



## Testimony

At the hearing on the omnibus pretrial motion on December 29, 2023, the Commonwealth presented two witnesses. The first witness was Detective Tyson Haven (Havens). Havens testified that he has been employed with the Lycoming County Narcotics Enforcement Unit for about five-and one-half years. N.T. 12/29/2023 at 6. After identifying Defendant as the subject of his investigation, he described that he had many roles in the investigation. *Id.* at 7. He described that he watched Defendant come and go from 623½ Green St. *Id.* He described that his main role was to participate in the execution of the search warrant on July 14<sup>th</sup>, 2023. *Id.* Through Havens, the Commonwealth introduced his body cam video, marked as Commonwealth's Exhibit #1. *Id.* On the video, Havens described that you could see there was what he called a 'mud room' which was a kind of accessway between 623 and 623½ Green Street. *Id.* at 9. From that room, both 623 and 623½ Green Street were accessible. *Id.* Once Defendant came to his door the officers entered and he was placed under arrest. *Id.* Havens described that once in the mudroom or entryway both residences were separately secured. *Id.* at 10. Havens also spoke with the resident of 623 Green Street and she gave permission to search her residence. *Id.* at 12. After a quick search he determined that it was a separately secured residence with no door between the two. *Id.* The only area common to the two was the mudroom or entryway. *Id.*

On cross examination, Havens confirmed that to reach the door to the mudroom, the officers would have approached from the backyard. *Id.* at 14. The route to the door would have been through the backyard by way of what could be called a carport, patio, or breezeway. *Id.* The path to the house was from the alley, through a backyard through an open private carport to

the back door of a house which enters the mudroom. *Id.* at 15. Havens believed that the mudroom would be the type of room that a delivery person would enter. *Id.*

Commonwealth's #1 was the body camera footage from Havens depicting the search of Defendant's residence. The 7:05 minute video begins with him driving a vehicle to the Green Street location and hearing him speak with someone in the vehicle (0:00- 1:17). Havens gets out of his vehicle in the alley and he has something in his right hand which looks like a tool to be used in the service of the warrant (1:18). Another officer comes into view with what appears to be a ballistic shield and gun drawn toward the rear of the residence (1:36). The officers there to serve the warrant are entering from the rear of the residence walking under a carport approaching two doors (1:57). The left door has a window that is diamond shaped and the right door has eight panes of glass with the door knob on the left-hand side. Havens tells whoever he is with that the door "is the one with the windows." As they are approaching the rear driveway to the house (1:46) it appears that Havens opens the door on the right which has eight windows to let everyone inside, immediately into a small entryway (1:57-2:05). As the group enters the entryway, visible very briefly are two doors, one straight ahead with windows and the other a solid door approximately 90 degrees to the right.<sup>3</sup> The officers briefly announce themselves and begin to attempt to make entry through the door with the windows and are having a difficult time breaking the door to get inside (2:05-2:29). After hearing glass break, within two or three seconds, someone opens the solid door and the officers yell to get down (2:29-2:31). The

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<sup>3</sup> To assist the reader in visualizing the "mud room" and the entrances of 623 Green Street and 623 ½ Green Street, it may be easier to view the "mud room" as common or joint enclosed porch. Directly across the porch is the entry door with numerous windows for 623 Green Street. At the right (or south) end of the porch is the solid entry door for 623 ½ Green Street. It is as if 623 Green Street is a house and 623 ½ Green Street is a separate structure (perhaps a converted garage or woodshop) that is adjoined to the house only by the south end of the enclosed porch.

recording shows a male in custody who is sitting (2:35). The Commonwealth did not play the remainder of this video.

Detective Michael Caschera (Caschera) from the NEU was also called to testify. He has been an employee with the NEU for seven years. *Id.* at 18. He testified that he used a confidential informant (CI) to facilitate sales of crack cocaine. *Id.* at 19. Caschera used both audio and video recording to capture the transactions between Defendant and the CI. *Id.* The only pre-authorization he obtained was for the third transaction. *Id.* at 20. Caschera said that he did not get prior authorization for the first two transactions because he was told that the CI never went inside the residence; s/he would deal with the Defendant directly at his back door. *Id.* Because Caschera wasn't sure what the Court's opinion would be of the need for authorization, he obtained one for the third transaction. *Id.* Caschera testified that the CI told him that s/he would never go inside his house; s/he described that Defendant would reach his harm [sic] out through the threshold of the door, receive the money and hand off the crack cocaine. *Id.* The Commonwealth then introduced another video into evidence which represents the actual entry into the area by the CI. Commonwealth's #2. The Commonwealth also introduced and played the video from the CI's second transaction. Commonwealth's #3.

