

The Luzerne Legal Register

Established 1872

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COMMONWEALTH v. WILLIAMS 43

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The Wilkes-Barre Law and Library Association

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and may be viewed and/or downloaded.

Legal Ads published in this issue may be electronically
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“JB” Joseph Paul Justice Burke, III
Reporter of Decisions of the Court of
Common Pleas and Editor-in-Chief

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WEBSITE ADDRESS:

www.luzernecountybar.com

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and are published exactly as submitted by the advertiser.
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spelling corrections, eliminate errors
in grammar, or make changes to content.



W-BLLA Component Parts:

Bar Association,
Hon. Max Rosenn Memorial Law Library,
The Luzerne Legal Register and
Luzerne County Lawyer Referral Service.

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President:	Girard J. Mecadon, Esq.	gmecadon@mecadonlaw.com
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**Please e-mail All Legal Ads and
Notices for Publication to
law.library@luzernecounty.org**

Tel.: (570) 822-6712

Office: 200 North River Street, Room 23
Wilkes-Barre, PA 18711



HOURS

Daily

8:30 A.M. – 4:30 P.M.

**The Law Library is OPEN to
W-BLLA Members 24/7.**

To be Vetted by the Sheriff's Office for
specific After hours Courthouse
Building Access, submit the Form on
the next page whenever access is
necessary.



**W-BLLA MEMBERS REQUEST TO BE VETTED FOR
AFTER HOURS COURTHOUSE BUILDING ACCESS
FOR USE OF THE LAW LIBRARY**

**SUBMIT THIS REQUEST TO THE
LUZERNE COUNTY SHERIFF'S DEPARTMENT
SEND TO: eugene.gurnari@luzernecounty.org**

YOUR NAME: _____

SUPREME COURT I.D. #: _____ TEL # _____

EMAIL ADDRESS: _____

OFFICE ADDRESS: _____

**PLEASE STATE SPECIFICALLY THE DATES FOR THE
NIGHT TIME OR WEEKEND
AFTER HOUR ACCESS BEING REQUESTED:**

(The Sheriff's Department will let you know if your request for After Hours Access to the Building is granted and for the time period it has been granted for. Your Library Access Card will then be programmed to let you into the building for this period of time so that you may have After Hours Access).

Luzerne County Sheriff's Department



Brian M. Szumski

Sheriff

Luzerne County Courthouse
200 North River Street, Wilkes-Barre, PA 18711
Phone: 570-825-1651 Fax: 570-825-1849

REAL ESTATE DIVISION

Sale Dates and Filing Periods

(10 day filing window)

2024

*FEBRUARY 9, 2024	OCTOBER 30 – NOVEMBER 10, 2023
APRIL 5, 2024	DECEMBER 24, 2023 - JAN 4, 2024
*JUNE 14, 2024	FEBRUARY 26 – MARCH 8, 2024
AUGUST 2, 2024	APRIL 29 - MAY 10, 2024
*OCTOBER 7, 2024	JULY 1 - JULY 12, 2024
DECEMBER 6, 2024	AUGUST 26 – SEPTEMBER 6, 2024

2025

FEBRUARY 7, 2025	OCTOBER 25 – NOVEMBER 6, 2024
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*DATE CHANGE DUE TO A CONFLICT WITH A NEIGHBORING COUNTY.

Oct. 27—Jan. 26



NOTICE

TO: W-BLLA MEMBERS
FROM: JOSEPH P.J. BURKE, III, ESQ., SECRETARY
RE: YEAR 2024/25 NOMINATIONS

NOTICE IS HEREBY GIVEN that the Nominating Committee has nominated the following for a two-year term for the **Years 2024/2025 Officers and Executive Committee:**

President: Cheryl Sobeski-Reedy, Esq.
Vice President: Qiana Murphy Lehman, Esq.
Treasurer/Secretary: Joseph P.J. Burke, III, Esq.

Executive Committee: Laura C. Dennis, Esq.
Jarrett J. Ferentino, Esq.
Peter J. Moses, Esq.

Rachel D. Olszewski, Esq. and C. David Pedri, Esq. will be serving their second year of their two-year term in 2023.

This Notice is being published in *The Luzerne Legal Register* and is posted in the Law Library by the Secretary in accordance with Article VII, B. of the Association *By-Laws*.

Dec. 1, 8

Medical Malpractice/General Litigation Attorney – Scranton, PA

Weber Gallagher is a thriving and growing firm with more than 110 legal professionals in 10 locations. The firm is an equal-opportunity employer offering competitive salaries, bonuses and generous benefits.

Weber Gallagher offers a hybrid schedule, friendly office environment, excellent benefits package, including 401(k) and top-notch health coverage.

Equal employment opportunity is provided to all employees and applicants for employment without regard to a person's race, color, religion, age, gender, sex, sexual orientation, gender identity, pregnancy, ancestry, physical handicap, disability, national origin, genetic information, marital status, veteran status, disability, or any other factor/ status in accordance with applicable federal, state and local laws.

Weber Gallagher seeks an associate for our medical malpractice/general liability group in our Scranton, PA office. Successful candidate could be a recent grad or have up to five years of general litigation experience, excellent analytical and research abilities as well as strong written communication skills. Candidates from Judicial Clerkships or District Attorney's Office preferred. Must be admitted to practice in Pennsylvania.

Please submit a cover letter and resume for consideration to: careers@wglaw.com.

Nov. 17, 24; Dec. 1

Full-Time Staff Attorney Position

The Barbara J. Hart Justice Center, a Project of the Women's Resource Center has an immediate opening for a full-time staff attorney, Spanish speaking preferably. The qualified attorney will represent survivors of domestic and sexual violence in family law, immigration, housing, and consumer debt matters in Lackawanna and Susquehanna Counties.

Candidates must be licensed in Pennsylvania and have excellent oral and written communication skills. Candidates must also be self-starters with the ability to work individually and in teams.

The Justice Center provides a great and challenging opportunity for attorneys to develop litigation skills and expertise in the field of domestic and sexual violence and family law. Qualified candidates should submit a cover letter and resume to ***deniseb@wrcnepa.org***.

Nov. 17, 24; Dec. 1



DIGITAL PIX
COMPOSITES

FINAL PHOTO SESSION DATES

DPC will be taking photos in the **Presidents' Room at the Law Library at the Luzerne County Courthouse** on the following dates and between the following times:

Wed, Dec 06, 2023 - 1:30PM – 4:00 PM

Thu, Dec 07, 2023 - 10:00AM – 3:00 PM

Fri, Dec 08, 2023 - 10:00AM – 3:00 PM

If you have not yet had your photo taken for the **2023 Bar Composite**, please use this link to schedule a date and time to be photographed:

<https://planner.dpcpix.com/external/signup?token=097c4b43-55a9-4608-9a4d-7a0ab914ff5c>

Please note that Friday, December 8th is the **final date** to have your photo taken for the 2023 Bar Composite. No other dates are after this one.

Nov. 17, 24; Dec. 1



is pleased to announce that
Louis S. Sciandra, Esquire,
joined the firm as “Of Counsel” on November 1, 2023.
He has more than 25 years of experience handling
Personal Injury claims.
He can be contacted at
LSciandra@getyourselfagoodlawyer.com
(570) 287-2400

SELINGO GUAGLIARDO, LLC
is an 8-lawyer, regional firm providing legal services in
Pennsylvania, New York and New Jersey,
with offices at:
345 Market Street Kingston Pennsylvania and
5 East Market Street Corning New York.

Nov. 17, 24; Dec. 1

Winning Appellate Strategies



Karl S. Myers
215.751.2864
karl.myers@stevenslee.com

Hon. Thomas I. Vanaskie (Ret.)
570.969.5360
thomas.vanaskie@stevenslee.com

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Led by a former judge of the United States Court of Appeals for the Third Circuit and a highly distinguished appellate litigator
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- **Pragmatic Solutions**
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James C. Schwartzman, Esq.

Judge, Court of Judicial Discipline (retired) • Former Chairman, Judicial Conduct Board of Pennsylvania • Former Chairman, Disciplinary Board of the Supreme Court of PA • Former Chairman, Continuing Legal Education Board of the Supreme Court of PA • Former Chairman, Supreme Court of PA Interest on Lawyers Trust Account Board • Former Federal Prosecutor • Selected by his peers as one of the top 100 Super Lawyers in PA • Named by his peers as *Best Lawyers in America* 2022 and 2015 Philadelphia “Lawyer of the Year” Ethics and Professional Responsibility Law and Legal Malpractice Law

1460 Wyoming Avenue, Forty Fort, PA 18704
(570) 343-1827



NOTICE

The temporary surcharge portion of \$21.25 of the **Judicial Computer Project/Access to Justice/Criminal Justice Enhancement/Office of Attorney General (JCP/ATJ/CJEA/OAG)** fee was reinstated at the end of the day November 1, 2023. It has been **returned to \$40.25.**

The Prothonotary, Clerk of Courts, Recorder of Deeds, Register of Wills and Clerk of Orphans' Court began collecting the fee as of **November 3, 2023.**

Nov. 10—Dec. 8



Honoring

2023:

Hon. Hugh F. Mundy

1970-2023

Robert E. Bull, Esq.

1949-2023

Lawrence D. MacDonald, Esq.

1977-2023

Sandor Yelen, Esq.

1957-2023

2022:

Robert J. Gillespie, Jr., Esq.

1972-2022

John P. Moses, Esq.

1971-2022

Harold Rosenn, Esq.

1941-2022

Christine M. Trottini, Esq.

1993-2022

The Court *en banc* ceremony

is scheduled for

9:30 A.M.

on **THURSDAY, DECEMBER 14, 2023**, in

Courtroom #1

on the Third Floor of

the Luzerne County Courthouse.

A light refreshment reception in the Law Library
will follow the ceremony.

Dec. 1, 8

Guardianship Tracking System Online workshops: Winter 2024

> Overview

The Administrative Office of the Pennsylvania Courts (AOPC) is offering a series of online workshops that show court-appointed guardians how to use the new Guardianship Tracking System (GTS). The GTS makes it possible for guardians of adult incapacitated persons to file inventory and annual reports online from any internet-accessible computer.

These online workshops are conducted through WebEx. Registration is required. You are welcome to attend any session that fits your schedule.

> Workshop Topics

- Overview of the GTS
- How to log in to the GTS
- How to navigate the GTS Dashboard
- How to submit guardianship reports online
- How to determine if a report was accepted by the court
- Discuss additional support for GTS submissions

**This is the same subject matter covered in all past workshops.*

> Online Workshop Schedule

January 3	8am
January 18	2pm
February 6	10am
February 21	5pm
March 8	9am
March 25	1pm


Both registration and the workshop are completed through WebEx. Attending a session requires a computer or laptop with an internet connection.

Registration instructions appear on the next page.

GTS workshop Registration Instructions

Any person planning on attending a workshop must register for their preferred session through WebEx.

Registration can be completed using the following steps:

1. Go to the registration webpage: <https://pacourts.webex.com>
2. On this webpage, click on the three horizontal lines  appearing to the left and select **WebEx Training** from the menu. *Note:* The WebEx Training page may try to open in a new browser page or tab. If you have popup blockers enabled, the page may not open. You may need to disable popup blockers, or authorize one-time access if prompted, and then try opening the page again.
3. A full list of training classes offered by the AOPC display – Look for classes with a topic name starting with the acronym **GTS**. If needed, hover your mouse pointer over any of these topic names to see the full name of the class.
4. Click on the **Register** link for the preferred training class.
5. Complete the registration page. All fields are required. Please provide as much registration information as possible. If there are items that do not apply to the person registering, enter **NONE** in the field.
6. Click the **Register** button at the bottom of the screen. You will receive an e-mail confirming your registration and a reminder e-mail will be sent a few days prior to training.

