as Instrument No. 37598.

PROPERTY ADDRESS: 5680 Wales Road, Erie, PA 16510. **PARCEL ID #** (27) 77-238-9 & (27) 77-239-13

M. TROY FREEDMAN, ESQUIRE STERN & EISENBERG, PC
1581 Main Street, Suite 200
The Shops at Valley Square
Warrington, PA 18976
(215) 572-8111

Jan. 27 and Feb. 3, 10

SALE NO. 31

Ex. #12378 of 2016

**Beneficial Consumer Discount
Company d/b/a Beneficial
Mortgage Co. of Pennsylvania,
Plaintiff**

v.

**Van A. Miller and Ellen Miller,
Defendant**

DESCRIPTION

By virtue of a Writ of Execution filed to No. 12378-16, Beneficial Consumer Discount Company d/b/a Beneficial Mortgage Co of Pennsylvania v. Van A. Miller and Ellen Miller

Van A. Miller and Ellen Miller, owners of property situated in the Township of Waterford, Erie County, Pennsylvania being 1024 Old State Road, Waterford, Pennsylvania 16441.

Tax I.D. No. 47027064000406
Assessment: \$ 72,469.56

Improvements: Residential Dwelling

McCabe, Weisberg and Conway, P.C.
123 South Broad Street, Suite 1400
Philadelphia, PA 19109

215-790-1010

Jan. 27 and Feb. 3, 10

SALE NO. 32

Ex. #12418 of 2016

**Lakeview Loan Servicing, LLC,
Plaintiff**

v.

**Justine C. Patterson, Defendant
DESCRIPTION**

By virtue of a Writ of Execution filed to No. 12418-2016 Lakeview Loan Servicing, LLC v. Justin C. Patterson

Justin C. Patterson, owners of property situated in the Township of North East, Erie County, Pennsylvania being 1041 Freeport Road, North East, Pennsylvania 16428.

Tax I.D. No. 370050405001400
Assessment: \$ 98,450.35

Improvements: Residential Dwelling

McCabe, Weisberg and Conway, P.C.
123 South Broad Street, Suite 1400
Philadelphia, PA 19109

215-790-1010

Jan. 27 and Feb. 3, 10

SALE NO. 33

Ex. #12778 of 2014

**PNC Bank, National Association,
Plaintiff**

v.

**All Known and Unknown
Heirs of Robert F. Aylsworth,
Defendant**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 12778-2014, PNC BANK, NATIONAL ASSOCIATION vs. ALL KNOWN AND UNKNOWN HEIRS OF ROBERT F. AYLSWORTH

ALL KNOWN AND UNKNOWN HEIRS OF ROBERT F. AYLSWORTH, owner(s) of property situated in TOWNSHIP OF FAIRVIEW, Erie County, Pennsylvania being 7420 BEAR CREEK ROAD, FAIRVIEW, PA 16415

Assessment Map number: 21-64-121-4.01

Assessed Value figure: \$152,000.00
Improvement thereon: single family dwelling

Brett A. Solomon, Esquire
Michael C. Mazack, Esquire
Tucker Arensberg, P.C.

1500 One PPG Place
Pittsburgh, PA 15222

(412) 566-1212

Jan. 27 and Feb. 3, 10

SALE NO. 34

Ex. #12151 of 2015

PNC Bank, National Association,

Plaintiff

v.

**Angela C. Collins, Aaron B. Collins, and The United States of America, Defendants
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 12151-2015, PNC BANK, NATIONAL ASSOCIATION vs. ANGELA C. COLLINS, AARON B. COLLINS, and THE UNITED STATES OF AMERICA

ANGELA C. COLLINS and AARON B. COLLINS, owner(s) of property situated in CITY OF ERIE, Erie County, Pennsylvania being 501 CASCADE STREET, ERIE, PENNSYLVANIA 16507

1275 square feet

Assessment Map number:

17040029011700

Assessed Value figure: \$57,760.00

Improvement thereon: single family dwelling

Brett A. Solomon, Esquire

Michael C. Mazack, Esquire

Tucker Arensberg, P.C.

1500 One PPG Place

Pittsburgh, PA 15222

(412) 566-1212

Jan. 27 and Feb. 3, 10

SALE NO. 35

Ex. #11893 of 2015

**PNC Bank, National Association,
Plaintiff**

v.