Commonwealth's #2 according to Caschera is a recording of the first transaction between the CI and the Defendant. Although upside down, you can see the CI approach the rear of 623 Green Street (:15), take the door to the right and enter the entryway (:18). While in the entryway, the CI knocks on the solid door to the right (:20) and while standing in the entryway has a conversation with someone that the Commonwealth alleges is the Defendant who complains that the CI did not call in advance (:27-:41). CI remains in the entryway while Defendant retrieves the controlled substance (:43). The remainder of the recording is the CI

walking back to a vehicle and being debriefed by an NEU officer. The entire recording lasts 3:40.

Commonwealth's #3 is the recording of the second drug transaction. This recording lasts 1:57 and has no audio. The CI walks up to the same location, only a black male is waiting at the partially opened door (:16). The CI hands currency to the male and he simultaneously places something small in the CI's hand (:17-:18). The CI immediately leaves the Green Street address to go to a vehicle parked in the alley. The remainder of the video is inside the vehicle.

***Was the Commonwealth required to comply with the Wiretap Act as part of its investigation***

Defense Counsel argues that the Commonwealth was precluded from utilizing the consensual recordings as it failed to comply with the requirements of the Pennsylvania Wiretap Act. Commonwealth argues that since the transactions were completed outside the residence, that the Wiretap Act was not implicated.

Initially, the Court notes that the conversations between the CI and Defendant were made face-to-face through Defendant's doorway, not via telephone or text message. Subject to exceptions not applicable here, an "oral communication" is "[a]ny oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation." 18 Pa. C.S. §5702. In comparison, a "wire communication" is

Any aural transfer made in whole or in part through the use of facilities for the transmission of communication by wire, cable or other like connection between the point of origin and the point of reception, including the use of such a connection in a switching station, furnished or operated by a telephone, telegraph or radio company for hire as a communication common carrier.

*Id.* Therefore, the communications were “oral communications” and not a wire communication. Due to the differences in these definitions, there can be circumstances where a defendant does not need to establish circumstances justifying an expectation of privacy for wire communications but the same cannot be said of an oral communication. *See Commonwealth v. Diego*, 119 A.3d 370, 378-79 (Pa. Super. 2015).

Chapter 57 of the Pennsylvania Statutes regulates Wiretapping and Electronic Surveillance in Pennsylvania. Specifically, 18 Pa. C.S.A. Section 5704 discusses the exceptions to the prohibition of interception and disclosure of communications. The applicable law enforcement sections fall under section 2.

It shall not be unlawful and no prior court approval shall be required under this chapter for:....

2) Any investigative or law enforcement officer or any person acting at the direction or request of an investigative or law enforcement officer to intercept a wire, electronic or oral communication involving suspected criminal activities, including, but not limited to, the crimes enumerated in section 5708 (relating to order authorizing interception of wire, electronic or oral communications), where:

(i) Deleted.

(ii) one of the parties to the communication has given prior consent to such interception. However, no interception under this paragraph shall be made unless the Attorney General or a deputy attorney general designated in writing by the Attorney General, or the district attorney, or an assistant district attorney designated in writing by the district attorney, of the county wherein the interception is to be initiated, has reviewed the facts and is satisfied that the consent is voluntary and has given prior approval for the interception; however, such interception shall be subject to the recording and record keeping requirements of section 5714(a) (relating to recording of intercepted communications) and that the Attorney General, deputy attorney general, district attorney or assistant district attorney authorizing the interception shall be the custodian of recorded evidence obtained therefrom;