You will receive instructions for logging into the online classroom and printable training documents will be e-mailed to you prior to your scheduled session.

Cancellations: If you register for a class and later decide not to attend, instructions for cancelling a registration are included in the confirmation and reminder emails.



AOPC
Administrative Office of
the Pennsylvania Courts

Foundation Check Presentation made to the
Pittston Memorial Law Library



Foundation Vice President Jerry Mecadon is shown presenting a donation check to Howard Grossman of the Pittston Memorial Library.

Dec. 1

W-BLLA Sponsors a Tour and Presentations at the Max Rosenn US Courthouse for King's Pre-Law Students

As part of the ongoing efforts of the W-BLLA Student Member program and as part of the Middle District's NE Tier's Judicial Outreach initiative, King's Pre-Law Society Students were recently provided a tour of the US Max Rosenn Courthouse in Wilkes-Barre. They also attended presentations in the Courtroom by US Magistrate Judge Joseph F. Saporito Jr. and the US Marshals Service. Here are some of the photos taken of this:









A Very Big **THANK YOU**
to
Judge Saporito
and
the US Marshal Service
for doing this.

And thanks to
Prof./Atty. Joseph G. Rish,
the Pre-Law Advisor at
King's College, and the
King's Pre-Law Society for
participating.

Dec. 1

IN RE:	:	IN THE COURT OF
	:	COMMON PLEAS
JOAN HOGGARTH,	:	OF LUZERNE
DIRECTOR OF JUDICIAL	:	COUNTY
SERVICES AND RECORDS	:	
OF LUZERNE COUNTY	:	CIVIL DIVISION
	:	
REQUEST TO INCREASE	:	No. 2023-11567
FEES OF THAT SECTION	:	
OF THE DIVISION OF	:	
JUDICIAL SERVICES AND	:	
RECORDS, FORMERLY	:	
REFERRED TO AS THE	:	
OFFICE OF THE	:	
PROTHONOTARY	:	

ORDER

AND NOW, this 9 day of November, 2023, upon consideration of the within Petition, and pursuant to 42 P.S. § 21071.1, which authorizes the Prothonotary to increase fees consistent with the percentage of increase in the Consumer Price Index for Urban Workers for the immediate three-year period preceding the last increase, the Court takes judicial notice that the proposed increase in fees is within the allowed percentage increase (4.9% max).

IT IS HEREBY ORDERED AND DECREED that the Court approves the increases in the fee schedule for that section of the Division of Judicial Services and Records, formerly referred to as the Office of the Prothonotary, effective January 1, 2024, as per the Prothonotary Fee Schedule attached hereto and marked as Exhibit “A”. The Director of Judicial Services and Records of Luzerne County is hereby directed to file this Order and this Order shall be published

on the Luzerne County website and in the Luzerne County
Legal Register and *Pennsylvania Bulletin*.

BY THE COURT:

/s/ Michael T. Vough

	IN RE:	:	IN THE
COURT OF			
	:		COMMON PLEAS
JOAN HOGGARTH,	:		OF LUZERNE
DIRECTOR OF JUDICIAL	:		COUNTY
SERVICES AND RECORDS	:		
OF LUZERNE COUNTY	:		CIVIL DIVISION
	:		
REQUEST TO INCREASE	:		No. 2023-11567
FEES OF THAT SECTION	:		
OF THE DIVISION OF	:		
JUDICIAL SERVICES AND	:		
RECORDS, FORMERLY	:		
REFERRED TO AS THE	:		
OFFICE OF THE	:		
PROTHONOTARY	:		

***PETITION OF JOAN HOGGARTH, DIRECTOR
OF JUDICIAL SERVICES AND RECORDS
OF LUZERNE COUNTY, TO INCREASE THE
FEES OF THAT SECTION OF THE DIVISION OF
JUDICIAL SERVICES AND RECORDS,
FORMERLY REFERRED TO AS THE OFFICE
OF THE PROTHONOTARY***

Joan Hoggarth, Director of Judicial Services and Records of Luzerne County, through her counsel, Mark Makowski, Esquire, respectfully requests this Honorable Court increase the fees of that section of the Division of Judicial Services and Records, formerly referred to as the Office of the Prothonotary as proposed in Exhibit “A” which is attached hereto, and avers as follows in support thereof:

1. This Honorable Court has the authority to increase the Prothonotary’s fees pursuant to 42 P.S. §21071.1.

2. Pursuant to 42 P.S. § 21071.1, the Prothonotary has the right to petition for an increase in fees every three years provided that the amount of the increase is not greater than the percentage of the increase in the Consumer Price Index for Urban Workers for three years immediately preceding the last increase. 42 P.S. §21071.1.

3. The Luzerne County Prothonotary has not raised its fee since January 1, 2021.

4. Section 12.04 of Luzerne County's Home Rule Charter, effective January 1, 2012, eliminated the Elective Office of the Prothonotary.

5. Section 12.07(E) provides, as follows: "The Division of Judicial Services and Records shall be responsible for: the services and functions that prior to the effective date of this Charter were performed by the Clerk of Courts, Coroner, **Prothonotary**, Recorder of Deeds, Register of Wills, and Sheriff, and any other powers, duties, programs, services, or functions that may be assigned by the Administrative Code." **Emphasis added.**

6. Joan Hoggarth is the duly appointed Director of Judicial Services and Records of Luzerne County.

7. The proposed fee bill with proposed increases that do not exceed 4.9% is attached hereto and marked as Exhibit "A".

8. The current fee bill is attached hereto and marked as Exhibit "B". [Not published herein.]

9. It is believed and therefore averred that the proposed percentage increase is within the range authorized by 42 P.S. § 21071.1 in that it does not exceed the percentage of the increase in the Consumer Price Index for Urban Workers for three years immediately preceding the last increase, i.e., January 1, 2021.

WHEREFORE, Joan Hoggarth, Director of Judicial Services and Records of Luzerne County, through her counsel, respectfully requests this Honorable Court, pursuant to 42 P.S. § 21071.1, approve the fees as set forth in Exhibit "A" effective January 1, 2024.

Respectfully Submitted,
By: /s/ Mark Makowski
Mark Makowski, Esquire
Attorney for Petitioner

VERIFICATION

I, JOAN HOGGARTH, Director of Judicial Services and Records of Luzerne County, verify that the statements made in the foregoing PETITION are true and correct to the best of my knowledge.

The undersigned understands this Verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

/s/ Joan Hoggarth

EXHIBIT A
PROTHONOTARY'S FEE BILL
LUZERNE COUNTY

Pursuant to ACT 98-164 of January 21, 1999, the following fees are fixed by the Prothonotary and effective:

EFFECTIVE: January 1, 2024

APPEALS: From the Court of Common Pleas to any Appellate Court	\$71.00
Plus Appellate Court Fee (separate check)	\$90.25
ARBITRATIONS: Where arbitration proceedings are processed by the Prothonotary's Office (\$50,000.00 Limit)	\$64.00
APPEAL OF ARBITRATOR'S DECISION	\$473.50
ASSIGNMENTS	\$12.50
AUDITOR'S REPORT: (School, etc.)	\$69.00
BUILDING AGREEMENTS: Stipulations	\$32.00
Waivers	\$32.00
CERTIFICATIONS:	
Certifying copy of any paper – First Page	\$9.00
Additional pages	\$4.75
Certification of Notary Public, Justice of Peace, Motor Vehicle or similar paper	\$6.75
CERTIFICATION OF TRIAL READINESS	\$11.50
COMMENCEMENT OF ACTIONS (by Summons, Petition or Complaint):	
Civil Actions, Declaration of Taking, Equity, Lis Pendens, Name Change, Mortgage Foreclosure, Quiet Title, Minors Compromise Settlement, Petition to Open/Strike Judgment, Suspension of Motor Vehicle, Tax Assessment Appeal, Transfers from Other Jurisdictions, Notice of Appeal from Magistrate, Appeal from Zoning Hearing Board, Miscellaneous	\$178.50
Statement of Objection: (Magistrate)	\$69.50
PFA	\$141.50
PFA State surcharge	\$100.00
COPIES: (Made by customer)	\$0.50

COPIES: (Made by employees).....	\$2.25
DECLARATORY JUDGMENT	\$192.00
DECREEES: (Entry of any decree which is final)	\$14.50
DISCONTINUANCE: (On any case filed before January 3, 2005)	\$12.50
DIVORCE ACTION: (basic no-fault)..... (Add \$45.50 for each count after the first)	\$190.00
DIVORCE COUNTER CLAIM: (Additional Count).....	\$45.50
DIVORCE: (Additional: Count of Custody).....	\$47.00

Special Note:

\$9.50 is to be collected on all custody case filings. The fee is the result of Act 119 of 1996 (commonly referred to as the Jen and Dave fee). The purpose of the fee is to fund a new automated system to make criminal charge information available to parties involved in custody cases.

CUSTODY ACTION.....	\$189.00
EXECUTIONS: Money Judgment, Mortgage Foreclosure & Municipal.....	\$36.25
Possession, Writ of	\$36.25
Attachment.....	\$36.25
Seizure, Writ of	\$36.25
Judgment (Out of County Execution)	\$17.25
EXEMPLIFICATION OF RECORDS	\$24.50
FAX: Long Distance... (per page).....	\$3.00
Local..... (per page).....	\$3.00
FINANCIAL STATEMENT.....	\$29.50
JUDGMENTS: Complaint in Confession of Judgment	\$150.00
New Filing: Entry of any Judgment or Decree, which is final whether by Agreement, Demurrer, Non Pros, or Preliminary Objection or Motion on Verdict of Award, by Court Order, Finding Opinion, Default, Etc.	\$23.25
Notes (DSB).....	\$41.00
Transfer of Judgment from other Counties	\$41.00
Transcripts J.P. or Magistrates	\$33.00
LIENS:	
Municipal.....	\$40.50
Mechanics	\$40.50

Federal.....	\$40.50
Flood Protection Authority Lien	\$41.00
Commonwealth	\$41.00
MASTERS FEE:	
Moving Party	\$400.00
Responding Party	\$400.00
NOTARY PUBLIC: Registration of Signature of Notary Public	\$5.00
NOTICE TO RETAKE MAIDEN NAME	\$11.50
NOTICE TO RESUME PRIOR SURNAME	\$22.75
POUNDAGE: For handling of money put into Court:	
For each dollar of the first \$1,000.00	¢0.45
For each additional dollar over \$1,000.00	¢0.15
PRAECIPE TO DISSOLVE ATTACHMENT	\$13.50
PRAECIPE FOR LIS PENDENS: (Subsequent filing)	\$28.50
PRAECIPE TO REISSUE WRIT OR REINSTATE COMPLAINT	\$6.75
PRAECIPE TO TRANSMIT RECORD	\$49.25
RECORDING: Filing any paper, account of document required by law to be recorded, not otherwise provided for or included herein	\$12.50
REVIVALS: Reviving the lien of any Judgment by Amicable Proceedings	\$23.25
Reviving the lien of any Judgment by Adverse Proceedings	\$36.25
RELEASE OF JUDGMENT	\$8.25
RETURN CHECK CHARGE	\$35.00
SUBPOENA (under seal) Each	\$5.75
SATISFACTION:	
On any case filed before January 3, 2005	\$12.50
Commonwealth Satisfaction on any case filed before January 3, 2005	\$12.50
Federal Lien Release	\$12.50
Clerk of Courts Satisfaction	\$41.00
SEARCH: Five Years	\$28.50
Each Additional Year	\$5.75
Naturalization Search (Per Person)	\$28.50
WRIT OF CERTIORARI	\$140.75

IN RE:	:	IN THE COURT OF
	:	COMMON PLEAS
JOAN HOGGARTH,	:	OF LUZERNE
DIRECTOR OF JUDICIAL	:	COUNTY
SERVICES AND RECORDS	:	
OF LUZERNE COUNTY	:	CIVIL DIVISION
	:	
REQUEST TO INCREASE	:	No. 1165 MD 23
FEES OF THAT SECTION	:	
OF THE DIVISION OF	:	
JUDICIAL SERVICES AND	:	
RECORDS, FORMERLY	:	
REFERRED TO AS THE	:	
OFFICE OF THE CLERK	:	
OF COURTS	:	

ORDER

AND NOW, this 9 day of November, 2023, upon consideration of the within Petition, and pursuant to 42 P.a.C.S.A §1725.4, which authorizes the Clerk of Courts to increase fees consistent with the percentage of increase in the Consumer Price Index for Urban Workers for the immediate three-year period preceding the last increase, the Court takes judicial notice that the proposed increase in fees is within the allowed percentage increase (4.9% max).

