

# Northampton County Reporter

(USPS 395-280)

VOL. LX

EASTON, PA January 10, 2019

NO. 54

**Commonwealth of Pennsylvania v. Royce Atkins, Defendant**  
**Part III**

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4. "Job Description: Trial Judge"

### **NOTICE TO THE BAR...**

#### **New Rule Provides Direction to Attorneys with Unclaimed Funds in their IOLTA Account**

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\* \* \* \* \*

#### **PA Supreme Court Board and Committee Vacancies**

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\* \* \* \* \*

#### **2019 Court Calendar Changes**

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The Northampton County Reporter will be published every Thursday by the Northampton County Bar Association, 155 South Ninth St., Easton, PA 18042-4399. All legal notices relating to the business of the county, are required by rule of Court, to be published in this Journal. All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Law Reporter nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes to content.

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Editor

## **NOTICE TO NCBA MEMBERS – BAR NEWS**

### **2019 Court Calendar Changes**

Non Jury has been moved from 6/10-6/12 to 6/24-6/26, 2019. Call of the List will be held on 6/19/19.

Status Conferences scheduled for 6/25/19 have been cancelled.

Miscellaneous Hearings scheduled for 7/5/19 have been moved to 7/3/19.

### **Pennsylvania Supreme Court Committee Vacancies**

There are seven vacancies on Pennsylvania Supreme Court boards and committees. The positions have been posted on the UJS website.

Applications are due by January 31, 2019.

<http://www.pacourts.us/courts/supreme-court/committees/>.

### **New Rule Provides Direction to Attorneys with Unclaimed Funds in their IOLTA Account**

See page 11.

### **Courthouse Library Copy Machine Cards**

Copy machine cards are still available at the NCBA Office. If you make any copies on the copy machine in the Law Library you may want to consider purchasing copy cards. The cards sell for \$10.00. If you use the cards, copies are 15 cents rather than the usual 25 cents.

When everything seems to be going against you, remember that the airplane takes off against the wind, not with it. ~ Henry Ford

**ESTATE AND TRUST NOTICES**

Notice is hereby given that, in the estates of the decedents set forth below, the Register of Wills has granted letters testamentary or of administration to the persons named. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

**FIRST PUBLICATION****ALDIO, ELIZABETH L.,** dec'd.

Late of Cherryville, Northampton County, PA

Co-Executors: JoAnn M. Nemeth and Dennis E. Falat c/o Joshua D. Shulman, Esquire, Shulman & Shabbick, 1935 Center Street, Northampton, PA 18067

Attorneys: Joshua D. Shulman, Esquire, Shulman & Shabbick, 1935 Center Street, Northampton, PA 18067

**D'AMATO, MICHAEL,** dec'd.

Late of the Borough of Roseto, Northampton County, PA

Executor: Giani Armon D'Amato c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

**DUNN, BARBARA J.,** dec'd.

Late of 328 E. Wall Street, Bethlehem, Northampton County, PA

Personal Representative: Molly E. Dunn c/o James A. Ritter, Esquire, 111 E. Harrison St., Suite 2, Emmaus, PA 18049-2916

Attorney: James A. Ritter, Esquire, 111 E. Harrison Street, Suite 2, Emmaus, PA 18049-2916

**FERRETTI, ROSE MARIE,** dec'd.

Late of the Borough of Wind Gap, Northampton County, PA

Co-Executors: Richard W. Ferretti, 175 W. Factoryville Rd., Bangor, PA 18013 and Bruce N. Ferretti, 57 E. Central Avenue, East Bangor, PA 18013

**HERO, RICHARD J.,** dec'd.

Late of Hellertown, Northampton County, PA

Executor: Jeffrey L. Hero

Attorney: Nicholas M. Zanakos, Esquire, 742 Main Street, Bethlehem, PA 18018

**KING, KENNETH M.,** dec'd.

Late of Walnutport, Northampton County, PA

Executrix: Maria Rodriguez c/o Charles A. Waters, Esquire, Steckel and Stopp LLC, 125 S. Walnut Street, Suite 210, Slatington, PA 18080

Attorneys: Charles A. Waters, Esquire, Steckel and Stopp LLC, 125 S. Walnut Street, Suite 210, Slatington, PA 18080

**McNALLY, JOAN MARIE,** dec'd.

Late of Bethlehem Township, Northampton County, PA

Executor: John K. McNally c/o Steven B. Molder, Esquire, 904 Lehigh St., Easton, PA 18042

Attorney: Steven B. Molder, Esquire, 904 Lehigh St., Easton, PA 18042

**OTTERVIK, ERIC V.,** dec'd.

Late of the City of Bethlehem,  
Northampton County, PA

Executrices: Jennifer Robin  
Ottervik and Kathleen Virginia  
Jameson c/o Robert V. Littner,  
Esquire, Littner, Deschler &  
Littner, 512 North New Street,  
Bethlehem, PA 18018

Attorneys: Robert V. Littner,  
Esquire, Littner, Deschler &  
Littner, 512 North New Street,  
Bethlehem, PA 18018

