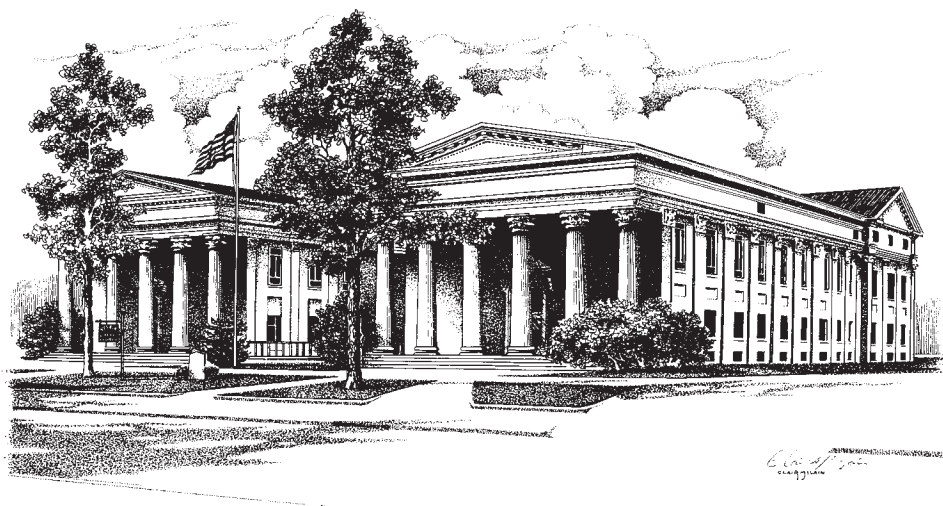


Erie
County
Legal
Journal

January 18, 2019

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Commonwealth v. Heidelberg

Erie County Legal Journal

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

Managing Editor: Megan E. Black

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Erie County Bar Association

Calendar of Events and Seminars

MONDAY, JANUARY 21, 2019

Martin Luther King Day
Erie County and Federal Courthouses closed
ECBA office closed

FRIDAY, JANUARY 25, 2019

ECBA Live Lunch-n-Learn Seminar
Annual Criminal Law Update
The Will J. Schaaf & Mary B. Schaaf Education Center
11:00 a.m. - Seminar begins
Noon - Brief break for lunch (provided)
12:15 p.m. - 1:15 p.m. - Seminar continues
\$94 (ECBA members/their non-attorney staff)
\$120 (non-members)
1 hour substantive and 1 hour ethics

MONDAY, JANUARY 28, 2019

ECBA Board of Directors Meeting
Noon
ECBA Headquarters

TUESDAY, JANUARY 29, 2019 WEDNESDAY, JANUARY 30, 2019

PBA/ECBA Mock Trial Competition
1:00, 3:00 and 5:00 p.m.
Erie County Courthouse

FRIDAY, FEBRUARY 1, 2019

Beat the Wintertime Blues Cocktail Party
4:30 p.m.
Warner Theater Grand Lobby

MONDAY, FEBRUARY 18, 2019

Presidents' Day
Erie County and Federal Courthouses closed



Erie County Bar
Association



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To view PBI seminars visit the events calendar
on the ECBA website
<http://www.eriebar.com/public-calendar>

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ERIE COUNTY BAR ASSOCIATION JUDICIAL CANDIDATE RATINGS
(formerly called Plebiscite)

Below is the Resolution regarding judicial candidate ratings that was passed by the membership on December 6, 2018. Note that judicial candidates must submit their resume to the ECBA Executive Director no later than March 11, 2019 to be given the opportunity to address the membership at the special membership meeting scheduled for this purpose on March 12, 2019 at Noon at the Bayfront Convention Center.

RESOLUTION

Be it resolved as follows:

I. In any year in which there is an election for initial terms as Common Pleas Judges, the Erie County Bar Association will conduct judicial candidate ratings whereby candidates shall be rated by members of the Bar Association as:

HIGHLY RECOMMENDED; RECOMMENDED; NOT RECOMMENDED; NO OPINION

II. The evaluation of prospective candidates should be directed primarily to professional qualifications, i.e., competence, integrity, temperament, and experience.

Ratings' Definitions

Competence - the intellectual capability, judgment, legal writing and analytical ability, industry, knowledge of the law, scholarship and academic talent, and professional contributions necessary to serve as a judge.

Integrity - the good moral character, ethics, honesty, and trustworthiness necessary to serve as a judge.

Temperament - the compassion, decisiveness, open-mindedness, sensitivity, courtesy, patience, freedom from bias, and commitment to justice necessary to serve as a judge.

Experience - the years in practice, diversity of legal experience, trial experience, work with administrative agencies and arbitration boards, teaching, and public service necessary to serve as a judge.

Highly Recommended - The candidate possesses the highest level of competence, integrity, temperament, and experience and would be capable of outstanding performance as a judge.

Recommended - The candidate possesses an adequate level of competence, integrity, temperament, and experience and would be capable of satisfactory performance as a judge.

Not Recommended - At the present time, the candidate does not possess an adequate level of

competence, integrity, temperament, or experience, or a combination thereof, to be capable of satisfactory performance as a judge.

No Opinion - I do not know the candidate well enough to evaluate whether he or she possesses the level of competence, integrity, temperament, and experience to be capable of satisfactory performance as a judge.

III. The procedure shall be as follows:

1. The Erie County Bar Association shall publish in each edition of the *Erie County Legal Journal* during the month of January, a notice inviting prospective judicial candidates to submit a resume of not more than two 8 1/2 x 11 typewritten pages. The resumes will be submitted to the Erie County Bar Association Executive Director no later than one day before the membership meeting described in the next paragraph.
2. Each potential candidate who has submitted a resume shall be given the opportunity to address the Erie County Bar at a membership meeting to be scheduled in February or March with each candidate being allocated an equal amount of time.
3. The resumes and appropriate ballots will be distributed to the active membership within three days of the said membership meeting and shall be returned by mail postmarked no later than fifteen days after the date of distribution.
4. The ballot shall ask the said membership to rate on a scale of 1 to 5 (with 1 representing "strongly disagree" and 5 representing "strongly agree") the extent to which they agree (or disagree) that each potential candidate possesses the competence, integrity, temperament, and experience necessary to serve as a judge. The ballot also shall ask the said membership to give each potential candidate an overall rating of "Highly Recommended," "Recommended," "Not Recommended," or "No Opinion."
5. A two-envelope system shall be used. Each voting member shall sign the outer envelope and shall leave the inner envelope unsigned. An accounting firm shall act as teller.
6. Each candidate who agrees not to release the results until such time the Erie County Bar Association releases the results shall be privately advised of their own results by the President of the Erie County Bar Association, or the Chair of the Judicial Committee when the President is unavailable, before the results are published.
7. If more than 50% of the ballots have been returned, the results shall be published through a press release to be issued as soon as possible after the receipt of the results. Publication of the results shall be in the form of a paid advertisement to be run on the two Sundays immediately preceding the primary election. Publication of the results shall occur in the same manner on the two Sundays immediately preceding the general election.
8. There shall be no publication of the results as to any person who is not a candidate for judicial office at the time of the publication.

9. The press release and the paid advertisement shall contain raw data i.e., the actual count and actual percentage of ballots returned. The press release and paid ad shall specify that the results are based on ballots received, not total active membership. The publication shall identify those candidates who were found to be “Highly Recommended,” “Recommended” or “Not Recommended” by more than 50% of the membership returning ballots. For the purpose of determining whether a candidate has been found to be “Recommended” by more than 50% of the membership returning ballots, votes received by candidates in the category “Highly Recommended,” shall be added to the votes received by a candidate in the category “Recommended.” The press release and the paid advertisement shall also set forth the definitions of the categories as set forth above.