IT IS HEREBY ORDERED AND DECREED that the Court approves the increases in the fee schedule for that section of the Division of Judicial Services and Records, formerly referred to as the Office of the Clerk of Courts, effective January 1, 2024, as per the Clerk of Court Fee Schedule attached hereto and marked as Exhibit “A”. The Director of Judicial Services and Records of Luzerne County is hereby directed to file this Order and this Order shall be published

on the Luzerne County website and in the Luzerne County
Legal Register and *Pennsylvania Bulletin*.

BY THE COURT:

/s/ Michael T. Vough

	IN RE:	:	IN THE
COURT OF			
	:		COMMON PLEAS
JOAN HOGGARTH,	:		OF LUZERNE
DIRECTOR OF JUDICIAL	:		COUNTY
SERVICES AND RECORDS	:		
OF LUZERNE COUNTY	:		CIVIL DIVISION
	:		
REQUEST TO INCREASE	:		No. 1165 MD 23
FEES OF THAT SECTION	:		
OF THE DIVISION OF	:		
JUDICIAL SERVICES AND	:		
RECORDS, FORMERLY	:		
REFERRED TO AS THE	:		
OFFICE OF THE CLERK	:		
OF COURTS	:		

**PETITION OF JOAN HOGGARTH, DIRECTOR
OF JUDICIAL SERVICES AND RECORDS OF
LUZERNE COUNTY, TO INCREASE THE FEES
OF THAT SECTION OF THE DIVISION OF
JUDICIAL SERVICES AND RECORDS,
FORMERLY REFERRED TO AS THE OFFICE OF
THE CLERK OF COURTS**

Joan Hoggarth, Director of Judicial Services and Records of Luzerne County, through her counsel, Mark Makowski, Esquire, respectfully requests this Honorable Court increase the fees of that section of the Division of Judicial Services and Records, formerly referred to as the Office of the Clerk of Courts as proposed in Exhibit “A” which is attached hereto, and avers as follows in support thereof:

1. This Honorable Court has the authority to increase the Clerk of Court fees pursuant to 42 Pa.C.S.A §1725.4.
2. Pursuant to 42 Pa.C.S.A §1725.4, the Clerk of Courts has the right to petition for an increase in fees every three years provided that the amount of the increase is not greater than the percentage of the increase in the Consumer Price

Index for Urban Workers for three years immediately preceding the last increase. 42 Pa.C.S.A §1725.4.

3. The Luzerne County Clerk of Courts has not raised its fee since January 1, 2021.

4. Section 12.04 of Luzerne County's Home Rule Charter, effective January 1, 2012, eliminated the Elective Office of the Clerk of Courts.

5. Section 12.07(E) provides, as follows: "The Division of Judicial Services and Records shall be responsible for: the services and functions that prior to the effective date of this Charter were performed by the **Clerk of Courts**, Coroner, Prothonotary, Recorder of Deeds, Register of Wills, and Sheriff, and any other powers, duties, programs, services, or functions that may be assigned by the Administrative Code." **Emphasis added.**

6. Joan Hoggarth is the duly appointed Director of Judicial Services and Records of Luzerne County.

7. The proposed fee bill with proposed increases that do not exceed 4.9% is attached hereto and marked as Exhibit "A".

8. The current fee bill is attached hereto and marked as Exhibit "B". [Not published herein.]

9. It is believed and therefore averred that the proposed percentage increase is within the range authorized by 42 Pa.C.S.A §1725.4 in that it does not exceed the percentage of the increase in the Consumer Price Index for Urban Workers for three years immediately preceding the last increase, i.e., January 1, 2021.

WHEREFORE, Joan Hoggarth, Director of Judicial Services and Records of Luzerne County, through her counsel, respectfully requests this Honorable Court, pursuant to 42 Pa.C.S.A §1725.4, approve the fees as set forth in Exhibit "A" effective January 1, 2024.

By: /s/ Mark Makowski
Mark Makowski, Esquire
Attorney for Petitioner

VERIFICATION

I, JOAN HOGGARTH, Director of Judicial Services and Records of Luzerne County, verify that the statements made in the foregoing PETITION are true and correct to the best of my knowledge.

The undersigned understands this Verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

/s/ Joan Hoggarth

EXHIBIT A

Luzerne County – Clerk of Courts Fees

EFFECTIVE January 1, 2024

Appeal Processing for Clerk of Courts (\$62.75 + \$5.00 automation fee)	\$67.75
Appeal Processing for Superior Court	\$90.25
<i>Superior Court Raised Fee as of 11-1-17 (Per AOPC)</i>	
Appointment to Fill Vacancy of Office	\$18.50
ARD Dismissal Rule 319 (\$19.00 + \$5.00 automation fee)	\$24.00
Bail Bondsmen renewal	\$10.75
Certifications	\$9.00
Civil Judgment Satisfaction (\$19.00 + \$5.00 automation fee)	\$24.00
Constable Deputy and Constable Bonds	\$18.50
Copies	\$0.50
Detective License Applications (Incorporated)	\$453.50
Detective License Applications (Individual)	\$340.75
Expungements Rule 320 (\$19.00 + \$5.00 automation fee)	\$24.00
Expungement Fee Under Pa.C.S. Section 1725.7 (Act 5)	\$132.00
Filing Petition & Order (\$19.00 + \$5.00 automation fee)	\$24.00
Filing of Orders/Motions (2 nd Filing)	\$9.00
Filings of Resolutions/Ordinances	\$19.00
Filing of Tax Collector's Bonds	\$12.25
Limited Access (19.00 + \$5.00 automation fee)	\$24.00
Liquor License Appeals	\$25.00
Microfilm Copies	\$1.50
Motion & Order (All Nolle Prose)	\$24.50
Poundage on Bail... 3% on the first thousand, 1% on the balance	

Processing all Misc. or Felony Cases During or After Trial	\$155.25
Processing all Misc. of Felony Cases During or Before Trial	\$87.00
Record Checks (Per Individual)	\$18.50
Short Certificate	\$8.50
Subpoenas	\$3.50
Summary Appeal (\$50.25 + \$5.00 automation fee).....	\$55.25
Writ of Habeas Corpus Petitions (\$62.50 + \$5.00 automation fee).....	\$67.50

Case Assessments: (Applied by Probation)

Administrative Fee on MD Numbers (\$42.75 + \$5.00 automation fee)	\$47.75
Clerk of Courts Filing Fee (\$128.00 + \$5.00 automation fee).....	\$133.00
Luzerne County cost each additional count	\$27.75

COMMONWEALTH v. WILLIAMS

Criminal Law and Procedure—Motion for Reconsideration of Sentence and Post-Trial Motions—Statement of Errors Complained of on Appeal—Weight of Controlled Substance—Increased the Standard Range of Sentencing—Element of the Offense—Jury—Part of Verdict—Sufficiency of Evidence—Standard Applied—Light Most Favorable to Commonwealth as Verdict Winner—Fact-Finder—Element of the Crime—Beyond a Reasonable Doubt—Facts and Circumstances Established—Preclusion—Doubts Resolved by Fact-Finder—Weak and Inconclusive Evidence—Matter of Law—No Probability of Fact—Evidence Deemed to Support Verdict—Circumstantial Evidence—Cocaine—Controlled Substance—Prohibited Possession—780-113(a)(16)—Controlled Substance, Drug, Device and Cosmetic Act—Defendant Convicted of Intentional Possession—18 Pa. C.S. §301(c)—Possession Defined—Conflicts in the Testimony—Conjecture or Guess—Reconciling Conflicting Testimony and Questions of Credibility—35 P.S. §780-113(a)(30)—PWID (Possession With the Intent to Deliver)—Proof—Circumstantial Evidence—Commonwealth’s Burden—Constructive Possession—Totality of the Circumstances—Proof Required—Relevant Factors—Expert Testimony—Credibility Questions of Doubt—Fact-Finder—Evidence Insufficient as a Matter of Law—Lesser Included Offense—Double Jeopardy Principles—18 Pa. C.S.A. §109—Longstanding Precedent—Inconsistent Verdicts Allowable—Not Reversible Error—Allegation of Court’s Abuse of Discretion—Fentanyl—Offense Gravity Score (OGS)—Legality of the Sentence—Second Offense—35 Pa. C.S.A. §780-115—Recidivist Statute for Drug Offenders—Appeal—Superior Court of Pennsylvania—AFFIRMED.

1. Since the weight of the controlled substance at issue increased the standard range, it is an element of the offense that must be found by the jury or part of its verdict.

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

3. In addition, the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence.

4. Any doubts regarding a defendant’s guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.

5. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.

6. If the fact-finder reasonably could have determined from the evidence adduced that all of the necessary elements of the crime were established, then that evidence will be deemed to support the verdict.

7. The standard applies equally to cases in which the evidence is circumstantial, rather than direct, as long as the evidence as a whole links the accused to the crime charged beyond a reasonable doubt.

8. Possession of cocaine, a controlled substance, is prohibited by Section 780-113(a)(16) of the Controlled Substance, Drug, Device and Cosmetic Act.

9. In the matter *sub judice*, the jury convicted the Defendant of intentional possession of cocaine, which requires that the Commonwealth prove that Defendant possessed the contraband.

10. As defined by the Crimes Code, the act of “possession” occurs “if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.” 18 Pa. C.S. §301(c).

11. In this case, the Commonwealth successfully proved that the substance was cocaine and the Commonwealth and Defendant entered into a stipulation with regard to the crack cocaine at Commonwealth Exhibit Number 11, agreeing that the evidence was in fact .21 grams plus or minus .01 grams of cocaine. In addition, the Commonwealth proved that the Defendant possessed the cocaine.

12. The mere existence of conflicts of testimony does not mean that the fact-finder is require to resort to speculation which would cause the result to be based on conjecture or guesswork.

13. A conviction cannot properly be sustained if it be based upon testimony of a witness which is so contradictory on the essential issues as to make the verdict obviously the result of conjecture or guess. However, the mere fact that there are some inconsistencies is not alone sufficient to destroy the Commonwealth’s case.

14. It is the function of the fact-finder to reconcile conflicting testimony and questions of credibility. The trier of fact, while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

15. In the instant case, viewing all of the evidence in the light most favorable to the Commonwealth, the jury could reasonably have determined that all of the necessary elements of the crime were established.

16. 35 P.S. §780-113(a)(30) precludes an unregistered person from possessing a controlled substance with the intent to deliver it.

17. To convict a defendant of PWID (Possession With the Intent to Deliver) the Commonwealth must prove beyond a reasonable doubt that “on a specific occasion the defendant possessed a controlled substance he was not licensed to possess and that he did so under circumstances demonstrating an intent to deliver that substance.”

18. In determining whether there is sufficient evidence to convict Defendant of PWID, all facts and circumstances surrounding the possession are relevant, and the Commonwealth may establish the essential elements of the crime entirely by circumstantial evidence.

19. The Commonwealth may meet its burden of demonstrating that the Defendant possessed the controlled substances by showing actual, constructive, or joint constructive possession of the controlled substances.

20. Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious dominion. We subsequently defined conscious dominion as the power to control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances.