**RODGERS, ANNA M.,** dec'd.

Late of the Township of  
Bethlehem, Northampton  
County, PA

Executrix: Kathleen J. Holzer-  
Muniz c/o Alfred S. Pierce,  
Esquire, Pierce & Steirer, LLC,  
124 Belvidere Street, Nazareth,  
PA 18064

Attorneys: Alfred S. Pierce,  
Esquire, Pierce & Steirer, LLC,  
124 Belvidere Street, Nazareth,  
PA 18064

**SMITH-KMIECZAK, DIANNE A.,**  
dec'd.

Late of the City of Bath,  
Northampton County, PA

Executrices: Joann L. Stivala  
and Deanna L. Kohler c/o Judith  
A. Harris, Esquire, Norris  
McLaughlin, P.A., 515 West  
Hamilton Street, Suite 502,  
Allentown, PA 18101

Attorneys: Judith A. Harris,  
Esquire, Norris McLaughlin,  
P.A., 515 West Hamilton Street,  
Suite 502, Allentown, PA 18101

**WARSINSKI, JOHN,** dec'd.

Late of Wilson Borough,  
Northampton County, PA

Administrator: John C.  
Warsinski c/o Steven B. Molder,

Esquire, 904 Lehigh St., Easton,  
PA 18042

Attorney: Steven B. Molder,  
Esquire, 904 Lehigh St., Easton,  
PA 18042

**YEISLEY, KENNETH MILLER,**  
dec'd.

Late of the Township of Wash-  
ington, Northampton County, PA

Executors: Geary L. Yeisley and  
Carlene Diane Bennyhoff c/o  
McFall, Layman & Jordan, P.C.,  
Attorneys at Law, 134 Broadway,  
Bangor, PA 18013

Attorneys: McFall, Layman &  
Jordan, P.C., Attorneys at Law,  
134 Broadway, Bangor, PA  
18013

**SECOND PUBLICATION****ANTHONY, LAMAR D.,** dec'd.

Late of Walnutport, North-  
ampton County, PA

Executrix: Schirlene S.  
Benninger c/o Keith W. Strohl,  
Esquire, Steckel and Stopp LLC,  
125 S. Walnut Street, Suite 210,  
Slatington, PA 18080

Attorneys: Keith W. Strohl,  
Esquire, Steckel and Stopp LLC,  
125 S. Walnut Street, Suite 210,  
Slatington, PA 18080

**CAPITULIK, NORA,** dec'd.

Late of the City of Easton, North-  
ampton County, PA

Administrator: Paul Daniel Hahn  
Attorney: Richard J. Shiroff,  
Esquire, 724 Lehigh Street,  
Easton, PA 18042

**COMPOS, VIRGINIA J.,** dec'd.

Late of the Township of Hanover,  
Bethlehem, Northampton  
County, PA

Executor: Stephen C. Compos  
c/o William P. Leeson, Esquire,  
70 East Broad Street, P.O. Box

1426, Bethlehem, PA 18016-1426

Attorney: William P. Leeson, Esquire, 70 East Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

**DORWARD, JAMES L.,** dec'd.

Late of 47 W. Washington Avenue, Bethlehem, Northampton County, PA

Personal Representatives: James L. Dorward, II and Lauren L. Dorward a/k/a Lauren Louise Dorward c/o James A. Ritter, Esquire, Gross McGinley, LLP, 111 E. Harrison St., Suite 2, Emmaus, PA 18049-2916

Attorneys: James A. Ritter, Esquire, Gross McGinley, LLP, 111 E. Harrison Street, Suite 2, Emmaus, PA 18049-2916

**JOHNSON, KATHERINE A.,** dec'd.

Late of Bethlehem, Northampton County, PA

Personal Representative: Sarah K. Johnson c/o Paul S. Frank, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

Attorneys: Paul S. Frank, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

**JONES, JOAN A.,** dec'd.

Late of Hanover Township, Northampton County, PA

Executrix: Margaret Jones Bachman c/o Vivian I. Zumas, Esquire, 742 Main St., Bethlehem, PA 18018

Attorney: Vivian I. Zumas, Esquire, 742 Main St., Bethlehem, PA 18018

**KUHN, KELLEN DAVID,** dec'd.

Late of 703 Almond Road, Walnutport, Northampton County, PA

Personal Representative: Linda Diane Cooper c/o Thomas A. Capehart, Esquire, Gross McGinley, LLP, 33 South 7th Street, P.O. Box 4060, Allentown, PA 18105-4060

Attorneys: Thomas A. Capehart, Esquire, Gross McGinley, LLP, 33 South 7th Street, P.O. Box 4060, Allentown, PA 18105-4060

**LIBRICZ, GEORGE J.,** dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executors: George J. Libricz, Jr., 5242 Cheryl Drive, Bethlehem, PA 18017 and Lois Hollopeter, 170 Green Forest Lane, Lehighton, PA 18235