(iii) the investigative or law enforcement officer meets in person with a suspected felon and wears a concealed electronic or mechanical device capable of intercepting or recording oral communications. However, no interception

under this subparagraph may be used in any criminal prosecution except for a prosecution involving harm done to the investigative or law enforcement officer. This subparagraph shall not be construed to limit the interception and disclosure authority provided for in this subchapter; or

(iv) the requirements of this subparagraph are met. If an oral interception otherwise authorized under this paragraph will take place in the home of a nonconsenting party, then, in addition to the requirements of subparagraph (ii), the interception shall not be conducted until an order is first obtained from the president judge, or his designee who shall also be a judge, of a court of common pleas, authorizing such in-home interception, based upon an affidavit by an investigative or law enforcement officer that establishes probable cause for the issuance of such an order. No such order or affidavit shall be required where probable cause and exigent circumstances exist. ***For the purposes of this paragraph, an oral interception shall be deemed to take place in the home of a nonconsenting party only if both the consenting and nonconsenting parties are physically present in the home at the time of the interception.***

18 Pa. C.S.A. §§5704(2)(ii), (iii), (iv) (emphasis added).

The Commonwealth argues that the transactions did not occur within a home as defined by the Wiretap act and therefore there is no need to comply with the Wiretap Act.

“[T]he Wiretap Act is to be strictly construed to protect individual privacy rights” because it derogates a fundamental Pennsylvania constitutional right—the right to privacy. *Karoly v. Mancuso*, 619 Pa. 486, 65 A.3d 301, 310 (2013) (citations omitted). Given that “private conversations are [being] overheard by governmental authorities,” courts should closely scrutinize law enforcement authorities for strict compliance with the Act's requirements. *Id.* In establishing a violation of the Wiretap Act, a defendant is not required to establish actual prejudice. *Commonwealth v. Hashem*, 526 Pa. 199, 584 A.2d 1378, 1381-82 (1991) (holding, “We ... specifically reject the Superior Court's holding that before relief can be granted in this type of claim the Defendant must bear the burden of showing how the failure to comply with the [Wiretap] Act prejudiced him. As we [held previously], where an act is in derogation of this

Commonwealth's constitutionally protected right to privacy its provisions must be strictly applied.” *Commonwealth v. Shreffler*, 201 A.3d 757, 764 (Pa. Super. 2018) (citation omitted).

In the context of a verbal communication, the Pennsylvania Supreme Court held that Article I, Section 8 of the Pennsylvania Constitution prevents police from sending a confidential informant into the home of an individual to electronically record his conversation by use of a body wire absent a prior determination of probable cause by a neutral judicial authority. See *Commonwealth v. Brion*, 652 A.2d 287 (Pa. 1994). In finding a constitutionally recognized expectation of privacy, the Supreme Court's primary focus was on the zone of privacy in the home and the face-to-face conversations taking place therein. The majority did not accept an analysis based on the disclosure of information, which, as described above, and by the dissenters in *Brion*, would have resulted in no recognized expectation of privacy. Therefore, while still applying the *Katz* privacy expectation analysis, Pennsylvania Courts have found a legitimate expectation of privacy in face-to-face conversations conducted within one's home. *Commonwealth v. Rekasie*, 566 Pa. 85, 95, 778 A.2d 624, 630 (2001).

To determine whether an area is protected from searches, the Supreme Court also analyzed whether the person asserting the right had a legitimate expectation of privacy in the area. *Commonwealth v. Ferretti*, 395 Pa. Super. 629, 577 A.2d 1375, 1379 (1990)(citation omitted). This determination is to be accomplished by an examination of the totality of the circumstances. *Id.*; *Com. v. Reed*, 851 A.2d 958, 960–61 (Pa. Super. 2004). The crucial distinction between protected and unprotected areas, as set forth in the above cited cases, is whether an unrelated person has unfettered access to the area. If even one unrelated person has an unfettered right to access an area, the area is not protected in Pennsylvania from government searches and seizures. *Reed*, 851 A.2d at 962. In *Reed*, the Superior Court found that if the



defendant did not have the right to exclude persons from common areas within an apartment building like hallways and stairs, the defendant would have no reasonable expectation of privacy in that area. *Id.*

In reviewing the video of the entry of the Defendant's apartment as well as the two transactions, the CI entered what appeared to be a common area between the two doors and never stepped foot into Defendant's residence. The Defendant talked to the CI through a partially open door for less than 15 seconds. Since the CI was talking to the Defendant from an area that appears to be a common area between his apartment and 623 Green St., the consenting party was not physically present inside Defendant's home, and Defendant would have had no reasonable expectation of privacy. Therefore, the Commonwealth was not in violation of the Wiretap Act. Accordingly, the Court will deny Defendant's motion to suppress the recordings from the CI wearing a consensual electronic recording device.