21. Constructive possession requires proof of the ability to exercise conscious dominion over the substance, the power to control the contraband, and the intent to exercise such control. Presence is not enough to establish constructive possession.

22. Factors which may be relevant in determining whether the drugs were possessed with the intent to deliver include, but are not limited to, the “manner in which the controlled

substance was packaged, the behavior of the Defendant, the presence of drug paraphernalia, and large sums of cash.”

23. The final factor to be considered is expert testimony. Expert opinion testimony is admissible concerning whether the facts surrounding the possession of controlled substances are consistent with an intent to deliver rather than with an intent to possess it for personal use.

24. As indicated, issues of credibility are left to the finder of fact, who is free to accept all, part, or none of a witness’s testimony. Questions of doubt are for the finder of fact, unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the totality of the circumstances.

25. Only when the evidence offered to support the verdict is in contradiction to the physical facts, or in contravention to human experience and the laws of nature, can the evidence be considered insufficient as a matter of law.

26. In the instant case, the totality of the circumstances demonstrates that the Commonwealth proved each element of the PWID offense with sufficient evidence.

27. In the matter *sub judice*, although the Defendant is correct in stating that possession is a lesser included offense of PWID, his argument is flawed. Defendant bases his allegation on the double jeopardy principles set forth at 18 Pa. C.S.A. §109.

28. Longstanding precedent dictates that inconsistent verdicts are allowable in the Commonwealth of Pennsylvania.

29. The rule that inconsistent verdicts do not constitute reversible error applies even where the acquitted offense is a lesser included offense of the charge for which a defendant is found guilty.

30. In the matter at hand, because there was sufficient evidence to support Defendant’s conviction for PWID as discussed above, the inconsistent verdict resulting in his acquittal on the lesser included offense of possession should not be overturned.

31. The Defendant in this case alleges that the court abused its discretion or committed an error of law when it sentenced the Defendant by applying an incorrect Offense Gravity Score (“OGS”) of 10 due to the weight of a controlled substance (2.7 grams of fentanyl) that was the subject of Defendant’s conviction for PWID.

32. A claim that the sentencing court used an incorrect OGS is a challenge to the discretionary aspects of sentence and goes to the legality of the sentence. [*See* case citations and analysis.]

33. Neither case cited by Defendant applies in the case. Accordingly, the court determined that the prescribed statutory maximum penalty for the Defendant’s conviction of Possession with Intent to Deliver a Controlled Substance is thirty (30) years of incarceration and/or a \$500,000.00 fine.

34. Because the instant offense, in this case, is Defendant’s second offense under Section 780-113(a)(30), Section 780-115 of Title 35 also applies. Section 780-115, a recidivist statute for drug offenders, is a discretionary sentencing enhancement statute.

35. In the matter herein the maximum penalty is provided for in the statute and is a result of Defendant’s prior conviction.

36. The court, herein, was able to impose a sentence within its discretion and issued a standard range sentence after considering all of the obligatory factors, statutory requirements and the sentencing guidelines.

37. For all of the foregoing reasons, this court respectfully submits that Defendant’s appeal is without merit and that Defendant’s judgment of sentence should be undisturbed.

38. Appealed to Superior Court of Pennsylvania. [See Criminal Court Docket.]

39. AFFIRMED on Appeal, August 4, 2023.

*In the Court of Common Pleas of Luzerne County—
Criminal Division—CP-40-CR-0002417-2019.
AFFIRMED on Appeal by the Superior Court of
Pennsylvania, August 4, 2023. See Criminal Court
Docket.*

Samuel M. Sanguedolce, Esquire, District Attorney
of Luzerne County, for the Commonwealth.

Matthew P. Kelly, Esquire, for Defendant.

Before: Sklarosky, Jr, J.

SKLAROSKY, JR, J., June 28, 2022:

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

Joseph Edward Williams (“Defendant”) appeals from the June 28, 2022, order denying Defendant’s motion for reconsideration of sentence and post-trial motions. After a jury trial commencing on October 19, 2021, Defendant was convicted of possession with intent to deliver (fentanyl) (“PWID”)^{1, 2} and possession of a controlled substance (cocaine).³ Defendant was found not guilty of possession of a firearm with manufacturer’s number altered,⁴ possession of a controlled substance (fentanyl),⁵

¹35 P.S. §780-113(a)(30).

²Before trial, this court granted the Commonwealth’s motion to amend the information—which had originally listed heroin and fentanyl—to omit the word heroin. N.T. Jury Trial, 10/19/21, at pp. 4-5.

³35 P.S. §780-113(a)(16).

⁴18 Pa. C.S.A. §6110.2 §(a).

⁵35 P.S. §780-113(a)(16).

and use or possession of drug paraphernalia.⁶ The original count one, possession of a firearm prohibited,⁷ was severed for trial.

On January 20, 2022, Defendant was sentenced to a state correctional institution for a minimum of 60 months to a maximum of 120 months on the PWID charge followed by twelve months of consecutive special probation on the possession of cocaine charge. Defendant was also ordered to pay restitution.⁸

Defendant filed a Motion for Reconsideration of Sentence and Post-Trial Motions, which were denied on June 28, 2022, after a May 11, 2022, hearing. Trial counsel, Robert Saurman, Esquire, filed a Notice of Appeal on July 14, 2022. Attorney Saurman was permitted to withdraw as counsel and the Public Defender's Office was appointed to represent Defendant on August 9, 2022. On the same day, an order directing Defendant to file a Statement of Errors Complained of on Appeal (Statement) within 21 days pursuant to R.A.P. 1925(b) was issued. On August 29, 2022, attorneys from the Public Defender's Office filed a motion citing a conflict in representation and requesting that conflict counsel be appointed. Said motion also requested an extension of time for conflict counsel to file the Statement. On September 1, 2022, Attorney Matthew Kelly, Esquire, was appointed as counsel and this court granted a 21-day extension of time for conflict counsel to file the Statement. Defendant's Statement was filed by conflict counsel on September 20, 2022.

⁶35 P.S. §780-113(a)(32).

⁷18 Pa. C.S.A. §6105(a)(1).

⁸Defendant was also ordered to forfeit \$526.00, to pay court costs, and to provide a DNA sample. In addition, Defendant was ordered to follow treatment recommendations regarding a drug and alcohol evaluation and a mental health evaluation.

I. Statement of Facts

On June 27, 2019, Pamela Obitz lived at 416 East Main Street in the city of Wilkes-Barre with her fiancé, William Davis. N.T. Jury Trial, 10/19/21, p. 30. Obitz testified on behalf of the Commonwealth that she was addicted to heroin and fentanyl at that time. *Id.* at p. 31. She was using about 50 bags of heroin a day with a needle and syringe. *Id.* at pp. 32-33. On the date in question, Obitz had known Defendant for eight months to a year. *Id.* at p. 31. Defendant delivered drugs to her but she had never seen him use heroin or fentanyl himself. *Id.* at pp. 31, 42. She had seen him smoke weed on occasion. *Id.* at p. 42. She said that he came to her house almost every day to sit in the kitchen, “bag up stuff, and get stuff ready to sell.” *Id.* at p. 32. Sometimes he would leave things, including drugs, in the house and he would hide them in different places. *Id.* at pp. 43-44. In exchange for letting him use their kitchen, Defendant would give her a few bags of drugs when he left. *Id.* at p. 32. She further testified that when people came to the house, she would sell Defendant’s drugs to them for him in exchange for money. *Id.* at p. 33. In addition, she testified that she had helped arrange drug deals where people would call her phone number or Defendant’s and she would give them the drugs. *Id.* at pp. 33, 46. Other times people called Defendant and he would send them to her house. *Id.* at p. 46.

Obitz testified that she arranged a drug deal for Defendant on June 27, 2019. *Id.* at pp. 33-34. Defendant was at her house when a man she knew previously called her phone and asked how much a “brick” would cost. *Id.* at pp. 34, 37. She said a brick is fifty bags of heroin and fentanyl. *Id.* at p. 34. Obitz testified that she asked

Defendant how much a brick would cost and then told the caller the price that Defendant had given her. *Id.* at p. 34. She said that the caller asked if he could meet her at Chacko's Bowling. *Id.* at p. 34. Obitz said she asked Bill Davis to take Defendant's car and take the drugs to meet the customer. *Id.* at p. 35.

William Davis testified that he had known Defendant for three years, and that they met when Defendant gave drugs to both him and Obitz. *Id.* at p. 60. He said that in June of 2019 he was using heroin and fentanyl. *Id.* at p. 60. He was using about fifteen bags a day. *Id.* at p. 61. He testified that he hung out with Defendant and that Defendant came to his residence on a daily basis to package heroin. *Id.* at p. 61. He said Defendant brought a backpack with drugs inside with him almost every time he came. *Id.* at p. 76. Davis said sometimes Defendant would leave the bag with drugs, a scale and a plate behind in Davis' kitchen cupboard but he wouldn't hide them. *Id.* at p. 77. In exchange for allowing Defendant to use their residence, Davis said Defendant would give him two buns a day, which was ten packages of heroin. *Id.* at pp. 61-62. He said Defendant gave Obitz anywhere from three to five buns a day. *Id.* at p. 61. Davis said he never saw Defendant use either heroin or fentanyl. *Id.* at p. 61.

Davis testified that he had seen Defendant with a silver .22 semiautomatic that he had in his backpack on one occasion. *Id.* at p. 62. He said Defendant left the gun with him because Defendant's girlfriend did not want the gun in her house. *Id.* at p. 62. Davis said he stored Defendant's gun under his mattress. *Id.* at p. 63.

Davis said that on June 27, 2019, he had just finished a shift at work, went to sleep and then he woke up. *Id.* at p. 64. He said Defendant and Obitz were in

the kitchen and they asked him to do a run and deliver heroin at Chacko's Bowling Alley. *Id.* at p. 64. Davis said Defendant gave him roughly a brick of heroin to sell, which would be 50 bags. *Id.* at p. 65. He testified that Defendant gave him roughly a bundle in exchange for doing the run. *Id.* at p. 65.

Davis drove Defendant's rental car to deliver the drugs. *Id.* at p. 82. When he got to Chacko's, Davis said Jeremy Gittens got in the passenger side of the vehicle and he exchanged the heroin for money. *Id.* at p. 65. Davis was familiar with Gittens because he was a past customer. *Id.* at p. 65. Davis said that after he made the exchange, Gittens must have signaled to the police as a confidential informant and the police apprehended Davis. *Id.* at p. 66. Davis was arrested and interrogated at the police station. *Id.* at p. 66. He said afterwards he went back to his apartment with the police and gave them permission to look around. *Id.* at p. 67.

Obitz testified that she was present when the police entered her apartment and found Defendant in the kitchen. *Id.* at p. 50. She said Defendant was either sitting or standing at the kitchen table and there were boxes on the table in front of him. *Id.* at p. 52. Obitz explained that although she had previously made statements to police that contradicted her testimony at trial, she had a better recollection at trial because she had been sober for two years. *Id.* at pp. 53-54.

Davis also testified that, at the time of trial, he had not been using drugs but had been going to a methadone clinic for the last two years. *Id.* at pp. 68-69, 81. He explained that any discrepancies in statements he made to police and his testimony at trial were because he was initially trying to cover up for Defendant. *Id.* at p. 83.