10. To make the results of the poll easy for the public to understand, the results will be published in the following order: Any candidate found to be “Highly Recommended” shall be listed first. In the event more than one candidate is found to be “Highly Recommended,” the candidate with more “Highly Recommended” votes shall be listed first. In the event of a tie, the candidate with more combined “Highly Recommended” and “Recommended” votes shall be listed first. Any candidate found to be “Recommended” shall be listed next. In the event more than one candidate is found to be “Recommended,” then the candidate with more combined “Highly Recommended” and “Recommended” votes shall be listed first. In the event of a tie, the candidate with more “Highly Recommended” votes shall be listed first. Any candidate found to be “Not Recommended” shall be listed next. In the event more than one candidate is found to be “Not Recommended,” then the candidate with fewer “Not Recommended” votes shall be listed first. In the event of a tie, the candidate with more combined “Highly Recommended” and “Recommended” votes shall be listed first. If a candidate does not receive more than 50% of the membership returning ballots in any of these categories, then the press release and paid ad shall list separately those candidates who did not receive an overall rating. Further, for each rating on a scale of 1 to 5, the press release and paid ad shall specify for each candidate the average numerical rating, rounded to the nearest tenth. The results shall be published in the order of highest average rating to the lowest average rating for each qualification.

Jan. 11, 18, 25

CHANCELLOR OF THE BAR NOMINATIONS

The Erie County Bar Association is accepting nominations for Chancellor of the Bar, properly endorsed by at least five members in good standing and confirming that the nominee has practiced at the Erie County Bar for more than 30 years. Chancellor of the Bar is an honorary position; the Chancellor serves on the Association’s Nominating Committee.

The ECBA’s Law Day Committee and Board of Directors will review the nominations and evaluate each nominee’s contributions with respect to ethical practice, attitude toward the Courts and fellow lawyers, participation in civil affairs, community life and activities involving the Erie County Bar Association.

Nominations should be sent to the ECBA office and received/postmarked no later than January 25, 2019.

Jan. 11, 18

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COMMONWEALTH OF PENNSYLVANIA
v.
CAL HEIDELBERG III

CRIMINAL PROCEDURE / APPEALS / SUFFICIENCY OF EVIDENCE

Whether sufficient evidence exists to support the verdict is a question of law; the Pennsylvania Superior Court’s standard of review is *de novo* and the Superior Court’s scope of review is plenary.

CRIMINAL PROCEDURE / APPEALS / SUFFICIENCY OF EVIDENCE

The standard for reviewing the sufficiency of the evidence is whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt.

CRIMINAL PROCEDURE / APPEALS / WEIGHT OF EVIDENCE

The weight of the evidence is a matter exclusively for the finder of fact, who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses.

CRIMINAL PROCEDURE / APPEALS / WEIGHT OF EVIDENCE

Resolving contradictory testimony and questions of credibility are matters for the finder of fact.

CRIMINAL PROCEDURE / APPEALS / WEIGHT OF EVIDENCE

An appellate court cannot substitute its judgment for that of the finder of fact and may only reverse the lower court’s verdict if it is so contrary to the evidence as to shock one’s sense of justice.

CRIMINAL PROCEDURE / APPEALS / WEIGHT OF EVIDENCE

Where the trial court has ruled on a weight claim below, an appellate court’s role is not to consider the underlying question of whether the verdict is against the weight of the evidence; rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION
NO. CR 3791 of 2016

Appearances: James A. Pitonyak, Esq., on behalf of Cal Heidelberg III, Appellant
John H. Daneri, Erie County District Attorney, for the Commonwealth of Pennsylvania, Appellee

OPINION

Domitrovich, J.

March 14, 2018

The instant matter is currently before the Pennsylvania Superior Court on the appeal of Cal Heidelberg III (hereinafter “Appellant”) from the Sentencing Order entered on December 5, 2017. Following a criminal jury trial on October 16 and 17, 2017, the jury found Appellant as follows: guilty of Firearms not to be Carried Without a License; guilty of Tampering with or Fabricating Physical Evidence; guilty of Possession of Firearm Prohibited; and guilty of Disorderly Conduct. On appeal, Appellant raises the issue of whether the jury’s guilty

verdicts were against the weight of the evidence or were based on insufficient evidence.

Factual Background

At the jury trial held on October 16, 2017, the Commonwealth called Brandon Tufts, who is employed as a bar-back with Coconut Joe's, a bar located at 28 North Park Row, Erie, Pennsylvania 16507. (*See* Notes of Testimony, Jury Trial, Day 1, Oct. 16, 2017, pg. 83). On August 13, 2016, around 2:00 a.m., Mr. Tufts observed an altercation in the nature of an argument taking place between Appellant and another unnamed individual. (*Id.* at 85). Specifically, Mr. Tufts indicated he observed Appellant "pull out his gun, cock it, and have it off to the side," and specifically noted the firearm was a black handgun. (*Id.* at 85-86). Mr. Tufts then alerted Christopher Hall, who is employed as head of security with Coconut Joe's, that Appellant had a firearm on his person. (*Id.* at 86). Mr. Tufts also alerted City of Erie Police Patrolman James Cousins, who was patrolling in his police cruiser nearby, of the fact that a gentleman in a pink shirt had a firearm. (*Id.* at 86-87).

Christopher Hall, who also testified as a witness for the Commonwealth on October 16, 2017, indicated he is employed as head of security with Coconut Joe's. (*Id.* at 99). Mr. Hall similarly indicated he observed an altercation in the nature of an argument taking place between Appellant and another unnamed individual on August 13, 2016, around 2:00 a.m. (*Id.* at 99-100). After Mr. Hall observed Appellant and the other individual arguing back-and-forth, Mr. Hall observed Appellant retrieve a firearm from a vehicle and observed Appellant "rack" said firearm. (*Id.* at 100). Mr. Hall described the firearm as a small, black handgun. (*Id.* at 101). Mr. Hall indicated Appellant had the firearm at his left side and continued to pull it in and out of his left pocket while arguing with the other unnamed individual. (*Id.*). Mr. Hall heard Appellant exclaim "It's about to go down. Are you ready for this?" (*Id.*). Mr. Hall responded by drawing his handgun and stated to Appellant: "It's not going to happen here." (*Id.*). In response, Appellant began to turn away from the scene of the altercation. (*Id.*). Mr. Hall observed Patrolman Cousins on the corner of Fifth and Peach Streets, and began to yell to the Patrolman: "He has a gun." (*Id.* at 102).

Patrolman Cousins also testified as a witness for the Commonwealth on October 17, 2017. Patrolman Cousins, who was in full dress uniform and driving a marked police vehicle, indicated he was preparing to exit his vehicle when he heard Mr. Hall yelling: "He's got a gun." (*See* Notes of Testimony, Jury Trial, Day 2, Oct. 17, 2017, pgs. 5-6). Patrolman Cousins stated he made eye contact with Appellant, and Appellant "took off running." (*Id.* at 8). After exiting his vehicle, Patrolman Cousins began pursuing Appellant down Peach Street and turned eastbound onto Fifth Street. (*Id.*). Patrolman Cousins commanded Appellant numerous times to stop. (*Id.*). Similarly, Mr. Hall stated he began pursuing Appellant down Peach Street and turned right onto Fifth Street. (*See* Notes of Testimony, Jury Trial, Day 1, Oct. 16, 2017, pg. 102).

