



Judicial Conduct Board
Commonwealth of Pennsylvania
Robert A. Graci, Chief Counsel
717-234-7911

Press Release

September 11, 2014

TO: Media/Press

FROM: Judicial Conduct Board

**SUBJECT: Dwight Shaner
Former Magisterial District Judge
2 JD 2014**

Harrisburg. Today, the Judicial Conduct Board filed a Petition for Interim Suspension against Dwight K. Shaner, a former magisterial district judge of Fayette County, seeking his suspension from any future judicial assignment or the granting of his application for senior status pending resolution of the criminal charges filed against him. Earlier today, the Office of Attorney General filed a criminal complaint against former MDJ Shaner charging him with perjury, a felony of the third degree, and obstruction of law or other governmental function, a misdemeanor of the second degree.

Board Petition is attached.

CONTACT: Robert A. Graci, Chief Counsel

For more information about the Judicial Conduct Board, please visit our website at www.jcbpa.org.

END

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Dwight Shaner	:	
Former Magisterial District Judge	:	2 JD 14
MDJ Court 14-3-06	:	
Fayette County	:	

PETITION FOR RELIEF REQUESTING INTERIM SUSPENSION

AND NOW, this 11th day of September 2014, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (hereinafter "Board"), by and through undersigned counsel files this Petition For Relief Requesting Interim Suspension pursuant to Rule 701 of the Court of Judicial Discipline Rules of Procedure and Rule 13(A) of the Board Rules of Procedure and avers the following:

1. The Pennsylvania Constitution at Article V, § 18(d)(2) provides this Court with the authority to impose interim suspension as follows:

Prior to a hearing, the court may issue an interim order directing suspension, with or without pay, of any justice, judge or justice of the peace against whom formal charges have been filed with the court by the board or against whom has been filed an indictment or information charging a felony. An interim order under this paragraph shall not be considered a final order from which an appeal may be taken.

2. From January 6, 1986, until December 31, 2013, former MDJ Dwight Shaner served as Magisterial District Judge for Magisterial District Court 14-3-06, Fayette County, Pennsylvania.
3. Former MDJ Shaner retired from commissioned judicial service on December 31, 2013.
4. Former MDJ Shaner has applied to the Supreme Court of Pennsylvania for senior status through the Administrative Office of Pennsylvania Courts (AOPC).

5. Based upon information and belief, former MDJ Shaner's application for senior status remains pending with the Supreme Court and AOPC.
6. MDJ Shaner was the subject of a criminal investigation by the Office of Attorney General (OAG) of Pennsylvania regarding his activity in dismissing a criminal complaint filed against Robert Lee Rudnick, the nephew of former Fayette County Assistant District Attorney Linda Cordaro, now a Judge on the Court of Common Pleas of Fayette County.
7. As a result of the OAG's investigation into the activity of Former MDJ Shaner, the 36th Statewide Investigating Grand Jury returned a Presentment recommending that former MDJ Shaner be charged with the following offenses: (1) perjury, a felony of the third degree, in violation of 18 Pa.C.S.A. § 4902; (2) obstructing administration of law or other governmental function, a misdemeanor of the second degree, in violation of 18 Pa.C.S.A. § 5101. The Grand Jury Presentment (and accompanying criminal complaint) is attached hereto as "Exhibit A," made a part hereof, and is incorporated herein by reference as though set forth in full.
8. Based upon the Grand Jury's presentment, the OAG filed a criminal complaint against former MDJ Shaner charging him with the following offenses: (1) perjury, a felony of the third degree, in violation of 18 Pa.C.S.A. § 4902; (2) obstructing administration of law or other governmental function, a misdemeanor of the second degree, in violation of 18 Pa.C.S.A. § 5101. The criminal complaint (and Grand Jury Presentment) is attached hereto as "Exhibit A," made a part hereof, and is incorporated herein by reference as though set forth in full.
9. The pending felony criminal charge against Former MDJ Shaner undermine both public confidence in the judiciary and its reputation. If former MDJ Shaner is permitted to continue participating in cases before any magisterial court where he may serve by virtue of the granting of his application for senior status, the public's confidence in the judiciary and the judiciary's reputation will continue to erode.