Officer Jeffrey Ference, of the Wilkes-Barre City Police Department (“WBPD”), also testified on behalf of the Commonwealth. *Id.* at pp. 86-87. Officer Ference has been a police officer in Luzerne County since 2001 and has been with the WBPD for thirteen years. *Id.* at p. 87. In June of 2019, he was working in the anti-crime unit doing drug task force work. *Id.* at p. 88. Officer Ference testified that on June 27, 2019, he was engaged in a buy-bust operation in which the focus was William Davis. *Id.* at p. 88. He said the police were working with an informant who told them he was able to purchase narcotics. *Id.* at p. 88. Ference said they searched the informant, made a call to Obitz, and gave the informant prerecorded buy money with which to purchase a brick of heroin or heroin fentanyl.⁹ *Id.* at pp. 88-89. He explained that a brick would be fifty separate bags of the drug. *Id.* at pp. 89-90. He said that William Davis arrived in the Chacko’s parking lot in a silver SUV and delivered the drugs. *Id.* at pp. 88, 90. Ference testified that after buy-busting Davis, he was read his *Miranda* warnings and was searched. *Id.* at p. 90. The search of Davis revealed the prerecorded buy money that was given to the informant and a few more packets of heroin. *Id.* at p. 90.

Davis agreed to talk with officers. *Id.* at p. 91. He told them that there might be more narcotics at his apartment and agreed to take them there. *Id.* at pp. 91-92. When they arrived at Davis’ residence, Ference and other officers knocked on the door which was answered by Obitz.

⁹Officer Ference testified that it would be common for officers to do a buy or a buy-bust where they request heroin but actually receive fentanyl. He explained that the narcotics market has changed in the years that he has been an officer. He testified that when he first started doing drug work, the laboratory results would mostly be heroin or heroin cut with another agent. He testified that now, the drugs are almost purely fentanyl because it is cheaper and gives a similar and effective high. *Id.* at p. 89.

Id. at p. 92. Both Davis and Obitz agreed that officers could search the residence. *Id.* at p. 92. The officer testified that seconds after entering the apartment, they saw Defendant sitting at the kitchen table. *Id.* at p. 93. The table had four seats around it and was not large. *Id.* at p. 94. The officer saw a box containing heroin packets and a box that was found to contain a scale on the table in front of Defendant. *Id.* at pp. 93, 108. There was a blender with a white powdered substance near his feet. *Id.* at p. 93. The officer testified that drug dealers often use a blender to mix the drug with a cutting agent such as a workout supplement or baby formula to maximize their product and sell more of it. *Id.* at p. 105. The drugs on the table in front of Defendant were packaged in seventeen bundles, or a total of 170 bags. *Id.* at p. 94. The items were collected as evidence and Defendant was placed under arrest. *Id.* at p. 94.

Officers testified that Defendant was searched incident to arrest and officers found one bag of marijuana and one bag of crack cocaine in addition to approximately \$500.00 in U.S. currency on his person. *Id.* at pp. 95, 100.¹⁰ Obitz was also arrested and found with approximately 20 bags of heroin but no cash. *Id.* at p. 94.¹¹ After searching the house, officers found paraphernalia and packaging materials throughout the house. *Id.* at p. 96. The officer testified that they also found a black backpack with the word PUMA on the side of it. *Id.* at pp. 98-99. He specifically described each type of paraphernalia found throughout the house, including finding a box of new empty packets marked “Blu Boy” with a picture of a small blue boy on them in a cabinet.

¹⁰Later on cross-examination, Officer Ference said he did not know the exact location the cocaine was located. *Id.* at p. 121.

¹¹Officer Ference testified that Obitz was arrested the following day.

Id. at p. 103. The officer further testified that the 170 packets of fentanyl found on the kitchen table in front of Defendant were packaged in the same bags containing a picture of a blue boy. *Id.* at p. 111. The officer testified that all of the evidence was sent to the lab for testing. *Id.* at pp. 111-12. Officer Ference also said they found a handgun in the bedroom which had the serial number removed. *Id.* at p. 112.

Detective James Conmy (“Conmy”), who has been employed with the WBPD for fourteen years, also testified on behalf of the Commonwealth. *Id.* at p. 143. Detective Conmy was admitted without objection as an expert in the field of drug trafficking investigations to offer an opinion regarding possession with intent to deliver a controlled substance versus possession for personal use. *Id.* at p. 146. The detective testified that he reviewed evidence in the instant matter and prepared a report of his findings. *Id.* at p. 147. In forming his opinion, he found several factors indicating that Defendant possessed the controlled substances with the intention of delivering or dealing them rather than for personal use. *Id.* at p. 148.

The detective said that Defendant was in possession of distributable amounts of fentanyl packets and estimated the street value of the fentanyl in his possession at between \$850 and \$1,360. *Id.* at p. 148. He said a user tends to have far less in their possession due to the highly addictive nature of the drug. *Id.* at p. 148. Conmy further testified that the fact Defendant had \$526 in cash when he was arrested is consistent with the fact that drug dealing is primarily a cash business and it is common for people involved in narcotics trafficking to carry hundreds of dollars of cash. *Id.* a p. 151. He also

testified that in his experience it would be very rare to find an addict in possession of any significant amount of cash because they immediately spend it to restock their supply. *Id.* at p. 152. Conmy said that it also would be very common to find a Magic Bullet blender in a location where heroin or fentanyl is being cut up and packaged for sale. *Id.* at p. 153. Detective Conmy explained that in his experience, an addict usually buys their product from someone else and that it would be rare for an addict to make their own product. *Id.* at p. 153. He said when the Magic Bullet is used, heroin and fentanyl are usually cut with other ingredients such as baking soda, talcum powder or powdered milk to increase the amount and the profit. *Id.* at p. 153. He said that the heroin would be cut, mixed and then scooped with a small spoon to pack the drugs into a bag which would then be packaged for sale. *Id.* at p. 153. The digital scale would be used to weigh the bags and then ten bags would be wrapped in a rubber band to market as bundles. *Id.* at p. 152. He testified that in his opinion, the quantity of drugs, the firearm, the cash, and the type of paraphernalia in this case are consistent with possession with an intent to deliver rather than possession for personal use. *Id.* at p. 153. He said his opinion would not change even if no firearm had been discovered. *Id.* at p. 154. He also testified that he offered this opinion within a reasonable degree of certainty in the field of drug trafficking investigations and possession with intent to deliver. *Id.* at p. 155.

During the trial, the Commonwealth and Defendant entered into a stipulation with regard to the items entered into evidence as Commonwealth Exhibit Number 11; specifically, the fentanyl, crack cocaine and marijuana. *Id.* at p. 142. All evidence in this matter was secured

at the WBPd and was transported to the Pennsylvania State Police Wyoming Regional Laboratory for the analysis of the drugs. The parties agreed that the laboratory possessed the proper certificates to identify controlled substances and determine their weights. It was further agreed that the evidence was tested by Jennifer Libus, a Forensic Scientist 2 at the laboratory, who possessed the requisite training, experience and certificates to perform tests on controlled substances. It was stipulated that the 171 glassine packets of powder weighed 2.7 grams plus or minus .02 grams of fentanyl. It was also stipulated that the tests on item 2.3, described as a Ziploc bag containing a chunky substance, determined that the evidence weighed .21 grams plus or minus .01 grams of cocaine. It was further stipulated that the evidence was securely stored in the evidence locker at the WBPd where it remained until the time of trial. Jennifer Libus' lab report is attached to the stipulation. The stipulation was signed by Defendant and his counsel, was read into evidence by the deputy district attorney and was entered into evidence without objection as Commonwealth Exhibit Number 12. *Id.* at p. 142. The court instructed the jury that because the parties had entered into a stipulation, the jury could regard those facts as proven. *Id.* at p. 142.

II. Legal Analysis

In his Statement, Defendant raises three allegations of error:

1. Whether the Commonwealth proved by sufficient evidence that the Defendant was guilty of Possession of Controlled Substance where there was no evidence proving that Defendant was ever in possession of cocaine.

2. Whether the Commonwealth proved by sufficient evidence that the Defendant was guilty of PWID where Defendant contends that because he was acquitted of the lesser included offense, Possession of Controlled Substance (Fentanyl/Heroin), his conviction for PWID (Fentanyl/Heroin) should have been overturned.

3. Whether the trial court abused its discretion or committed an error of law in sentencing Defendant in applying an incorrect Offense Gravity Score of 10 due to the weight of a controlled substance (2.7 grams of Fentanyl) that was the subject of Defendant's conviction for PWID[,] *See* *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Alleyne v. United States*, 570 U.S. 99 (2013), where it was held that since the weight of the controlled substance at issue increased the standard range, it is an element of the offense that must be found by the jury or part of its verdict.

We will respond to the allegations of error in order.

A. *Sufficiency*

The standard we apply in reviewing the sufficiency of the evidence is whether, viewing all the evidence admitted at trial in the light most favorable to the Commonwealth as verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. *Commonwealth v. Evans*, 901 A.2d 528, 532 (Pa. Super. 2006). In addition, the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. *Id.* Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no

probability of fact may be drawn from the combined circumstances. *Id.*

The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. *Commonwealth v. Lehman*, 820 A.2d 766, 772 (Pa. Super. 2003). If the fact-finder reasonably could have determined from the evidence adduced that all of the necessary elements of the crime were established, then that evidence will be deemed to support the verdict. *Commonwealth v. Wood*, 637 A.2d 1335, 1343 (Pa. Super. 1994). The standard applies equally to cases in which the evidence is circumstantial, rather than direct, as long as the evidence as a whole links the accused to the crime charged beyond a reasonable doubt. *Commonwealth v. Wright*, 865 A.2d 894, 910 (Pa. Super. 2004), (*citing Commonwealth v. Hardcastle*, 546 A.2d 1101, 1105 (Pa. 1988)).

1. Sufficiency—possession of controlled substance

Defendant claims that there was no evidence proving that he was ever in possession of cocaine. Possession of cocaine, a controlled substance, is prohibited by Section 780-113(a)(16) of the Controlled Substance, Drug, Device and Cosmetic Act¹² (“the act”) as follows:

Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

35 P.S. §780-113(a)(16).

¹²35 P.S. §§780-101-780-144, repealed in parts not relevant to this appeal.

The jury convicted Defendant of intentional possession of cocaine, which requires that the Commonwealth prove that Defendant possessed the contraband. As defined by the Crimes Code, the act of “possession” occurs “if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.” 18 Pa. C.S. §301(c).

Here, the Commonwealth successfully proved that the substance in question was indeed cocaine. Officer Ference was shown what was marked as Commonwealth Exhibit 11, which consisted of bags of different controlled substances recovered from the scene. The officer testified that when he collected the evidence, he documented it by marking the name of the drugs discovered directly on the bags, including the cocaine. Further, the Commonwealth and Defendant entered into a stipulation with regard to the crack cocaine at Commonwealth Exhibit Number 11, agreeing that the evidence was in fact .21 grams plus or minus .01 grams of cocaine.

In addition, the Commonwealth proved that Defendant possessed the cocaine.

At trial, the assistant district attorney questioned Officer Ference as follows:

Q: Were there any other drugs located *on the Defendant* that day?

A: That day we located an amount of marijuana and I believe also an amount of if I’m not mistaken crack cocaine.

N.T. Jury Trial, 10/19/21, at p. 110 (emphasis supplied).

On cross-examination, Officer Ference was asked about the location of various items recovered by police

on the date in question. N.T. Jury Trial, 10/19/21, at p. 121. When asked where he found the cocaine, the officer responded, “I don’t recall the location of the cocaine.” *Id.* at p. 121. There were no further questions regarding the location of the cocaine.

The mere existence of conflicts in the testimony does not mean that the fact-finder is required to resort to speculation which would cause the result to be based on conjecture or guesswork. *Commonwealth v. Duncan*, 373 A.2d 1051, 1054 (Pa. 1977). “It is true, of course, that a conviction cannot properly be sustained if it be based upon testimony of a witness which is so contradictory on the essential issues as to make the verdict obviously the result of conjecture or guess. However, the mere fact that there are some inconsistencies is not alone sufficient to destroy the Commonwealth’s case.” *Commonwealth v. Williams*, 434 A.2d 717, 719 (Pa. Super. 1981) (internal citations omitted). It is the function of the fact-finder to reconcile conflicting testimony and questions of credibility. *Commonwealth v. Fuentes*, 272 A.3d 511, 516 (Pa. Super. 2022). In addition, the trier of fact, while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence. *Commonwealth v. Bullick*, 830 A.2d 998, 1000 (Pa. Super. 2003).