**Richard Ruark, Administrator
of The Estate of Aaron C. Ruark,
a/k/a Aaron Ruark, a/k/a Aaron
Charles Lloyd Ruark, and all
unknown heirs of the Estate of
Aaron C. Ruark, a/k/a Aaron
Ruark, a/k/a Aaron Charles
Lloyd Ruark, Defendants**

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 11893-15, PNC BANK, NATIONAL ASSOCIATION vs RICHARD RUARK, ADMINISTRATOR OF THE ESTATE OF AARON C. RUARK,

a/k/a AARON RUARK, a/k/a AARON CHARLES LLOYD RUARK, and ALL UNKNOWN HEIRS OF THE ESTATE OF AARON C. RUARK, a/k/a AARON RUARK, a/k/a AARON CHARLES LLOYD RUARK, owner(s) of

property situated in CITY OF ERIE
 Erie County, Pennsylvania being
 3229 PINE AVENUE, ERIE, PA
 16504
 1351 square feet
 Assessment Map number: 18-5071-
 103
 Assessed Value figure: \$68,500
 Improvement thereon: single family
 dwelling
 Brett A. Solomon, Esquire
 Michael C. Mazack, Esquire
 Tucker Arensberg, P.C.
 1500 One PPG Place
 Pittsburgh, PA 15222
 (412) 566-1212

Jan. 27 and Feb. 3, 10



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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 or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION**COUGHLIN, BARBARA, deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executrix: Michele Orlando, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Darlene M. Vlahos, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

DAUGHERTY, JAMES F., deceased

Late of Millcreek Township, Erie County, Pennsylvania

Administrator C.T.A.: PA Soldiers and Sailors Home, c/o Thomas M. Davis, Esq., Dept. of Military and Veterans Affairs, Bldg. 7-36, Fort Indiantown Gap, Annville, PA 1700

Attorney: Thomas M. Davis, Esq., Dept. of Military and Veterans Affairs, Bldg. 7-36, Fort Indiantown Gap, Annville, PA 1700

DeJOHN, DOROTHY M., deceased

Late of the Township of Millcreek
Executor: James Minnis

Attorney: Edwin W. Smith, Esq., Shapira, Hutzelman and Smith, 305 West 6th Street, Erie, PA 16507

DINGFELDER, HOWARD E., deceased

Late of the City of Corry, County of Erie, Commonwealth of Pennsylvania

Executor: Dan Dingfelder, c/o Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

Attorney: Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

GEORGE, I, ROBERT EUGENE, a/k/a GEORGE, ROBERT, a/k/a GEORGE, ROBERT E., deceased

Late of the City of Corry, County of Erie, Commonwealth of Pennsylvania

Executor: Stanley George, c/o Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

Attorney: Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

GONZALEZ, PATRICIA A., deceased

Late of North East Borough, Erie County, North East, Pennsylvania

Executor: Steven G. Heiter c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428

Attorney: Robert J. Jeffery, Esq., Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

HAMMER, RICHARD L., deceased

Late of the City of Erie, County of Erie, Pennsylvania

Executrix: Linda S. Janda, c/o 150 East 8th Street, Erie, PA 16501

Attorney: Gregory L. Heidt, Esquire, 150 East 8th Street, Erie, PA 16501

HEAD, BARBARA A., a/k/a BARBARA ANN HEAD, a/k/a BARBARA HEAD, deceased

Late of the Borough of Wesleyville, County of Erie and State of Pennsylvania

Executrix: Ann M. Majersky, 2223 East Gore Road, Erie, PA, 16510
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

KNAPP, DONALD R., deceased

Late of Wayne Township, Erie County, Pennsylvania

Executrix: Cathlene M. Knapp, c/o Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

Attorney: Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

MANNING, HELEN J., deceased

Late of the City of Erie, Commonwealth of Pennsylvania
Executrix: MarcyAnn Bencivenga, 5429 Countryside Drive, McKean, PA 16426

Attorney: L.C. TeWinkle, Esquire, 821 State Street, Erie, PA 16501

MUIR-KERNER, SHARON L., deceased

Late of Wattsburg, Erie County, Pennsylvania

Executrix: Mary Beth Swears, c/o Robert C. Ward, Esq., 307 French Street, Erie, Pennsylvania 16507-1129

Attorney: Robert C. Ward, Esq., 307 French Street, Erie, Pennsylvania 16507-1129

NICHOLLS, JAE K., deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executor: Mark W. Nicholls
Attorney: Thomas J. Minarcik, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**NICK, AUDREY I.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executrix: Diane S. Tack

Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**O'CONNOR, TIMOTHY
MICHAEL,
deceased**

Late of Erie County, Commonwealth of Pennsylvania
Executrix: Christine O'Connor, 7076 East Lake Road, Erie, PA 16511

Attorney: None

**OSEARO, LOUISE R.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania

Executrix: Letisha R. Osearo, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428