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064-2083

**SCHOCKER, ADELE L.,** dec'd.

Late of Bethlehem, Northampton County, PA

Executor: Jack David Schocker, 212 Stonehedge Road, Hollidaysburg, PA 16648

Attorneys: Jane L. Carothers, Esquire, Jubelirer, Carothers, Krier & Halpern, 6 Sheraton Drive, Suite 2, Altoona, PA 16601

**SIENICKI, PAUL K.,** dec'd.

Late of Bethlehem, Northampton County, PA

Administratrix: Karen Anne Sienicki c/o William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

Attorney: William W. Matz, Jr.,  
Esquire, 211 W. Broad Street,  
Bethlehem, PA 18018-5517

**TUROCY, MICHAEL THOMAS,**  
dec'd.

Late of Bethlehem Township,  
Northampton County, PA

Executor: Michael Brian Turocy  
c/o Joel M. Scheer, Esquire,  
Fishbone and Scheer, 940 W.  
Lafayette Street, Easton, PA  
18042

Attorneys: Joel M. Scheer,  
Esquire, Fishbone and Scheer,  
940 W. Lafayette Street, Easton,  
PA 18042

**WILLIAMS, JAMES A.,** dec'd.

Late of Bethlehem, Northampton  
County, PA

Executrix: Mary Ellen Williams  
c/o Lisa A. Pereira, Esquire,  
Broughal & DeVito, L.L.P., 38  
West Market Street, Bethlehem,  
PA 18018

Attorneys: Lisa A. Pereira,  
Esquire, Broughal & DeVito,  
L.L.P., 38 West Market Street,  
Bethlehem, PA 18018

**THIRD PUBLICATION**

**BARTA, PHOEBE Y. a/k/a**  
**PHOEBE ALICE BARTA,** dec'd.

Late of the Borough of Nazareth,  
Northampton County, PA

Co-Executors: David L. Barta  
and Allyn B. Dukes c/o  
Goudsouzian & Associates, 2940  
William Penn Highway, Easton,  
PA 18045-5227

Attorneys: Goudsouzian & Asso-  
ciates, 2940 William Penn  
Highway, Easton, PA 18045-  
5227

**CHAUDOIN, JOANNE Z.,** dec'd.

Late of the Township of  
Bethlehem, Northampton  
County, PA

Executrix: Patricia A. Holliday  
c/o Daniel E. Cohen, Attorney,  
Seidel, Cohen, Hof & Reid, L.L.C.,  
3101 Emrick Blvd., Suite 205,  
Bethlehem, PA 18020

Attorneys: Daniel E. Cohen,  
Attorney, Seidel, Cohen, Hof &  
Reid, L.L.C., 3101 Emrick Blvd.,  
Suite 205, Bethlehem, PA 18020

**EISEL, DOROTHY E.,** dec'd.

Late of Palmer Township, North-  
ampton County, PA

Executrix: Gabrielle Ann Maria  
Eisel c/o Peters, Moritz, Peischl,  
Zulick, Landes & Brienza, LLP,  
1 South Main Street, Nazareth,  
PA 18064

Attorneys: Peters, Moritz, Peischl,  
Zulick, Landes & Brienza, LLP,  
1 South Main Street, Nazareth,  
PA 18064

**FRENCH, ANNE A.,** dec'd.

Late of the Township of  
Bethlehem, Northampton  
County, PA

Co-Executors: H. Douglas  
French, III and Frank S. Azzalina  
c/o Robert C. Brown, Jr.,  
Esquire, Fox, Oldt & Brown, 940  
W. Lafayette Street, Suite 100,  
Easton, PA 18042-1412

Attorneys: Robert C. Brown, Jr.,  
Esquire, Fox, Oldt & Brown, 940  
W. Lafayette Street, Suite 100,  
Easton, PA 18042-1412

**GALATI, SAMUEL,** dec'd.

Late of the Borough of Bangor,  
Northampton County, PA

Executrix: Karen I. Galati, 619  
Market Street, Bangor, PA 18013  
Attorneys: Ronold J. Karasek,  
Esquire, Karasek Law Offices,  
L.L.C., 641 Market Street,  
Bangor, PA 18013

**LUGG, MARY LOUISE,** dec'd.

Late of the Township of Upper  
Nazareth, Northampton County,  
PA



Executrix: Donna Dae Leverington c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019  
Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

**MILLER, JAMES A., JR.,** dec'd.

Late of the Borough of Bangor, Northampton County, PA  
Administratrix: Joan Loretta Miller c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019  
Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

**SMITH, SHIRLEY ANN,** dec'd.

Late of Plainfield Township, Northampton County, PA  
Executor: Brian L. Smith c/o Lori Gardiner Kreglow, Esquire, 18 East Market Street, P.O. Box 1961, Bethlehem, PA 18016-1961  
Attorney: Lori Gardiner Kreglow, Esquire, 18 East Market Street, P.O. Box 1961, Bethlehem, PA 18016-1961

**NOTICE OF PROFESSIONAL INCORPORATION**

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on December 6, 2018, effective January 1, 2019, for the purposes of obtaining a Certificate of Incorporation pursuant to the provisions of the Professional Corporation Law of the Commonwealth of Pennsylvania.