Despite the fact that the testimony might appear contradictory, Officer Ference here testified that he believed crack cocaine was found “on the Defendant” and the parties stipulated that the substance recovered at the scene was cocaine. Viewing all of the evidence in the light most favorable to the Commonwealth, the jury could reasonably have determined that all of the necessary elements of the crime were established.

2. Sufficiency—possession with intent to deliver controlled substance

a. Sufficiency of PWID Conviction in General

In addition to prohibiting a person from possessing a controlled substance, the act also precludes an unregistered person from possessing a controlled substance with the intent to deliver it. Specifically, the act proscribes:

the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

35 P.S. §780-113(a)(30).

To convict a defendant of PWID the Commonwealth must prove beyond a reasonable doubt that “on a specific occasion the defendant possessed a controlled substance he was not licensed to possess and that he did so under circumstances demonstrating an intent to deliver that substance.” *Commonwealth v. Griffin*, 804 A.2d 1, 15 (Pa. Super. 2002), citing *Commonwealth v. Aguado*, 760 A.2d 1181, 1185 (Pa. Super. 2000) (en banc). In determining whether there is sufficient evidence to convict defendant of PWID, all facts and circumstances surrounding the possession are relevant, and the Commonwealth may establish the essential elements of the crime entirely by circumstantial evidence. *Commonwealth v. Bricker*, 882 A.2d 1008, 1015 (Pa. Super. 2008).

The Commonwealth may meet its burden of demonstrating that the defendant possessed the controlled

substances by showing actual, constructive, or joint constructive possession of the controlled substances. *Commonwealth v. Roberts*, 133 A.3d 759, 767 (Pa. Super. 2016), quoting *Commonwealth v. Vargas*, 108 A.3d 858, 868 (Pa. Super. 2014) (*en banc*). Because the fentanyl was not found on Defendant's person in the instant case, the Commonwealth was required to establish that he had constructive possession of the items seized.

Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious dominion. We subsequently defined conscious dominion as the power to control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances.

Commonwealth v. Hopkins, 67 A.3d 817, 820 (Pa. Super. 2013), quoting *Commonwealth v. Brown*, 48 A.3d 426, 430 (Pa. Super. 2012), *appeal denied*, 63 A.3d 1243 (Pa. 2013).

“Constructive possession requires proof of the ability to exercise conscious dominion over the substance, the power to control the contraband, and the intent to exercise such control.” *Commonwealth v. Bricker*, 882 A.2d 1008, 1014 (Pa. Super. 2005). Mere presence is not enough to establish constructive possession. *See Commonwealth v. Armstead*, 305 A.2d 1, 2 (Pa. 1973); *Commonwealth v. Juliano*, 490 A.2d 891, 894 (Pa. Super. 1985). In the instant case, there was evidence showing more than Defendant's mere presence at the scene.

Both Obitz and Davis testified that Defendant provided them with fentanyl to use and to sell. They said that he came to their home on an almost daily basis to package narcotics with the intent to sell them. Evidence was presented that when officers entered the home where Defendant was apprehended, he was seated at a table which held a scale and a box full of 171 fentanyl packets with a blender at his feet. When viewed in their totality, the facts and circumstances clearly support the finding that Defendant had the ability, power, and intent to exercise control over the fentanyl.

The Commonwealth also proved that Defendant possessed the controlled substance with the specific intent of delivering it to another person. Defendant's intent may be inferred from the totality of the circumstances. *Bricker*, supra at 882 A.2d 1008, 1015 (Pa. Super. 2005). Initially, we note that 171 fentanyl packets is a large quantity of fentanyl, indicating an intent to deliver. Even if the quantity were not dispositive as to intent, there were other factors present here. *Commonwealth v. Ratsamy*, 934 A.2d 1233, 1238 (Pa. 2007), quoting *Commonwealth v. Jackson*, 45 A.2d 1366, 1368 (Pa. Super. 1994). Factors which may be relevant in determining whether the drugs were possessed with the intent to deliver include, but are not limited to, the "manner in which the controlled substance was packaged, the behavior of the Defendant, the presence of drug paraphernalia, and large sums of cash[.]" *Id.* at 1238.

Here, the fentanyl recovered from the scene was individually packaged in clear bags in accordance with the way drugs are commonly packaged and sold. In addition, Defendant was found with \$526.00 in cash, a large amount of money. A box of empty clear bags and a scale were also

found on the scene. A blender with a white powdered substance in it was recovered by the Defendant's feet. The fact that the blender was near the fentanyl was consistent with delivery and not with personal use in that both Officer Ference and Detective Conmy testified that a person dealing fentanyl often cuts the product with baby powder or another substance to increase profit. Obitz and Davis testified that the Defendant came to their home almost daily to prepare the drugs for sale and that he gave them drugs in exchange for being able to use their home. In addition, both Davis and Obitz delivered drugs to customers on behalf of Defendant and both testified that they had never seen Defendant use either heroin or fentanyl.

“The final factor to be considered is expert testimony. Expert opinion testimony is admissible concerning whether the facts surrounding the possession of controlled substances are consistent with an intent to deliver rather than with an intent to possess it for personal use.” *Ratsamy*, supra at 1238, quoting *Commonwealth v. Jackson*, 45 A.2d 1366, 1368 (Pa. Super. 1994). Detective Conmy testified in detail that he considered all available factors before forming his expert opinion that Defendant possessed the controlled substances with the intent to distribute them. In our judgment, the totality of evidence on this point is ample.

The defense argued that the testimony of Obitz and Davis was not believable, both because they were drug users and because the more serious of their charges in the instant matter were withdrawn after they pled guilty to simple possession. The defense was permitted to cross-examine both witnesses on those issues and to make that argument to the jury. Evidently, the jury accepted the testimony of the prosecution's witnesses in

reaching their verdict. Issues of credibility are left to the finder of fact, who is free to accept all, part, or none of a witness's testimony. *Commonwealth v. Andruliewicz*, 911 A.2d 162, 164 (Pa. Super. 2006). Questions of doubt are for the finder of fact, unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the totality of the circumstances. *Id.* Only when the evidence offered to support the verdict is in contradiction to the physical facts, or in contravention to human experience and the laws of nature, can the evidence be considered insufficient as a matter of law. *Commonwealth v. Widmer*, 744 A.2d 745, 751 (Pa. 2000).

In the instant case, the totality of the circumstances demonstrates that the Commonwealth proved each element of the PWID offense with sufficient evidence.

b. Sufficiency—Acquittal of Lesser Included Offense

Defendant asserts that because he was acquitted of the lesser included offense of possession, his conviction for PWID should have been overturned. Although Defendant is correct in stating that possession is a lesser included offense of PWID, his argument is flawed. Defendant bases his allegation on the double jeopardy principles set forth at 18 Pa. C.S.A. §109. (*See* Defendant's 1/31/22 Motion for Reconsideration of Sentence and Post-Trial Motions, p. 4 (unpaginated).)

The statute provides in relevant part:

When a prosecution is for a violation of the same provision of the statutes and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a

finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

18 Pa. C.S.A. §109.

Defendant acknowledges that this rule is in reference to retrial after a hung jury, but posits that based on the rule, the acquittal of a lesser included offense should still act as double jeopardy against the more serious offense. As Defendant here was not tried more than once, there was no “former prosecution” and Rule 109 does not apply in the instant case.

Longstanding precedent dictates that inconsistent verdicts are allowable. *Commonwealth v. States*, 938 A.2d 1016, 1025 (Pa. 2007). The Superior Court explained the reasoning as follows:

We note first that inconsistent verdicts, while often perplexing, are not considered mistakes and do not constitute a basis for reversal. Consistency in verdicts in criminal cases is not necessary. When an acquittal on one count in an indictment is inconsistent with a conviction on a second count, the court looks upon the acquittal as no more than the jury’s assumption of a power which they had no right to exercise, but to which they were disposed through lenity. Thus, this Court will not disturb guilty verdicts on the basis of apparent inconsistencies as long as there is evidence to support the verdict.

Commonwealth v. Burton, 234 A.3d 824, 829 (Pa. Super. 2020), *appeal denied*, 252 A.3d 234 (Pa. 2021), (quoting *Commonwealth v. Petteway*, 847 A.2d at 713, 718 (Pa. Super. 2004)).

The court in *Burton* continued its explanation by specifically addressing the very issue Defendant raises: “*The rule that inconsistent verdicts do not constitute reversible error applies even where the acquitted offense is a lesser included offense of the charge for which a defendant is found guilty.*” *Id.* (emphasis supplied).

Because there was sufficient evidence to support Defendant’s conviction for PWID as discussed above, the inconsistent verdict resulting in his acquittal on the lesser included offense of possession should not be overturned.

B. Alleyne/Apprendi Allegation of Sentencing Error

Finally, Defendant alleges that this court abused its discretion or committed an error of law when sentencing Defendant by applying an incorrect Offense Gravity Score (“OGS”) of 10 due to the weight of a controlled substance (2.7 grams of fentanyl) that was the subject of Defendant’s conviction for PWID. Defendant cites to *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Alleyne v. United States*, 570 U.S. 99 (2013) in arguing that since the weight of the fentanyl increased the standard range, it is an element of the offense that must be found by the jury. A claim that the sentencing court used an incorrect OGS is a challenge to the discretionary aspects of sentence. *Commonwealth v. Williams*, 151 A.3d 621, 625 (Pa. Super. 2016). However, issues pertaining to *Alleyne* and *Apprendi* go to the legality of the sentence. *Commonwealth v. Lawrence*, 99 A.3d 116, 123 (Pa. Super. 2014).

At sentencing, Defendant argued that he was being sentenced in the wrong OGS range in that the jury had not determined a weight for the fentanyl involved in

the PWID charge. The OGS is “an assignment in the sentencing guidelines reflecting the seriousness of a conviction offense. The OGS assigned to the most serious offense in the case is used to determine the risk factors and associated values to be included in the risk scales.” 204 Pa. Code §305.1. Defendant claims that he should be sentenced in the range for possession with intent for no weight rather than the weight assigned in this matter for sentencing purposes.

The following exchange took place at the sentencing hearing with regard to the Commonwealth’s request to amend the presentence investigation report (“PSI”):

ADA: Your Honor, as far as the corrections goes, in reviewing the presentence investigation I noticed that adult probation and parole calculated an offense gravity score for the offense of possession with intent to deliver fentanyl as an offense gravity of ten—excuse me, of nine, Your Honor.

It’s the Commonwealth’s position that the offense gravity score should be ten. The guidelines in effect at the time of this crime, back in 2019, indicated that a weight of fentanyl between one and ten grams, carrying an offense gravity score of ten, not nine. During the trial in this case the defense and the Commonwealth stipulated to a lab report indicating that the only fentanyl alleged to be involved in this case as far as that count goes was to 2.7 grams of fentanyl.

THE COURT: And that would make the standard range what?

ADA: Your Honor, that would increase the standard range. Currently it’s listed as 48 to 60 months. It would be 60 to 72 months with a prior record score of five as indicated.

THE COURT: Do you want to be heard on that Mr. Saurman?

DEFENSE: Yes, your Honor ... I do not believe that a stipulation to a lab result automatically allows the imposition of a higher weight. I think there's certainly case law—if we are going to increase someone's sentence based on something like that, it has to be found (sic) by the jury.

The jury was not, did not make a finding of weight. They merely found possession with intent. So under the laws that exist (sic) we are at a nine, we are not at a ten.

ADA: Your Honor, may I respond to that?

THE COURT: Sure.