Attorney: Robert J. Jeffery, Esq., Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**PACANSKY, HELEN T., a/k/a
HELEN TREASA PACANSKY,
a/k/a HELEN PACANSKY,
deceased**

Late of the Township of Girard, County of Erie, State of Pennsylvania

Executrix: Julia Edwards, 9826 Peach Street, Girard, PA 16417

Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**PHILABAUM, BARBARA
ANNETTE, a/k/a BARBARA A.
PHILABAUM,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania

Executrix: Tamara S. Philabaum c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501

Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**SHEFFER, WILLIAM J., a/k/a
WILLIAM SHEFFER a/k/a
W. JOHN SHEFFER, a/k/a
WILLIAM JOHN SHEFFER,
deceased**

Late of the Township of Springfield, County of Erie, State of Pennsylvania

Administrator: David Sheffer, 9526 East Lake Road, North East, Pennsylvania 16428

Attorney: Grant M. Yochim, Esq., 24 Main St. E., P. O. Box 87, Girard, PA 16417

**SPADE, JOSEPH A.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania

Administratrix: Molly A. Spade c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**TSSARIO, JOSEPH T.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Co-Executors: George T. Tssario and Joseph G. Tssario, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

Attorneys: Colleen R. Stumpf, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

SECOND PUBLICATION**BRUNNER, MICHAEL R.,
deceased**

Late of the Township of Harborcreek, County of Erie, and Commonwealth of Pennsylvania

Executor: Joseph R. Brunner, c/o William J. Schaaf, Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorney: William J. Schaaf, Esq., Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP., Suite 300, 300 State Street, Erie, PA 16507

**CATAPANO, E. VALENTINE,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Executrix: Debra Field, 2173 S. Manor Dr., Erie, PA 16505

Attorney: None

**FABAC, RICHARD WILLIAM,
a/k/a RICHARD W. FABAC,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Administrator: Seth Fabec, 1222 Mission Dr., Erie, PA 16509

Attorney: John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

**GLOVER, RITA MARGARET,
a/k/a RITA M. GLOVER, a/k/a
RITA GLOVER,
deceased**

Late of the Township of Millcreek, County of Erie, and Commonwealth of Pennsylvania

Co-Executors: Sheila D'Amassa and Thomas W. Glover, Jr.

Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**GRESH, MICHAEL JR.,
deceased**

Late of the City of Erie

Executor: David A. Gresh, 2433 Wintergreen Drive, Erie, PA, 16510

Attorney: David J. Mack, 510 Parade Street, Erie, PA 16507

**GRZEGORZEWSKI, ANN F.,
deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania
Executor: Charles DiGiovanni, 26 Woodcroft Rd., Havertown, PA 19083
Attorney: None

**KEISER, ELIZABETH L.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Daniel J. Perfetti, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Colleen R. Stumpf, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**LESH, DAVID E.,
deceased**

Late of Township of Millcreek
Executrix: Marie T. Lesh, 5808 Forest Crossing, Erie, PA 16506
Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**LONG, RICHARD T., a/k/a
RICHARD LONG, a/k/a RICK
LONG,
deceased**

Late of North East Township, Erie County, PA
Administrator: Bruce A. Long, c/o Mary Alfieri Richmond, Esq., Jones School Square, 1st Floor, 150 East 8th Street, Erie, PA 16501
Attorney: Mary Alfieri Richmond, Esq., Jones School Square, 1st Floor, 150 East 8th Street, Erie, PA 16501

**MERRILL, MARJORIE M.,
deceased**

Late of the Borough of Union City, County of Erie, Commonwealth of Pennsylvania
Executor: Marshall R. Merrill, Jr., c/o Thomas J. Ruth, Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**OBMANN, MARY ANNE,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Bradley A. Obmann, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**SHAFFER, JASON SCOTT, a/k/a
JASON S. SHAFFER,
deceased**

Late of Harborcreek Township, Erie County, Commonwealth of Pennsylvania
Administratrix: Sandra K. Shaffer, c/o 120 W. 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

**WEBER, L. DANIEL a/k/a LEO
DANIEL WEBER, a/k/a LEO D.
WEBER,
deceased**

Late of Harborcreek Township, Erie County, Pennsylvania
Executor: Bradley A. Weber, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**WIECZOREK, LOUIS J., a/k/a
LOUIS WIECZOREK,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Kaylia Corcoran, 2355 Glendale Avenue, Erie, PA 16510-1501
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