Mr. Hall indicated Appellant dropped the same small, black handgun Mr. Hall observed earlier at Coconut Joe's in front of a nearby dumpster. Appellant then scrambled to retrieve the handgun and continued to run thereafter with the handgun. (*Id.*). Similarly, Patrolman Cousins indicated that, as he pursued Appellant eastbound on Fifth Street, he heard metal on cement and observed Appellant bend over attempting to retrieve an object. (*See* Notes of Testimony, Jury Trial, Day 2, Oct. 17, 2017, pgs. 9-10). Patrolman Cousins stated once Appellant picked up the object, Appellant's hand came backwards due to Appellant's natural running motion

and then Patrolman Cousins could clearly see a firearm in Appellant's hand. (*Id.*)

Patrolman Cousins continued to chase Appellant along Fifth Street and observed Appellant slow down to make a pronounced dipping motion at the corner of Fifth and French Streets. (*Id.* at 12). In addition, a third individual, Michael Dunn, who the Commonwealth also called to testify, stated he also pursued Appellant from Coconut Joe's until Appellant was apprehended. (*See* Notes of Testimony, Jury Trial, Day 1, Oct. 16, 2017, pg. 128). Mr. Dunn likewise indicated Appellant stopped behind the bushes located at the corner of French and Fifth Streets and observed Appellant toss a firearm into the sewer drain. (*Id.* at 129).

Mr. Hall stated Appellant ran along Fifth Street towards Erie Insurance, where Erie Police eventually apprehended Appellant. (*Id.* at 102). After Appellant was apprehended, Mr. Dunn stated he assisted police officers in locating Appellant's firearm, which was found in a sewer drain on the corner of Fifth and French Streets. (*Id.* at 131). At trial, Mr. Dunn described the firearm as a silver and black handgun. (*Id.*) Additionally, Mr. Hall confirmed the firearm retrieved from the sewer was the same small, black handgun he observed Appellant brandish earlier during the altercation that occurred in front of Coconut Joe's. (*Id.* at 104). Patrolman Nico Fioravanti, who the Commonwealth called to testify, also stated he assisted in locating the firearm in a sewer at Fifth and French Streets based on information Mr. Dunn provided to the Patrolmen relating to Appellant's attempt to discard the firearm in the sewer. (*Id.* at 149-50).

Finally, after a thorough colloquy outside the presence of the jury, Appellant chose to testify at trial on behalf of himself and also called another witness, Ryan Harris, to testify. Mr. Harris testified he did not observe Appellant brandish a firearm during the altercation occurring on August 13, 2016. (*See* Notes of Testimony, Jury Trial, Day 2, Oct. 17, 2017, pgs. 51). Similarly, Appellant testified he did not have a firearm on his person that night. (*Id.* at 92). Appellant testified he initially dropped his cellular device on Fifth Street, not a firearm. (*Id.* at 63, 65).

Relevant Procedural History

On December 15, 2016, the District Attorney's Office filed a Criminal Information, charging Appellant with (1) Possession with Intent to Deliver, in violation of 35 P.S. § 780-113(a)(30); (2) Firearms not to be carried without a License, in violation of 18 Pa.C.S. § 6106(a)(1); (3) Possession of Weapon, in violation of 18 Pa.C.S. § 907(b); (4) Tampering with/Fabricating Physical Evidence, in violation of 18 Pa.C.S. § 4910(2); (5) Possession of Firearms Prohibited, in violation of 18 Pa.C.S. § 6105(a)(1); (6) Possession of a Controlled Substance, in violation of 35 P.S. § 780-113(a)(16); (7) Possession of Drug Paraphernalia, in violation of 35 P.S. § 780-113(a)(32); and (8) Disorderly Conduct, in violation of 18 Pa.C.S. § 5503(a)(1).

Appellant, by and through his counsel, Attorney Pitonyak, filed his Motion for Writ of *Habeas Corpus*/Motion for Release on Nominal Bail on August 3, 2017, and a hearing was scheduled on said Motion for September 7, 2017. By Order dated September 7, 2017, this Trial Court granted Appellant's Motion for Release on Nominal Bail. Also on September 7, 2017, Assistant District Attorney Robert Marion, on behalf of the Commonwealth, filed an Amended Information wherein Count Five (Possession of Firearm Prohibited) was amended from a Felony of the Second Degree to a Misdemeanor of the First Degree.

By Opinion and Order dated September 28, 2017, following the *Habeas Corpus* hearing

held on September 7, 2017, this Trial Court granted in part Appellant's Motion for Writ of *Habeas Corpus* as to the charges: Count One (Possession with Intent to Deliver); Count Six (Possession of a Controlled Substance); and Count Seven (Possession of Drug Paraphernalia), which were dismissed with prejudice. By the same Order dated September 28, 2017, this Trial Court denied in part Appellant's Motion for Writ of *Habeas Corpus* as to charges: Count Two (Firearms not to be Carried without a License); Count Three (Possession of Weapon); Count Four (Tampering with/Fabricating Physical Evidence); Count Five (Possession of Firearm Prohibited); and Count Eight (Disorderly Conduct).

On October 16, 2017, Appellant filed his Motion in *Limine* wherein he requested this Trial Court preclude the Commonwealth from introducing evidence or mention drugs or drug-related activities during the course of Appellant's criminal jury trial and from introducing or using Appellant's prior criminal record for Defiant Trespass as *crimen falsi*. By Order dated October 16, 2017, this Trial Court granted Appellant's Motion in *Limine*.

A criminal jury trial was held on October 16 and 17, 2017. Counsel for the Commonwealth, D. Robert Marion Jr., Esq., and counsel for Appellant, Jim Pitonyak, Esq., entered into and presented to this Trial Court a stipulation wherein both counsel agreed (1) Appellant is a Person Not To Possess as defined by 18 Pa.C.S. 6105(A)(1); (2) Appellant did not have a license to carry a concealed firearm at the time of the alleged offense; (3) the surveillance videos provided from Erie Insurance are substantive evidence; (4) the Lab Report marked as E16-02829-1 which analyzed the firearm retrieved from the sewer at the corner of Fifth and French Streets are substantive evidence; and (5) the firearm submitted as evidence was functional and capable of discharging the ammunition designed for its use.

During the jury trial on October 17, 2017, after the Commonwealth's case-in-chief, Appellant moved for Judgment of Acquittal based upon discrepancies of the testimony elicited by the witnesses for the Commonwealth as to the color of the firearm and as to which witness first saw the firearm and reported said information to the City of Erie Police. (*See* Notes of Testimony, Jury Trial, Day 2, Oct. 17, 2017, pg. 42-43). With respect to the Firearms not to be Carried Without a License, Appellant contended none of the witnesses testified Appellant concealed the firearm. (*Id.*). By Order dated October 19, 2017, this Trial Court granted Appellant's oral Motion for Judgment of Acquittal as to Count Three (Possessing Instruments of Crime).

At the conclusion of the jury trial, the jury found Appellant guilty beyond a reasonable doubt as to each of the following offenses: Count Two (Firearms not to be Carried Without a License in violation of 18 Pa.C.S. § 6106(A)(1)); Count Four (Tampering with or Fabricating Physical Evidence in violation of 18 Pa.C.S. § 4910(2)); Count Five (Possession of Firearm Prohibited in violation of 18 Pa.C.S. § 6105(A)(1)); and Count Eight (Disorderly Conduct in violation of 18 Pa.C.S. § 5503(A)(1)).