ADA: In my understanding of a lean (sic), that applies if its taking the discretion from the Court at sentencing as a mandatory minimum sentence or when a maximum is increased. In this case Your Honor, the maximum stays the same. There's no mandatory minimum because the Court still has the discretionary aspect of sentencing.

MR. SAURMAN: Your Honor, I read it differently. And I can certainly indicate that I've had multiple trials for possession with intent and/or theft or anything like that, where there is a breakout on the jury sheet that indicates the weight and/or value to allow the jury to make that determination so that standard is met.

N.T. Sentencing Hearing, 1/20/22, at pp. 2-4.

In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Supreme Court of the United States held that other than the fact of a prior conviction, any fact that in-

creases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proven beyond a reasonable doubt. *Id.* at 490. In *Apprendi*, the court did not consider a conviction for possession of fentanyl but instead reviewed a defendant's conviction for possession of a firearm for unlawful purpose and unlawful possession of prohibited weapon. The New Jersey hate crime statute in *Apprendi* allowed the judge to make a factual determination based on the preponderance of the evidence. The judge's determination increased the maximum sentence of the defendant, who had been convicted of the second-degree offense of unlawful possession of a prohibited weapon, to a punishment identical to that imposed for a first-degree crime. *Id.* at 468, 491. The Supreme Court held that such factual determination needed to be made by the jury on the basis of proof beyond a reasonable doubt. *Id.* at 490.

In *Alleyne v. United States*, 570 U.S. 99 (2013), the United States Supreme Court held that any fact that increases the mandatory minimum sentence for a crime is an element of the crime that must be submitted to the jury. *Alleyne*, supra at 108.

Neither *Apprendi* nor *Alleyne* is applicable to this case. The prescribed statutory maximum penalty for the Defendant's conviction of Possession with Intent to Deliver a Controlled Substance is thirty (30) years of incarceration and/or a \$500,000.00 fine.

The Controlled Substance, Drug, Device, and Cosmetic Act provides in pertinent part:

§780-113. Prohibited acts; penalties

(f) Any person who violates clause (12), (14) or (30) of subsection (a) with respect to:

(1) A controlled substance or counterfeit substance classified in Schedule I or II^[13] which is a narcotic drug, is guilty of a felony and upon conviction thereof shall be sentenced to imprisonment not exceeding fifteen years, or to pay a fine not exceeding two hundred fifty thousand dollars (\$250,000), or both or such larger amount as is sufficient to exhaust the assets utilized in and the profits obtained from the illegal activity.

35 P.S. §780-113.

Because the instant offense is Defendant's second offense under Section §780-113(a)(30), Section 780-115 of Title 35 also applies. Section 780-115, a recidivist statute for drug offenders, is a discretionary sentencing enhancement statute. Specifically, the statute provides:

§ 780-115. Second or subsequent offense

(a) Any person convicted of a second or subsequent offense under clause (30) of subsection (a) of section 13 of this act or of a similar offense under any statute of the United States or of any state may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to the commission of the second offense, the offender has at any time been convicted under clause (30) of

¹³35 P.S. §780-104.

subsection (a) of section 13 of this act or of a similar offense under any statute of the United States or of any state relating to controlled substances.

35 P.S. §780-115.

As a result, the weight of the fentanyl here does not increase the maximum penalty because the maximum penalty for the offense is not dependent on the weight. The maximum penalty is provided for in the statute and is a result of Defendant's prior conviction. The Superior Court specifically held that §115, allowing for enhancement of sentence upon finding of prior conviction, did not violate *Apprendi's* requirement that any fact that increases the penalty for a crime beyond the prescribed statutory maximum had to be submitted to the jury because *Apprendi* explicitly exempted the fact of prior conviction from the requirement. *Commonwealth v. Griffin*, 804 A.2d 1, 18 (Pa. Super.2002), *appeal denied*, 868 A.2d 1198 (Pa. 2005), *cert. denied*, 54 U.S. 1148 (2005). Further, the weight of the fentanyl does not implicate a mandatory minimum sentence as forbidden by *Alleyne*. This court was able to impose a sentence within its discretion and issued a standard range sentence after considering all of the obligatory factors, statutory requirements and the sentencing guidelines.

For all of the foregoing reasons, this court respectfully submits that Defendant's appeal is without merit and that Defendant's judgment of sentence should be undisturbed..

THE LUZERNE LEGAL REGISTER

Notice is hereby given to all persons concerned that accountants in the following estates have filed their accounts in the Office of the Register of Wills and Clerk of the Orphans' Court of Luzerne County and unless objections are filed thereto, said accounts will be audited and confirmed by the Orphans' Court Division of the Court of Common Pleas of Luzerne County at 9:30 A.M. on January 2, 2024 at Luzerne County Courthouse, 200 North River Street, Wilkes-Barre, PA.

NO.	NAME OF ESTATE	ACCOUNTANT	FIDUCIARY CAPACITY
1.	Mark Matthew Bogdon	Marlene T. Deal	Administratrix
2.	John P. Brennan	Thomas P. Brennan	Executor
3.	Robert Evans Lindquist, Jr.	Robert A. Bull	Executor

The Luzerne County Orphans' Court, located at Luzerne County Courthouse, 200 North River Street, Wilkes-Barre, PA is a facility accessible to persons with disabilities. Please notify a member of the staff of the Honorable Tarah C. Toohil, Judge at (570) 830-5122 if special accommodations are required.

NOTICE

It is strongly recommended that all attorneys having a matter on an Audit List of the Orphans' Court be present at the call of the Audit List. Any attorney seeking to be excused from attending the call of the Audit List must contact the staff in Judge Toohil's Chambers in advance of the call date in order to obtain permission from the Judge to be absent.

Dec. 1, 8

THE LUZERNE LEGAL REGISTER

DECEDENTS' ESTATES

Notice is hereby given that letters testamentary or of administration have been granted in the following estates. All persons indebted to said estates are required to make payment and those having claims or demands to present the same without delay to the administrators or executors named or their attorneys

FIRST PUBLICATION

ESTATE OF FREDERICK M. BANKES, late of Kingston Twp. (died October 12, 2023), David J. Bankes, Executor; Hourigan, Kluger & Quinn, P.C., 600 Third Ave., Kingston, PA 18704

ESTATE OF THOMAS V. CHEWEY, late of Larksville (died October 31, 2023), Elliot B. Edley, Executor; Elliot B. Edley, Esquire, 37 N. River Street, Wilkes-Barre, PA 18702

ESTATE OF PATRICIA HEINDEL a/k/a Patricia M. Heindel, late of Kingston (died October 10, 2023), Alice Leigh Cortazzo, Executrix; Lawrence A. Durkin, Esquire, Durkin MacDonald, LLC, 536 East Drinker St., Dunmore, PA 18512

ESTATE OF MARY JARRETT, late of Plymouth (died October 1, 2023), Gerald R. Jarrett, Jr., Administrator; Job T. Stepanski, Esquire, Fellerman & Ciarimboli, 183 Market Street, Suite 200, Kingston, PA 18704

ESTATE OF ROWENA M. KEMMERER, late of Nescopeck (died October 14, 2023), Chris A. Kocher, Executor; Luschas, Naparsteck & Crane, LLP, 120 W. Main Street, Bloomsburg, PA 17815

ESTATE OF MARY ROSE KOVAL a/k/a Mary R. Rauscher Koval, late of Wilkes-Barre (died November 8, 2023), Marie Koval Nardone,

Executrix; Robert V. Davidson, Esquire, New Bridge Center, 480 Pierce St., Suite 216, Kingston, PA 18704

ESTATE OF CAROL LATONA, late of Pittston (died July 23, 2020), Laura Zdancewicz, Administratrix; Caputo & Mariotti, P.C., 730 Main St., Moosic, PA 18507

ESTATE OF ANTHONY JOHN MALESKY, JR., late of Plymouth (died September 18, 2023), Joan M. Malesky, 432 East Main Street, Plymouth, PA 18651, Administratrix

ESTATE OF SCOTT R. ROBERTS a/k/a Scott Robert Roberts a/k/a Scott Roberts, late of West Hazleton (died November 1, 2023), Ana N. Diaz, Executrix; Frank J. Skokoski, Esquire, Skokoski & DeCosmo, P.C., 165 Susquehanna Boulevard, West Hazleton, PA 18202

ESTATE OF HELEN V. SIMON, late of Wright Twp. (died May 17, 2016), Michael P. Simon, Jr., Executor; Robert A. Gonos, Esquire, 88 N. Franklin St., Second Floor, Wilkes-Barre, PA 18701

ESTATE OF MARY M. VISINTAINER, late of Butler Township (died October 12, 2023), Karen V. Cattabiani, Executrix; The Seach Law Offices, 466 State Route 93, Sugarloaf, PA 18249

SECOND PUBLICATION

ESTATE OF ELEANOR DORMIO, late of Trucksville (died October 3, 2022), Lynn Smith, Executrix; Joseph Kosierowski, Esquire, 400 Broad St., Milford, PA 18337

ESTATE OF GEORGE M. KOSTELNICK, JR., late of Wilkes-Barre (died December 21, 2021), Susan Kostelnick, Administratrix; Robert S. Betnar, Esquire, 126 South Main Street, Pittston, PA 18640

THE LUZERNE LEGAL REGISTER

ESTATE OF LINFORD W. KUEHN, late of Butler Township (died October 19, 2023), Nancy L. Schoch, Executrix; Jordan H. Pecile, Esquire, 1201A N. Church St., Suite 220, Hazle Township, PA 18202

ESTATE OF THOMAS MICHAELS, late of Mountain Top (died July 29, 2023), Joseph Michaels, Administrator; Alexander B. Russin, Esquire, 1516 Wyoming Ave., Forty Fort, PA 18704

ESTATE OF ESTHER MIRRO, late of West Pittston (died September 14, 2023), Anna Marie Sernak, Executrix; Susan Sernak-Martinelli, Esquire, Law Office of Susan Sernak-Martinelli, 199 North Church St., Hazleton, PA 18201

ESTATE OF WILLIAM LAWRENCE NORMAN, late of Hazleton (died April 18, 2017), Craig W. Norman, Administrator; Gregory J. Pavlovitz, Esquire, Pavlovitz & Fackenthal, LLC, 408 W. Market Street, 1st Floor, Pottsville, PA 17901

ESTATE OF MARY PETOCK, late of Hazleton (died October 2, 2023), Carol Gortva, Administratrix; Richard J. Marusak, Esquire, Ustynoski & Marusak, LLC, 101 West Broad St., Suite 205, Hazleton, PA 18201

ESTATE OF DONALD JOHN PRICE a/k/a Donald J. Price, late of Nanticoke (died October 28, 2023), Donald W. Price, Administrator; David W. Saba, Esquire, 345 Market St., Kingston, PA 18704

ESTATE OF SHARON M. SAMUELS, late of Plymouth (died September 24, 2023), Joel Samuels, Administrator; Alexander B. Russin, Esquire, 1516 Wyoming Ave., Forty Fort, PA 18704

ESTATE OF ANTHONY R. STANZIO-
LA, late of Freeland (died September 24, 2023), Angel Colasurdo, Executrix; Donald G. Karpowich, Esquire, 85 Drasher Rd., Drums, PA 18222

ESTATE OF ROBERT A. STELLA, late of Wilkes-Barre (died August 18, 2023), Robert M. Stella, Executor; Rosenn, Jenkins & Greenwald, LLP, 1065 Hwy. 315, Suite 200, Wilkes-Barre, PA 18702

ESTATE OF RASJON H. WALTERS, late of Wilkes-Barre (died October 10, 2023), Deanne A. Walters, Administratrix; Chad J. Sweigart, Esquire, Dyller & Solomon, LLC, 88 North Franklin Street, Wilkes-Barre, PA 18701

