

ADVANCE SHEET Pages 144-163

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Hooker & Habib, P.C.

100 Chestnut Street, Suite 304
Harrisburg, PA 17101-2518
Telephone: 717-232-8771
Facsimile: 717-232-8773
E-mail: hhpc@ptd.net
Website: www.h-hpc.com

42 Years in Harrisburg

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ELIZABETH G. SIMCOX
Executive Director

JOYCE TAMBOLAS
Administrative Assistant

BRIDGETTE L. HILBISH
Office Assistant

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Estate Notices

DECEDENTS ESTATES

NOTICE IS HEREBY GIVEN that letters testamentary or of administration have been granted in the following estates. All persons indebted to the estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors or their attorneys named below.

FIRST PUBLICATION

ESTATE OF STEVE GREGORITS, III, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 16, 2012). Executrix: Karin L. Hill, 58 Highcroft Drive, Morgantown, PA 19543. Attorney: Richard S. Friedman, Esq., 300 North Second Street, Suite 402, Harrisburg, PA 17101. d28-j11

ESTATE OF JEAN E. KISSINGER, late of Lykens Township, Dauphin County, Pennsylvania (died November 30, 2012). Co-Administrators: Kimberly S. Adams, 787 Erdman Road, Lykens, PA 17048; Larry E. Kissinger, 2875 Luxemburg Road, Lykens, PA 17048 and Michael E. Kissinger, 2859 Luxemburg Road, Lykens, PA 17048. Attorney: Terrence J. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023.. d28-j11

ESTATE OF RUTH IRENE WRIGHT a/k/a RUTH I. WRIGHT, late of Swatara Township, Dauphin County, Pennsylvania (died November 21, 2012). Personal Representatives: Jeffrey Lynn Wright, 5210 Crestwood Drive, Harrisburg, PA 17109 and Brian Paul Wright, 22 Dead End Road, Millerstown, PA 17062. Attorney: Robin Holman Loy, Esq., Holman & Holman, P.O. Box 97, New Bloomfield, PA 17068. d28-j11

ESTATE OF MILDRED ARDELL FARVER a/k/a MILDRED A. FARVER, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executrix: Elizabeth A. Bell, 16 Birchwood Drive, Harrisburg, PA 17109. Attorney: Gerald J. Shekletski, Esq., Stone LaFaver & Shekletski, P.O. Box E, New Cumberland, PA 17070. d28-j11

ESTATE OF STERLEN S. FREED, late of Susquehanna Township, Dauphin County, Pennsylvania. Co-Executrices: Linda Freed Ebright, 17 Parkside Drive, Hummelstown, PA 17036 and Marcia Elizabeth Freed, 4075 Deer Run Court, Harrisburg, PA 17112. Attorneys: Butler Law Firm, 1007 Mumma Road, Suite 101, Lemoyne, PA 17043. d28-j11

SECOND PUBLICATION

Estate Notices

ESTATE OF KAREN E. ENGLE, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 29, 2012). Executor: W. Franklin Martin, Jr., 5833 Tyler Dr., Harrisburg, PA 17112. d28-j11

ESTATE OF CLARENCE C. MORRISON, late of the Township of Susquehanna, Dauphin County, Pennsylvania (died November 22, 2012). Executor: Mark E. Morrison, c/o Stephen C. Nudel, PC, 219 Pine Street, Harrisburg, PA 17101. Attorney: Stephen C. Nudel, Esq., Law Offices Stephen C. Nudel, PC, 219 Pine Street, Harrisburg, PA 17101. d28-j11

SECOND PUBLICATION

ESTATE OF JAMES MILTON NEUBOLD, late of Dauphin County, Pennsylvania (died September 23, 2012). Executor: John F. Neubold, 5808 Locust Lane Harrisburg, PA 17109. d21-j4

ESTATE OF BERNICE R. COWAN, late of Williamstown Borough, Dauphin County, Pennsylvania (died November 28, 2012). Co-Administrators: Edgar G. Cowan, III, 322 South Fourth Street, Tower City, PA 17980 and Richard E. Cowan, Sr., 110 Quarry Road, Halifax, PA 17032. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023. d21-j4

ESTATE OF VIRGINIA H. HERSHEY, late of West Hanover Township, Dauphin County, Pennsylvania (died November 25, 2012). Co-Executors: Scott W. Hershey and Deborah J. Morris. Attorney: Elizabeth P. Mullaugh, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108. Telephone (717) 232-8000. d21-j4

ESTATE OF JACQUELINE CRUMMEL, a/k/a JACQUELINE L. CRUMMEL, late of Dauphin County, Pennsylvania (died November 21, 2012). Executor: Larry D. Crummel. Attorney: Steven P. Miner, Esq., Daley Zucker Meilton Miner & Gingrich, LLC, 635 N. 12th Street, Suite 101, Lemoyne, PA 17043. d21-j4

ESTATE OF RHODA V. MCBRIDE, late of Dauphin County, Pennsylvania (died August 14, 2012). Executrix: Hope A. Hoffman. Attorney: Patricia Carey Zucker, Esq., Daley Zucker Meilton Miner & Gingrich, LLC, 635 N. 12th Street, Suite 101, Lemoyne, PA 17043. d21-j4

ESTATE OF DARWIN R. TOBIAS, SR., late of Halifax Township, Dauphin County, Pennsylvania. Executrix: Denise R. Tobias Herb, 1356 Tourist Park Rd., Halifax, Pennsylvania 17032. Attorney: John J. Krafzig, Jr., Esq., 2921 North Front Street, Harrisburg, PA 17110. d21-j4

ESTATE OF DOUGLAS S. HEBERLING, late of Hershey, Dauphin County, Pennsylvania (died November 12, 2012). Executrix: Donna S. Seyfert, 138 E. Dellview Drive, Warsaw, IN 46582. Attorney: Peter R. Henninger, Jr., Esq., Jones & Henninger, P.C., 339 W. Governor Rd., Ste. 201, Hershey, PA 17033. d21-j4

Commonwealth v. Tolbert**Crimes and Criminal Procedure — Post Sentence Motion — New Trial — Weight of the Evidence — Newly Discovered Evidence.**

After a jury found the Defendant guilty of two counts of aggravated assault and one count of criminal conspiracy, she sought a new trial on the basis of after-discovered evidence and weight of the evidence.

1. A weight of the evidence claim is primarily addressed to the discretion of the judge who actually presided at trial. *Armbruster v. Horowitz*, 813 A.2d 698, 702 (Pa. 2002). A trial judge cannot grant a new trial “because of a mere conflict in testimony or because the trial judge on the same facts would have arrived at a different conclusion.” *Commonwealth v. Brown*, 538 Pa. 410, 648 A.2d 1177, 1189 (Pa. 1994), quoting *Thompson v. City of Philadelphia*, 507 Pa. 592, 493 A.2d 669, 672-73 (Pa. 1985). Instead, a new trial should be granted only in truly extraordinary circumstances, i.e., “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.*” *Id.* (emphasis in original). *Commonwealth v. Edwards*, 903 A.2d 1139, 1148-49 (Pa. 2006).

2. A jury may convict a person as an accomplice so long as the facts adequately support the conclusion that she aided, agreed to aid, or attempted to aid the principal in planning or committing the offense, and acted with the intention to promote or facilitate the offense. *Commonwealth v. Markman*, 916 A.2d 586, 597-98 (Pa. 2007) (footnote omitted); see 18 Pa.C.S.A. § 306(c). The amount of aid need not be substantial so long as it was offered to the principal to assist her in committing or attempting to commit the crime. *Id.* (citations omitted).

3. In order to sustain a conviction for criminal conspiracy, the Commonwealth must establish that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy. *Commonwealth v. Murphy*, 795 A.2d 1025, 1037-38 (Pa. Super. 2002). The overt act need not be committed by the defendant; it need only be committed by a co-conspirator.

