



Northampton County Reporter

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VOL. LXII

EASTON, PA September 7, 2023

NO. 88

Commonwealth of Pennsylvania v. Clement Barrington Swaby, Defendant (Part II of V)

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NOTICE TO THE BAR...

Quarterly Association Meeting
Thursday, September 14, 2023
Registration form inside

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Northampton County Reporter

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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

Save the Dates

- | | |
|--------------------|---|
| September 14, 2023 | Quarterly Association Meeting
Registration form inside |
| October 9, 2023 | NCBA Fall CLE Conference @ Wind Creek
Conference Center |
| October 13, 2023 | Amicus Soirée |
| October 21, 2023 | CluedUpp Scavenger Hunt for members, families
and friends of all ages. |

And all at once, summer collapsed into fall. ~ Oscar Wilde

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**BROWER, ANNE C. a/k/a ANNE T. BROWER, dec'd.**

Late of the City of Bethlehem, Northampton County, PA
Executor: Stephen T. Brower c/o April L. Cordts, Esquire, 391 Nazareth Pike, Bethlehem, PA 18020

Attorney: April L. Cordts, Esquire, 391 Nazareth Pike, Bethlehem, PA 18020

CORCORAN, DENNIS C., dec'd.

Late of Williams Township, Northampton County, PA
Administrator: Thomas Christian c/o Goudsouzian & Associates, 2940 William Penn Highway, Easton, PA 18045-5227

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

FREEMAN, DOROTHY JEAN, dec'd.

Late of Hellertown, Northampton County, PA

Personal Representative: Jill Diane Csekitz c/o Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

Attorneys: Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

HARTMAN, PAULINE M., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Mary Fenelli c/o Joseph F. Leeson, III, Esquire, 70 East Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

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

KANYUK, CATHERINE, dec'd.

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

Executrix: Loretta C. Kanyuk 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

LIGHTFOOT, VICTOR C., JR., dec'd.

Late of the Township of Forks, Northampton County, PA

Executrix: Kimberly Ann Lightfoot c/o Joseph F. Leeson, III, Esquire, 70 East Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

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

TAYLOR, DOROTHY ZUG, dec'd.
Late of the City of Bethlehem,
Northampton County, PA
Executor: Martin Mayor Zug c/o
Ellen M. Kraft, Esquire, 4510
Bath Pike, Suite 201, Bethlehem,
PA 18017-9265
Attorney: Ellen M. Kraft, Esquire,
4510 Bath Pike, Suite 201,
Bethlehem, PA 18017-9265

SECOND PUBLICATION

BACHMAN, GREGORY R., dec'd.
Late of the Township of Lehigh,
Northampton County, PA
Executor: Matthew A. Nowik
Attorneys: Gladys E. Wiles,
Esquire, Snyder & Wiles, P.C.,
7731 Main Street, Fogelsville, PA
18051

DRONEY, MICHAEL L., dec'd.
Late of Bethlehem, Northampton
County, PA
Administratrix: Michele Marie
Turner 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

EVANS, RICHARD EDWIN, dec'd.
Late of the Borough of Hellertown,
Northampton County, PA
Executrix: Janice Evans Swah
c/o Robert V. Littner, Esquire,
Littner & Littner Law Offices,
PLLC, 512 North New Street,
Bethlehem, PA 18018
Attorneys: Robert V. Littner,
Esquire, Littner & Littner Law
Offices, PLLC, 512 North New
Street, Bethlehem, PA 18018

FRITZ, MARY A., dec'd.

Late of Williams Township,
Northampton County, PA
Administrator: Albert W. Frasier
c/o Steven B. Molder, Esquire,
904 Lehigh St., Easton, PA
18042
Attorney: Steven B. Molder,
Esquire, 904 Lehigh St., Easton,
PA 18042

GREATSINGER, JAMES R., dec'd.
Late of the Township of
Bethlehem, Northampton
County, PA
Administratrix: Cynthia A.
Greatsinger c/o Richard Eugene
Santee, Esquire, Shay, Santee,
Kelhart & Deschler LLC, 44 E.
Broad Street, Suite 210,
Bethlehem, PA 18018
Attorneys: Richard Eugene
Santee, Esquire, Shay, Santee,
Kelhart & Deschler LLC, 44 E.
Broad Street, Suite 210,
Bethlehem, PA 18018

KOLOWITZ, EUGENE F., dec'd.
Late of Northampton, North-
ampton County, PA
Administrator: Joseph Kolowitz
c/o Joshua D. Shulman,
Esquire, Shulman Law Office
PC, 1935 Center Street, North-
ampton, PA 18067
Attorneys: Joshua D. Shulman,
Esquire, Shulman Law Office
PC, 1935 Center Street, North-
ampton, PA 18067

MANDELL, SUZANNE M., dec'd.
Late of the Borough of Nazareth,
Northampton County, PA
Administratrix: Mollie M. Santee
c/o Richard Eugene Santee,
Esquire, Shay, Santee, Kelhart
& Deschler LLC, 44 E. Broad
Street, Suite 210, Bethlehem, PA
18018

Attorneys: Richard Eugene Santee, Esquire, Shay, Santee, Kelhart & Deschler LLC, 44 E. Broad Street, Suite 210, Bethlehem, PA 18018

MILLER, DONNA MARIA, dec'd.