The name of the corporation is:

**SHULMAN LAW OFFICE PC**

Joshua D. Shulman, Esquire  
Shulman Law Office PC  
1935 Center Street  
Northampton, PA 18067

Jan. 10

**FICTITIOUS NAME  
REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on December 12, 2018 for:

**THE BEDFORD CONSULTANCY**

at: 135 Spring Street, Unit C, Nazareth, PA 18064. The name and address of the individual interested in the business are Lewis E. Frisch at 135 Spring Street, Unit C, Nazareth, PA 18064. This was filed in accordance with 54 Pa. C.S. 311.

Jan. 10

**CORPORATE FICTITIOUS NAME  
REGISTRATION NOTICES**

NOTICE IS HEREBY GIVEN, pursuant to the provision of Act No. 295 of 1982 of intention to file, or the file of, in the Office of the Secretary of the Commonwealth of the Pennsylvania, at Harrisburg, Pennsylvania, a certificate for the conduct of a business in Pennsylvania, under the assumed or fictitious name, style or designation of:

**BETHLEHEM PA  
HEALING ROOMS**

with its principal place of business at: 529 E. Broad Street, Bethlehem, Pennsylvania 18018. Website: healingrooms.com/us1957; e-mail: bethlehempahealingrooms@gmail.com; ph.: (484) 896-9112. The name and address of the entity owning or interested in said business are: Ekballo Harvest, 529 E. Broad St., Bethlehem, PA 18018. The certificate has been/will be filed on (or after) October 27, 2018.

Jan. 10

NOTICE IS HEREBY GIVEN, pursuant to the provision of Act No. 295 of 1982 of intention to file, or the



file of, in the Office of the Secretary of the Commonwealth of the Pennsylvania, at Harrisburg, Pennsylvania, a certificate for the conduct of a business in Pennsylvania, under the assumed or fictitious name, style or designation of:

**MOSAIC HOUSE OF PRAYER**

with its principal place of business at: 529 E. Broad Street, Bethlehem, Pennsylvania 18018. Website: [ekballoharvest.org/mhop](http://ekballoharvest.org/mhop); e-mail: [ekballoharvest.org](mailto:ekballoharvest.org); ph.: (484) 291-1604. The name and address of the entity owning or interested in said business are: Ekballo Harvest, 529 E. Broad St., Bethlehem, PA 18018. The certificate has been/will be filed on (or after) October 27, 2018.

Jan. 10

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA**

**CIVIL DIVISION—LAW**

IN RE: PETITION FOR  
CHANGE OF NAME OF  
LJUBISHA ROBERT VASICH

**NO. 48-CV-2018-11045**

CHANGE OF NAME

NOTICE IS HEREBY GIVEN that LJUBISHA ROBERT VASICH has filed a Petition to change his name to ROBERT VASICH.

The Court has fixed Friday, February 1, 2019, at 10:00 a.m. as the time and Northampton County Government Center, 7th and Washington Street, Easton, Pennsylvania, Courtroom No. 4 as the place for the hearing on said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

DANIEL E. COHEN, ATTORNEY

Attorney for Petitioner

3101 Emrick Blvd.

Suite 205

Bethlehem, PA 18020

(610) 258-6184

Jan. 10

**FULL-TIME RECEPTIONIST**

Small but fast paced Law Firm seeking a Full-Time Receptionist. The candidate would answer all incoming phone lines; handle all incoming and outgoing mail; maintaining and preparing files for the Attorneys; confirmation calls; and other miscellaneous responsibilities such as refile, photocopying, scanning, etc. The candidate will greet clients in a personalized and friendly manner and keep the general office area clean at all times. The ideal candidate should possess multitasking abilities, excellent interpersonal skills, organized, detail-oriented and be able to work independently. Knowledge of Microsoft Office and Amicus software is beneficial but not required.

Please submit resume to: [Rebecca.3839@gmail.com](mailto:Rebecca.3839@gmail.com).

Jan. 10, 17

## **NEW RULE PROVIDES DIRECTION TO ATTORNEYS WITH UNCLAIMED FUNDS IN THEIR IOLTA ACCOUNT**

After several years of receiving calls from attorneys seeking guidance on the ethical distribution of unclaimed and unidentifiable funds in their IOLTA trust account, the IOLTA Board is pleased to share that recently adopted Pennsylvania Rule of Professional Conduct 1.15(v) provides such guidance. It is an especially common question when an attorney is winding down a law practice in preparation for retirement or when his or her attempts to contact a former client are unsuccessful.

The new rule provides that after reasonable efforts have been undertaken to reunite funds in an IOLTA account with their rightful owner for at least two years, any unidentifiable or unclaimed funds may be transferred to the IOLTA Board for safekeeping. The funds may be reclaimed if the rightful owner is identified or located at a later time.

For additional information and access to related forms: <https://www.paiolta.org/unclaimed-funds/>.

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Fowler Hirtzel McNulty & Spaulding, a fast growing civil litigation firm is currently seeking an associate attorney for our Allentown office. Candidates should have 0-2 years experience in general insurance defense. The position requires excellent writing and communication skills as well as a strong academic background. Pennsylvania Bar admission is required. Information on our firm may be found at [fhmslaw.com](http://fhmslaw.com).