4. To be granted a new trial on the basis of after-discovered evidence a defendant must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted. *Commonwealth v. Padillas*, 997 A.2d 356, 363 (Pa. Super. 2010), *appeal denied*, 14 A.3d 826 (Pa. 2010).

Pa.R.A.P. 1925(a) Opinion.

Chase M. DeFelice, for the Commonwealth

Wendy J. Grella, for the Defendant

TURGEON, J., November 16, 2012 — Defendant Lashae Tolbert filed a post sentence motion arguing that she was entitled to a new trial because her convictions were against the weight of the evidence and on the basis of after-discovered evidence. I denied her motion on November 8, 2012. This opinion is written in support of that order.

OVERVIEW

On April 6, 2012, following a three-day trial, a jury found defendant guilty of two counts of aggravated assault and one count of criminal conspiracy. These crimes arose from two incidents occurring on October 6, 2010, when defendant and her sister Asia Wannamaker serially attacked Toni Booth and later, her sister Nia Booth. Both Booths were severely burned during the attacks by hot water which was thrown on them by defendant and her sister. Defendant testified on her own behalf at trial, claiming that she was not present during her sister's assault on Toni Booth. She also testified that while she was present during her sister's assault on Nia Booth, she took no part in the attack and was merely an innocent bystander.

On November 14, 2011, prior to defendant's trial, Wannamaker pled guilty before the Honorable Scott Evans to two counts of aggravated assault and two counts of conspiracy to commit aggravated assault for her role in the assaults upon the Booth sisters (Case No. CP-22-CR-5003-2010). Sentencing was deferred and she remained un-sentenced as of defendant's trial.¹ Though defendant's attorney subpoenaed Wannamaker to appear as a witness to testify on defendant's behalf, she ultimately did not call Wannamaker because both Wannamaker and her attorney explicitly informed defendant's attorney that if called, Wannamaker would refuse to testify and exercise her Fifth Amendment privilege against self-incrimination.

TRIAL PROCEEDINGS

The relevant evidence garnered from defendant's trial is as follows: In October 2010, Asia Wannamaker and Toni Booth resided in adjacent units on the third floor of the Cumberland Court apartment building in Harrisburg Pa. The women, both in their early twenties, had initially been friendly but their relationship had become contentious. (N.T. 53) Prior to the incidents at issue, Toni Booth admittedly had sprayed mace on Wannamaker after an incident where Wannamaker had pushed Toni Booth's daughter into a closet. (N.T. 87, 101) According to neighbor Nancy Smith, it was common knowledge that Toni Booth and Wannamaker did not get along and had a "Hatfield and McCoy" level of contempt for each other. (N.T. 46)

On October 6, 2010, Toni Booth returned home from work around 7:00 p.m. with her two-year-old daughter who was in a car carrier. As she bent down to pick up her keys to open the front door to the

1. I eventually sentenced Wannamaker on June 4, 2012, to an aggregate term of two and one-half to five years' incarceration.

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apartment building, she heard Wannamaker from the other side of the door tell her to “move my fucking bitch,” referring to her daughter. They exchanged words and Wannamaker brushed Toni Booth’s shoulder as she walked past. (N.T. 55-57) Toni Booth proceeded into the building and stopped to speak with a neighbor for a few minutes. By this time, her daughter became agitated and was crying loudly. (N.T. 59) According to Toni Booth, as she opened the door to the third floor that led to her hallway, defendant Tolbert immediately opened the door to her sister’s apartment. (N.T. 59-60, Commw. Exbts. 7, 9) Toni Booth knew that defendant Tolbert was Wannamaker’s sister and Toni Booth and defendant in fact worked for the same employer (PHEAA), but did not know each other well. (N.T. 54)

According to Toni Booth, as defendant opened her sister’s door she yelled at Toni Booth that “today is your day” and “you are going to have to see me today.” (N.T. 61) Toni Booth said “okay” and attempted to enter her room with her key while defendant continued yelling at her, telling her to “go sit my little bitch down,” referring to her daughter in the car carrier. (N.T. 61) Toni Booth glanced into Wannamaker’s apartment and saw Wannamaker walking from her kitchen holding a large silver pot with one hand. As Wannamaker approached, Toni Booth turned to shield her daughter as Wannamaker threw the pot of hot water at her. (N.T. 64-65)

After throwing the pot of water on Toni Booth, Wannamaker continued to attack her with the pot, hitting her in the head with it four or five times. (N.T. 65, 68) According to Toni Booth, during the attack, defendant remained in the door frame yelling over and over “fuck that bitch up!” (N.T. 67) Toni Booth testified that defendant eventually joined in the attack, kicking her in the head while she was laying on the ground causing her to black out for a short time. (N.T. 68, 69) She was eventually able to get up and ran away with her daughter to a neighbor’s unit on the second floor. (N.T. 70) Once there, Toni Booth realized she had been severely burned, noticing her skin bubbling up on her arm. (N.T. 70-71) She began to run around her friend’s apartment and roll on the ground, moaning and screaming in pain, trying to find a way to cool down her burns. (N.T. 71-72) Someone in the neighbor’s unit called the police and an ambulance as well as her sister Nia Booth. (N.T. 71-72)

Nancy Smith, who lived directly across the hall from Toni Booth and Asia Wannamaker, witnessed a portion of the aftermath of the assault upon Toni Booth. She testified that she was in her apartment when she heard a commotion outside her door. She looked through her peephole and saw defendant and a friend of the defendant’s mother going in and

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out of the door to the third floor looking over the railing to see if anyone was coming up the steps. (N.T. 35) Smith continued to observe as defendant cleaned up the floor in front of Toni Booth's apartment door, using the rug outside the door, telling her acquaintance that "she was getting it up because the police were on their way." (N.T. 36, 43) Shortly thereafter, Smith saw Wannamaker leave her apartment alone with a large cup in her hand and angrily say to a woman in the hallway who was about to enter Smith's apartment that she was "tired of these girls fucking with me." (N.T. 36-38, 46) Smith testified that she did not see defendant at this time. (N.T. 37) She also stated that she never saw defendant with a cup in her hand nor witness defendant exhibit any harassing or angry behavior through the peephole. (N.T. 45, 48)

Shortly after her sister was attacked, Nia Booth received a phone call from a Cumberland Court resident informing her that Wannamaker had burned her sister and that police and medical help were on the way. (N.T. 110) Nia Booth testified that prior to that date, she knew Asia Wannamaker as her sister's neighbor but had never met defendant Tolbert. (N.T. 118) Nia Booth had friends drive her to the apartment and as she walked up to the front of the building, was confronted by a group of four or five girls/women. (N.T. 111, 114-15) She recognized and locked eyes with Wannamaker who threw hot water in her face from a white cup. (N.T. 111, 115) The two began fighting and Nia Booth slipped to the ground. (N.T. 116) She claimed that as she fell down, defendant Tolbert threw a second cup of hot water at her upper torso, including on to her chest and shoulders. (N.T. 112, 117-18, 150) Nia Booth later testified that she saw several people with white cups so it was possible other people had hot water that night. (N.T. 139) She also agreed that it was dark out that evening. (N.T. 136)

While on the ground, she tried to get up but stated that four or five girls began to kick her including the defendant. (N.T. 112, 118-19, 138-39) Though she was certain defendant was amongst the group attacking her, she was not sure exactly where defendant was standing and she was unable to identify her by her clothing or shoes. (N.T. 119, 137-38) During the assault, Nia Booth claimed she heard defendant encourage her sister Wannamaker to "fuck her up, fuck that bitch up!" though she agreed that since she had never heard defendant's voice before that night, she wasn't really sure it was the defendant. (N.T. 122) The fight ended when a police officer pulled Nia Booth away from the fight. (N.T. 112) After a short while, she realized others were looking at her in horror and her she began to feel intense pain like her skin was melting off her face. (N.T. 121) She became hysterical at that point and started screaming. (N.T. 124)