Late of Northampton County, PA
Executor: Paul Miller c/o Leonard M. Mellon, Esquire, 151 South 7th Street, Easton, PA 18042

Attorney: Leonard M. Mellon, Esquire, 151 South 7th Street, Easton, PA 18042

NORTH, SAMUEL W., dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Administratrix: Savannah Landis North c/o Joseph F. Leeson, III, Esquire, 70 East Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

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

O'KEEFE, NANCY D., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Sean Edward O'Keefe c/o Joseph F. Leeson, III, Esquire, 70 East Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

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

PEARSON, CLARK L., dec'd.

Late of Moore Township, Northampton County, PA

Co-Executors: Raymond Pearson and William J. Ohlandt c/o Fitzpatrick Lentz & Bubba, P.C., Two City Center, 645 West

Hamilton Street, Suite 800, Allentown, PA 18101

Attorneys: Fitzpatrick Lentz & Bubba, P.C., Two City Center, 645 West Hamilton Street, Suite 800, Allentown, PA 18101

SCHUBERT, CONSTANCE H., dec'd.

Late of Bethlehem Township, Northampton County, PA

Trust of The Schubert Family dated 08/09/1994

Trustee: Laurie Ann Dougherty c/o Jon A. Swartz, Esquire, Prokup & Swartz, 7736 Main Street, Fogelsville, PA 18051

Attorneys: Jon A. Swartz, Esquire, Prokup & Swartz, 7736 Main Street, Fogelsville, PA 18051

SKOPAL, THOMAS EDWARD, SR., dec'd.

Late of Hanover Township, Northampton County, PA

Executrix: Karen P. McLaughlin c/o Michael D. Recchiuti, Esquire, 60 W. Broad Street, Ste. 303, Bethlehem, PA 18018

Attorney: Michael D. Recchiuti, Esquire, 60 W. Broad Street, Ste. 303, Bethlehem, PA 18018

VARGA, PAUL R., dec'd.

Late of the Township of Plainfield, Northampton County, PA

Executrix: Susan Traci Burcaw c/o Carla J. Thomas, Esquire, 716 Washington St., Easton, PA 18042

Attorney: Carla J. Thomas, Esquire, 716 Washington St., Easton, PA 18042

WICKETT, JEAN M., dec'd.

Late of the Borough of East Bangor, Northampton County, PA

Executors: Anthony D. Gregory, Steven M. Gregory and Douglas Allen Gregory
Attorneys: Alan B. McFall, Esquire, McFall Law, LLC, 31 West First Street, Suite J, Wind Gap, PA 18091

THIRD PUBLICATION

DAVIS, ALAN D., SR., dec'd.

Late of Freemansburg Borough, Northampton County, PA
Administrator: Charles A.J. Halpin, III, The Landing Title Bldg., 100 S. Broad St., Ste. 1830, Philadelphia, PA 19110
Attorney: Charles A.J. Halpin, III, Esquire, The Landing Title Bldg., 100 S. Broad St., Ste. 1830, Philadelphia, PA 19110

FRASER, DOLORES F., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executor: Craig R. Fraser c/o Joseph F. Leeson, III, Esquire, 70 East Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426
Attorney: Joseph F. Leeson, III, Esquire, 70 East Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

HAHN, EILEEN A., dec'd.

Late of the Township of Moore, Northampton County, PA
Co-Executors: Debra Kay Budge and Michael Jay Hahn 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

KELDANOWICZ, JOSEPH PAUL, III, dec'd.

Late of the Township of Forks, Northampton County, PA

Executrix: June Ann Brereton
Attorneys: Garrett R. Benner, Esquire, Benner & Trovato, 2005 City Line Road, Suite 106, Bethlehem, PA 18017

LONG, JEANETTE S., dec'd.

Late of the Township of Hanover, Northampton County, PA
Executrix: Brigit J. Silvestri c/o Kevin F. Danyi, Esquire, Danyi Law, P.C., 133 East Broad Street, Bethlehem, PA 18018
Attorneys: Kevin F. Danyi, Esquire, Danyi Law, P.C., 133 East Broad Street, Bethlehem, PA 18018

PATTON, JULIANNE M., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executor: Michael Joseph Patton c/o Laura M. Mercuri, Esquire, Duffy, North, 104 North York Road, Hatboro, PA 19040
Attorneys: Laura M. Mercuri, Esquire, Duffy, North, 104 North York Road, Hatboro, PA 19040

PINSLEY, DONNA G., dec'd.