WHEREFORE, the Board, by and through undersigned counsel respectfully requests that this Honorable Court enter an interim order suspending former MDJ Shaner's application for senior magisterial judge status; precluding him from accepting any judicial assignment; and from performing any judicial duties pending disposition on the criminal charge filed against him and to grant such other relief as may be deemed appropriate.

Respectfully submitted,

ROBERT A. GRACI,
Chief Counsel

DATE: September 11, 2014


BY: 
James P. Kleman, Jr.
Deputy Counsel
Pa. Supreme Court ID No. 87637
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911

EXHIBIT "A"

COMMONWEALTH OF
PENNSYLVANIA
COUNTY OF: DAUPHINPOLICE CRIMINAL COMPLAINT
COMMONWEALTH OF PENNSYLVANIA
VS.

Magisterial District Number: 12-3-03
 MDJ: Hon. William C. Wenner
 Address: 5925 Stevenson Ave.
Harrisburg, PA 17112
 Telephone: (717) 545-0261

DEFENDANT:

(NAME and ADDRESS):

DWIGHT

K.

SHANER

First Name

Middle Name

Last Name

Gen.

267 LITTLE SUMMIT ROAD, DUNBAR, PA 15431

NCIC Extradition Code Type

- ☐ 1-Felony Full ☐ 4-Felony No Ext. ☐ B-Misdemeanor Limited ☐ E-Misdemeanor Pending
☐ 2-Felony Ltd. ☐ 5-Felony Pend. ☐ C-Misdemeanor Surrounding States ☐ Distance: _____
☐ 3-Felony Surrounding States ☐ A-Misdemeanor Full ☐ D-Misdemeanor No Extradition

DEFENDANT IDENTIFICATION INFORMATION

Docket Number <u>CR-315-14</u>	Date Filed <u>9/11/14</u>	OTN/LiveScan Number <u>T 563720-3</u>	Complaint/Incident Number <u>36-657</u>	SID	Request Lab Services? <input type="checkbox"/> YES <input type="checkbox"/> NO
GENDER <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	DOB <u>05/21/1943</u>	POB	Add'l DOB / /	Co-Defendant(s) <input checked="" type="checkbox"/>	
First Name		Middle Name		Last Name	
AKA					
RACE <input checked="" type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Native American <input type="checkbox"/> Unknown					
ETHNICITY <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown					
HAIR COLOR <input checked="" type="checkbox"/> GRN (Gray) <input type="checkbox"/> RED (Red/Aubn.) <input type="checkbox"/> SPY (Sandy) <input type="checkbox"/> BLU (Blue) <input type="checkbox"/> PLE (Purple) <input type="checkbox"/> BRO (Brown) <input type="checkbox"/> BLK (Black) <input type="checkbox"/> ONG (Orange) <input type="checkbox"/> WHI (White) <input type="checkbox"/> XXX (Unk/Bald) <input type="checkbox"/> GRN (Green) <input type="checkbox"/> PNK (Pink) <input type="checkbox"/> BLN (Blonde / Strawberry)					
EYE COLOR <input type="checkbox"/> BLK (Black) <input checked="" type="checkbox"/> BLU (Blue) <input type="checkbox"/> BRO (Brown) <input type="checkbox"/> GRN (Green) <input type="checkbox"/> GRY (Gray) <input type="checkbox"/> HAZ (Hazel) <input type="checkbox"/> MAR (Maroon) <input type="checkbox"/> PNK (Pink) <input type="checkbox"/> MUL (Multicolored) <input type="checkbox"/> XXX (Unknown)					
Driver License State <u>PA</u> License Number <u>12001135</u> Expires: <u>05/22/2015</u>	WEIGHT (lbs.)				
DNA <input type="checkbox"/> YES <input type="checkbox"/> NO DNA Location					
FBI Number	MNU Number				FE HEIGHT (in)
Defendant Fingerprinted <input type="checkbox"/> YES <input type="checkbox"/> NO					
Fingerprint Classification					