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A few moments later, while being attended to by medical personnel, Nia Booth told EMS worker Joshua Nelson that she remembered the entire incident and indicated to him that a single female had thrown water on her. (N.T. 139-40) She similarly agreed that later in the evening, while receiving treatment at a burn center, she provided an account of the incident to attending personnel which did not mention being hit twice with hot water. (N.T. 142) Nevertheless, at trial, she told the jury she had no doubt that Wannamaker and defendant Tolbert had each thrown hot water on her. (N.T. 118, 150) In addition, she claimed that after the incident, she told an officer that both had thrown water on her. (N.T. 125)

Harrisburg police officer Antwyn Chatman, who was called to the scene that night, testified that as he arrived to the front of the building he saw two women fighting, later identified as Asia Wannamaker and Nia Booth. (N.T. 154) He also observed a few other people standing around the area and described the evening as dark and drizzly. (N.T. 155, 159) Defendant Tolbert was not part of the fight when he arrived, according to Officer Chatman. (N.T. 162) He pulled Nia Booth from the fight while his partner extracted Wannamaker. (N.T. 155) He attempted to talk to Nia Booth but she was too hysterical from pain. He testified that as he tried to talk to her he saw the epidermis layer of her skin begin to roll off her face. (N.T. 155-56) Before the Booths left in an ambulance he asked them who had injured them and they both named Wannamaker and defendant Tolbert. (N.T. 157) He later recovered one white Styrofoam cup from the front stairs. (N.T. 158)

Toni Booth testified that while she was in her neighbor's second floor apartment waiting for the ambulance, she heard her sister scream outside the apartment. (N.T. 73) She ran down and saw her sister on the ground being kicked and punched by five or six people including by defendant Tolbert. (N.T. 74-75) About a minute or two later, she stated that police came and grabbed the girl that "everybody was on top of," which turned out to be her sister who was unrecognizable to her at first due to the severity of burns to her face. (N.T. 75, 100) Toni Booth admitted, however, that at defendant's preliminary hearing,² she then testified that before she even reached the outside of the apartment building, the first thing she saw upon reaching the first floor and looking out of the front glass door of the lobby area, was an officer outside the door breaking up a fight involving numerous people and throwing a girl up against the glass door, whom she later identified as he sister. (N.T. 100-01, 107) She

2. A joint preliminary hearing was held for both defendant and her sister Asia Wannamaker.

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also admitted that at defendant's preliminary hearing she had never mentioned that she witnessed anyone kicking or striking her sister, including the defendant. (N.T. 107)

Detective Ryan Neal testified that on October 15, 2010, he attempted to obtain video surveillance footage from the apartment complex but discovered that the owners recorded over prior footage after six days, so no relevant footage of the incident was available. (N.T. 165-66)

Both Booth sisters were given morphine to address their severe pain and then transferred to Hershey Medical Center. (N.T. 79-80) After a short evaluation there, they were immediately transferred to the Lehigh Valley Burn Center in Allentown due to the severity of their injuries. (N.T. 80, 128-32; Commw. Exbts. 12-25) Both were diagnosed with second and third degree burns and were hospitalized for one week during which they underwent painful skin grafts. (N.T. 80-83, 126-27, 150; Commw. Exbt. 29) Both bear scars from their burns. (N.T. 149-50)

Defendant testified at her trial that on the evening of the incident, she received a phone call from her sister Asia Wannamaker who was hysterical and crying. She drove to her sister's Cumberland Court apartment and upon approaching her unit, heard her sister talking on the phone with police, asking for help. (N.T. 187) At some point, they were joined by their mother and a friend of their mother's. (N.T. 189) Defendant denied throwing water at Toni Booth or seeing anyone throw water on her. (N.T. 189-90) She also denied saying anything to Toni Booth like "I am going to fuck you up" or otherwise encouraging her sister to throw hot water on Toni Booth. (N.T. 190) She further denied having made a statement outside her sister's apartment that she had to clean up the water because the police were coming. (N.T. 192) She agreed she continually ran over to the third floor railing to look down the stairway but explained she did so to see if the police had responded to her sister's call. (N.T. 196)

Defendant testified that after visiting her sister's unit, she and her sister walked downstairs to meet the police at the front door but on their way, defendant noticed water in the hallway and cleaned it up so her mother would not slip on it. (N.T. 188) Defendant testified she had no knowledge how the water got there. (N.T. 188) Upon arriving outside, defendant saw Nia Booth approach her sister and ask her "are you the Asia bitch?" and then started swinging at her. They fought for a short while after which the police broke up the fight. (N.T. 189) Defendant denied any involvement in the assault upon Nia Booth, denied saying anything to Nia Booth and denied throwing water on her or physically

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attacking her. (N.T. 190) Defendant also testified that she gave a statement to police two days after the incident denying any involvement in the assaults and requesting they obtain the video surveillance from the building which she claimed would show she had not been involved. (N.T. 191, Commw. Exbt. 30) As noted, however, the video was not available because police requested it too late. (N.T. 191)

Defendant also offered the testimony of EMT Joshua Nelson, who treated the Booths at the scene. He testified that while evaluating Nia Booth, and before providing any medication to her, he asked about her chief complaint. He recorded in his report that she told him that “she poured hot water on me” and also that “a female threw hot water on her and her sister.” (N.T. 179) He testified that Nia Booth never mentioned that water was twice thrown on her or that there were two assailants. (N.T. 176)

Following the testimony, the jury found defendant guilty of aggravated assault on Toni Booth (Count 1), criminal conspiracy to commit aggravated assault on Toni Booth (Count 2) and aggravated assault on Nia Booth (Count 3). The jury found defendant not guilty of criminal conspiracy to commit aggravated assault on Nia Booth (Count 4). I thereafter sentenced defendant to an aggregate term of four to eight years’ incarceration.

POST SENTENCE PROCEEDINGS

After sentencing, defendant filed a timely post sentence motion claiming that the convictions were against the weight of the evidence. She also asserted the discovery of new evidence warranted a new trial because Asia Wannamaker was now available to testify and could offer exculpatory evidence. I held a hearing on the post sentence motion August 15, 2012.

At the hearing, Asia Wannamaker testified that she had been subpoenaed by defendant’s attorney Wendy Grella to testify in defendant’s case each time it was scheduled for trial, a total of three or four times. (N.T. 8/15/12 at 4) She discussed the subpoenas with her attorney, Paul Muller, who strongly advised her not to testify. (N.T. 5) Wannamaker appeared for court pursuant to the last subpoena during defendant’s trial and I held a meeting in my chambers concerning the issue. Wannamaker was present at the meeting with her attorney Muller. Also present were defendant’s attorney Grella and the prosecuting attorney Chase DeFelice. (N.T. 5-6) Wannamaker made it clear that if called she would refuse to testify for defendant under her Fifth Amendment privilege against self-incrimination. (N.T. 5) Wannamaker further testified at the

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post sentence hearing that during defendant's trial she had a brief discussion with Grella who asked her if she was going to plead the Fifth. Wannamaker reiterated that she would not testify for her sister. (N.T. 15) Wannamaker testified that if called at a new trial, however, she would not exercise her Fifth Amendment privilege but instead would testify that her sister, defendant Tolbert, had not been involved in the attacks upon the Booth sisters. (N.T. 40)

Attorney Muller confirmed that he had a number of discussions with his client (Wannamaker) prior to defendant's trial and consistently advised her that if called, she should assert her Fifth Amendment privilege because she had entered an open plea and had not yet been sentenced. (N.T. 22) He recalled as well at the in-chambers meeting that he specifically informed the Court he would advise Wannamaker to plead the Fifth if called because she could still incriminate herself. (N.T. 23, 25, 27) Muller believed that Wannamaker understood his advice and agreed with it. (N.T. 23-24, 27) He also recalled that later in the courtroom during a break in the defendant's trial, someone, possibly defendant's attorney, asked Wannamaker that if she were called to testify what would she do and that Wannamaker responded she would take the Fifth. (N.T. 25-26) According to Muller, after I came back to the courtroom to resume defendant's trial, defendant's attorney Grella advised me that since Wannamaker was planning on exercising her privilege, she would not be calling her to testify in defendant's trial. (N.T. 26)

Finally, defendant also presented the testimony of defendant's mother Michelle Tolbert at the post sentence hearing. Michelle Tolbert, who attended defendant's trial, testified that after defendant's trial, she informed defendant's attorney that she had been a witness to events and that defendant had not thrown any water at Nia Booth. (N.T. 17-18) Michelle Tolbert further stated that she had not previously divulged this information to defendant's attorney Grella. (N.T. 18) Defendant suggested this was additional after-discovered evidence warranting a new trial.