Late of Northampton County, PA
Executors: Mark Pinsley and Rachael Pinsley c/o Zator Law, 4400 Walbert Ave., Allentown, PA 18104
Attorneys: Zator Law, 4400 Walbert Ave., Allentown, PA 18104

WERKHEISER, MATTHEW G., dec'd.

Late of the Township of Plainfield, Northampton County, PA
Executrix: Jacqueline M. Lee-Werkheiser 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

**IN THE NORTHAMPTON COUNTY
COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION**

NOTICE IS HEREBY GIVEN that the following accounts in decedents' estates, have been filed in the Office of the Orphans' Court of Northampton County, and that the same will be called for Confirmation on SEPTEMBER 19, 2023 at 9 A.M., IN COURTROOM #10, at which time the Courts will hear exceptions, and make distribution of the balances ascertained to be in the hands of accountants.

*Estate of ERNEST E. MILLER;
Bryan Douglas Miller, Executor

*Estate of PATRICIA A. SZELAST;
Lisa M. Spitale, Esquire, Administra-
trix

Miranda L. Dunda
Acting Register of Wills &
Clerk of Orphans' Court
Sept. 7, 14

**IN THE COURT OF COMMON
PLEAS OF NORTHAMPTON
COUNTY, PENNSYLVANIA
CIVIL DIVISION—LAW**

IN RE: PETITION OF CAREER
INSTITUTE OF TECHNOLOGY FOR
APPROVAL OF PRIVATE SALE OF
LAND TOTALING APPROXIMATELY
.25 ACRES AND BUILDINGS
THEREON LOCATED AT 536
CYPRESS LANE, EASTON,
NORTHAMPTON COUNTY,
PENNSYLVANIA
NO. 6376 OF 2023
PUBLIC NOTICE

All parties interested are notified that the Career Institute of Technology desires to sell improved real property consisting of .25 total acres located at 536 Cypress Lane, Easton, Northampton County, Pennsylvania, Parcel ID #L9NE1 8 1-20 0311E, by

private sale for the purchase price of \$405,500.00 and has filed a Petition for Approval of Private Sale of Land in the Court of Common Pleas of Northampton County.

All parties interested are notified that a hearing on the Petition for Approval of Private Sale of Land is scheduled for September 27, 2023 at 9:00 a.m. in a courtroom to be determined by the Court of Common Pleas of Northampton County, located at 669 Washington Street, Easton, Pennsylvania. Any party interested shall appear to be heard and shall report to Court Administration prior to the hearing time to receive an assigned courtroom number.

Sept. 7, 14, 21

**IN THE COURT OF COMMON
PLEAS OF NORTHAMPTON
COUNTY, PENNSYLVANIA
CIVIL ACTION—LAW**

IN RE: TAKING IN EMINENT
DOMAIN OF CERTAIN PARCEL
OF REAL ESTATE BY THE
REDEVELOPMENT AUTHORITY
OF EASTON, PENNSYLVANIA,
KNOWN AS 360 WEST
WILKES BARRE STREET
LOCATED IN THE CITY OF
EASTON, NORTHAMPTON
COUNTY, PA

NO. 4823-3598

Premises: 360 W. Wilkes Barre;
Parcel ID No. L9SE3D-11-4; Parcel ID
No. L9SE3D-11-3.

Condemnees: Victor S. Levens, Jr.,
and Mary E. Levens.

NOTICE

To: The Known and Unknown Heirs
and/or Administrators of the
Estates of Victor S. Levens, Jr.,
and Mary E. Levens

You are hereby notified that the
Redevelopment Authority of Easton,
Pennsylvania, has filed a Declaration

of Taking against Victor S. Levens, Jr., and Mary E. Levens with the intention of taking by eminent domain the property located at and known as 360 West Wilkes Barre Street in the City of Easton, Northampton County, Pennsylvania, the said property also being known as Parcel ID Nos. L9SE3D-11-4 and L9SE3D-11-3.

You have the right to file preliminary objections within 30 days after the last publication of this notice. If you do not do so, then the condemnor Redevelopment Authority of Easton, Pennsylvania, will pay into court the estimated just compensation as determined by its real estate appraiser, the said sum to be deposited into court after adjustment for present and delinquent real estate taxes and municipal liens.

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 condemnor, i.e. transfer of title to the Redevelopment Authority of Easton, Pennsylvania. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW, 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.