DEFENDANT VEHICLE INFORMATION

Plate #	State	Hazmat <input type="checkbox"/>	Registration Sticker (MM/YY)	Comm'l Veh. Ind. <input type="checkbox"/>	School Veh. <input type="checkbox"/>	Oth. NCIC Veh. Code	Reg. same as Def. <input type="checkbox"/>
VIN	Year	Make	Model	Style	Color		

Office of the attorney for the Commonwealth ☒ Approved ☐ Disapproved because:

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing. See Pa.R.Crim.P. 507).

SDAG L. TODD GOODWIN

(Name of the attorney for the Commonwealth)

(Signature of the attorney for the Commonwealth)

(Date)

I, SSA GARY TALLENT

(Name of the Affiant)

435

(PSP/PMPO/ETO - Assigned Affiant ID Number & Badge #)

of PA OFFICE OF ATTORNEY GENERAL

(Identify Department or Agency Represented and Political Subdivision)

PA0222400

(Police Agency ORI Number)

do hereby state: (check appropriate box)

1. ☒ I accuse the above named defendant who lives at the address set forth above
☐ I accuse the defendant whose name is unknown to me but who is described as _____

- ☐ I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have
 therefore designated as John Doe or Jane Doe
 with violating the penal laws of the Commonwealth of Pennsylvania at []

(Subdivision Code) (Place-Political Subdivision)

in DAUPHIN County

(22)

on or about DECEMBER 13, 2011

(County Code)



POLICE CRIMINAL COMPLAINT

Docket Number: CR-315-14	Date Filed: 9/11/ 14	OTN/LiveScan Number T 563720-3	Complaint/Incident Number 36-657
Defendant Name:	First: DWIGHT	Middle: K.	Last: SHANER

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically. (Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 - 213.7.)

<input checked="" type="checkbox"/> Indicate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
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<input checked="" type="checkbox"/> 1	5101	of the	18	1	M2		
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		

Statute Description (include the name of statute or ordinance): 18 5101 OBSTRUCTING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION M2 1 COUNT

Acts of the accused associated with this Offense: The actor intentionally obstructed, impaired or perverted the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, to wit the actor while serving in the official capacity of a District Magistrate (Magisterial District 14-3-06) in Fayette County, PA (County Code 26) on December 13, 2011, presided over a criminal case (OTN L657783-0). While presiding over the case, the actor denied a request by lead Investigator Trooper Joseph Ross of the PA State Police to continue the case due to a last minute recusal by Fayette County Prosecutor Linda Cordaro. Then, without benefit of hearing any testimony, the actor dismissed the criminal case. Afterwards the actor explained to Trooper Ross that he dismissed the case because he was "catching some heat" over the fact that the defendant in the criminal case was the nephew of Prosecutor Linda Cordaro.

<input type="checkbox"/> Indicate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
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<input type="checkbox"/> 2	4902	A	of the	18	1	F3		
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		

Statute Description (include the name of statute or ordinance): 18 4902 (a) PERJURY F3 1 COUNT

Acts of the accused associated with this Offense: The actor, while in an official proceeding, made a false statement under oath or equivalent affirmation, or swore to, or affirmed the truth of a statement previously made, when the statement was material and he did not believe it to be true, to wit the actor while testifying under oath before the Commonwealth of Pennsylvania Thirty-Sixth Statewide Investigating Grand Jury on September 18, 2013, in Dauphin County, PA, (County Code 22), made material statements that were false and he did not believe to be true.