Following the hearing, and after the parties filed briefs, I issued my order denying the post sentence motion.

LEGAL DISCUSSION

In her post sentence motion, defendant asserted: (1) that the verdict was against the weight of the evidence and (2) that the existence of newly discovered evidence warranted a new trial.

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Weight of the Evidence

As set forth by our supreme court:

... a weight of the evidence claim is primarily addressed to the discretion of the judge who actually presided at trial. *Armbruster v. Horowitz*, 572 Pa. 1, 813 A.2d 698, 702 (Pa. 2002). It is axiomatic that it is the function of the jury as the finder of fact to determine the credibility of the witnesses. *Commonwealth v. Champney*, 574 Pa. 435, 832 A.2d 403, 408 (Pa. 2003), *cert. denied*, 542 U.S. 939, 124 S. Ct. 2906, 159 L. Ed. 2d 816 (2004) (citing *Commonwealth v. Johnson* 542 Pa. 384, 668 A.2d 97, 101 (Pa. 1995), *cert. denied*, 519 U.S. 827, 117 S. Ct. 90, 136 L. Ed. 2d 46 (1996)). Thus, the trial judge possesses only narrow authority to upset a jury verdict on a weight of the evidence claim:

A trial judge cannot grant a new trial “because of a mere conflict in testimony or because the trial judge on the same facts would have arrived at a different conclusion.” [*Commonwealth v. Brown* 538 Pa. 410, 648 A.2d 1177, 1189 (Pa. 1994)], quoting [*Thompson v. City of Philadelphia*, 507 Pa. 592, 493 A.2d 669, 672-73 (Pa. 1985)]. Instead, a new trial should be granted only in truly extraordinary circumstances, *i.e.*, “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*” *Id.* (emphasis in original).

Armbruster, 813 A.2d at 703.

Commonwealth v. Edwards, 903 A.2d 1139, 1148-49 (Pa. 2006).

To convict a person of aggravated assault the Commonwealth had to prove that defendant either attempted to cause or caused serious bodily injury to another, intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life. 18 Pa.C.S.A. § 2702(a)(1). “Serious bodily injury” means “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa.C.S.A. § 2301.

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The jury's conviction of defendant for aggravated assault of Toni Booth (Count 1) was supported by the weight of the evidence. For this crime, defendant was charged as an accomplice. A jury may convict a person as an accomplice so long as the facts adequately support the conclusion that she aided, agreed to aid, or attempted to aid the principal in planning or committing the offense, and acted with the intention to promote or facilitate the offense. *Commonwealth v. Markman*, 916 A.2d 586, 597-98 (Pa. 2007) (footnote omitted); see 18 Pa.C.S.A. § 306(c). The amount of aid need not be substantial so long as it was offered to the principal to assist her in committing or attempting to commit the crime. *Id.* (citations omitted).

Defendant's conviction under an accomplice liability theory was entirely consistent with the evidence and was not shocking. The Commonwealth presented sufficiently weighty evidence through the victim that the principal, defendant's sister Asia Wannamaker, committed an aggravated assault upon Toni Booth whereby she knowingly caused serious bodily injury to Toni Booth; i.e. Wannamaker intentionally threw hot water upon Toni Booth causing her severe burns and also struck her in the head with a metal kitchen pot numerous times.³ The evidence further revealed that defendant acted as her sister's accomplice by aiding in Wannamaker to commit this assault, with an intent or shared intent to commit it, as follows: immediately preceding the attack, defendant threatened Toni Booth by forewarning her that "today is your day!" Defendant thereafter actively encouraged and promoted her sister's attack upon Toni Booth by repeatedly yelling for her sister to "fuck that bitch up!" Finally, defendant herself kicked Toni Booth in the head while she was laying on the ground. Toni Booth's neighbor, Nancy Smith, a neutral witness, offered additional supporting evidence, whereby following the attack, defendant was observed in front of Toni Booth's apartment door trying to clean up evidence of the attack while telling her friend she was concerned that the police would soon be there, revealing a consciousness of guilt. Smith's testimony also directly contradicted defendant Tolbert's testimony which was that she wasn't even aware how the water got outside Toni Booth's door, thus impeaching defendant's trial testimony.

3. Defendant does not argue that the infliction of second and third degree burns upon the victims would not qualify as "serious bodily injury" under the law. A second-degree burn is one that affects the epidermis and the dermis and a third-degree burn is one that destroys both the epidermis and the dermis. <http://medical-dictionary.thefreedictionary.com> (Nov. 15, 2012).

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The evidence was also sufficiently weighty to convict on Count 2, criminal conspiracy to commit aggravated assault upon Toni Booth. In order to sustain a conviction for criminal conspiracy, the Commonwealth must establish that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy. *Commonwealth v. Murphy*, 795 A.2d 1025, 1037-38 (Pa. Super. 2002) (citation omitted). The overt act need not be committed by the defendant; it need only be committed by a co-conspirator. Furthermore, the intent required for criminal conspiracy is identical to that required for accomplice liability; in both crimes a defendant must act with the intent of promoting or facilitating the offense. However, a mere finding that an individual was an accomplice of the criminal actor does not automatically establish that the individual was a conspirator with the actor; accomplice liability and conspiracy are not one and the same crime. Conspiracy requires proof of an additional factor which accomplice liability does not, namely the existence of an agreement. *Id.* at 1038 (citations omitted). Most notably, the evidence revealed defendant reached an agreement with her sister to physically assault Toni Booth whereby upon entering the third floor of the apartment building, defendant immediately opened the door to her sister's apartment, indicating that she was lying in wait for Toni Booth's arrival. She thereafter essentially forewarned Toni Booth of the coming attack, telling her that "today is your day." Finally, once the attack ensued, defendant joined in the attack at one point, kicking the victim as she lay on the ground.

I admittedly find the conviction for defendant's aggravated assault upon Nia Booth (Count 3) more troubling though sufficiently weighty under the law to support the conviction. As to that portion of the attack involving hot water, the sole Commonwealth eyewitness was the victim Nia Booth. Her testimony was that immediately after Wannamaker threw the first cup of hot water and they began to physically scuffle, that defendant then threw the second cup of hot water at her upper body. However, following the attack, Nia Booth on two occasions identified only a single person as having thrown hot water on her, including in a statement made immediately after the event to the EMT at the scene - to whom she said that she remembered everything about the event - and a number of hours later to medical personnel at the burn center. Defendant denied any involvement whatsoever in the attack upon Nia Booth and there was no other evidence corroborating Nia Booth's account. Furthermore, the victim admittedly saw numerous people with white cups that night, and also admitted she had never seen defendant before.

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Nevertheless, at trial, Nia Booth told the jury she had no doubt that Wannamaker and defendant Tolbert had each thrown hot water on her. Given the severity of the burns suffered by defendant and the obvious pain she was in on the night of the attacks, it is not shocking that the jury would credit her testimony at trial and overlook the inconsistent statements she made shortly after she suffered such trauma. Furthermore, the jury could have understandably discredited defendant's testimony, particularly where it may have reasonably concluded that she lied about having no knowledge of the first attack upon Toni Booth.

With regard to that portion of the attack which occurred while Nia Booth was on the ground, the Commonwealth's evidence, offered through both Nia and Toni Booth, was that defendant punched and kicked her as part of a group of four or five other people doing the same. Assuming the jury found this evidence credible, it was sufficient to establish an intent by defendant to cause Nia Booth serious bodily injury. As to the weight of this evidence, Nia Booth testified that she was certain defendant was amongst the group attacking her though she admitted she could not tell exactly where defendant was during this physical assault, could not identify defendant's clothing or shoes, and had never seen her before that night.