***Was the description of the property to be searched legally sufficient***

Defense counsel argues that based upon the body cam videos provided in discovery, it is clear that the description of the premises to be searched was not clear enough as the entry team initially breached the wrong door. It wasn't until the Defendant opened his own door and looked out that the Commonwealth realized they were going into the wrong door. The Commonwealth argues that the description was accurate but that despite the detective who started 'smashing' the wrong door, only 623½ Green Street was searched that day.

Both the Fourth Amendment of the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens from unreasonable, searches and seizures. *Commonwealth v. Burgos*, 64 A.3d 641, 648 (Pa. Super. 2013). The Fourth

Amendment has a strong preference for searches conducted pursuant to warrants.

*Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018). Search warrants may only issue upon probable cause and the issuing authority may not consider any evidence outside of the affidavits. Pa. R. Crim. P. 203 (B). The affidavit of probable cause must provide the magistrate with a substantial basis for determining the existence of probable cause. *Leed*, supra (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)).

Pa Rule of Criminal Procedure Rule 205 provides that

- (A) Each search warrant shall be signed by the issuing authority and shall:
- (1) specify the date and time of issuance;
  - (2) identify specifically the property to be seized;
  - (3) name or describe with particularity the person or place to be searched.

Pa. R. Crim. P. 206 also provides that

- Each application for a search warrant shall be supported by written affidavit(s) signed and sworn to or affirmed before an issuing authority, which affidavit(s) shall:
- (1) state the name and department, agency, or address of the affiant;
  - (2) identify specifically the items or property to be searched for and seized;
  - (3) name or describe with particularity the person or place to be searched;
  - (4) identify the owner, occupant, or possessor of the place to be searched;
  - (5) specify or describe the crime which has been or is being committed...

“[T]he Fourth Amendment categorically prohibits the issuance of any warrant except one ‘particularly describing the place to be searched and the persons or things to be seized.’ ” *Maryland v. Garrison*, 480 U.S. 79, 84, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987), quoting U.S. Const. amend. IV. This requirement is meant to prevent general searches and “ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.” *Id.* Along those lines, “the scope of a lawful search is defined by the object of the search and the places in which

there is probable cause to believe that it may be found.” *Id.* (internal quotation and citation omitted). *Commonwealth v. Turpin*, 654 Pa. 619, 634, 216 A.3d 1055, 1063–64 (2019).

However, the Pennsylvania Supreme Court established in *Commonwealth v. Edmunds*, 586 A.2d 887 (Pa. 1991) that Article 1 Section 8 of the Pennsylvania Constitution Court affords greater protection than its Fourth Amendment counterpart, including a more stringent particularity requirement. *Commonwealth v. Grossman*, 555 A.2d at 899 (finding “as nearly as may be” language of Article I, Section 8 to require more specificity in description of items to be seized than federal particularity requirement). In order to protect these twin aims, a warrant must describe the place to be searched and the items to be seized with specificity, and the warrant must be supported by probable cause. The place to be searched must be described “precise[ly] enough to enable the executing officer to ascertain and identify, with reasonable effort, the place intended, and where probable cause exists to support the search of the area so designated, a warrant will not fail for lack of particularity.” *Commonwealth v. Carlisle*, 348 Pa.Super. 96, 501 A.2d 664 (Pa.Super.1985), *aff’d* 517 Pa. 36, 534 A.2d 469 (1987), *Commonwealth v. Waltson*, 555 Pa. 223, 230, 724 A.2d 289, 292 (1998).