<input type="checkbox"/> Indicate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
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<input type="checkbox"/>			of the					
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Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code	UCR/NIBRS Code
	PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone		

Statute Description (include the name of statute or ordinance):

Acts of the accused associated with this Offense:



POLICE CRIMINAL COMPLAINT

Docket Number: CR-315-14	Date Filed: 9/11/14	OTN/LiveScan Number T 563720-3	Complaint/Incident Number 36-657
Defendant Name	First: DWIGHT	Middle: K.	Last: SHANER

2. I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
3. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.
4. This complaint consists of the preceding page(s) numbered ___ through ___.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.
(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)

Sept 11, 2014
(Date)

[Signature]
(Signature of Affiant)

AND NOW, on this date September 11, 2014 I certify that the complaint has been properly completed and verified.

An affidavit of probable cause must be completed before a warrant can be issued.

12-3-03
(Magisterial District Court Number)

[Signature]
(Issuing Authority)



**POLICE CRIMINAL COMPLAINT
AFFIDAVIT CONTINUATION PAGE**

Docket Number: CR-315-14	Date Filed: 9 / 11 14	OTN/Live Scan Number T 563720-3	Complaint/Incident Number 36-657
Defendant Name:	First: Dwight	Middle: K.	Last: SHANER

AFFIDAVIT of PROBABLE CAUSE

Your affiant is a Supervisory Special Agent with the Pennsylvania Office of Attorney (OAG). I am assigned to the Bureau of Criminal Investigations in the Western Regional Office, located in Pittsburgh, Pennsylvania. I have been a law enforcement officer for over 30 years, having spent 25 years as a police officer for the Allegheny County Police Department.

This particular investigation was initiated on March 27, 2013, by then OAG Acting Chief Deputy Attorney General Bruce R. Beemer, predicated on a complaint from Fayette County (PA) resident Brian Oros. In his complaint, Oros alleged that a DUI case was "fixed" by District Magistrate Dwight K. Shaner (Magisterial District #14-3-06). The defendant in the DUI case was Robert Rudnick of Connellsville, PA. In furtherance of this investigation, your affiant conducted numerous interviews and recovered various documents. Certain case witnesses subsequently testified before the Thirty-Sixth Statewide Investigating Grand Jury in Harrisburg, PA. Additionally, relevant documents and photographs were entered as exhibits and presented to the Grand Jury.

The Affidavit of Probable Cause in this case is based on a Presentment (No. 20) from the Thirty-Sixth Statewide Investigating Grand Jury, in the Court of Common Pleas Dauphin County, Pennsylvania. The order accepting the Presentment was signed by J. Wesley Oler, Jr, Supervising Judge, The Thirty-Sixth Statewide Investigating Grand Jury, on August 19, 2014. The seventeen (17) page Presentment/Order is listed as Attachment A., and will be submitted with this affidavit.

Based on the facts and circumstances outlined in the Presentment, your affiant respectfully submits that probable cause does exist to file a criminal complaint against Dwight K. Shaner, DOB 05/21/1943, with 18 Pa. C.S. Section 5101 OBSTRUCTING ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTIONS, M-2 AND 18 Pa. C.S. Section 4902(a) PERJURY, F-3.

END OF AFFIDAVIT (See Attachment A.)


(Signature of Affiant)


Attachment "A"IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: NO. 8 MISC. DKT. 2013
THE THIRTY-SIXTH STATEWIDE :
: DAUPHIN COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : NO. 141 M.D. 2013
:
: NOTICE NO. 20

ORDER SEALING PRESENTMENT NO. 26

The Court has accepted Presentment No. 20. This Presentment shall be sealed and no person shall disclose a return of the Presentment except when necessary for issuance and execution of process, or as otherwise directed or permitted by Order of the Supervising Judge.

SO ORDERED this ¹⁶~~19~~ day of August, 2014.