Toni Booth testified at trial that, upon running down to the ground floor entry area, she saw her sister Nia being kicked and punched by five or six people including defendant Tolbert. During Toni Booth's preliminary hearing testimony, however, she never mentioned that she saw defendant punching and kicking her sister. She also testified at the preliminary hearing that she arrived on the scene just as police had broken up the altercation and was thus too late to have witnessed the fight. Officer Chatman's testimony was that upon arriving at the scene, he saw only two women fighting, Asia Wannamaker and Nia Booth, and that defendant Tolbert was not part of the fight.

Though conflicts and inconsistencies certainly existed within the Booths' trial testimony, there was sufficiently weighty evidence that defendant had physically assaulted Nia Booth (by punching and kicking her) but that her involvement ended before the arrival of police or before Toni Booth got to the ground floor to witness it, thus crediting Nia Booth's version of the events. As noted, a new trial cannot be granted because of a mere conflict in testimony or because the trial judge on the same facts may have arrived at a different conclusion.

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After Discovered Evidence

Defendant's second claim is that she should be awarded a new trial on the basis of after-discovered evidence primarily because her sister, who was unable to testify on her behalf during her trial because she had exercised her Fifth Amendment right, is now available and would now offer exculpatory testimony at a new trial. Defendant also suggested that she discovered additional post-trial evidence, which she would offer through her mother Michelle Tolbert.

To be granted a new trial on the basis of after-discovered evidence a defendant must demonstrate that the evidence: (1) could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach the credibility of a witness; and (4) would likely result in a different verdict if a new trial were granted. *Commonwealth v. Padillas*, 997 A.2d 356, 363 (Pa. Super. 2010), *appeal denied*, 14 A.3d 826 (Pa. 2010) (citation omitted). The defendant must show by a preponderance of the evidence that each of these factors has been met in order for a new trial to be warranted. *Id.* (citations omitted).

I find that defendant established the first element: that she could not have obtained the new evidence, her sister's testimony, prior to the conclusion of the trial by the exercise of reasonable diligence. The relevant law regarding this first element, under facts similar to those asserted here, is as follows:

In Pennsylvania, if the testimony of a witness who previously invoked the Fifth Amendment becomes available after the verdict, that testimony constitutes after-discovered evidence. *Commonwealth v. Fiore*, 780 A.2d 704, 711-12 (Pa. Super. 2001) (emphasis added). For that testimony to be considered previously "unavailable," however, the witness must have actually invoked his right to remain silent; if the witness simply refused to testify or the defendant did not question the witness about the incriminating topic, then the defendant cannot claim a witness' later self-incriminating statement is "after-discovered." See *Stanley v. Shannon* 2007 WL 2345284, *4 n. 6 (E.D. Pa. Aug 16, 2007) (observing witness in *Fiore* was unavailable to testify at trial because he had invoked his Fifth Amendment right not to testify; therefore, witness' testimony in *Fiore* constituted after-discovered

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evidence; but testimony of witness who simply refuses or is unwilling to testify does not constitute after-discovered evidence).

Padillas at 363 (footnote omitted).

The Commonwealth suggests that defendant cannot clear the initial hurdle suggested in *Padillas* which is that the witness must have been called to the stand at defendant's trial and then asserted her Fifth Amendment right. This court believes, however, that the evidence produced in this case, as discussed above, revealed beyond any doubt that the witness effectively asserted her Fifth Amendment right and that her assertion of that right would have been recognized by this Court. As such, calling Wannamaker to the stand in this case would have been an unnecessary and futile exercise.

"The privilege against self-incrimination is 'accorded liberal construction in favor of the right it was intended to secure' and may be claimed when a witness 'has reasonable cause to apprehend danger' from answering questions put to him." *Commonwealth v. Rodgers*, 372 A.2d 771, 780-81 (Pa. 1977) (citation omitted). "When a witness invokes [her] Fifth Amendment right against self-incrimination, the court must assess whether the witness' fear of self-incrimination is reasonable, and not of an "imaginary and unsubstantial character." *Padillas* at 363 (citation omitted). The assertion of the right here would have been completely reasonable and of substantial character. Our courts have held that a witness whose conviction has not been finalized on direct appeal is permitted to invoke the privilege against self-incrimination and may refuse to testify about the subject matter which formed the basis of his conviction. *Commonwealth v. Long*, 625 A.2d 630, 635 (Pa. 1993) (citing *Rodgers* at 780). The reason is that remedies available to that individual on direct and collateral review may result in a new trial. As such, a conviction does not eliminate the possibility that an individual will later be prosecuted for the crime about which he is asked to testify. *Id.*

The case for extending the privilege in Wannamaker's situation is even stronger. In addition to potential direct appeal and collateral review rights, she maintained an additional procedural right under the Rules of Criminal Procedure to petition for the withdrawal of her guilty plea prior to sentencing, which withdrawals are to be liberally allowed. Pa.R.C.P. 591 (Comment). As such, testimony that Wannamaker would have offered at defendant's trial would have clearly been potentially incriminating against her in future proceedings. See *Commonwealth v. Saunders*, 12 Pa. D. & C. 3d 158, 164-67 (Mont. C.P. 1978) *aff'd*, 408

A.2d 530 (Pa. Super. 1979) (finding that a witness was entitled under Rodgers to assert his Fifth Amendment right against self-incrimination where the witness had pled guilty but had not yet been sentenced).

Accordingly, since Wannamaker had not yet been sentenced following her guilty plea, it is beyond peradventure that this court would have recognized her right to not testify had she been called to the stand at defendant's trial. In addition, given that she proved beyond any doubt that she intended to assert that right if called, this court finds that Wannamaker effectively asserted her Fifth Amendment right and was thus an unavailable witness to defendant under the law. *Padillas, supra*. As such, Wannamaker's current availability since the conclusion of defendant's trial constitutes after-discovered evidence which could not have been obtained prior to the conclusion of the trial by the exercise of reasonable diligence. *Id.*

While defendant has proven the first element for a new trial on grounds of after-discovered evidence, she fails to prove the next element, that the proposed evidence will not be merely corroborative or cumulative. "Whether new evidence is corroborative or cumulative in this context depends on the strength of the other evidence supporting the conviction; ... [n]ew evidence to support a defendant's claim of innocence is less likely to be deemed cumulative if the conviction is based largely on circumstantial evidence." *Padillas* at 364 (citations omitted). "Where the new evidence, however, supports claims the defendant previously made and litigated at trial, it is probably cumulative or corroborative of the evidence already presented." *Id.* (citation omitted).

With regard to defendant's convictions for her assault on Toni Booth (Counts 1 and 2), the proposed evidence to be offered by Asia Wannamaker at a new trial would be that her sister was not present during that assault outside Wannamaker's apartment and that Wannamaker was the sole culprit. This would be the identical testimony offered by defendant at her trial and is thus cumulative and corroborative of evidence already presented to a jury. Furthermore, as noted above, the evidence in support of defendant's conviction on these two counts was sufficiently strong; it was not based largely on circumstantial evidence but upon the victim's eyewitness testimony that the defendant participated in the assault upon her. The victim's testimony was not otherwise undermined by any previous inconsistent statements. Additionally, Toni Booth's testimony was further bolstered by a neutral witness, Nancy Smith, whereby she observed defendant reveal a consciousness of guilt by attempting to conceal evidence from

police following the attacks. Also, as noted, Smith's testimony directly contradicted defendant's testimony that she had no idea how water got outside Toni Booth's door, thus impeaching defendant.