The search warrant issued to the NEU on July 14, 2023 was obtained to search the residence at 623½ Green St., City of Williamsport for cocaine and related paraphernalia, currency and indicia of occupancy contained the following information about the residence to be:

“623½ Green St., A multi family residence. 623 ½ being the south section of the residence.” It also lists Defendant as the owner, occupant or possessor of the premises. *See Commonwealth’s #4.*

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623 ½ Green St City of Williamsport

This investigation involved (3) three controlled purchases of crack, cocaine from DOM CARTER at his residence 623 ½ Green St. in the City of Williamsport. This CI has purchased crack, cocaine from DOM CARTER on numerous occasions in the past. All weights are approximate.

**Controlled Buy 1**

On 6/26/23 CI 23-24 purchased approximately 1.02 grams of crack, cocaine (\$100) from DOM CARTER at his residence at 623 ½ Green St in the City of Williamsport.

1. CI was searched to negate the presence of any drugs, contraband, or currency. None were found.
2. CI was provided with \$100 in prerecorded police funds.
3. CI contacted CARTER at cellular number 570-337-#### to arrange the purchase of \$100 worth of crack, cocaine. CARTER agreed to the sale and directed the CI to his residence (623 ½ Green St.)
4. CI consented to the placing of an audio/video recording device on or about their person.
5. CI was transported to 623 ½ Green St.
6. CI made contact at the rear door of the above residence.
7. CARTER opened the door, reached his arm out of the residence, and conducted a hand to hand exchange with the CI
8. CI handed CARTER \$100 in prerecorded police funds
9. CARTER handed the CI crack, cocaine (1.02 grams)
10. CARTER closed the door
11. CI returned to the UC vehicle and immediately turned over the crack, cocaine
12. CI was searched to negate the presence of any drugs, contraband, or currency. None were found.

**Controlled Buy #2**

On 6/28/23 CI 23-24 purchased approximately 1.02 grams of crack, cocaine (\$40) from DOM CARTER at his residence at 623 ½ Green St in the City of Williamsport.

1. CI was searched to negate the presence of any drugs, contraband, or currency. None were found.
2. CI was provided with \$40 in prerecorded police funds.
3. CI contacted CARTER at cellular number 570-337-#### to arrange the purchase of \$40 worth of crack, cocaine. CARTER agreed to the sale and directed the CI to his residence (623 ½ Green St.)
4. CI consented to the placing of an audio/video recording device on or about their person.

5. CI was transported to 623 ½ Green St.
6. CI made contact at the rear door of the above residence.
7. CARTER opened the door, reached his arm out of the residence, and conducted a hand to hand exchange with the CI
8. CI handed CARTER \$40 in prerecorded police funds
9. CARTER handed the CI crack, cocaine (0.39 grams)
10. CARTER closed the door
11. CI returned to the UC vehicle and immediately turned over the crack, cocaine
12. CI was searched to negate the presence of any drugs, contraband, or currency. None were found.

### **Controlled Buy #3**

On 7/1328/23 CI 23-24 purchased approximately .39 grams of crack, cocaine (\$40) from DOM CARTER at his residence at 623 ½ Green St in the City of Williamsport.

1. CI was searched to negate the presence of any drugs, contraband, or currency. None were found.
2. CI was provided with \$40 in prerecorded police funds.
3. CI contacted CARTER at cellular number 570-337-#### to arrange the purchase of \$40 worth of crack, cocaine. CARTER agreed to the sale and directed the CI to his residence (623 ½ Green St.)
4. CI consented to the placing of an audio/video recording device on or about their person.
5. CI was transported to 623 ½ Green St.
6. CI made contact at the rear door of the above residence.
7. CARTER opened the door, reached his arm out of the residence, and conducted a hand to hand exchange with the CI
8. CI handed CARTER \$40 in prerecorded police funds
9. CARTER handed the CI crack, cocaine (1.02 grams)
10. CARTER closed the door
11. CI returned to the UC vehicle and immediately turned over the crack, cocaine
12. CI was searched to negate the presence of any drugs, contraband, or currency. None were found.