Please send a resume, cover letter and a writing sample to:

Joseph V. Lynam, Jr. Chief Operating Officer at:

[jlynam@fhmslaw.com](mailto:jlynam@fhmslaw.com)

**Joseph V. Lynam, Jr.**

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Jan. 3, 10, 17

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is pleased to announce



**MATTHEW T. TRANTER**  
and  
**KARLEY BIGGS SEBIA**  
have been named  
**MEMBERS of the firm**

Mr. Tranter and Ms. Sebia concentrate their legal practices in business law and real estate.



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Bethlehem, PA 18018  
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**Continued From Previous Issue**

[T]he guidelines were implemented to create greater consistency and rationality in sentencing. The guidelines accomplish the above purposes by providing a norm for comparison, *i.e.*, the standard range of punishment, for the panoply of crimes found in the crimes code and by providing a scale of progressively greater punishment as the gravity of the offense increases. ...

The provision of a ‘norm’ also strongly implies that deviation from the norm should be correlated with facts about the crime that also deviate from the norm for the offense, or facts relating to the offender’s character or criminal history that deviates from the norm and must be regarded as not within the guideline[’]s contemplation. Given this predicate, simply indicating that an offense is a serious, heinous or grave offense misplaces the proper focus. The focus should not be upon the seriousness, heinousness or egregiousness of the offense generally speaking, but, rather, upon how the present case deviates from what might be regarded as a ‘typical’ or ‘normal’ case of the offense under consideration.

846 A.2d 152, 158 (Pa. Super. 2004) (internal quotations omitted). The Superior Court has upheld aggravated range sentences based on the sentencing court’s finding that a defendant committed the crime in an “atypically objectionable way ... [that] had an atypically harmful result.” *Commonwealth v. Fullin*, 892 A.2d 843, 849 (Pa. Super. 2006).

During our sentencing colloquy, we reviewed the circumstances of Atkins’s crime and his efforts to conceal that crime after the fact. *See* N.T. Mar. 3 at 3, 39-40. Forensic evidence adduced at trial indicates that Condash’s head and face impacted Atkins’s car only one foot in front of the windshield. *See id.* at 31. The force of the impact propelled Condash’s body a significant distance in front of Atkins’s vehicle. *See id.* Atkins did not stop at the scene of the accident, although he testified at trial that he knew he had struck an object. *See id.* He parked his vehicle in his parents’ garage, even though it remained operable. *See id.* Atkins did not report the accident to police and was only arrested after his friend anonymously reported him to the authorities. *See id.* at 39-40.

In a remarkably similar case, *Commonwealth v. Huynh*, the Superior Court affirmed appellant’s sentence, where the sentencing court specifically considered appellant’s efforts to conceal his crime in determining an appropriate sentence. *See* No. 2872 EDA 2013, 2014 WL 10889701, at \*4 (Pa. Super. 2014).<sup>5</sup> The appellant in *Huynh* pleaded guilty to the charge of Accidents Involving Death. *See id.* at \*1. In support of its above-aggravated sentence, the sentencing court highlighted the following:

<sup>5</sup> We cite to this unreported case for its persuasive value.



[A]ppellant was acutely aware that he struck something and kept going; that leaving the scene was ‘callous and inhumane’; that the road was closed for several hours causing major inconvenience on the community; that despite being front page news for several days, [A]ppellant never once stepped forward; and furthermore, that [A]ppellant actually took steps to cover up his actions by attempting to get his vehicle fixed with cash, not offering any identification, and telling the mechanic the damage was from hitting a wall. If Appellant was truly remorseful, he would not have attempted to evade authorities for upwards of two hundred days, forcing them to spend countless hours and resources on tracking down the driver.

*Id.* at \*3. In affirming the sentence, the Superior Court noted that the trial court “properly considered ... Appellant’s decision to flee from the scene of the crime, his failure to turn himself in at the earliest opportunity, and his efforts to conceal his crime.” *See id.* at \*4.

Here, while we noted that Condash died as a result of the incident during our sentencing colloquy, we were merely relating the circumstances of the crime. We described Atkins’s actions during the event and his efforts to conceal the crime thereafter. We did not infer causation into our sentencing determination. We simply concluded that Atkins’s crime was committed in an “atypically objectionable way ... [that] had an atypically harmful result.” *Fullin*, *supra*. It was entirely proper to consider Atkins’s flight from the scene, his failure to notify authorities at the earliest opportunity, and the actions he took to conceal evidence of the crime. *See Huynh*, *supra*.

Separately, we considered “the gravity of the offense as it relates to the effect on the victim and the victim’s family.” N.T. Mar. 3 at 41. We heard testimony from Condash’s mother and stepfather regarding how Atkins’s crime has affected their family and community. *See id.* at 9-14, 33 (“It crushed us, crushed the whole family, crushed the whole community, everybody he came in touch with at school, he played sports, everybody just loved him so much. ... [H]e wasn’t just a loss toward our family, he was a loss to his friends, his teachers, his coaches, and everyone he knew. He basically touched them just because that’s who he was. His eyes and spirit would just light up a room and put a smile on your face. He was special and my life will never be the same.”).