ESTATE OF BARRY S. WILLIAMS, late of Hanover Twp. (died September 25, 2023), Vic Northrup, Administrator; Patrick J. Aregood, Esquire, 1218 South Main St., Wilkes-Barre, PA 18706

ESTATE OF MAUREEN J. YORK, late of Duryea (died October 18, 2023), Kristin Y. Rusincovitch, Executrix; Jane M. Carlonas, Esquire, 1212 S. Abington Road, Clarks Summit, PA 18411

ESTATE OF MARIE ELIZABETH ZUPA, late of Wilkes-Barre (died October 9, 2023), Marguerite Klubec, Executrix; John F. Kulick, Esquire, Kulick Law Firm LLC, 1701 Wyoming Avenue, Suite 2, Exeter, PA 18643

THIRD PUBLICATION

ESTATE OF MARY ALEXIOU, late of Wright Township (died September 14, 2023), Stella Deakos, Executrix; Harry P. Mattern, Esquire, 777 Wyoming Ave., Suite 5, Kingston, PA 18704

ESTATE OF ELIZABETH ANN CHRISTINO a/k/a Elizabeth A. Christi-

THE LUZERNE LEGAL REGISTER

- no, late of Butler Township (died May 5, 2021), Angela Marcantognini, Administratrix; The Seach Law Offices, 466 State Route 93, Sugarloaf, PA 18249
- ESTATE OF ROBERT CHARLES CIGARSKI, late of Jackson Township (died September 6, 2023), Robert Cigarski and Robin Engener, Administrators; Michael J. Bendick, Esquire, P.O. Box 1733, Shavertown, PA 18708
- ESTATE OF PAULINE ROSE DELCONTE a/k/a Pauline Delconte, late of Pittston Township (died October 8, 2023), Debra McCulloch, Executrix; Saporito, Falcone & Watt, 48 South Main St., Pittston, PA 18640
- ESTATE OF JOAN EILEEN DILLON a/k/a Joan Dillon, late of Ross Township (died October 5, 2023), John Dillon, Jr., Executor; Rossen, Jenkins & Greenwald, LLP, 1065 Hwy. 315, Suite 200, Wilkes-Barre, PA 18702
- ESTATE MARIE FALVELLO a/k/a Marie C. Falvello, late of Hazleton (died September 19, 2023), Nina J. Falvello, Executrix; Conrad A. Falvello, Esquire, The Falvello Law Firm, P.C., 641 State Route 93, Sugarloaf, PA 18249
- ESTATE REGINA FERENCE a/k/a Victoria Regina C. FERENCE, late of Luzerne (died October 18, 2023), Lawrence C. Coolick and Karen M. Coolick, Co-Executors; Jonathan A. Spohrer, Esquire, 279 Pierce St., Kingston, PA 18704
- ESTATE OF RICHARD A. KERR a/k/a Richard Kerr, late of Wilkes-Barre (died September 4, 2023), Kathleen Kerr, Administratrix; Hiscox & Musto, 400 Third Ave., Suite 201, Kingston, PA 18704
- ESTATE OF MARK W. KINCHELOE, late of Rice Township (died April 25, 2023), Margaret F. Kincheleo, Administratrix; Robert A. Gonos, Esquire, 88 N. Franklin Street, 2nd Floor, Wilkes-Barre, PA 18701
- ESTATE OF RICHARD KRAYNAK, late of Larksville (died October 3, 2023), Kimberly Kraynak Pardoe, Executrix; Michael J. Bendick, Esquire, P.O. Box 1733, Shavertown, PA 18708
- ESTATE OF MARY ELLEN LOBITZ, late of Butler Township (died September 24, 2023), Lisa L. Lobitz, Executrix; Joseph R. Baranko, Jr., Esquire, Slusser Law Firm, 1620 North Church Street, Suite 1, Hazleton, PA 18202
- ESTATE OF PETER G. LOFTUS, SR., late of Wilkes-Barre (died June 8, 2019), Mary Elizabeth Perron, Administratrix; Joseph A. O'Brien, Esquire, 1212 S. Abington Road, Clarks Summit, PA 18411
- ESTATE OF BARBARA MIKULKA a/k/a Barbara A. Mikulka, late of Swoyersville (died July 26, 2023), Lawrence Chokola, Administrator; Law Office of Thomas A. O'Connor, PC, 601 Wyoming Ave., Kingston, PA 18704
- ESTATE OF JAMES EDWARDS O'KANE, late of Larksville (died April 8, 2018), Judith Ann O'Kane a/k/a Judith A. O'Kane, Executrix; David E. Schwager, Esquire, 183 Market Street, Suite 100, Kingston, PA 18704-5444
- ESTATE OF GEORGE E. PAVLICK, late of Plymouth (died July 14, 2023), Marie Pavlick, Executrix; Patrick J. Aregood, Esquire, 1218 South Main St., Wilkes-Barre, PA 18706
- ESTATE OF MARY A. PICK a/k/a Mary Pick, late of Plymouth (died September 7, 2023), Linda Pick,

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Executrix; Patrick J. Aregood, Esquire, 1218 South Main St., Wilkes-Barre, PA 18706

ESTATE OF DOLORES BERNADETTE PRUTZMAN a/k/a Dolores B. Prutzman, late of Hanover Twp. (died October 8, 2023), Wilbur R. Prutzman, Executor; Koff, Mangin & Gartley, P.C., 1065 Hwy. 315, Suite 302, Wilkes-Barre, PA 18702

ESTATE OF JOEL P. QUINN a/k/a Joel Paul Quinn a/k/a Joel Quinn, late of Harveys Lake (died September 14, 2023), James Sitlinger, Executor; Robert A. Bull, Esquire, Law Offices of Bull & Bull, LLP, 106 Market Street, Berwick, PA 18603

ESTATE OF MARJORIE RODGERS a/k/a Marjorie F. Rodgers, late of Hazle Twp. (died September 2, 2023), Brian Romancheck, Administrator; Charles A. DeCosmo, Esquire, Skokoski & DeCosmo, P.C., 165 Susquehanna Blvd., West Hazleton, PA 18202

ESTATE OF JEAN C. ROMAN, late of Wright Twp. (died October 19, 2023), Brenda Lounsbury and Joan Pavlick, Executrices; Rossenn, Jenkins & Greenwald, LLP, 1065 Hwy. 315, Suite 200, Wilkes-Barre, PA 18702

ESTATE OF MICHAEL TOLODZIE-SKI, late of Nanticoke (died September 18, 2023), Christine Tolodzieski, Executrix; Bregman & Lantz, LLC, 1205 Wyoming Ave., Forty Fort, PA 18704

ESTATE OF PATRICK WALLACE, late of Sugar Notch (died September 30, 2023), Ashley Wallace, Administratrix; Patrick J. Aregood, Esquire, 1218 South Main St., Wilkes-Barre, PA 18706

ESTATE OF CHRISTINE MARLENE WYDICK a/k/a Christine M. Wydick a/k/a Christiane M. Wydick, late of Wilkes-Barre Twp. (died October 19, 2023), Sandra Dervin, Executrix; Anthony G. Ross, Esquire, Law Offices of Tony Ross, 126 South Main St., Pittston, PA 18640

ESTATE OF ROBERT M. ZELNOCK, SR. a/k/a Robert M. Zelnock a/k/a Robert Zelnock, Sr., late of Larksville (died September 21, 2023), Robert M. Zelnock, Jr., Executor; Donald P. Roberts, Esquire, Burke Vullo Reilly Roberts, 1460 Wyoming Avenue, Forty Fort, PA 18704

ESTATE OF THERESE D. ZOGBY, late of Hazleton (died October 17, 2023), Michael J. Moran and James E. Zogby, Executors; James V. Senape, Jr., Esquire, Catherine A. McGovern, Esquire, Michael B. Senape, Esquire, Senape & Associates, 612-614 Main Street, P.O. Box 179, Freeland, PA 18224-0179

NOTICE OF HEARING

IN THE COURT OF COMMON PLEAS OF LUZERNE COUNTY
CIVIL ACTION—LAW

NO. 3096 of 2022

IN CUSTODY

PETER KIROV
6130 West Flamingo Rd.
Unit 666
Las Vegas, NV 89103

Plaintiff

vs.

KIMBERY KELLY
83 Kelly Ave.
Wilkes-Barre, PA 18705

Defendant

THE LUZERNE LEGAL REGISTER

The above referenced matter has been scheduled for a hearing in connection with a Name Change Petition related to Daniel Colt Kelly. The Petitioner/Plaintiff is requesting that Daniel Colt Kelly's name be changed to Daniel Colt Kelly Kirov. The hearing in this matter is scheduled for December 11, 2023 at 9:00 A.M. in the Luzerne County Courthouse located in the Brominski Building before Judge Stephanie Salavantis. Any objections to the name change should be raised at the time of the hearing.

JAMES T. MULLIGAN, JR.,
ESQUIRE
THE MULLIGAN LAW FIRM
3703 Birney Ave.
Moosic, PA 18507
Phone: (570) 703-0269
Fax: (570) 963-8973
E-mail: jimmulliganlaw@gmail.com

Dec. 1

NOTICE

NOTICE IS HEREBY GIVEN that a Foreign Registration Statement has been filed with the PA Department of State on or about November 15, 2023 by La Brea Linehaul Inc., a foreign corporation formed under the laws of the state of New Jersey where its principal office is located at 42 Spring Hill Rd., Annandale, NJ 08801, for authority to do business in the Pennsylvania under the provisions of the Business Corporation Law of 1988, as amended. The registered office in Pennsylvania is located at 850 Sans Souci Parkway, Suite 5, Hanover Township, PA 18706.

Dec. 1

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

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

No. 202309992

Wells Fargo Bank, N.A.
Plaintiff

vs.

Holly A. Spangenberg, Unknown Heirs, Successors, Assigns and All Parties, Firms or Associations Claiming Right, Title or Interest from or under Jeffrey Spangenberg, Deceased, Jeffrey Spangenberg, Jr., solely in capacity as heir of Jeffrey Spangenberg, Deceased, Allyson Spangenberg, solely in capacity as heir of Jeffrey Spangenberg, Deceased

Defendants

NOTICE

TO: Unknown Heirs, Successors, Assigns and All Parties, Firms or Associations Claiming Right, Title or Interest from or under Jeffrey Spangenberg, Deceased

You are hereby notified that on September 26, 2023, Plaintiff, Wells Fargo Bank, N.A. filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of Luzerne County, Pennsylvania, docket to TERM, No. 202309992. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 1051 Murray Street, Forty Fort, PA 18704 whereupon

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your property would be sold by the Sheriff of Luzerne County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

North Penn Legal Services, Inc.
33 N. Main Street
Suite 200
Pittston, PA 18640
(570) 299-4100

- or -
Wilkes-Barre Law Library
Association
200 N. River St.
Rm. 23
Wilkes-Barre, PA 18711
(570) 822-6029

Dec. 1

NOTICE

NOTICE IS HEREBY GIVEN that the Articles of Incorporation—Nonprofit were filed with the Department of State of the Commonwealth of Pennsylvania, for:

HAZLETON COMMUNITY
RESOURCE CENTER, INC.

On October 17, 2023, the corporation has been incorporated under the provisions of the Pennsylvania Nonprofit Corporation Law of 1988.

The corporation was organized to provide resources and support for the local community, as well as to transact any and all lawful business for which non-profit corporations may be organized under the Pennsylvania Non-profit Corporation Law of 1988 and under section 501(c)(3) of the Internal Revenue Code.

DONALD G. KARPOWICH,
ESQUIRE

85 Drasher Road
Drums, PA 18222
(570) 788-6647

Dec. 1

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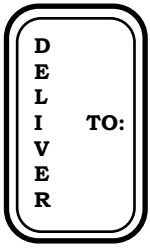
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PERIODICAL PUBLICATION

* Dated Material. Do Not Delay. Please Deliver Before Monday, December 4, 2023