LAWYER REFERRAL SERVICE
P.O. Box 4733
Easton, PA 18043-4733
(610) 258-6333

Aug. 31; Sept. 7

Part II of V continued

Two days later, the Commonwealth filed a criminal complaint against Swaby on May 19, 2021 for the rape and assault of K.K. that took place at 563 Hillside Avenue. *See* Complaint, *Commonwealth v. Swaby*, No. C-48-CR-2065-2021 (C.P. Northampton Co. May 19, 2021). This matter was assigned the docket number C-48-CR-2065-2021 (the “2065-2021 matter”). *See id.* The complaint for the 2065-2021 matter charged Swaby with Rape,⁸ Involuntary Deviate Sexual Intercourse,⁹ two counts of Sexual assault,¹⁰ Aggravated Indecent Assault,¹¹ two counts of Indecent Assault,¹² Burglary with the Intent to Commit a Bodily Injury Crime Therein,¹³ Burglary with the Intent to Commit a Crime Therein,¹⁴ Possession of an Instrument of Crime¹⁵ and Terroristic Threats.¹⁶ *See id.*

On August 18, 2021, the Commonwealth filed a notice of joinder with respect to the 1319-2021 matter and the 2065-2021 matter. *See* Notice of Joinder, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021 (C.P. Northampton Co. Aug. 18, 2021). The next day, Swaby was arraigned for the 1319-2021 matter. *See* Arraignment, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021 (C.P. Northampton Co. Aug. 19, 2021).

On August 26, 2021, the Commonwealth filed a criminal complaint against Swaby for the assault of A.C. that took place at 416 McCartney Street. *See* Complaint, *Commonwealth v. Swaby*, No. C-48-CR-2793-2021 (C.P. Northampton Co. Aug. 26, 2021). This matter was assigned the docket number C-48-CR-2793-2021 (the “2793-2021 matter”). *See id.* The complaint for the 2793-2021 matter charged Swaby with Burglary with the Intent to Commit a Bodily Injury Crime Therein,¹⁷ Burglary with the Intent to Commit a Crime Therien,¹⁸ Terroristic Threats,¹⁹ Possession of an Instrument of Crime,²⁰ Simple Assault²¹ and Theft.²² *See id.*

On October 29, 2021, Attorney Christopher B. Caserio (“Attorney Caserio”) entered his appearance on behalf of Swaby for the 2793-2021 matter. *See* Entry of Appearance, No. C-48-CR-2793-2021 (C.P. Northampton Co. Oct. 29, 2021). Then, on November 9, 2021, he entered his appearance on behalf of Swaby for the 2065-2021 matter and for the 1319-2021

⁸ 18 Pa. C.S.A. §3121(a)(1).

⁹ 18 Pa. C.S.A. §3123(a)(1).

¹⁰ 18 Pa. C.S.A. §3124.1.

¹¹ 18 Pa. C.S.A. §3125(a)(2).

¹² 18 Pa. C.S.A. §3126(a)(2).

¹³ 18 Pa. C.S.A. §3502(a)(1)(i).

¹⁴ 18 Pa. C.S.A. §3502(a)(1)(ii).

¹⁵ 18 Pa. C.S.A. §907(a).

¹⁶ 18 Pa. C.S.A. §2706(a)(1).

¹⁷ 18 Pa. C.S.A. §3502(a)(1)(i).

¹⁸ 18 Pa. C.S.A. §3502(a)(1)(ii).

¹⁹ 18 Pa. C.S.A. §2706(a)(1).

²⁰ 18 Pa. C.S.A. §907(a).

²¹ 18 Pa. C.S.A. §2701(a)(3).

²² 18 Pa. C.S.A. §3921(a).

matter. *See* Entry of Appearance, *Commonwealth v. Swaby*, No. C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. Nov. 9, 2021).

On November 15, 2021, the Commonwealth filed a second notice of joinder, requesting to join the 2793-2021 matter with the 2065-2021 matter and the 1319-2021 matter. *See* Notice of Joinder, *Commonwealth v. Swaby*, No. C-48-CR-2793-2021 (C.P. Northampton Co. November 15, 2021). Swaby did not object to the joinder at this time.

On February 3, 2022, Swaby was arraigned for the 2793-2021 matter and for the 2065-2021 matter. *See* Arraignment, *Commonwealth v. Swaby*, No. C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. Feb. 3, 2022).

110 days after his formal arraignment, on May 24, 2022, Swaby, through Attorney Caserio, filed a motion objecting to the Commonwealth's joinder of the 1319-2021 matter, the 2065-2021 matter and the 2793-2021 matter and requesting the Court to sever the matters for trial. *See* Defendant's Motion Objecting to Joinder & Certificate of Service, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. May 24, 2022) ("Defendant's Motion Objecting to Joinder").

Approximately one week later, on June 1, 2022, Attorney Caserio filed a motion to withdraw his appearance in all three matters on June 1, 2022. *See* Motion to Withdraw Appearance & Certificate of Service, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. June 1, 2022).

On June 2, 2022, we held a hearing on Swaby's motion objecting to the joinder. *See* Motion to Sever/Motion to Withdrawal [sic] Hearing Held 6-2-22, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. June 2, 2022). The next day, we denied Swaby's motion objecting to the joinder and granted Attorney Caserio's motion to withdraw. *See* Order Denying Motion Objecting to the Commonwealth's Joinder, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. June 3, 2022); Order Granting Motion to Withdraw Counsel, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. June 3, 2022).