On December 5, 2017, this Trial Court entered the Sentencing Order from which Appellant now appeals. This Trial Court sentenced Appellant **in the standard and mitigated ranges** as follows:

- Count Two (Firearms not to be Carried Without a License) a **mitigated** range sentence of three (3) years to six (6) years of state incarceration with 390 days of credit for time served;
- Count Four (Tampering with or Fabricating Physical Evidence) a **standard** range sentence of six (6) months to two (2) years of state incarceration;

- Count Five (Possession of Firearm Prohibited) a **mitigated** range sentence of eighteen (18) months to three (3) years of state incarceration; and
- Count Eight (Disorderly Conduct) a **standard** range sentence of six (6) months to one (1) year of state incarceration.

On December 11, 2017, Appellant filed two post-trial motions: (1) Motion for Judgment of Acquittal and For Arrest of Judgment; and (2) Motion for Reconsideration of Sentence. By Order dated December 28, 2017, this Trial Court denied Appellant's Motion for Judgment of Acquittal and For Arrest of Judgment but granted Appellant's Motion for Reconsideration of Sentence to the extent this Trial Court recommended Appellant be considered eligible for Quehanna Boot Camp at the Pennsylvania Department of Corrections.

On January 22, 2018, Appellant, by and through his counsel, Attorney Pitonyak, filed a Notice of Appeal to the Pennsylvania Superior Court. This Trial Court filed its 1925(b) Order on January 26, 2018. Appellant filed his Concise Statement of Matters Complained of on Appeal on February 8, 2018.

Law and Analysis

In this instant appeal, Appellant challenges the guilty verdicts rendered by the jury as being against both the weight of the evidence as well as insufficient to sustain Appellant's convictions of Firearms not to be Carried Without a License, Tampering with or Fabricating Physical Evidence, Possession of Firearm Prohibited, and Disorderly Conduct.

Under Pennsylvania law, whether sufficient evidence exists to support the verdict is a question of law; the Pennsylvania Superior Court's standard of review is *de novo* and "the Superior Court's scope of review is plenary." *Commonwealth v. Walls*, 144 A.3d 926, 931 (Pa. Super. 2016). In assessing Appellant's sufficiency challenge, the Pennsylvania Superior Court must determine whether, viewing the evidence in a light most favorable to the Commonwealth as verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found the Commonwealth proved each element of the crime beyond a reasonable doubt. *Commonwealth v. Ansell*, 143 A.3d 944, 949 (Pa. Super. 2016). In addition, with respect to the sufficiency of the evidence, the Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. *Commonwealth v. Hutchinson*, 947 A.2d 800, 805-806 (Pa. Super. 2008).

Moreover, "[t]he weight of the evidence is exclusively for the finder of fact, who is free to believe all, none or some of the evidence and to determine the credibility of the witnesses." *Commonwealth v. Talbert*, 129 A.3d 536, 545 (Pa. Super. 2015) (quoting *Commonwealth v. Johnson*, 668 A.2d 97, 101 (Pa. 1995)). As such, resolving contradictory testimony and questions of credibility are matters for the finder of fact. *Commonwealth v. Hopkins*, 747 A.2d 910, 917 (Pa. Super. 2000). Thus, "an appellate court cannot substitute its judgment for that of the finder of fact [and] may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice." *Commonwealth v. Collins*, 70 A.3d 1245, 1251 (Pa. Super. 2013) (quoting *Commonwealth v. Champney*, 832 A.2d 403, 408 (Pa. 2003)). Finally, "where the trial court has ruled on a weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence;" rather, "appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim." *Champney* (citing *Commonwealth v. Tharp*, 830 A.2d 519, 528 (Pa.2003)).

In this instant case, the above-referenced factual background demonstrates the jury's conviction of Appellant for Firearms not to be Carried Without a License Conduct is not against the weight of the evidence since the Commonwealth presented sufficient evidence for the jury to find Appellant guilty of said offense. In particular, both counsel for Appellant and counsel for the Commonwealth stipulated Appellant is a Person Not To Possess as defined by 18 Pa.C.S. 6105(A)(1) and also stipulated Appellant did not have a license to carry a concealed firearm at the time of the alleged offense. In addition, the jury heard ample testimony from Patrolman James Cousins, Brandon Tufts, Christopher Hall, and Mike Dunn, who all indicated Appellant carried a firearm on or about his person regarding the altercation which occurred near or at Coconut Joe's on the night of August 13, 2016.

Likewise, since both counsel for Appellant and counsel for the Commonwealth stipulated Appellant is a Person Not To Possess as defined by 18 Pa.C.S. 6105(A)(1), in addition to the aforementioned testimony, sufficient evidence existed for the jury to find Appellant guilty of Possession of Firearm Prohibited. Furthermore, the jury is the factfinder who makes the credibility determination with respect to each witness as to whether Appellant possessed, used, or controlled a firearm on the night of August 13, 2016.

Moreover, the Commonwealth presented sufficient evidence to support the jury's verdict finding Appellant guilty of Tampering with or Fabricating Physical Evidence. In particular, both Patrolman Cousins and Mr. Dunn indicated Appellant tossed a firearm into the sewer drain at the corner of French and Fifth Streets while being chased by law enforcement. Also, Mr. Hall and Mr. Dunn both confirmed the firearm later retrieved from the sewer was the same firearm Appellant brandished during the altercation at Coconut Joe's. Thus, the jury was justified in inferring Appellant, by discarding the firearm into the sewer, intended to impair the availability of the firearm as evidence at a later official proceeding or investigation.

Finally, the Commonwealth presented sufficient evidence to support the jury's verdict finding Appellant guilty of Disorderly Conduct. Specifically, Mr. Tufts and Mr. Hall indicated Appellant, while in a public location in front of Coconut Joe's, participated in an altercation and each personally observed Appellant retrieve a handgun from a nearby vehicle. Both Mr. Tufts and Mr. Hall stated Appellant maintained the firearm at his side during the altercation, and Mr. Hall indicated he heard Appellant exclaim "It's about to go down. Are you ready for this?" Patrolman Cousins further indicated that after Appellant began to flee, Patrolman Cousins commanded Appellant numerous times to stop; however, Appellant refused to comply.

Based on the evidence presented by the Commonwealth, Appellant's conviction of said offenses are not against the weight of the evidence. To the extent Appellant asserts discrepancies existed among the witnesses' testimony as to whether the firearm was black or gray or as to minute details of how the events specifically unfolded, the jury was charged with and was solely responsible for resolving any alleged contradictory testimony. Similarly, to the extent Appellant asserts Patrolman Cousins' testimony differed from the testimony he provided at Appellant's preliminary hearing, the jury was also solely charged with resolving any question related to the credibility of Patrolman Cousins' testimony. Thus, since the jury as the fact-finder was free to believe all, part, or none of the witness' testimony against Appellant as outlined above, the jury's verdicts were certainly not "so contrary to the evidence as to shock one's sense of justice." See *Collins*, 70 A.3d at 1251.