With regard to defendant's conviction for her assault on Nia Booth (Count 3), the proposed evidence to be offered by Wannamaker would be that her sister was an innocent bystander during this assault and that Wannamaker was the sole culprit. This would also be identical testimony to that offered by defendant at her trial and is thus cumulative and corroborative. As noted, "[w]here the new evidence ... supports claims the defendant previously made and litigated at trial, it is probably cumulative or corroborative of the evidence already presented." *Id.* at 364 (citation omitted). The evidence in support of defendant's conviction for assaulting Nia Booth was not based largely on circumstantial evidence but upon eyewitness accounts from both Booths. I have noted above, nevertheless, that the eyewitness evidence offered in support of the hot water portion of the attack upon Nia Booth by defendant was somewhat weak: Nia Booth was the sole witness on this point and her testimony was in direct conflict with defendant's. Furthermore, Nia Booth offered inconsistent statements as to whether one or two women threw water on her that night. Nevertheless, the jury obviously credited Nia Booth's trial testimony and justifiably discounted defendant's testimony given that it may have considered her to have lied in other portions of her testimony, most notably concerning her knowledge of her sister's involvement in Toni Booth's attack. In any event, because the proposed evidence would support the claims defendant made and litigated at trial, it is cumulative and corroborative, and defendant thus fails to meet the second prong of the four part test.

Regarding the third element, defendant has proven that the after-discovered evidence here would not be used solely to impeach the credibility of a witness. Initially, I note that Wannamaker's proposed testimony in a new trial, that her sister was not involved in either attack on the Booth sisters and thus contradicting the testimony of both Booths, would in fact be used as impeachment in a new trial: "Where eyewitness identification tied the defendant to the crime charged and the defendant challenged the identification in his trial, third-party testimony exculpating the defendant impeaches the eyewitness." *Padillas* at 365 (citation omitted). However, the impeaching nature of Wannamaker's proposed testimony would not be the *sole* reason it would be offered. It would also be offered to corroborate defendant's version of events as well, as discussed above.

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The final element, whether the proposed after-discovered evidence is of such nature and character that a different verdict will likely result if offered at a new trial, is not present in this case.

... In making [this] determination, a court should consider the integrity of the alleged after-discovered evidence, the motive of those offering the evidence, and the overall strength of the evidence supporting the conviction. *Parker, supra* (stating conflicting accounts are inherently unreliable and would not compel different verdict in new trial). *See also Commonwealth v. Washington*, 592 Pa. 698, 717, 927 A.2d 586, 597 (2007) (stating exculpatory accomplice testimony should be viewed with suspicion where accomplice has already been tried and has nothing to lose); *Argyrou, supra* at 1204 (noting “cases that have addressed [newly-discovered evidence] have focused not simply on the credibility of the person offering the exculpatory evidence, but on the credibility or trustworthiness of the evidence itself, as well as the motive, or other impeaching characteristics, of those offering it”); *Hopkins v. Commonwealth* 20 Va. App. 242, 456 S.E.2d 147, 151 (1995) (holding after discovered evidence was insufficient to support the grant of a new trial where verdict was “based on uncontradicted, corroborated, and reaffirmed eyewitness testimony” and evidence is “self-contradictory, perjured at least in part, and plainly untrustworthy of belief”); *State ex rel. Smith v. McBride*, 224 W.Va. 196, 681 S.E.2d 81, 95-96 (2009) (noting due to strength of evidence against defendant, third party’s confession was unlikely to change verdict).

Padillas at 365

With regard to the integrity of the proposed evidence concerning defendant’s assault on Toni Booth (Counts 1 and 2), the proposed evidence is that Asia Wannamaker would testify at a new trial that she alone threw hot water on Toni Booth. The integrity of this evidence is of a mixed bag. On the one hand, as quoted above in *Padillas*, the law directs that exculpatory accomplice testimony be viewed with suspicion where the accomplice has already been tried and has nothing to lose. *Id.* (quoting *Washington*). Wannamaker would have obvious reasons to fabricate her testimony because she has already been convicted and sentenced for her role in the crimes. On the other hand, the exculpatory

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(and corroborative) evidence Wannamaker would offer at a new trial is nevertheless largely consistent with her version of events provided to police at the outset of its investigation. In Wannamaker's police statement, given just two days after the crimes and clearly given against her penal interest, she admitted that she alone threw water at a bunch of girls who were harassing her outside of her apartment. She denied her sister was present and claimed that she in fact phoned her sister and their mother after the incident because she needed their assistance. The integrity of Wannamaker's proposed new trial testimony is thus bolstered by her police statement. (Post Sent. Hearing, Commw. Exbt. 1)

With regard to motive, the law directs that the court should closely scrutinize the veracity of exculpatory statements offered by close relatives of the defendant. *See Padillas* at 366 ("the familial relationship between defendant and his brother calls into question the veracity of any exculpatory statement by defendant's brother") (citation omitted). As defendant's sister, Wannamaker would have a strong motive to fabricate evidence on her behalf.

Finally, this court must assess the overall strength of the evidence supporting the convictions. As noted above, the evidence supporting the two crimes committed against Toni Booth was not unduly weak inasmuch as it was not based largely on circumstantial evidence but upon the victim's eyewitness testimony that both Wannamaker and defendant attacked her. That testimony was further supported in part by the neighbor's testimony who observed defendant, a very short time following the attack, reveal a consciousness of guilt by attempting to conceal evidence from police by wiping up water from the floor. In addition, this testimony also directly contradicted defendant Tolbert's own trial testimony which was that she wasn't even aware of an incident involving water, thus strongly impeaching defendant's testimony.

In light of all these considerations - the integrity of the after-discovered evidence, the motive of those offering the evidence and the overall strength of the evidence supporting the convictions - I find that the after-discovered evidence is not of such nature and character that a different verdict would likely result if offered at a new trial concerning the crimes directed against Toni Booth. While the proffered evidence maintains some integrity despite being offered by an accomplice, it is not of such sufficient substance to overcome the fact it would be offered by defendant's sister, who has an obvious bias in her favor, and would be offered against fairly strong evidence offered by the Commonwealth in favor of conviction.

With regard to the integrity of the proposed evidence concerning defendant's aggravated assault on Nia Booth (Count 3), Wannamaker would purportedly testify at a new trial that defendant played no role in the attack upon Nia Booth and that Wannamaker was the sole culprit. This evidence is of mixed integrity. Again, Wannamaker's proposed exculpatory accomplice testimony would be viewed with suspicion since she has already been convicted and has nothing to lose. Additionally, while her proffered evidence is somewhat consistent with her version of events provided in her police statement, it is inconsistent with the statement on one significant point. Notably, while Wannamaker told police she got into a fight with defendant, which is a statement against her penal interest, she nevertheless denied that either she or her sister threw water at Nia Booth. She further claimed that while she carried a white cup outside, it contained only cold tea. (Post Sent. Hearing, Commw. Exbt. 1) This gap in her police statement by which she maintained no knowledge of anyone throwing hot water at Nia Booth would not help her sister's case in a new trial and could easily harm it. In any event, these inconsistencies between her police statement and what she would testify to at trial degrade the integrity of evidence she would offer in a new trial.

With regard to motive, the analysis is the same as above; that is, the court must closely scrutinize the veracity of exculpatory statements offered by a close relative of the defendant and fully consider Wannamaker's strong motive to fabricate evidence on her sister's behalf.

Finally, this court must assess the overall strength of the evidence supporting the convictions. As noted above, the evidence supporting the aggravated assault against Nia Booth, though not without its conflicts and inconsistencies, was sufficiently weighty.

In light of all these considerations - the integrity of the after-discovered evidence, the motive of those offering the evidence and the overall strength of the evidence supporting the convictions - I find that the after-discovered evidence is not of such nature and character that a different verdict would likely result if offered at a new trial for the crimes committed upon Nia Booth. The proffered evidence is of questionable integrity since it is both offered by an accomplice and is inconsistent on a significant point with the statement Wannamaker made to police. Furthermore, the proposed evidence would be offered by defendant's sister, who has an obvious bias in her favor, and would be offered against two eyewitness accounts presented by the Commonwealth which favored conviction.