WESLEY C. WENNER, JR.
Supervising Judge
The Thirty-Sixth Statewide Investigating
Grand Jury


IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: NO. 8 MISC. DKT. 2013
THE THIRTY-SIXTH STATEWIDE :
: DAUPHIN COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : NO. 141 M.D. 2013
:
: NOTICE NO. 20

ORDER ACCEPTING PRESENTMENT NO. 26

1. The Court finds Presentment No. 20 of the Thirty-Sixth Statewide Investigating Grand Jury is within the authority of said Grand Jury and is in accordance with the provisions of the Investigating Grand Jury Act, 42 Pa.C.S. §§ 4541 *et seq.* Accordingly, this Presentment is accepted by the Court.
2. The County for conducting the trial of all charges pursuant to this Presentment shall be Dauphin County.
3. The Attorney General of the Commonwealth of Pennsylvania, or her designee, is hereby authorized to prosecute as recommended in this Presentment by instituting appropriate criminal proceedings in the aforesaid County.

~~SO ORDERED this 19th day of August, 2014.~~


WESLEY OLER, JR.
Supervising Judge
The Thirty-Sixth Statewide Investigating
Grand Jury

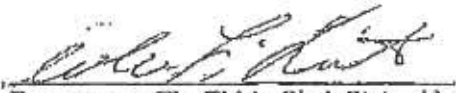
IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: NO. 8 M.D. MISC. DKT. 2013
THE THIRTY-SIXTH STATEWIDE :
: DAUPHIN COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : NO. 141 M.D. 2013
: NOTICE NO. 20

TO THE HONORABLE J. WESLEY ^{OLEA}~~CHIEF~~, JR., SUPERVISING JUDGE:

PRESENTMENT NO. 26

We, the Thirty-Sixth Statewide Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court and testifying before us. We find reasonable grounds to believe that various violations of the criminal laws have occurred. So finding with not fewer than twelve concurring, we do hereby make this Presentment to the Court.


Foreperson—The Thirty-Sixth Statewide
Investigating Grand Jury

DATED: August 19, 2014

INTRODUCTION

We, the members of the Thirty-Sixth Statewide Investigating Grand Jury, having received evidence pertaining to violations of the Crimes Code occurring in Dauphin and Fayette County pursuant to Notice of Submission of Investigation Number 20, do hereby make the following findings of fact and recommendation of charges:

FINDINGS OF FACT

The Grand Jury has heard evidence concerning an investigation being conducted by the Pennsylvania Office of Attorney General (OAG) into allegations that a criminal case involving charges of Driving Under the Influence and Accidents Involving Damage to Unattended Vehicle or Property were dismissed for improper reasons by Magisterial District Judge (MDJ) Dwight Shaner. The investigation centered on a preliminary hearing conducted by MDJ Shaner in December 2011 involving said charges. The accused, Robert Rudnik, is the nephew of Linda Cordaro, who at the time of the hearing was an Assistant District Attorney in Fayette County and was responsible for prosecuting cases at MDJ Shaner's office.

The Grand Jury heard testimony from a number of witnesses, including Pennsylvania State Troopers who investigated the case, eye witnesses from the scene of the accident, Agents from the OAG, members of the Fayette County District Attorney's Office, and from MDJ Shaner himself. Based on the testimony presented, as well as a review of documents presented in the investigation, the Grand Jury has found *prima facie* evidence of obstruction of the administration of law or other governmental function and perjury. The Grand Jury makes the following factual findings:

RUDNIK DUI ARREST

The Grand Jury heard evidence regarding an investigation by the Pennsylvania State Police ("PSP") into a hit and run accident and suspected drunk-driving matter. On September 14, 2011, PSP Troopers Joseph Ross and Todd Stephenson were dispatched to the area of 537 Monarch Road in Dunbar Township, Fayette County. Ross described his six-year career with PSP as one that dealt with many Driving Under the Influence ("DUI") cases, particularly due to the fact that for five of those years he worked the "midnight" shift. The midnight shift for a patrol officer would typically have them on the road between midnight and 8:00 a.m., often a peak time period for law enforcement to investigate and observe suspected DUI activity.