Moreover, Appellant's argument that the Commonwealth presented "no evidence of a

physical nature, such as DNA testing of the gun ... nor were the fingerprints of [Appellant] found on the weapon that was recovered” is similarly without merit. (See Appellant’s Statement of Matters Complained of on Appeal As Per Rule 1925(b) at ¶ 2(d)). Specifically, Commonwealth presented ample circumstantial evidence in this case, including testimony from six witnesses, the firearm itself, live ammunition found in the chamber of the firearm, and a “Firearm and Tool Mark” Lab Report prepared by the Pennsylvania State Police Bureau of Forensic Services, which analyzed the firearm. As “[t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence,” the jury in this instant case was entitled to rely on said evidence in making factual determinations. See *Hutchinson*, 947 A.2d at 806. The jury has the exclusive responsibility to weight these matters, and this Trial Court finds the jury properly considered this evidence presented by the Commonwealth and such evidence was sufficient to warrant the jury’s findings that Appellant committed these offenses for which Appellant was convicted.

Finally, this Trial Court previously ruled on a weight claim after Appellant orally moved for Judgment of Acquittal based upon the discrepancies of the testimony elicited by the witnesses for the Commonwealth as to the precise color of the firearm and as to which witness first saw the firearm and reported it to the City of Erie Police. After this Trial Court heard and carefully considered oral argument from both counsel regarding Appellant’s challenge to the sufficiency of the evidence, this Trial Court properly exercised its discretion in granting in part said Motion as to Count Three (Possessing Instruments of Crime). This Trial Court granted in part said Motion of Acquittal which demonstrates this Trial Court did not take lightly this Trial Court’s responsibility in evaluating the sufficiency of the evidence. Thus, this Trial Court did not “palpably abuse[] its discretion in ruling on [Appellant’s] weight claim” and any such claim otherwise is wholly without merit. See *Tharp*, 830 A.2d at 528.

For the above reasons, this Trial Court respectfully requests the Pennsylvania Superior Court affirm the jury’s findings of Appellant’s guilt for the above-referenced offenses.

BY THE COURT

/s/ Stephanie Domitrovich, Judge

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

v.

CAL HEIDELBERG, III, Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 138 WDA 2018

Appeal from the Judgment of Sentence December 5, 2017

In the Court of Common Pleas of Erie County Criminal Division at No(s):

CP-25-CR-0003791-2016

BEFORE: SHOGAN, J., DUBOW, J., and STEVENS*, P.J.E.

MEMORANDUM BY SHOGAN, J:

FILED DECEMBER 24, 2018

Cal Heidelberg, III (“Appellant”) appeals from the judgment of sentence made final by an order granting his post-sentence motion for reconsideration of sentence and recommending him for boot camp. Order, 2/14/18. We affirm.

The trial court summarized the facts of this case in its Pa.R.A.P. 1925(a) opinion. Trial Court Opinion, 3/15/18, at 1-4. In short, following a dispute at a bar near the intersection of 5th Street and Peach Street in Erie, Pennsylvania, on August 13, 2016, Appellant fled from police, discarded a firearm into a sewer drain, and discarded a plastic baggie containing drugs. Appellant was arrested for various drug and weapon offenses. A jury convicted Appellant on October 16, 2017, of firearms not to be carried without a license, tampering or fabricating physical evidence, possession of firearm prohibited, and disorderly conduct.¹ The trial court sentenced Appellant to incarceration for an aggregate term of four and one-half to nine years on December 5, 2017. Appellant filed timely post-sentence motions on December 11, 2017, which the trial court granted in part, recommending him for boot camp. Order, 12/28/17. Appellant filed a timely appeal on January 22, 2018. In an amended sentencing order, the parties agreed to waive Appellant’s ineligibility for boot camp. Order, 2/14/18. Appellant and the trial court complied with Pa.R.A.P. 1925.

On appeal, Appellant states the following questions for our review:

1. Did the Commonwealth present insufficient evidence to sustain each of Appellant’s convictions as the testimony was so contradictory on the essential issues that the jury’s findings were based on mere conjecture and speculation?
2. Did the trial court erred [sic] when it denied Appellant’s post-sentence request for relief on weight of the evidence grounds?

Appellant’s Brief at 10.

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. §§ 6106(a)(1), 4910(2), 6105(a)(1), and 5503(a)(1), respectively.

Appellant's first issue challenges the sufficiency of the Commonwealth's evidence that he possessed a firearm or engaged in disorderly conduct. Appellant's Brief at 24. Specifically, Appellant contends that, "[v]iewed in the light most favorable to the verdict winner, the Commonwealth's case rested entirely on the incredibly inconsistent testimony of a number of witnesses." *Id.* at 27.

The standard for evaluating sufficiency claims is as follows:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the finder of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Estep, 17 A.3d 939, 943-944 (Pa. Super. 2011).

The offense of "firearms not to be carried without a license," is defined, in relevant part, as follows:

[A]ny person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

18 Pa.C.S. § 6106(a)(1). A person tampers with or fabricates physical evidence:

if, believing that an official proceeding or investigation is pending or about to be instituted, he ... (2) makes, presents or uses any record, document or thing knowing it to be false and with intent to mislead a public servant who is or may be engaged in such proceeding or investigation.

18 Pa.C.S. § 4910(2). Regarding the offense of possession of firearms prohibited, the Pennsylvania Crimes Code provides that:

[a] person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct

meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

18 Pa.C.S. § 6105(a)(1). Finally, “[a] person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (1) engages in fighting or threatening, or in violent or tumultuous behavior[.]” 18 Pa.C.S. § 5503(a)(1).

The trial court disposed of Appellant’s sufficiency challenge with the following analysis:

[T]he Commonwealth presented sufficient evidence for the jury to find Appellant guilty of [firearms not to be carried without a license]. In particular, both counsel for Appellant and counsel for the Commonwealth stipulated Appellant is a Person Not to Possess as defined by 18 Pa.C.S. 6105(A)(1) and also stipulated Appellant did not have a license to carry a concealed firearm at the time of the alleged offense. In addition, the jury heard ample testimony from Patrolman James Cousins, Brandon Tufts, Christopher Hall, and Mike Dunn, who all indicated Appellant carried a firearm on or about his person [at the time of] the altercation which occurred near or at Coconut Joe’s on the night of August 13, 2016.

Likewise, since both counsel for Appellant and counsel for the Commonwealth stipulated Appellant is a Person Not to Possess as defined by 18 Pa.C.S. 6105(A)(1), in addition to the aforementioned testimony, sufficient evidence existed for the jury to find Appellant guilty of Possession of Firearm Prohibited. Furthermore, the jury is the factfinder who makes the credibility determination with respect to each witness as to whether Appellant possessed, used, or controlled a firearm on the night of August 13, 2016.

Moreover, the Commonwealth presented sufficient evidence to support the jury’s verdict finding Appellant guilty of Tampering with or Fabricating Physical Evidence. In particular, both Patrolman Cousins and Mr. Dunn indicated Appellant tossed a firearm into the sewer drain at the corner of French and Fifth Streets while being chased by law enforcement. Also, Mr. Hall and Mr. Dunn both confirmed the firearm later retrieved from the sewer was the same firearm Appellant brandished during the altercation at Coconut Joe’s. Thus, the jury was justified in inferring Appellant, by discarding the firearm into the sewer, intended to impair the availability of the firearm as evidence at a later official proceeding or investigation.

Finally, the Commonwealth presented sufficient evidence to support the jury’s verdict finding Appellant guilty of Disorderly Conduct. Specifically, Mr. Tufts and Mr. Hall indicated Appellant, while in a public location in front of Coconut Joe’s, participated in an altercation and each personally observed Appellant retrieve a handgun from a nearby vehicle. Both Mr. Tufts and Mr. Hall stated Appellant maintained the firearm at his side during the altercation, and Mr. Hall indicated he heard Appellant exclaim[,] “It’s about to go down. Are you ready for this?” Patrolman Cousins further indicated that after Appellant began to flee, Patrolman Cousins commanded Appellant numerous times to stop; however, Appellant refused to comply.