We are required to consider “the gravity of the offense as it relates to the impact on the life of the victim and on the community.” 42 Pa. C.S.A. §9721(b). Thus, consideration of these statements was not an error. *See id.*

Based on the foregoing, we believe that Atkins’s sentence was adequately supported by the record and should not be disturbed on appeal. We considered all relevant factors set forth in 42 Pa. C.S.A. §9721(b) and demonstrated, through a lengthy colloquy, that this case was “compel-

lingly different from the typical case of the same offense.” *Walls*, supra at 563, 926 A.2d at 960.

Atkins was sentenced to serve a minimum term of four years’ imprisonment in a State Correctional Institution. *See* N.T. Mar. 3 at 42. This sentence exceeded the statutory mandatory minimum sentence by one year, but is below the highest minimum sentence of five years that we could have imposed. *See* 18 Pa. C.S.A. §1103(2). Our sentence is not “manifestly unreasonable,” as Atkins contends, simply because it exceeds the top of the aggravated sentencing guideline range by one year. Concise Statement ¶1(B). Atkins’s sentence was proportionate to his crime. While he may disagree with the manner in which the court weighed the statutory factors and the sentence we imposed, this court’s decision was not unreasonable. *See Chilquist*, supra (“The weight to be given [the sentencing] factors was within the province of the trial court to determine.”).

Therefore, we respectfully suggest that this claim of error is without merit.

## II. Recorded Prison Telephone Conversations

Atkins argues that we erred in considering recorded prison telephone conversations in fashioning his sentence because those conversations were obtained in violation of Pennsylvania’s Wiretap Act (“Wiretap Act”). *See* Concise Statement ¶2; 18 Pa. C.S.A. §5704. For the reasons set forth below, we believe Atkins has waived his right to make this argument.

### a. Waiver

A party’s failure to raise an evidentiary objection at trial precludes that party from raising such an issue in a subsequent appeal. *See Commonwealth v. Walter*; 632 Pa. 174, 190, 119 A.3d 255, 264 (2015) (holding that failure to object at trial court level to specific grounds raised on appeal results in waiver). Pennsylvania Rule of Evidence 103 provides, in pertinent part, as follows:

(a) *Preserving a Claim of Error.* A party may claim error in a ruling to admit or exclude evidence only:

(1) if the ruling admits evidence, a party, on the record:

(A) makes a timely objection, motion to strike or motion *in limine*; and

(B) states the specific ground, unless it was apparent from the context ... .

*Id.* Thus, the failure of a party to make a timely and specific objection to a purported evidentiary violation results in a waiver of that ground on appeal. *See* Pa. R.E. 103(a)(1); *see also, Walter*; supra; *Commonwealth v. Parker*, 104 A.3d 17, 28 (Pa. Super. 2014).

Here, Atkins cites to the Wiretap Act as grounds for excluding the recorded prison telephone conversations we referenced during Atkins’s

sentencing hearing. *See* Concise Statement ¶2. Atkins, however, failed to raise this issue prior to or at the time of the sentencing hearing. Atkins could have filed a motion *in limine*, seeking to preclude the introduction of the recorded conversations, after the Commonwealth provided him with copies of the recordings. Alternatively, Atkins could have objected to the introduction of the recorded conversations or made a motion to strike during the sentencing hearing. Atkins's failure to take any of these three steps precludes him from now arguing that the recorded prison telephone conversations were inadmissible. *See Walter, supra; Parker, supra.*

#### b. Wiretap Act

Assuming, *arguendo*, that Atkins has not waived his objection to the introduction of the recorded prison telephone conversations, we contend that this claim of error must still fail.

Section 5704(14) of the Wiretap Act specifically addresses the recording of telephone calls to and from inmates at a county correctional facility:

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

...

(14) An investigative officer, a law enforcement officer or employees of a county correctional facility to intercept, record, monitor or divulge an[y telephone calls] from or to an inmate in a facility under the following conditions:

(i) The county correctional facility shall adhere to the following procedures and restrictions when intercepting, recording, monitoring or divulging an[y telephone calls] from or to an inmate in a county correctional facility as provided for by this paragraph:

(A) Before the implementation of this paragraph, all inmates of the facility shall be notified in writing that, as of the effective date of this paragraph, their [telephone conversations] may be intercepted, recorded, monitored or divulged.

(B) Unless otherwise provided for in this paragraph, after intercepting or recording [a telephone conversation,] only the superintendent, warden or a designee of the superintendent or warden or other chief administrative official or his or her designee, or law enforcement officers shall have access to that recording.

(C) The contents of an intercepted and recorded [telephone conversation] shall be divulged only as is necessary to safeguard the orderly operation of the facility, in response to a court order or in the prosecution or investigation of any crime.