The search warrant presented to the Magisterial District Judge (MDJ)<sup>4</sup> clearly lists criminal activity in the affidavit of probable cause. Defense Counsel has not challenged that the affidavit has not sufficiently described criminal behavior demonstrating a fair probability that

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<sup>4</sup> The issuing MDJ was Aaron Biichle.

evidence of a crime would be found in 623 ½ Green Street. Therefore, the affidavit supports the request to search the location for the items sought.

The information listing the property description in the warrant on its face appears also to comply with the requirements of Pennsylvania law. *See* Pa. Const. Article 1, § 8 (“no warrant to search any place... shall issue without describing them as nearly as may be....”); Pa. R. Crim. P. 205 (A)(3)(“Each search warrant shall... (3) name or describe with particularity the person or place to be searched”). The warrant named or described the premises as “623½ Green St., A multi family residence. 623 ½ being the south section of the residence.” Challenges to the specificity of a warrant have been rejected where a street address was supplied or a general description of the building to be searched was provided. *See In re Gartley*, 491 A.2d 851, 856 (Pa. Super. 1985) and cases cited therein. Here, an address was given and a general description of the particular section of the residence. Additionally, Defense counsel presented no testimony that the description given to the MDJ was inaccurate.

As noted in footnote 3, this was not a typical double-house or multifamily residence. Typically, a house number designated with a ½ is a half-double (or one-half of a double-house) that contains two apartments, either a left side and a right side or an upstairs and a downstairs apartment. This residence was not divided in one of those typical configurations. Instead, this was more like a single house and an auxiliary structure that was only joined to the house by the “mud room” or enclosed porch. However, that was not readily apparent. When approaching from the alley behind the residence, the doors are a bit confusing. The team correctly initially entered through the south door with multiple windows rather than the diamond-windowed door to the north (left). From the rear, the initial two doors in the back made it appear that the house was divided into a left side and a right side. After entering the south door with several

windows, the team was then in the “mud room” or enclosed porch. The door directly in front of them looked like an entry door to the residence. The solid door to the right did not. Therefore, the court concludes that the detective leading the entry who attempted to enter the wrong apartment simply made a mistake, as Havens described it.

Additionally, the team assigned to serve the warrant was given somewhat confusing information. In reviewing the recording of Havens body cam, Havens who was involved in the investigations told the other members of the teams that the door was the “one with the windows.” Although the Court took that to mean the door with the 8 windows rather than the one on the left with the diamond shaped window, the detective leading the entry may have thought that Havens was referring to the windowed door inside the “mud room” or enclosed porch area. The first windowed door directly accessed two doors in the “mud room”—one to 623 Green which also had windows, and one to 623 ½ Green which did not. The more prudent course of action would have been to verify again which door led to 623 ½ Green by either reviewing the recordings of the CI or confirming which door, but no documented activity took place. While it is true that the warrant team only searched one residence that day,<sup>5</sup> a safer course of action would have been to confirm which door was to 623 ½ Green. The only conclusion the Court can make is that the description was accurate but that a mistake was made due Havens’ statement, the number of doors with windows and the atypical layout in this particular case. Fortunately for them, the Defendant opened his door to see what was happening, and the police were able to search the correct residence.

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<sup>5</sup> The fact that only one residence was searched is not dispositive. *See In Interest of Wilks*, 613 A.2d 577 (Pa. Super. 1992)(fact that only one apartment was searched did not validate a warrant that authorized the search of both apartments without probable cause).

## **Conclusion**

This Court finds Defendant did not have a reasonable expectation of privacy in the common “mud room” area immediately outside his residence doorway; therefore, the Commonwealth’s interception of the communication between the CI and Defendant did not violate the Wiretap Act. In reviewing the totality of the circumstances for the warrant, the NEU sufficiently described 623 ½ Green Street and the officers who were part of the entry team appeared not to have either reviewed the evidence or confirmed which door upon approach and failed to choose the correct door to attempt to execute the search warrant. However, they did not enter the incorrect door as the Defendant opened the correct door and the officers entered. The attempted entry in the wrong door was simply officer error.

## **ORDER**

**AND NOW**, this 26<sup>th</sup> day of June, 2024, based upon the foregoing Opinion, Defendant’s Omnibus Pretrial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: DA (M Welickovitch)  
Taylor Paulhamus, Esq.  
Jerri Rook