* * *

[The] Commonwealth presented ample circumstantial evidence in this case, including testimony from six witnesses, the firearm itself, live ammunition found in the chamber of the firearm, and a “Firearm and Tool Mark” Lab Report prepared by the Pennsylvania State Police Bureau of Forensic Services, which analyzed the firearm ... [T]his [t]rial [c]ourt finds the jury properly considered [the] evidence presented by the Commonwealth and such evidence was sufficient to warrant the jury’s findings that Appellant committed these offenses

Trial Court Opinion, 3/15/18, at 8-11 (internal citation omitted).

Upon review of the certified record, we discern no abuse of the trial court’s discretion in denying Appellant’s post-sentence motion for judgment of acquittal; the evidence was sufficient to establish beyond a reasonable doubt that Appellant committed the offenses charged. In addition to the trial court’s summary of the evidence, Appellant acknowledges—and the record confirms—the following facts of record:

- Mr. Tuft “observed Appellant pull out a black handgun, cock it, and hold it to the side in his right hand.” Appellant’s Brief at 27; N.T., 10/16/17, at 85.
- Mr. Hall observed “an argument between two people at the corner, which escalated, causing Appellant to go to his vehicle to retrieve a small black handgun.” Appellant’s Brief at 27; N.T., 10/16/17, at 100. According to Mr. Hall, “Appellant carried the gun in his left hand, and [Mr.] Hall observed him taking it in and out of his pocket multiple times.” Appellant’s Brief at 27; N.T., 10/16/17, at 101. Mr. Hall “saw Appellant drop and then retrieve the gun near the dumpsters by Molly Brannigan’s.” Appellant’s Brief at 27; N.T., 10/16/17, at 102, 112.
- Mr. Dunn, “saw Appellant coming out between two cars with a gun coming out of his shorts/pants.” Appellant’s Brief at 28; N.T., 10/16/17, at 127-128. Mr. Dunn “observed [Appellant] throwing the gun near the corner of Fifth and French Streets.” Appellant’s Brief at 28; N.T., 10/16/17, at 129.
- Officer Cousins pursued “Appellant at Fifth and State, saw movement near Appellant’s waistline, heard something metal hit the cement near the parking lot of Coconut Joe’s, saw Appellant reach down to retrieve the object, and then saw a gun in Appellant’s hand.” Appellant’s Brief at 28; N.T., 10/17/17, at 6-10, 16. Officer Cousins “described the gun as dark in color.” Appellant’s Brief at 29; N.T., 10/17/17, at 41.
- Police located a firearm in the sewer drain at Fifth and French Streets; “it was Silver and black in color.” Appellant’s Brief at 29; N.T., 10/16/17, at 150, 159-160; N.T., 10/17/17, at 144; Commonwealth Exhibit 1.

Additionally, as the trial court opined, the stipulations established that Appellant was a “person not to possess firearm” and did not have a license to carry a firearm. N.T., 10/17/17, at 23-24.

Viewing the evidence in the light most favorable to the Commonwealth, we reject Appellant's assertion that the jury's verdict was based "entirely on conjecture and is not sufficiently exclusive of every innocent hypothesis, namely, that the firearm had been discarded by a third party." Appellant's Brief at 30. The evidence was sufficient to establish that Appellant possessed a firearm, discarded it, and engaged in disorderly conduct by participating in an altercation and refusing to comply with Officer Cousins' directives. Thus, Appellant's sufficiency claim fails.

Appellant's second issue challenges the jury's verdict as being against the weight of the evidence. Appellant's Brief at 31. According to Appellant, "the Commonwealth's case was riddled with inconsistencies on critical factual questions in the case." *Id.*

"The weight of the evidence is a matter exclusively for the finder of fact, who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." *Commonwealth v. Gonzalez*, 109 A.3d 711, 723 (Pa. Super. 2015). Our Supreme Court has set forth the following standards to be used in addressing challenges to the weight of the evidence:

A motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. *Commonwealth v. Widmer*, 560 Pa. 308, 319, 744 A.2d 745, 751-[7]52 (2000); *Commonwealth v. Brown*, 538 Pa. 410, 435, 648 A.2d 1177, 1189 (1994). A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. *Widmer*, 560 A.2d at 319-[3]20, 744 A.2d at 752. Rather, "the role of the trial judge is to determine that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.'" *Id.* at 320, 744 A.2d at 752 (citation omitted). It has often been stated that "a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." *Brown*, 538 Pa. at 435, 648 A.2d at 1189.

An appellate court's standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court:

Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. *Brown*, 648 A.2d at 1189. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. *Commonwealth v. Farquharson*, 467 Pa. 50, 354 A.2d 545 (Pa. 1976).

Widmer, 560 Pa. at 321-[3]22, 744 A.2d at 753 (emphasis added).

Commonwealth v. Clay, 64 A.3d 1049, 1054-1055 (Pa. 2013). "Thus, the trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings." *Commonwealth v. Diggs*, 949 A.2d 873, 879-880 (Pa. 2008).

Here, the trial court disposed of Appellant's weight challenge as follows:

Based on the evidence presented by the Commonwealth, Appellant's conviction[s] of said offenses are not against the weight of the evidence. To the extent Appellant asserts discrepancies existed among the witnesses' testimony as to whether the firearm was black or gray or as to minute details of how the events specifically unfolded, the jury was charged with and was solely responsible for resolving any alleged contradictory testimony. Similarly, to the extent Appellant asserts Patrolman Cousins' [trial] testimony differed from the testimony he provided at Appellant's preliminary hearing, the jury was also solely charged with resolving any question related to the credibility of Patrolman Cousins' testimony. Thus, since the jury as the fact-finder was free to believe all, part, or none of the witness[es]' testimony against Appellant as outlined above, the jury's verdicts were certainly not "so contrary to the evidence as to shock one's sense of justice."

Trial Court Opinion, 3/15/18, at 10.

Upon review of the certified record, we discern no abuse of the trial court's discretion in concluding that the verdicts were not against the weight of the evidence. The record supports Appellant's various references to inconsistencies in the testimonial evidence. However, as the trial court opined—and the law affords—any discrepancies, contradictions, or inconsistencies in the witnesses' testimony were for the jury to resolve, and it was "free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." *Gonzalez*, 109 A.3d at 723. In this case, the jury chose to believe the evidence presented by the Commonwealth, as was its right. *Id.* This Court will not assume the role of fact-finder and reweigh the evidence. Appellant's weight challenge also fails.

Judgment of sentence affirmed.

Judgment Entered.

/s/ Joseph D. Seletyn, Esq.

Prothonotary

Date: 12/24/2018



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ARTICLES OF AMENDMENT

Notice is hereby given that on or about December 27, 2018, NAMI Pennsylvania, Erie County Affiliate, a non-profit corporation, with its registered office located at 1611 Peach Street, Suite 218, Erie, PA 16501, filed Articles of Amendment with the Pennsylvania Department of State pursuant to the provisions of the Nonprofit Corporation Law of the Commonwealth of Pennsylvania to change its name to NAMI Erie County PA.

Adam J. Williams, Esq.
WILLIAMS & JORDEN
425 West Tenth Street
Erie, PA 16502

Jan. 18

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 10086-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Rikki Lee Carr to Rikki Lee Pfeiffer-Carr.