(ii) So as to safeguard the attorney-client privilege, the county correctional facility shall not intercept, record, monitor

or divulge an[y conversation] between an inmate and an attorney.

(iii) Persons who are [calling into a facility to speak to] an inmate shall be notified that the [call] may be recorded or monitored. ...

(iv) The superintendent, warden or a designee of the superintendent or warden or other chief administrative official of the county correctional system shall promulgate guidelines to implement the provisions of this paragraph for county correctional facilities.

18 Pa. C.S.A. §5704(14). Atkins argues that the disclosure of the recorded telephone conversations did not occur as part of the “prosecution” of any crime and, thus, does not meet the requirements of Section 5704(14)(i) (C).<sup>6</sup> See Concise Statement ¶2.

In reviewing the Wiretap Act and related precedent, we did not find any case law addressing the specific argument Atkins propounds on appeal. The Pennsylvania Supreme Court, however, has generally upheld the use of recorded prison telephone conversations against a defendant in a criminal trial. See *Commonwealth v. Baumhammers*, 599 Pa. 1, 34, 960 A.2d 59, 79 (2008).

Here, Atkins distinguishes between the guilt and sentencing phases of the criminal proceeding in his suggested definition of “prosecution.” See Concise Statement ¶2. In his Concise Statement, Atkins contends that the criminal “prosecution” ended upon the jury’s guilty finding. See *id.* We find this argument unpersuasive. The prosecutor’s role in a criminal proceeding does not cease when the jury renders its guilty verdict. Rather, the prosecution continues through sentencing and all appeals, where the Commonwealth advocates for a sentence that appropriately punishes a defendant for his criminal behavior.<sup>7</sup> As such, we contend that the recorded telephone conversations were obtained in accordance with Section 5704(14)(i)(C), as part of Atkins’s prosecution. See Section 5704(14)(i)(C).

<sup>6</sup> We concede that these recordings were not disclosed to safeguard the orderly operation of Northampton County Prison, nor were they obtained pursuant to a court order. See 18 Pa. C.S.A. §5704(14)(i)(C).

<sup>7</sup> The Pennsylvania Rules of Professional Conduct specifically envision a prosecutorial role in sentencing proceedings:

The prosecutor in a criminal case shall:

...

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal ...

Pa. R.P.C. 3.8(d).

We would also add, in light of Atkins's efforts to distinguish between the guilt and sentencing phases of the criminal proceeding, that the Pennsylvania Rules of Evidence are less restrictive during the sentencing phase of any criminal proceeding than during trial. *See* Pa. R.E. 101 cmt. ("Traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, bail hearings, grand jury proceedings, *sentencing hearings*, parole and probation hearings, extradition or rendition hearings, and other." (emphasis added)). As such, even if the recorded prison telephone conversations were obtained in violation of the Wiretap Act, our consideration of those recordings was not in error as a sentencing court may receive any relevant information for the purposes of fashioning an appropriate penalty. *See Commonwealth ex rel. Clouthier v. Maroney*, 201 Pa. Super. 493, 496, 193 A.2d 640, 642 (1963) ("A proceeding held to determine sentence is not a trial, and the court in sentencing may receive any relevant information for the purpose of determining the penalty."); *Commonwealth v. Orsino*, 197 Pa. Super. 306, 315, 178 A.2d 843, 847 (1962) ("A proceeding held to determine sentence is not a trial and the court is not bound by the restrictive rules of evidence properly applicable to trials.").

### III. Recusal

Atkins argues that this court erred in failing to recuse itself prior to sentencing after the Commonwealth disclosed the contents of recorded prison telephone conversations wherein Atkins made "derogatory, defamatory and unfavorable references to this Court." Concise Statement ¶3. Atkins advanced the same argument in his post-sentence motions, which we denied. *See* Defendant's Post-Sentence Motions ¶7(I); Opinion and Order of Court dated Jun. 26, 2017. For the reasons set forth below, we respectfully suggest this claim of error is without merit.

"A party seeking recusal or disqualification [is required] to raise the objection at the earliest possible moment, or that party will suffer the consequences of being time barred." *In re Lokuta*, 608 Pa. 223, 241, 11 A.3d 427, 437 (2011) (citation omitted).

Paramount among concerns about an untimely motion to disqualify a judge is a party's late attempt to judge shop: 'Given the importance of court proceeding[s], not to mention their time and expense, a party should not be able to save an objection until a later date as a hedge against losing a case.'

*Lomas v. Kravitz*, 130 A.3d 107, 121 (Pa. Super. 2015) (quoting *James J. Alfini et al., Judicial Conduct and Ethics* §4.14 (4th ed. 2007)), *see also, Reilly by Reilly v. Southeastern Pennsylvania Transportation Authority*, 507 Pa. 204, 489 A.2d 1291 (1985). "Moreover, a recusal request must be specific, because where no clear recusal motion is made, the trial judge may fail to engage in the independent analysis and self-reflection necessary to

make a cognizable ruling on the motion.” *Commonwealth v. Luketic*, 162 A.3d 1149, 1158 (Pa. Super. 2017).