After Attorney Caserio withdrew, Attorney James Connell ("Attorney Connell") was appointed to represent Swaby in all three matters. *See* Entry of Appearance, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. June 30, 2022) ("Attorney Connell Entry of Appearance"). Attorney Connell entered his appearance for all three matters on June 30, 2022. *See id.*

On August 11, 2022, this Court issued a scheduling order, with dates agreed to by the parties, setting Swaby's trial for October 31, 2022. *See* Order of Court for Attachment, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. Aug. 11, 2022). Then, on October 5, 2022, Swaby, through his attorneys, requested a continuance of the trial date. *See* Notes of Testimony at 3, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Oct. 5, 2022) ("N.T. Oct. 5"). Following a conference, we denied this motion. *See id.* at 17. Swaby renewed this motion during a conference on October 19, 2022. *See* Notes of Testimony at 2, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Oct. 19, 2022) ("N.T. Oct. 19"). We denied the renewed motion. *See id.* at 28-32.

III. Jury Trial

On November 4, 2022, after a four-day trial, a jury of twelve Northampton County citizens convicted Swaby of one count of Rape, one count of Involuntary Deviate Sexual Intercourse, two counts of Sexual Assault, one count of Aggravated Indecent Assault, two counts of Indecent Assault, three counts of Burglary with the Intent to Commit a Bodily Injury Crime Therein, three counts of Burglary with the intent to Commit a Crime Therein, three counts of Possession of an Instrument of Crime, one count of Criminal Attempt to Commit Involuntary Deviate Sexual Intercourse, one count of Criminal Attempt to Commit Indecent Assault, three counts of Theft, four counts of Terroristic Threats and one count of Simple Assault. *See* Guilty, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Nov. 4, 2022).

IV. Sentencing Evaluations

As an aid to sentencing, this Court ordered that a psychological evaluation, a psychiatric evaluation, a psycho-sexual evaluation, a sexually violent predator evaluation and a pre-sentence investigation be conducted on Swaby. *See* Notes of Testimony at 129, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Nov. 4, 2022) ("N.T. Nov. 4"); Pre-sentence Investigation Ordered, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Nov. 7, 2023); Psychological/Psychiatric Evaluation Ordered, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Nov. 15, 2022).

A. Pre-Sentence Investigation

Probation Officer Terry Langen conducted the pre-sentence investigation for Swaby. *See* Pre-Sentence Investigation Report Filed at 14, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 31, 2023) (“PSI”). In this investigation, Officer Lange reported that Swaby was born in Kingston, Jamaica and has three siblings. *See id.* Two of his siblings have passed away. *See id.* Additionally, Swaby’s father passed away in 2013. *See id.* Swaby did not report being abused or neglected as a child or report that any of his family members were in trouble with the law. *See id.* He moved to Florida in 2006 for “a better life.” *See id.* Swaby was in a relationship with Ashley Christman for about fifteen years, until his arrest in 2021. *See id.* Swaby has a fourteen-year-old son and twelve-year-old daughter with Ms. Christman. *See id.*

Swaby attended and graduated from high school in Jamaica and reported having good grades and denied being suspended or expelled from school. *See id.* at 11. Swaby was in “mainstream classes” and was never held back a grade. *See id.* Swaby did not report having learning disabilities. *See id.*

Swaby reported that he was not working at the time of his arrest on June 8, 2021. *See id.* at 12. He stated that he last worked at a call center where he worked for “a few years.” *See id.* Swaby’s longest employment was at a restaurant where he worked for five or six years. *See id.* Swaby denied being terminated, suspended or disciplined at work. *See id.* On March 16, 2021, Swaby told Pretrial Officer Robert Kemmerer that he had worked at Uber and Coworks staffing for approximately “one to two years.” *See id.*

Swaby began drinking alcohol between the ages of nineteen and twenty-one, and claimed that the only alcohol he drinks is beer. *See id.* He denied experimenting with any drugs, including marijuana. *See id.*

Swaby did not attend any institutional programming in the prison, and had four disciplinary infractions in the prison. *See id.* at 13. First, he used another inmate’s GTL tablet account and were found guilty of unauthorized use of the telephone. *See id.* Second, he was found guilty of using another inmate’s personal identification number to make calls for a total cost of \$86.31. *See id.* Third, he was found guilty of aggravated assault for engaging in a physical altercation with another inmate. *See id.* Finally, he was found guilty of aggression toward staff, refusing to obey and order, disrespect to staff members, official visitors and prison volunteers, disruption of orderly running of the institution when he refused to be relocated between cells, striking officers with his feet and attempting to bite officers multiple times when being escorted. *See id.*

Officer Langen stressed that Swaby failed to cooperate with the investigation and failed to submit to other evaluations ordered by the Court.