The Court has fixed the 28th day of February, 2019 at 8:45 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Jan. 18

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 10002-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Lauren Michalchik to Lauren Alyse Walmer.

The Court has fixed the 14th day of February, 2019 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Jan. 18

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 10089-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Jacob Nathan Rash to Jessica Lee Reynolds.

The Court has fixed the 27th day of February, 2019 at 8:45 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Jan. 18

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania, 10065-2019 Notice is hereby given that Petition was filed in the above names court requesting an Order to change the name of Gia Grace Riscili to Gia Grace Fronzaglia.

The Court has fixed the 1st day of March, 2019 at 11:45 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Jan. 18

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

Notice is hereby given that a Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania for Full Throttle Films with a principle place of business located at 200 Business Park Drive,

Suite 109, Armonk, NY 10504. The entity interested in such business is Production Resource Group LLC whose commercial registered office address is c/o Corporate Creations Network Inc., Erie County. This is filed in accordance with 54 Pa. C.S. 311.

Jan. 18

FICTITIOUS NAME NOTICE

Notice is hereby given that a Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania for Video Equipment Rental with a principle place of business located at 200 Business Park Drive, Suite 109, Armonk, NY 10504. The entity interested in such business is Production Resource Group LLC whose commercial registered office address is c/o Corporate Creations Network Inc., Erie County. This is filed in accordance with 54 Pa. C.S. 311.

Jan. 18

LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

Orphans' Court Division
No. 104 In Adoption 2018

IN THE MATTER OF THE ADOPTION OF S.L.S.

TO: UNKNOWN BIOLOGICAL FATHER

At the instance of Petitioners/ Adopting Parents, by and through their attorney, M. Kathryn Karn, Esquire, in the above case, you, UNKNOWN BIOLOGICAL FATHER, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphans' Court of Erie County, Pennsylvania, at the Erie County Court House, Court Room No. 217-I, the Honorable Joseph M. Walsh, III, City of Erie, Pennsylvania, on January 30, 2019 at 1:30 p.m., (continued from December 4, 2018 at 10:00 a.m. pursuant to Petitioner's Motion To Continue) and then and there show cause, if any you have, why your parental rights to S.L.S. born December 15, 2017 at UPMC Hamot, Erie, Pennsylvania, should

not be terminated, in accordance with the Petition For Involuntary Termination Of Parental Rights filed on October 10, 2018 at the above term and number. The Petition alleges you, by conduct continuing for a period of at least six (6) months immediately preceding the filing of the petition, either have evidenced a settled purpose of relinquishing parental claim to the child or have failed or refused to perform parental duties. You hereby are notified that the Confirmation of Consent of the Natural Mother of S.L.S., Delaine L.S., will take place on January 30, 2019 at 2:00 p.m. before the Honorable Joseph M. Walsh, III.

Your presence is required at the hearing. You are warned that if you fail to appear at the hearing to object to the termination of your rights or fail to file a written objection to such termination with the court prior to the hearing, the hearing will go on without you and your rights may be terminated without you being present.

If it is your intention to contest these proceedings you, or your attorney, are further directed to immediately notify the Family/Orphans' Court Administrator, Room 205, Erie County Court House, Erie, PA 16501 or at (814) 451-6251.

You have the right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Lawyers' Referral Service, PO Box 1792, Erie, Pennsylvania 16507, (814) 459-4411

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa.C.S. Sections 2731-2742. This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and

approved by the court to be legally binding. You have the right to consult an attorney concerning your post adoption contact agreement rights. If you do not have an attorney, you can ask for assistance through the Lawyers' Referral Service or Family/Orphans' Court Administrator, as set forth above.

M. Kathryn Karn, Esquire
4402 Peach Street, Suite 3
Erie, PA 16509
Telephone: (814) 882-2974
Attorney for Petitioners, Adopting Parents

Jan. 18

LEGAL NOTICE

ATTENTION: CARLOS HENRY TATE, JR. A/K/A CARLOS HENRY TATE, II

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR FEMALE CHILD N.L.W. DOB: 1/14/2016

BORN TO: TERIKA DELORES WILLIAMS
123B IN ADOPTION 2018

If you could be the parent of the above-mentioned children, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Shad Connelly, Courtroom 208-B, City of Erie on February 13, 2019 at 9:30 a.m. and there show cause, if any you have, why your parental rights to the above children should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your children and your failure to appear may affect the Court's decision on whether to end your rights to your children. You are warned that even if you fail

to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your children may be ended by the Court without your being present.

You have a right to be represented at the Hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Family/Orphan's Court Administrator Room 204 - 205
Erie County Court House
Erie, Pennsylvania 16501
(814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S §§2731-2742.

This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Jan. 18

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 11161 Willow Road, North East, PA 16428 more particularly described at Erie County Instrument Number 2013-002267.

SAID SALE to be held in the Erie County Courthouse, Room 209, 140 West Sixth Street, Erie, PA 16501 at 10:00 a.m. prevailing, standard time, on February 7, 2019. All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel No.

37041088011000 recorded in Erie County, Pennsylvania. Seized and taken in execution as the property of Kathrine A. Lehner, at the suit of the United States of America, acting through the Rural Housing Service, on behalf of United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 1:18-CV-00190. 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. Michael Baughman, Acting United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at www.resales.usda.gov.

Jan. 11, 18, 25 and Feb. 1

Annual Criminal Law Update

FRIDAY, JANUARY 25, 2019

The Will J. Schaaf & Mary B. Schaaf Education Center
429 West 6th Street, Erie, PA 16507

NOTE TIMES

Seminar begins: 11:00 a.m.

Noon: Brief break for lunch (provided)

Seminar continues: 12:15 p.m. - 1:15 p.m.

\$94 - ECBA members (Judges & Attorneys)
and their Non-Attorney Staff
\$120 - Non-Members

**This seminar has been approved for
1 hour Substantive & 1 hour Ethics CLE/CJE credit.**



SPEAKER:

NICOLE D. SLOANE, ESQ.

Our knowledgeable speaker, Attorney Nicole D. Sloane, is an experienced trial attorney who focuses on criminal defense work. She has represented clients in numerous jury trials since 2006, including capital homicide cases, is a published author of articles on topics including correcting illegal sentences, and in 2017 was the recipient of The Public Defender Association of Pennsylvania's *Gideon Award* for indigent defense work.

Attorneys practicing in the criminal law area won't want to miss this much-anticipated annual update. Those attending will benefit from a comprehensive review of the latest case law developments as well as valuable materials.

Reservations due to the ECBA office by Friday, January 18.

**AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE**

Clerk of Records

**Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the**

Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, January 9, 2019** and confirmed Nisi.

February 20, 2019 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2019</u>	<u>ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
6.	Donald G. Batten a/k/a Donald Gilbert Batten a/k/a Donald G. Batten, Sr.	Thomas E. Batten, Executor.....	Gary H. Nash, Esq.
7.	Vito Tullio, Jr. a/k/a Vito C. Tullio, Jr.	Jeffrey A. Lombardo, Dennis Galletta, Co-Executors	Joseph P. Martone, Esq.
8.	Daniel P. Krahe.....	Mary T. Krahe, Executrix.....	Kurt L. Sundberg, Esq.