Ross and Stephenson arrived at the Monarch Road scene at approximately 2:00 a.m. It was later determined through investigation that a resident at 537 Monarch Road, Thomas Brown, had called 911 to report that a vehicle had slammed into his mailbox and a nearby guardrail and subsequently fled the scene without stopping. Brown made the call at 1:55 a.m., describing the vehicle as a blue sport utility vehicle ("SUV") truck that fled in the direction of, and ultimately stopped at, a neighbor's house known as the "Glunt" residence at 513 Monarch Road.

Brown relayed all of this information to Troopers Ross and Stephenson when they arrived on-scene within minutes of the 911 call. Ross and Stephenson were in a marked PSP vehicle with lights and sirens and dressed in full uniform. Ross was familiar with Brown and recognized him immediately. Ross described Brown as upset, and he was yelling that the vehicle that struck his mailbox was a blue Durango and it belonged to Bob Rudnik. Brown also related

to Ross that the vehicle had pulled into the Glunt residence up the street. The Troopers observed fresh damage to both the mailbox and guardrail.

Based on the information from Brown, Ross and Stephenson proceeded the short distance up the road to the Glunt residence. Armed with the statement from Brown, the Troopers inspected vehicles in the driveway. A blue Dodge Durango was parked near a carport and in between other vehicles, in an apparent attempt to make it appear it had been there longer than it actually had. The Durango had sustained fresh, significant impact damage down the passenger side and one of the tires was flat. Ross "ran" the license plate on the laptop computer in his car and learned that it was registered to a Robert Rudnik, the same name supplied by Thomas Brown minutes earlier.

The Glunt residence was occupied by a married couple, James and Amber Glunt, and their minor children. Trooper Ross spoke at the scene with Amber Glunt, who informed him that the driver of the blue Durango was Bob Rudnik and that he left the vehicle there and went home because he had been drinking and did not want to get into trouble. Glunt also described for Ross the location of Rudnik's residence, about three quarters of a mile away on 4th Street. Troopers Ross and Stephenson proceeded to the described residence and were met at that location by another member of PSP, Corporal Fagnilli.

Upon arrival at the house on 4th Street in Dunbar, Ross knocked on the front door. An elderly gentleman answered and confirmed that Robert Rudnik did stay there and that he was upstairs. Rudnik came downstairs and went outside with the Troopers. Rudnik at that point admitted to the following: he had just been involved in a crash on Monarch Road; he was the operator of the accident vehicle; he had been drinking alcohol that night at a local sports bar called Bud Murphy's in neighboring Connellsville; and he had not consumed any alcohol since

the crash occurred. Ross and Stephenson also observed several signs of intoxication, including a strong odor of an alcoholic beverage on Rudnik's breath, bloodshot and glassy eyes, and a speech pattern that was stuttered. The Troopers had Rudnik perform a series of field sobriety tests ("FST"), a battery of exams to test the motor skill, balance, and coordination of a suspect. Rudnik performed poorly on all the tests and Ross reached the conclusion that Rudnik was intoxicated to a degree that he was incapable of safely driving a motor vehicle.

Trooper Ross then requested that Rudnik submit to a portable breath test ("PBT") to measure the level of alcohol in his blood. Rudnik agreed, and the on-scene reading was .17%, which is more than double the legal limit of .08 in the Commonwealth of Pennsylvania. Ross determined that he had sufficient probable cause to arrest Rudnik for DUI and Accidents Involving Damage to Unattended Vehicle or Property. Rudnik was handcuffed, taken into custody at 2:13 a.m., and transported to the Uniontown PSP Station for purpose of administration of a Breathalyzer test.¹ The test was given at 3:05 a.m. with Rudnik's consent, and produced a reading of .166%. Rudnik was subsequently fingerprinted, processed, and released to someone who had come to the station to pick him up.