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Accordingly, for all the reasons set forth above, I denied defendant's motion for a new trial based upon after-discovered evidence vis-à-vis Asia Wannamaker.

Finally, defendant suggested that she had a right to a new trial based upon newly discovering after trial that defendant's mother, Michelle Tolbert, would have testified for her and offered testimony that she was innocent. This claim lacked any merit. First, it was not raised in defendant's post sentence motion and was thus waived. Alternatively, to the extent not waived, it was clearly not newly discovered evidence because defendant knew from the date of the incident that her mother had been present at the crime scene. "[A] defendant who fails to question or investigate an obvious, available source of information, cannot later claim evidence from that source constitutes newly discovered evidence." *Padillas* at 364 (citation omitted). Furthermore, "[t]he concept of reasonable diligence is particularly relevant where the defendant fails to investigate or question a potential witness with whom he has a close, amicable relationship." *Id.* (citations omitted). Defendant here failed to exercise reasonable diligence by not pursuing this obvious source of evidence.

Accordingly, I denied defendant's post sentence motion on November 8, 2012.

SECOND PUBLICATION

Estate Notices

ESTATE OF WILBERT MANIGAULT, late of Union City, Fulton County, Georgia. Executrix: Cynthia Cooper, 14 North 20th Street, Harrisburg, PA 17103. Attorneys: Bratic & Portko LLC, 101 South U.S. Route 15, Suite A, Dillsburg, PA 17019. d21-j4

ESTATE OF DONNA M. FISHER, late of Penbrook Borough, Dauphin County, Pennsylvania (died November 13, 2012). Personal Representative: Heidi Fisher, 2744 Banks Street, Harrisburg, PA 17103. Attorney: Francis A. Zulli, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. d21-j4

ESTATE OF ROBERT HELSLEY, a/k/a ROBERT L. HELSLEY, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 11, 2012). Executrix: Kimberly A. Helsey. Attorney: Diane S. Baker, Esq., P.O. Box 6443, Harrisburg, PA 17112-0443. d21-j4

THIRD PUBLICATION

ESTATE OF JOHN R. McCOOL, late of Dauphin County, Pennsylvania. Executrix: Diane E. Bryant, c/o David H Martineau, Esq. Salzmman Hughes, PC, 354 Alexander Spring Road, Suite 1, Carlisle, PA 17015. Attorneys: Salzmman Hughes, P.C.. d14-d28

ESTATE OF BETTY M. KOPPE a/k/a BETTY MAE KOPPE a/k/a BETTY MAY KOPPE, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 16, 2012). Executor: Albert L. Koppe. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. d14-d28

ESTATE OF SHIRLEY W. SWARTZ, late of Susquehanna Township, Dauphin County, Pennsylvania (died Ocotber 19, 2012). Executor: Robert E. Swartz, 3001 Locust Lane, Harrisburg, PA 17109. Attorney: Howell C. Mette, Esq., Mette, Evans & Woodside, 3401 North Front Street, Harrisburg, PA 17110. Telephone (717) 232-5000. d14-d28

ESTATE OF HELEN J. BOWMAN, late of Highspire Borough, Dauphin County, Pennsylvania (died November 15, 2012). Executor: Carol Anne Zimmerman, 478 Eshelman Street, Highspire, PA 17034. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. d14-d28

ESTATE OF HENRY L. WITMER, late of South Hanover Township, Dauphin County, Pennsylvania (died October 28, 2012). Executrix: Marguerite M. Witmer 5 Appletree Lane, Hummelstown, PA 17036. Attorney: A. Mark Winter, Esq., 310 W. Chocolate Avenue, Hershey, PA 17033. Telephone (717) 533-4868. d14-d28

ESTATE OF ROMAINE A. HORNER, late of Swatara Township, Dauphin County, Pennsylvania. Personal Representative: Janell E. Weaser, 563 2nd Street, Enhaut, PA 17113. Attorney: Brian K. Zellner, Esq., 2608 North 3rd Street, Harrisburg, PA 17110. d14-d28

ESTATE OF MIQUEL GALEN DAVIS a/k/a MIKE DAVIS, late of Harrisburg City, Dauphin County, Pennsylvania. Personal Representative: Thomas Eurieck, 428 South 25th Street, Harrisburg, PA 17104. Attorney: Bridget M. Whitley, Esq., Skarlatos Zonarich LLC, 17 South 2nd Street, Floor 6, Harrisburg, PA 17101. d14-d28

THIRD PUBLICATION

Estate Notices

ESTATE OF CATHERINE M. MAROVIC
a/k/a CATHERINE MAROVIC, late of
Harrisburg City, Dauphin County, Penn-
sylvania (died November 21, 2011).
Executrix: Kathleen Turley, 230 North
Old Stonehouse Road, Carlisle, PA
17015. Attorney: Jan L. Brown, Esq., Jan L.
Brown & Associates, 845 Sir Thomas
Court, Suite 12, Harrisburg, PA 17109.
Telephone (717) 541-5550. d14-d28

ESTATE OF ROSE MARIE C. BENTON
a/k/a ROSE MARIE C. LAGANA, late of
Harrisburg, Dauphin County, Pennsylvania
(died April 21, 2012). Executrix: Teresa
Ward. Attorney: Joseph D. Ustynoski, Esq.,
Ustynoski & Marusak, LLC, 101 West Broad
Street, Suite 205, Hazleton, PA 18201.
d14-d28

ESTATE OF MARIAN L. KUCHMA a/k/a
MARIAN LOUISE KUCHMA a/k/a
MARIAN BLOCHER KUCHMA, late of
Susquehanna Township, Dauphin County,
Pennsylvania. Executrix: Susan L. Kuba,
2277 Ianoff Road, Harrisburg, PA 17110.
Attorney: Gerald J. Shekletski, Esq., Stone
LaFaver & Shekletski, P.O. Box E,
New Cumberland, PA 17070. d14-d28

ESTATE OF MINNIE N. PENNA, late of
Lower Paxton Township, Dauphin County,
Pennsylvania (died August 17, 2012).
Executor: Salvatore J. Penna. Attorneys:
Young & Young, 44 South Main Street,
Manheim, PA 17545. d14-d28

ESTATE OF JOSEPH L. LOCKARD, late
of Harrisburg, Dauphin County, Pennsyl-
vania. Executor: Paul S. Lockard, c/o
Randall K. Miller, Esq., 1255 South Market
Street, Suite 102, Elizabethtown, PA 17022.
Attorney: Randall K. Miller, Esq., 1255
South Market Street, Suite 102,
Elizabethtown, PA 17022. d14-d28

ESTATE OF EDNA L. REYNOLDS, late
of Paxtang Borough, Dauphin County,
Pennsylvania (died February 7, 2012).
Executor: Michael T. Reynolds, 410 Pawnee
Drive, Mechanicsburg, PA 17050. Attorney:
Kent H. Patterson, Esq., 221 Pine Street,
Harrisburg, PA 17101. d14-d28

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that **Media
Now, Inc.**, a foreign business corporation
incorporated under the laws of the State of
Delaware, received a Certificate of Authority
in Pennsylvania on September 3, 2009, and
surrenders its Certificate of Authority to do
business in Pennsylvania.

Its last registered office in this
Commonwealth was located at: 133
Linglestown Road, Harrisburg PA 17110, and
its last registered office of the corporation
shall be deemed for venue and official publi-
cation purposes to be located in Dauphin
County, Pennsylvania.

Notice of its intention to withdraw from
Pennsylvania was mailed by certified or regis-
tered mail to each municipal corporation in
which the registered office or principal place
of business of the corporation in Pennsylvania
is located.

The post office address, including street and
number, if any, to which process may be sent
in an action or proceeding upon any liability
incurred before any liability incurred before
the filing of the application for termination of
authority is Goldberg Katzman, P.C., Attn:
Arnold B. Kogan, Esquire, 4250 Crums Mill
Road, P.O. Box 6991, Harrisburg, PA 17112.
d28

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that **Stratus Insurance Services, Inc.**, a foreign business corporation incorporated under the laws of the State of Virginia, received a Certificate of Authority in Pennsylvania on December 12, 2003, and surrenders its certificate of authority to do business in Pennsylvania.