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

Jan. 18, 25



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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

CAVICCHIO, LAWANNA M., a/k/a LAWANNA CAVICCHIO, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Barbara Cavicchio, c/o 504 State Street, 3rd Floor, Erie, PA 16501
Attorney: Micheal J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

MAAS, ELEANOR I., deceased

Late of the Township of Millcreek, County of Erie, State of Pennsylvania
Executor: Robert D. Maas, 470 Hawthorne Trace, Fairview, PA 16417
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

MAXWELL, JOSEPH J., deceased

Late of the City of Erie
Administrator: Donna Luciano
Attorney: Edwin W. Smith, Esquire, Shopira, Hutzelman and Smith, 305 West 6th Street, Erie, PA 16507

McKINNON, LYNN E., deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Coleen M. McKinnon
Attorney: Kenneth G. Vasil, Esquire, ELDERKIN LAW FIRM, 150 East 8th Street, Erie, PA 16501

MILLER, CHARICE, deceased

Late of the City of Erie, County of Erie
Executor: Luvetria Danowski
Attorney: Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16506

OSTERBERG, JOYCEANN, a/k/a JOYCEANN OSTERBERG, a/k/a JOYCE A. OSTERBERG, a/k/a JOYCE OSTERBERG, deceased

Late of the Borough of Cranesville, County of Erie, State of Pennsylvania
Co-Executrices: Patricia Anne Pavolko, 8947 Route 6N, Albion, PA 16401 and Barbara Jean Woodward, 21583 Cussewago Street, Venango, PA 16440
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

WAGNER, GERTRUDE C., deceased

Late of City of Erie, Erie County, Commonwealth of Pennsylvania
Co-Executors: Mary K. Sorensen and Christina E. Strub, 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

WOLSKI, MARY M., a/k/a MARY WOLSKI, deceased

Late of the City of Erie, County of Erie, Pennsylvania
Executrix: Christine H. Schultz, c/o 3939 West Ridge Road, Suite B-27, Erie, PA 16506
Attorney: James L. Moran, Esquire, 3939 West Ridge Road, Suite B-27, Erie, PA 16506

SECOND PUBLICATION

BLOSE, RUTH, a/k/a RUTH A. BLOSE, deceased

Late of the Township of Millcreek, County of Erie and State of Pennsylvania
Executrix: Ruth Carnes, 6240 Rte 215, Girard, PA 16417
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

BRETZ, CARLA A., a/k/a CARL ANDREW BRETZ, deceased

Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania
Executrix: Anne M. Bretz, 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

BROWN, ALBERTA, deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Todd I. Glazar, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

BROWN, WILLIAM E., a/k/a WILLIAM EARL BROWN, deceased

Late of the City of Erie, County of Erie
Executor: Donald J. Boyd, 3520 Stone Quarry Road, Waterford, Pennsylvania 16441
Attorney: Kari A. Froess, Esquire, CARNEY & GOOD, 254 West Sixth Street, Erie, Pennsylvania 16507

**D'ANDREA, RICHARD V.,
deceased**

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

Executor: Richard M. D'Andrea, c/o 2222 West Grandview Blvd., Erie, PA 16506

Attorney: Thomas E. Kuhn, Esquire, QUINN, BUSECK, LEEHMUIS, TOOHEY & KROTO, INC., 2222 West Grandview Blvd., Erie, PA 16506

**DARDEN, JOSEPH E., JR., a/k/a
JOSEPH E. DARDEN,
deceased**

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

Co-Executors: Craig M. Darden and Debra A. Sutton, 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

**LAYDEN, DAVID R.,
deceased**

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

Administrator: James M. Layden, 1028 Evergreen Drive, Erie, PA 16505

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

**MARTHALER, MARILYN M.,
deceased**

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

Executrix: Kimberly A. Brown, 9878 Amador Ranch Avenue, Las Vegas, Nevada 89149

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

**ROBLES, JAIME MONTERO,
deceased**

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

Co-Executors: James A. Montero & George H. Montero, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**THEISS, ROBERT L., a/k/a
ROBERT THEISS,
deceased**

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

Executrix: Mary Margaret Malue, 2431 West 36th Street, Erie, Pennsylvania 16506

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

**TOPERZER, WALTER, a/k/a
WALTER F. TOPERZER,
a/k/a WALTER FREDERICK
TOPERZER,
deceased**

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

Executrix: Rhoda Toperzer, 361 West Duval Street, Philadelphia, PA 19144

Attorney: None

THIRD PUBLICATION**HENDERSON, HENRY,
deceased**

Late of the City of Erie

Administrator: Gordon M. Mitchell, P.O. Box 152, Erie, PA 16512-0152

Attorney: None

**HUTZLER, BERNADETTE
A., a/k/a BERNADETTE ANN
HUTZLER, a/k/a BERNADETTE
HUTZLER,
deceased**

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

Executrix: Kathleen M. Paluh, 7601 Franklin Road, Girard, Pennsylvania 16417

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

**KENNEDY, ROBERTA M.,
deceased**

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

Executrix: Samantha M. Kennedy, c/o James E. Marsh Jr., Esquire, Suite 300, 300 State Street, Erie, PA 16507

Attorney: James E. Marsh Jr., Esquire, MARSH, SPAEDER, BAUR, SPAEDER & SCHAFF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**KOZUCHOWSKI, GENEVIEVE
CATHERINE, a/k/a GENEVIEVE
C. KOZUCHOWSKY, a/k/a
GENEVIEVE KOZUCHOWSKY,
a/k/a GENEVIEVE C.
KOZUCHOWSKI, a/k/a
GENEVIEVE KOZUCHOWSKI,
deceased**

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

Executors: Carol Piazza and Michael Kozuchowsky, 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

**NUTZ, MARY R.,
deceased**

Late of Girard Borough, Erie County, Pennsylvania

Executor: Albert J. Nutz, c/o J. Lauson Cashdollar, Esquire, 1176 Third Street, Beaver, PA 15009

Attorney: J. Lauson Cashdollar, Esquire, 1176 Third Street, Beaver, PA 15009

**SPROVERI, SEAN A., a/k/a
SEAN SPROVERI,
deceased**

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

Administratrix: Patricia A. Moon, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**TRACY, HILSTON L., a/k/a
HILSTON LEROY TRACY,
deceased**

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

Executrix: Mildred N. Larouche, P.O. Box 335, Fairfield, ME 04937
Attorney: None

**VERNO, DOLORES, a/k/a
DOLORES C. VERNO,
deceased**

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

Administratrix C.T.A.: Carol Bianchi, 9592 West Lake Road, Lake City, PA 16423

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

**WISINSKI, MARTHA M.,
deceased**

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

Executrix: Paula A. Casey, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501

Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

HON. SEAN J. MCLAUGHLIN.....814-459-2800
 Knox McLaughlin Gornall & Sennett, P.C.
 120 West Tenth Street
 Erie, PA 16501 *smclaughlin@kmgslaw.com*

DARRELL W. KUNTZ, III.....814-833-1987
 Sebald & Hackwelder(f) 814-616-4095
 2503 West 26th Street
 Erie, PA 16506 *d.kuntz@sebaldhackwelder.com*

DOMINICK A. SISINNI.....412-288-5485
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 Pittsburgh, PA 15219..... *Dominick.Sisinni@fhlb-pgh.com*

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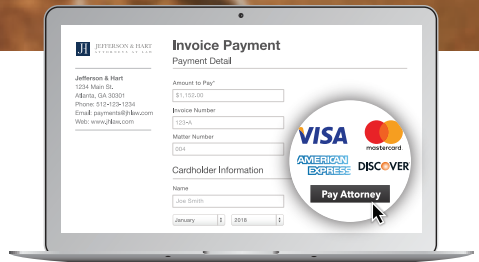
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