THIRD PUBLICATION

**APPLETON, MARILYN JEAN,
deceased**

Late of West Springfield Village, County of Erie, Commonwealth of Pennsylvania
Co-Executors: Lora L. Shuster, 887 Sandusky Street, Conneaut, OH 44030 and Lisa M. Goodwill, 454 Washington Street, Conneaut, OH 44030
Attorney: Charles N. Lafferty, Esq., 365 Main Street, Conneaut, OH 44030

**BOWSER, CLIFTON RAY,
deceased**

Late of Millcreek Township, County of Erie, Commonwealth of Pennsylvania
Executrix: Diana Mae Blandi, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie PA 16506-4508
Attorney: Colleen R. Stumpf, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**CALDWELL, BRUNHILDE CH.,
a/k/a B. CHRISTEL CALDWELL,
deceased**

Late of the Township of Fairview, Erie County, Pennsylvania
Executor: Anita Justinus, c/o Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507
Attorney: Joseph P. Martone, Esq., Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

**CONNORS, ELOUISE P.,
deceased**

Late of the Borough of Edinboro,
County of Erie, Commonwealth of
Pennsylvania

Executor: Michael W. Connors,
41 Greenleaf Drive, Florence, MA
01062-9768

Attorneys: MacDonald, Illig, Jones
& Britton LLP., 100 State Street,
Suite 700, Erie, PA 16507-1459

**GRADLER, GERALD A.,
deceased**

Late of the City of the Township of
Harborcreek, County of Erie and
Commonwealth of Pennsylvania

Executrix: Danelle Osborn
Attorney: Thomas J. Minarcik,
Esquire, Elderkin Law Firm, 150
East 8th Street, Erie, PA 16501

**HAWK, FRANCES M., a/k/a
FRANCES MAY HAWK,
deceased**

Late of Fairview Township,
County of Erie

Executor: Vance D. Payne, c/o
Thomas A. Testi, Esq., 3952
Avonia Road, P.O. Box 413,
Fairview, PA 16415

Attorney: Thomas A. Testi, Esq.,
3952 Avonia Road, P.O. Box 413,
Fairview, PA 16415

**HOPWOOD, RICHARD J. SR.,
deceased**

Late of City of Erie, County
of Erie, Commonwealth of
Pennsylvania

Personal Representative: PA
Soldiers' and Sailors' Home, c/o
Stephen J. Bushinski, Esq., Dept.
of Military and Veterans Affairs,
Bldg. 7-36, Fort Indiantown Gap,
Annville, PA 17003

Attorney: Stephen J. Bushinski,
Esq., Dept. of Military and
Veterans Affairs, Bldg. 7-36,
Fort Indiantown Gap, Annville,
PA 17003

**JENSEN, JOYCE ANN, a/k/a
JOYCE JENSEN,
deceased**

Late of the City of Erie, County
of Erie, Commonwealth of
Pennsylvania

Executor: John Martin Jensen
Attorney: David J. Rhodes,
Esquire, Elderkin Law Firm, 150
East 8th Street, Erie, PA 16501

**KOWALSKI, HELEN R.,
deceased**

Late of the City of Erie
Executor: Barbara J. Kwiatkowski,
802 Michigan Blvd., Erie PA
16505

Attorney: None

**MILLER, ROBERT H., a/k/a
ROBERT MILLER,
deceased**

Late of Cranesville Borough,
Erie County, Commonwealth of
Pennsylvania

Executor: Michael D. Miller, c/o
120 W. 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure,
Esq., Knox McLaughlin Gornall &
Sennett, P.C., 120 West 10th Street,
Erie, PA 16501

**MOHR, SUE R., a/k/a SUE
MOHR,
deceased**

Late of Millcreek Township,
County of Erie

Executrix: Marilyn Louise
Ferringer, c/o Thomas A. Testi,
Esq., 3952 Avonia Road, P.O. Box
413, Fairview, PA 16415
Attorney: Thomas A. Testi, Esq.,
3952 Avonia Road, P.O. Box 413,
Fairview, PA 16415

**WEBBER, SARA L.,
deceased**

Late of the City of Erie, County
of Erie and State of Pennsylvania
Co-Executors: Randy C. Webber,
837 Rice Avenue, Girard, PA
16417 and Melody L. Webber,
3022 Liberty Street, Erie, PA
16508

Attorney: Edwin W. Smith, Esq.,
Shapira, Hutzelman & Smith, 305
West Sixth Street, Erie, PA 16507

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

LUIGI P. MONTAGNA..... New Telephone (814) 833-5369
.....New Email: lmontagnalaw@gmail.com

JOY E. TAYLOR.....(724) 720-1284
Celtic Healthcare
150 Sharberry Lane
Mars, PA 16046.....taylorjo@celtichealthcare.com

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