

LEGAL NOTICES, cont.

SIXEAS First and final account, statement of proposed distribution and notice to the creditors of John A. Shelly, Administrator c.t.a. of the estate of Norma V. Sixeas late of Peters Township, Franklin County, Pennsylvania, deceased.

STINE First and final account, statement of proposed distribution and notice to the creditors of Robert E. Stine, executor of the Estate of Laura V. Stine late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pennsylvania
7-9-82, 7-16-82, 7-23-82, 7-30-82

COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT
OF PENNSYLVANIA
FRANKLIN COUNTY BRANCH

LEGAL NOTICES, cont.

MISCELLANEOUS DOCKET
VOLUME Y, PAGE 143

NOTICE

Notice is hereby given that on July 2, 1982, the petition of Carrie Lynn Brown, a minor, by Sandra Louise Gress, her guardian, was filed in the above-named court, praying for a decree to change the name of said minor to Carrie Lynn Gress.

The Court has fixed Monday, August 9, 1982, at 9:30 A.M., in Courtroom No. 1, as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any, they have, why the prayer of said petition should not be granted.

Graham and Graham
314 Chbg. Trust Co. Bldg.
Chambersburg, PA 17201
7-9-82, 7-14-82, 7-23-82, 7-30-82

ORDER OF COURT

June 11, 1982, the application of Fordyce Food Distributors, Plaintiff, for supplementary relief to direct the Sheriff of Franklin County to levy upon the liquor license of Valley Inn-keeper, Inc., Defendant, is denied. Costs shall be paid by the Plaintiff.

COMMONWEALTH V. DEVLIN, C. P. Franklin County Branch, No. 140 of 1978

Criminal Law - Alibi defense - Ineffective assistance of Counsel

1. In order to establish a complete alibi defense, the testimony must cover the whole time in which the crime by any possibility might have been committed.
2. Where defendant's counsel gave the district attorney improper notice of an alibi defense and defendant's alibi witnesses were not permitted to testify, counsel was not ineffective because his failure was not prejudicial to the defendant.
3. In order to establish ineffective assistance of counsel, it must appear that the lawyer's omission was arguably ineffective and that it is likely that such ineffectiveness was prejudicial to the defendant.

District Attorney

Public Defender

OPINION AND ORDER

EPPINGER, P. J., June 29, 1982:

Ronald Devlin was convicted of criminal mischief by a jury after he fired five shotgun blasts into the windows of the home of Mary Jane Kolbe located near the village of Doylesburg in Franklin County. This occurred at about 6:30 in the evening. Devlin contended at trial that he couldn't have fired the shots because from 5:45 until 6:00 he was in Blain, a village about 14 miles from the scene.

Prior to trial defendant's attorney notified the District Attorney of an alibi, but the notice was found to be defective. A second notice was also defective and defendant's alibi

THE FRANKLIN COUNTY BAR ASSOCIATION
ANNUAL SUMMER MEETING

shall be held at the Waynesboro Country Club Thursday, August 5, 1982—afternoon and evening.

Golf, tennis and swimming is available—make your own arrangements and pay green fees and tennis and pool charges directly to the Club.

CASH BAR — DINNER at 7:15

For reservations, call Denis DiLoreto at 264-2096, Mike Finucane at 264-4104, or Frank Martin at 762-3188 on or before August 2, 1982.

witnesses were not permitted to testify to his "alibi," although defendant himself did.

After the verdict, the failure of the court to permit the witnesses was cited, among other things, as an error in post trial motions. Those other matters are not in dispute here. After argument we concluded the court's ruling on the alibi witnesses was moot. In order to establish a complete alibi, the testimony must cover the whole time in which the crime by any possibility might have been committed. *Commonwealth v. Crow*, 303 Pa. 91, 100-101, 154 A.2d 283 (1931). With Blain only 14 miles away and with a half hour to travel the distance, no alibi was offered. Actually the evidence showed the defendant was in the vicinity and could have committed the crime.

The defendant was sentenced August 1, 1979. On August 8, 1979, the defendant's trial counsel was permitted to withdraw and the Public Defender was appointed to represent him. On stipulation of the Public Defender and the District Attorney, we allowed appeal bond. We said following the wording of the stipulation that the defendant's bail would continue "on the condition that a timely appeal and post-trial motion are filed." On August 10th, the Public Defender again filed motions for new trial and in arrest of judgment. These languished without either party placing the motions on the argument list until February 4, 1982. No appeal was ever filed.

Post trial motions must be filed within ten days after a finding of guilt and disposed of prior to sentencing. See Pa. R. Crim. P. 1123(1); *Commonwealth v. Middleton*, 242 Pa. Super. 421, 364 A.2d 342 (1976). Only in limited circumstances may post-trial motions be filed outside this time period; for instance, upon after discovered evidence or upon a court-granted right to file nunc pro tunc. Pa. R. Crim. P. 1123(d), (f); *Commonwealth v. Gaito*, 277 Pa. Super. 404, 419 A.2d 1208 (1980).