See id. Throughout the investigation, Swaby did not demonstrate empathy toward the victims or show any remorse or otherwise accept responsibility for his actions. *See id.* Swaby has a limited support network and a spotty employment history. *See id.* Mr. Langen described that Swaby is “a menace to society” regardless of his surroundings. *See id.* at 14.

B. Psychological Evaluation

Roland Shelton, LCSW conducted the psychological evaluation of Swaby on June 8, 2021. *See* Psychological Evaluation Filed at 5, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 31, 2023) (“Psychological Evaluation”). Mr. Shelton first noted that Swaby did not want to talk about the events that led to his arrest. *See id.* at 2. Swaby did not report having any issues with mental health or having been abused or neglected as a child. *See id.* Swaby denied having any medical issues. *See id.* He reported that he first tried alcohol when he was twenty-one and drinks occasionally. *See id.* Swaby denied experimenting with drugs. *See id.* at 2-3.

Mr. Shelton observed that Swaby’s “mood and affect were congruent and appropriate to the situation.” *See id.* at 3. Mr. Shelton reported that there were no indications of psychotic symptomatology including hallucinations or delusions and that Swaby maintained a normal demeanor. *See id.* at 3. Mr. Shelton concluded that there was no diagnostic to be given at the time. *See id.* at 4. Mr. Shelton further concluded that Swaby does not appear to be in need of mental health treatment and did not exhibit signs of mood or thought disorders. *See id.*

C. Psychiatric Evaluation

Dr. Alex Thomas conducted the psychiatric evaluation on Swaby on December 18, 2022. *See* Notes of Testimony at 90, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 15, 2022) (“N.T. Mar. 15”). In this evaluation, Swaby denied ever having psychiatric treatment or hospitalizations in the past. *See id.* Swaby refused to talk to Dr. Thomas about the criminal charges. *See id.* Swaby’s speech was “coherent, relevant, logical and goal-oriented but limited.” *See id.* He did not appear to be delusional during the interview. *See id.* He demonstrated at least average intelligence. *See id.*

Dr. Thomas reported that Swaby’s judgment and impulse control are questionable because he completely denied doing the crimes. *See id.* at 90-91. Dr. Thomas stated that Swaby presents as “a psychopath with anti-social personality disorder for which there is no medication or treatment available other than incarceration and is best dealt with by the criminal justice system.” *See id.* at 91.

D. Sexually Violent Predator Evaluation

Dr. Veronique N. Valliere from the Pennsylvania Sexual Offenders Assessment Board conducted a sexually violent predator evaluation of Swaby on January 14, 2023. *See id.* Because Swaby refused to participate in an interview for this assessment, Dr. Valliere relied on the record for her evaluation. *See id.*

Dr. Valliere noted that Swaby's crimes involved multiple victims and a significant level of risk taking. *See id.* at 91-92. She found that Swaby did not do more than what was necessary to gain compliance from his victims. *See id.* at 92. She highlighted that Swaby's victims were strangers and that they were asleep and at their most vulnerable when Swaby attacked them. *See id.* Dr. Valliere considered that Swaby had no criminal record. *See id.* She also considered that Swaby was in his thirties, which led her to believe that he has an increased likelihood of sexual recidivism. *See id.* She also noted that Swaby repeatedly referenced involvement with marijuana during the crimes so it is probable that he is at least familiar with drug subculture. *See id.*

Dr. Valliere diagnosed Swaby with a paraphilic disorder to nonconsent due to his repeated actions in assaulting his victims at knifepoint. *See id.* She concluded that Swaby is aroused by non-consent, force and rape. She further concluded that Swaby demonstrates characteristics consistent with antisocial personality disorder and is highly resistant to change. *See id.* at 92-93. She said that the traits of his personality disorder are characterological and are foundational aspects of his personality. *See id.* Dr. Valliere explained that individuals with antisocial personality disorder have a difficult time in treatment because they are resistant to change and they have little distress about their behaviors and their impacts. *See id.* She described that antisocial traits contribute to the likelihood of violent recidivism. *See id.*

Dr. Valliere explained that paraphilic disorders are lifetime disorders and cannot be cured. *See id.* She concluded that Swaby's personality condition overrode his self-control because he consistently engaged in these crimes despite knowing the potential consequences to both himself and his victims. *See id.* Ultimately, she stated that it is her professional opinion with a reasonable degree of certainty that Swaby meets the criteria to be defined as a sexually violent predator. *See id.*

E. Psychosexual Evaluation

Dr. Emily Salema conducted Swaby's psychosexual evaluation of Swaby. *See id.* at 93-94. Similar to other evaluations, Swaby refused to submit to this evaluation. *See id.* Therefore, Dr. Salema had to rely on the record for her evaluation. *See id.* at 94. She found that the Static-99R score placed Swaby in the Risk Category III, which is an average risk of reoffending. *See id.* The calculation considered his age, whether he has lived with

anyone in the past, whether he has been convicted for nonsexual violence for the underlying charges, whether he has had prior convictions for nonsexual violence, whether he has had convictions for prior sex offenses, whether he has had prior convictions for non-contact sex offenses, whether he is related to his victims, whether his victims were a stranger to him and whether he had male victims. *See id.*