In *Commonwealth v. Luketic*, a case decided on May 16, 2017, the Pennsylvania Superior Court recently addressed the issue of when a criminal defendant waives the right to assert a motion for recusal of a trial judge. In *Luketic*, appellant appealed from a sentence of six to twelve months of incarceration for possession of a controlled substance. *See id.* at 1152. Prior to sentencing, the sentencing judge made several statements indicating that he was predisposed to sentence appellant to serve a term of imprisonment, even before defense counsel could enumerate any mitigating factors. *See id.* at 1153. Defense counsel objected to the judge’s statements regarding his intent to sentence appellant to a term of imprisonment, but did not specifically make a motion for recusal of the sentencing judge. *See id.* at 1153-54. On appeal, appellant argued the sentencing judge should have recused himself from the proceeding. *See id.* at 1157. The Pennsylvania Superior Court held that appellant waived his recusal claim by failing to specifically move for the judge’s recusal during the sentencing proceeding, stating a recusal “motion must be clearly made on the record, and a judge is not obligated to infer that there is a recusal request from other complaints or objections made on the record.” *See id.* at 1158.

“Once a trial is complete with entry of a verdict or judgment, a party is deemed to have waived his right to have a judge disqualified unless he can meet the standard regarding after-acquired evidence ... .” *Commonwealth v. Edmiston*, 535 Pa. 210, 230, 634 A.2d 1078, 1088 (1993) (citing *Reilly by Reilly v. Southeastern Pennsylvania Transportation Authority*, 507 Pa. 204, 224, 489 A.2d 1291, 1301 (1985)). After-acquired evidence is “evidence [that] could not have been brought to the attention of the trial court in the exercise of due diligence and the existence of the evidence would have compelled a different result in the case.” *Id.*

In *Edmiston*, appellant alleged the trial court erred in failing to recuse itself because of a past professional relationship between the trial judge and the prosecuting attorney. *See id.* Appellant claimed he was unaware of this relationship prior to deciding to waive his right to a jury trial in the guilt phase of his case. *See id.* The Pennsylvania Superior Court ruled that appellant possessed actual knowledge of the prior professional relationship by virtue of a stipulation executed by the prosecuting attorney in advance of the start of the guilt phase of appellant’s trial. *See id.* Additionally, “defense counsel, prior to the waiver of a jury trial and the commencement of the guilt phase, stated that he had discussed the possibility of recusal with the appellant and saw no reason why the judge should be disqualified.” *Id.* The Pennsylvania Supreme Court held that appellant waived the issue of recusal. *See id.* at 231, 634 A.2d at 1088.

Atkins asserts that this court should have recused itself from the sentencing proceedings after the Commonwealth introduced recorded

prison telephone conversations that included unfavorable references about the court. *See* Defendant’s Post-Sentence Motions ¶7(I). Atkins, however, raised the issue of recusal for the first time in his “Post-Sentence Motions,” despite actual knowledge of the conversations prior to sentencing. *See id.*; Commonwealth’s Sentencing Memorandum. The Commonwealth gave Atkins’s counsel notice of these recordings well in advance of sentencing by providing defense counsel with audio recordings of all four of the prison telephone conversations on or about February 21, 2017. *See* Commonwealth’s Sentencing Memorandum. Moreover, we made specific inquiries, on the record, regarding defense counsel’s actual knowledge of the content of the recorded prison telephone conversations:

THE COURT: How would you address his—did you listen to the prison—

MR. LAUER: I did.

THE COURT: Okay, you listened to the calls. How would you address his total lack of remorse and his statements regarding Darious’s family?

MR. LAUER: Well, I would address it as I addressed it in my memo. Throughout this process there has been—all right, I—

THE COURT: You said I should not give much weight to the statements because he was angry when he made them; correct?

MR. LAUER: He was angry—yes.

N.T. Mar. 3 at 20-21. Defense counsel addressed the content of the recordings in both his sentencing memorandum and orally, at the sentencing hearing. *See* Defendant’s Sentencing Memorandum, N.T. Mar. 3 at 20-22.

On March 3, 2017, we entered judgement of sentence, fully completing the disposition of the case. “Once a trial is complete with entry of a verdict or judgment, a party is deemed to have waived his right to have a judge disqualified.” *Edmiston*, supra at 230, 634 A.2d at 1088 (citing *Reilly by Reilly*, supra at 224, 489 A.2d at 1301). Despite having actual knowledge of the recorded prison telephone calls, Atkins never raised the issue of recusal prior to the date of sentencing, nor did Atkins raise the issue of recusal at the time of sentencing. *See* N.T. Mar. 3 at 20-21. “A party seeking recusal or disqualification [is required] to raise the objection at the earliest possible moment, or that party will suffer the consequences of being time barred.” *In re Lokuta*, supra at 241, 11 A.3d at 437. Because Atkins was required to raise the issue of recusal prior to or at the sentencing and failed to do so, he must now suffer the consequence of being time barred from raising the issue of recusal. *See id.*

### CONCLUSION

For the reasons set forth above, we respectfully suggest that Atkins’s appeal lacks merit and should be dismissed.



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