Its last registered office in this Commonwealth was located at: Dauphin, PA, and its last registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania.

Notice of its intention to withdraw from Pennsylvania was mailed by certified or registered mail to each municipal corporation in which the registered office or principal place of business of the corporation in Pennsylvania is located.

The post office address, including street and number, if any, to which process may be sent in an action or proceeding upon any liability incurred before any liability incurred before the filing of the application for termination of authority is 260 S. 2500 W. Suite 303 Pleasant Grove, UT 84062. d28

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, pursuant to the provisions of the Limited Liability Company Law of the Commonwealth of Pennsylvania, Act of December 7, 1994 (P.L. 703 No. 106) for the following company: **Modern Architectural Design, LLC.**

TURNER AND O'CONNELL
4701 North Front Street
d28 Harrisburg, PA 17110

NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority was filed with the PA Dept. of State on 12/13/2012 by **American Rice, Inc.**, a foreign corporation formed under the laws of the State of DE with its principal office located at 2777 Allen Parkway, Houston, TX 77019, to do business in PA under the provisions of the Business Corporation Law of 1988. The registered office in PA shall be deemed for venue and official publication purposes to be located in Dauphin County. d28

NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority was filed with the PA Dept. of State on 12/17/2012 by **CWI, Inc.**, a foreign corporation formed under the laws of the State of KY with its principal office located at 650 Three Springs Rd., Bowling Green, KY 42104, to do business in PA under the provisions of the Business Corporation Law of 1988. The registered office in PA shall be deemed for venue and official publication purposes to be located in Dauphin County. d28

FIRST PUBLICATION

Fictitious Notices

NOTICE IS HEREBY GIVEN that an Application for Registration of a Fictitious Name, **Teledyne Judson Technologies**, for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 221 Commerce Drive, Montgomeryville, PA 18936, was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on February 1, 2008, pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name and address of the only person, or persons, or entity owning or interested in the said business is: Teledyne Scientific & Imaging, LLC., 1049 Camino Dos Rios, Thousand Oaks, CA 91360. d28

FIRST PUBLICATION

Fictitious Notices

NOTICE IS HEREBY GIVEN that an Application for Registration of a Fictitious Name, **Teledyne Judson**, for the conduct of business in Dauphin County, Pennsylvania, with the principal place of business being 221 Commerce Drive, Montgomeryville, PA 18936, was made to the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on February 1, 2008, pursuant to the Act of Assembly of December 16, 1982, Act 295. The name and address of the only person, or persons, or entity owning or interested in the said business is: Teledyne Scientific & Imaging, LLC., 1049 Camino Dos Rios, Thousand Oaks, CA 91360. d28

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Fictitious Name Act of 1982, Act of Assembly of December 16, 1982, P.L. 1309, Section 2, as amended, 54 Pa.C.S. §301 et seq., that an Application for Registration for Fictitious Name of **Kauffman Enders Insurance Agency** was made to the Department of State of the Commonwealth of Pennsylvania on December 12, 2012.

The address of the principal office of the business which will be operated under the fictitious name is 91 Kauffman Lane, Mifflintown, PA 17059.

The name and address of the entity interested in the said business is Colonial Park Realty Company, 5912 Linglestown Road, P.O. Box 6118, Harrisburg, Pennsylvania 17112.

J. STEPHEN FEINOUR, Esq.
Nauman, Smith, Shissler & Hall, LLP
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108
(717) 236-3010

d28

NOTICE IS HERBEY GIVEN that under 54 Pa.C.S, an Application for Registration of Fictitious Name for **Camping World, Inc.**, conducting business in Dauphin County, PA with its principal office located at 650 Three Springs Rd., Bowling Green, KY 42104, was filed with the PA Dept. of State at Harrisburg, PA on 12/17/2012. The name and address of the entity that is party to the registration is: CWI, Inc., 650 Three Springs Rd. Bowling Green, KY 42104. d28

FIRST PUBLICATION

Miscellaneous Notices

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY
PENNSYLVANIA**

CIVIL ACTION – LAW

CIVIL DIVISION

No. 2012-CV-3625-MF

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**

WELLS FARGO BANK, N.A., Plaintiff

vs.

**L. MICHELLE HUTCHINSON,
Defendant**

NOTICE

TO: L. MICHELLE HUTCHINSON

YOU ARE HEREBY NOTIFIED that on May 4, 2012, Plaintiff, WELLS FARGO BANK, N.A., filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of DAUPHIN County Pennsylvania, docketed to No. 2012-CV-3625-MF. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 1605 NORTH 2ND STREET, HARRISBURG, PA 17102-2403 whereupon your property would be sold by the Sheriff of DAUPHIN County.

FIRST PUBLICATION

Miscellaneous Notices

YOU ARE HEREBY NOTIFIED to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

IF YOU WISH TO DEFEND, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

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

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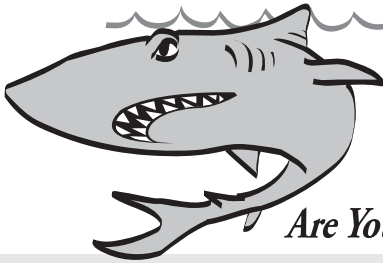
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The Board of Directors of the Bar Association meets on the third Thursday of the month at the Bar Association headquarters. Anyone wishing to attend or have matters brought before the Board should contact the Bar Association office in advance.

REPORTING OF ERRORS IN ADVANCE SHEET

The Bench and Bar will contribute to the accuracy in matters of detail of the permanent edition of the Dauphin County Reporter by sending to the editor promptly, notice of all errors appearing in this advance sheet. Inasmuch as corrections are made on a continuous basis, there can be no assurance that corrections can be made later than thirty (30) days from the date of this issue but this should not discourage the submission of notice of errors after thirty (30) days since they will be handled in some way if at all possible. Please send such notice of errors to: Dauphin County Reporter, Dauphin County Bar Association, 213 North Front Street, Harrisburg, PA 17101-1493.

DAUPHIN COUNTY COURT SECTION

Motion Judge of the Month

DECEMBER 2012

Judge Andrew H. DOWLING

Opinions Not Yet Reported

December 13, 2012 – Clark, J., **Doctor's Choice Physical Medicine & Rehabilitation Center, P.C. v Travelers Personal Insurance Company, No. 2008-CV-16214**

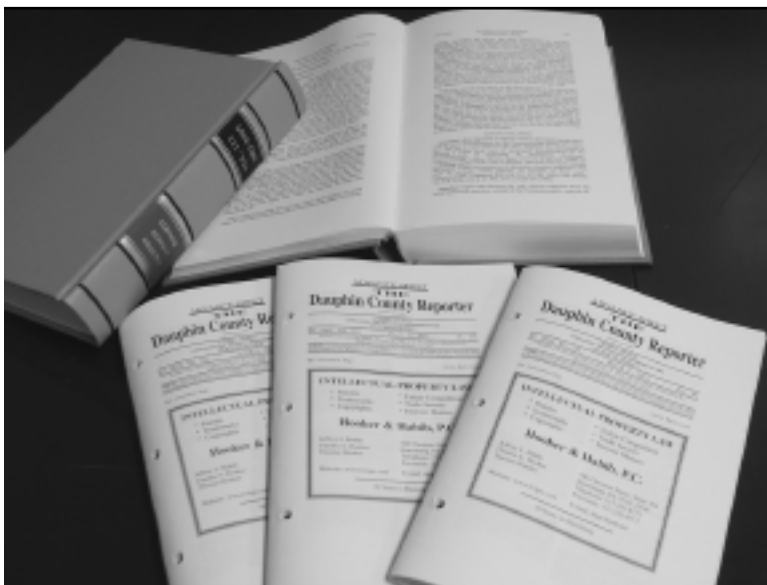
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