Dr. Salema described that individuals in Risk Category III have an average risk of reoffending because they have multiple needs that are likely to cause criminal behavior. *See id.* She concluded that Swaby presents with some prominent traits of psychopathy, but noted that Swaby was not assessed with the psychopathy checklist due to his refusal to cooperate. *See id.* at 95. Dr. Salema listed Swaby's diagnosis as "other specified paraphilic disorder, non-consenting/forced sex" and "other specified personality disorder, antisocial traits." *See id.*

Dr. Salema found it notable that Swaby's first eighteen years were spent in Jamaica, where there was no information available to confirm Swaby's claim that he has no criminal history. *See id.* She said that if information ever became available that indicated that Swaby had a criminal history, that his Static-99R score would be recalculated. *See id.*

Dr. Salema noted that Swaby's repetitive engagement in sexually problematic behaviors that involved non-consenting individuals is suggestive of a paraphilic disorder. *See id.* She said that because there was not enough evidence to suggest that Swaby derives pleasure from violence, Swaby did not meet the criteria for sexual sadism. *See id.* Therefore, she listed his diagnosis as "other specified paraphilic disorder, non-consenting/forced sex." *See id.* Additionally, Dr. Salema noted that Swaby possesses antisocial traits because he demonstrates a behavioral pattern of disregarding the rights of others, a pattern of failing to follow the law and a pattern of deception related to the offenses. *See id.* at 95-96. However, she said that she could not diagnose Swaby with antisocial personality disorder because she did not have evidence that he met the diagnostic criteria prior to the age of fifteen. *See id.* at 96. Therefore, she listed this diagnosis as "other specified personality disorder, antisocial traits." *See id.*

Dr. Salema thought that it was notable that he committed these offenses while he was in a long-term romantic relationship with Ms. Christman. *See id.* This suggested that despite the fact that Swaby had a partner available to meet his emotional and physical intimacy needs, he sought out to offend strangers. *See id.* She also noted Swaby's need for control, and how he attempted to exert control over the evaluation by conveying demands in which he would speak to the evaluator. *See id.*

V. Sentencing

On March 15, 2023, this Court sentenced Swaby to a minimum period of 75 years to a maximum period of 150 years in prison followed by an additional 12 years of probation. *See Order of Sentence, Commonwealth*

v. *Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 17, 2023). Prior to the sentencing hearing, this Court held a sexually violent predator hearing where Dr. Valiere testified to the contents of her evaluation. *See* N.T. Mar. 15 at 24. This Court found by clear and convincing evidence that Swaby is a sexually violent predator. *See id.* at 36; *see also*, Order Classifying Defendant as a Sexually Violent predator, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 17, 2023).

VI. *Post-Sentence Motion*

On March 20, 2023, Swaby filed a post-sentence motion for reconsideration. *See* Motion for Reconsideration of Sentence with Certificate of Service, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 20, 2023) (“Motion for Reconsideration”). That same day, this Court denied Swaby’s motion. *See* Order Denying Reconsideration of Sentence, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 20, 2023).

APPEAL

Swaby filed a timely notice of appeal to the Pennsylvania Superior Court on April 20, 2023 from the judgment of sentence entered on March 20, 2023. *See* Notice of Appeal, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Apr. 20, 2023). On May 10, 2023, we received Swaby’s statement of errors complained of on appeal. *See* Concise Statement of the Matters Complained on Appeal, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. May 15, 2023) (“Concise Statement”). Swaby’s matters complained of on appeal are as follows:

1. Defendant was found guilty of all charges following a jury trial on the three informations which were joined for trial by Order of Court.
2. Defendant was sentenced by President Judge Koury on March 15, 2023 to an aggregate sentence of 75 years to 150 years in a Pennsylvania Correctional Facility.
3. The Learning [sic] Trial Court erred in granting the [Commonwealth’s] Motion to join the three informations for trial. The Order of Court of June 3, 2022.
4. The Learning [sic] Trial Court erred in denying Defendant’s Motion for a Continuance. *See* transcript of hearing of October 19, 2022.

5. The Learning [sic] Trial Court erred in not granting Defendant's Motion to Dismiss charges of attempt to commit involuntary deviate sexual intercourse (18 Pa. C.S. Section 3121(A)(2) two counts and attempt to commit indecent assault (18 Pa. C.S. Section 3126(a)(3) two counts in criminal action CP-48-CR-1319-2021 [sic].

6. The Learning [sic] Trial Court erred in sentencing Defendant to an aggregate sentence of 75 years to 150 years.

Id.