If we do not conclude that our's was an order allowing filing of post trial motions nunc pro tunc, we need not examine the motions. *Commonwealth v. Whiting*, 205 Pa. Super. 92, 208 A.2d 1 (1965) (refusal of a new trial is not error where motion was not filed within time prescribed by the Rules of Court). We do not believe it granted the right to file another post trial motion nunc pro tunc, but we will examine the reasons stated for a new trial.

Defendant believes he was denied his constitutional right

FIRST NATIONAL

bank and trust co.

13 West Main St.
WAYNESBORO, PA. 17268
717-762-3161



TRUST SERVICES
COMPETENT AND COMPLETE

CITIZENS *National Bank*
OF AND TRUST COMPANY

WAYNESBORO, PENNSYLVANIA
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS
POTOMAC SHOPPING CENTER — CENTER SQUARE
WAYNESBORO MALL

BAR NEWS ITEM

CARLISLE—The Dickinson School of Law will hold its third annual Tax Seminar and Workshop for accountants and lawyers on September 16 and 17 at Americana Host Inn in Harrisburg. The program will feature the "Impact of the Economic Recovery Tax Act of 1981 on Income Tax Planning for Small and Closely Held Business." The seminar will emphasize the new Accelerated Cost Recovery System and investment and rehabilitation tax credits. For more information call the Dickinson School of Law Continuing Legal Education Office at (717) 243-5529.

EDITOR'S NOTE

As you may have already surmised, if you have not been so informed, personally, by the editor, this year's bound volume is a little slow in completion. We were advised by Geo. T. Bisel Company, a number of years ago, that it would be best not to adopt a policy of issuing a bound volume each year, on or about the same day. Rather, they suggested that we decide to publish a book of such size and content as we felt was worthy of our effort. This way, each year, or thereabouts, we would come up with a volume of about the same size as before, thus creating a kind of uniformity and general attractive appearance for our publication.

This advise, we have endeavored to follow, with a result, the editor and staff believe to be among the finest of the county publications of this nature in our state. And we have always been able to publish one bound volume a calendar year.

A number of factors have slowed down the production this year, however, among them an editorial policy of economic conservatism, which we hope has not overshot its mark. As a result of this policy, we have been able to continue with our more basic policy of always publishing the weekly Court calendar, always including some Court opinion pages in each issue, as often as possible including announcements of public or Bar Association importance (free of charge), sometimes including news items, and always making certain there is enough room for our commercial and legal notice advertisements, without giving any of this a crowded appearance. We have also been able to continue using quality paper and printing, all, we hope, within the approximate ambit of our budget, as espoused at the beginning of our last fiscal year. This, despite continuing inflation and general concern over the economy, and without increase in charges to our customers.

Now, however, we are going to have to bring Volume 5 to a close, in short order, or we will have overdone the belt tightening involved. We cannot permit our expenses for Volume 5 to eat into our receipts for fiscal year 1982-83, to too great an extent, by prolonging the completion of that volume. For this reason, the editor has requested a meeting of the board of directors, to decide on exactly what page we shall stop Volume 5 and start Volume 6.

Shortly, you will be receiving notice, in an advance sheet issue, of the date of completion. We thank you for your patience thus far, in awaiting this announcement, and we trust that you will bear with us a little longer.

to effective assistance of counsel in trial counsel's failure to provide the District Attorney with sufficient notice of his alibi defense. Before a defendant is entitled to relief under a theory of ineffective assistance of trial counsel, it must appear that the lawyer's act of omission or commission was arguably ineffective and that it is likely that such ineffectiveness was prejudicial to the defendant. *Commonwealth v. Wade*, 480 Pa. 160, 389 A.2d 560 (1978) citing *Commonwealth v. Hubbard*, 472 Pa. 259, 372 A.2d 687 (1977). As earlier noted, any error committed by trial counsel in failing to provide the required alibi defense was not prejudicial to defendant.

Having concluded that defendant's second post trial motions were not timely filed and are meritless in substance, we will deny them. We further note that a timely appeal was not filed and this was a condition of granting an appeal bond. So the bond will be revoked and the defendant will be ordered to report to the Franklin County Prison to begin serving the sentence.

ORDER OF COURT

June 29, 1982, the defendant's post trial motions are denied as untimely filed and meritless and the appeal bond is revoked. The defendant is directed to report to the Franklin County Prison on July 2, 1982, at 6:00 P.M. to begin serving his sentence. Should the defendant fail to appear at that time, it is ordered that a bench warrant shall issue and the defendant shall be apprehended by the Sheriff of Franklin County and placed in the Franklin County Prison to begin serving his sentence.

COMMONWEALTH V. WEST (No. 2) C.P., Franklin County Branch, No. 422 of 1981

Criminal Law - Witnesses' Refusal to Testify - 5th Amendment Right

1. Whether a witness may invoke her 5th Amendment privilege against self-incrimination is left to the sound discretion of the trial court after consideration of all the circumstances.
2. The privilege against self-incrimination extends not only to those disclosures which in themselves establish guilt, but also to any fact which might constitute an essential link in a chain of evidence by which guilt can be established.