DISCUSSION

1. The Learning [sic] Trial Court Erred in Granting the [Commonwealth's] Motion [sic] to Join the Three Informations for Trial

Swaby's first argument is that we erred by permitting all three matters to be heard in a single trial. *See* Concise Statement ¶3.

Swaby Waived the Severance Issue

First, Swaby's argument fails because he waived the severance issue by untimely filing his motion to sever.²³ Rule 578 of the Pennsylvania Rules of Criminal Procedure requires that a motion for severance be included in an omnibus pretrial motion along with all other pretrial requests for relief. *See* Pa. R.Crim.P. Rule 578 ("Unless otherwise required in the interests of justice, all pretrial requests for relief shall be included in one omnibus motion."). The comments to Rule 578 explicitly list a motion for severance as one of the requests covered by the rule. *See id.* ("Types of relief appropriate for the omnibus pretrial motions include the following requests ... (2) for severance and joinder or consolidation ...").

The Rules of Criminal Procedure further require that the omnibus pretrial motion be filed and served within thirty days after formal arraignment. *See* Pa. R.Crim.P. Rule 579. The exception to this requirement is if "the opportunity therefor did not exist, or the defendant or the defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown." *See id.*

²³ In his concise statement, Swaby characterizes this motion as the Commonwealth's motion for joinder. *See* Concise Statement ¶3. However, pursuant to the Rules of Criminal Procedure, when the Commonwealth seeks to join multiple informations prior to the defendant's formal arraignment, they issue a notice rather than file a motion. *See* Pa. R.Crim.P. Rule 582.

Here, the Commonwealth filed their joinder notices prior to the formal arraignment for each of the matters. Swaby did not object to the Commonwealth's notices. Therefore, in order to sever the matters at a later time, Swaby had to file a motion for severance. *See* Pa. R.Crim.P. Rule 578; *see also*, Pa. R.Crim.P. Rule 583 ("Under Rule 578 ... any request for severance must ordinarily be made in the omnibus pretrial motion or it is considered waived ..."). As such, Swaby's argument concerns his motion to sever, not the Commonwealth's joinder notice.

i. Swaby's motion for severance was facially untimely.

Because Swaby filed a motion for severance, it was required to be a part of an omnibus pretrial motion filed within thirty days of Swaby's arraignment. See *id.* The joinder involved three matters. See Order Denying Motion Objecting to the Commonwealth's Joinder, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Jun. 3, 2022). Swaby, through Attorney Caserio, filed his motion for severance on May 24, 2022. See Defendant's Motion Objecting to Joinder, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. May 24, 2022). The most recent formal arraignment of all the matters occurred on February 3, 2022. See Arraignment, *Commonwealth v. Swaby*, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Feb. 3, 2022). Therefore, he had to file an omnibus pretrial motion containing the severance motion by March 3, 2022. Swaby filed the severance motion on May 24, 2022. See Defendant's Motion Objecting to Joinder. As such, Swaby's motion was filed nearly four months after the formal arraignment date and did not comply with the thirty-day window as stated in Rule 579 of the Pennsylvania Rules of Criminal Procedure.

ii. The exception to the thirty-day time limit does not apply to Swaby's circumstances.

Rule 579 permits a party to submit an omnibus pretrial motion later than thirty days after arraignment if "the opportunity therefor did not exist, or the defendant or defense attorney ... was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown. See Pa. R.Crim.P. Rule 579. Here, Attorney Caserio entered his appearance on behalf of Swaby before Swaby's formal arraignment for all three matters. See Entry of Appearance, *Commonwealth v. Swaby*, C-48-CR-2065-2021 (C.P. Northampton Co. Nov. 9, 2021); Entry of Appearance, *Commonwealth v. Swaby*, C-48-CR-2793-2021 (C.P. Northampton Co. Nov. 9, 2021); Entry of Appearance, *Commonwealth v. Swaby*, C-48-CR-1319-2021 (C.P. Northampton Co. Nov. 9, 2021). Further, Attorney Caserio stated in a hearing on March 23, 2022 that he intended to file Swaby's severance motion. See Notes of Testimony at 3, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2065-2021, C-48-CR-2793-2021 (C.P. Northampton Co. Mar. 23, 2022). This was two months before his ultimate filing date. See Defendant's Motion Objecting to Joinder & Certificate of Service, *Commonwealth v. Swaby*, No. C-48-CR-1319-2021, C-48-CR-2793-2021, C-48-CR-2065-2021 (C.P. Northampton Co. May 24, 2022). Attorney Caserio was aware of the grounds for the severance motion and, as a result, Swaby had the opportunity to file the motion months before he did. Therefore, the exception does not apply to Swaby's circumstances and Swaby's severance motion was untimely.



PERIODICAL PUBLICATION

* Dated Material. Do Not Delay. Please Deliver Before Monday, September 11, 2023