Robert Rudnik, as it turned out, was not a stranger to this process. He had been arrested a number of months earlier, on February 18, 2011, for DUI by the PSP in Connellsville. At the time of his previous DUI arrest, Rudnik was operating his blue Dodge Durango SUV. Rudnik's Breathalyzer test results were .168%. At the time of the September arrest, Rudnik was seeking admission into the Accelerated Rehabilitative Disposition ("ARD") Program. This program allows first-time, non-violent offenders an opportunity to enter a probationary program that avoids any incarceration and permits the offender to have his or her record "expunged," or

¹ The PBT administered at the scene is not admissible as evidence under Pennsylvania law, and therefore the arresting officer will typically seek a blood or breath test despite the PBT reading.

crased, upon successful completion of the Program. One of the biggest obstacles to admittance to the ARD Program can often be getting arrested on a new charge, particularly for the same type of offense, before completion of the ARD Program. A new arrest often leads to not being offered admission at all or expulsion from the Program if one is already admitted. Against this backdrop, the long and tortured journey of this DUI case was about to begin.

THE PRELIMINARY HEARING

Based on the events described above, Trooper Ross filed a Criminal Complaint and Affidavit of Probable Cause on October 5, 2011, charging Rudnik with three counts of DUI and one count of Accidents Involving Damage to Unattended Vehicle or Property. The charges were filed at the office of MDJ Shaner. MDJ Shaner subsequently signed the Criminal Complaint and corresponding Affidavit of Probable Cause. The location of the crash, 537 Monarch Road in Dunbar Township, fell within the jurisdictional boundary of MDJ Shaner's district. MDJ Shaner, in any felony or misdemeanor cases filed within his district, has the responsibility of holding a preliminary hearing and ultimately deciding if the Commonwealth has presented *prima facie* evidence to bind the charges over to Common Pleas Court. *Prima facie* evidence is that which would allow an MDJ to find that a crime has probably been committed and that the accused is probably the one who committed it.² MDJ Shaner's office scheduled the Rudnik preliminary hearing for December 13, 2011, approximately three months after the arrest.

The Fayette County District Attorney's Office is responsible for the prosecution of all criminal cases filed within the jurisdictional borders of Fayette County. The elected District Attorney of Fayette County is Jack Heneks. Heneks was first elected in 2010. The general

² Any individual charged with a crime also has the option of not contesting the evidence at the preliminary hearing level and waiving their right to same. The Grand Jury received evidence that suggested such a procedure is not unusual, particularly with misdemeanor and DUI cases.

practice of the District Attorney was to send an Assistant District Attorney ("ADA") to each MDJ's office on that office's "criminal day." The criminal day would contain all of the preliminary hearings scheduled for that week.

DUI cases in general seemed to enjoy a unique status within the Fayette County District Attorney's Office. The Grand Jury heard from prosecutors within the office who described a culture of "no deals" on DUI matters. One prosecutor testified that, if an ADA dropped a DUI or even changed a charge to a different subsection of the statute, the ADA "would be fired."

Linda Cordaro ("Cordaro") was an ADA in Fayette County from 2005 through 2013.³ Cordaro had been a practicing attorney since 1994, specializing primarily in family law. She accepted a part-time job as an ADA in Fayette County and almost immediately became the assigned prosecutor at the office of MDJ Shaner for his criminal day.⁴ According to Cordaro, she was responsible for virtually every kind of criminal case while at MDJ Shaner's office, from violent offenses such as robbery and aggravated assault to DUIs. Cordaro appeared weekly before MDJ Shaner from early 2006 through 2013.

Robert Rudnik is the nephew of Linda Cordaro; Rudnik's mother Deborah is Cordaro's sister. The Grand Jury heard evidence suggesting Cordaro and Deborah Rudnik were very close to one another and spoke often. They also lived only about a mile apart. Notwithstanding the closeness of the sisters, Cordaro's job as a prosecutor, and the seriousness of Rudnik's legal situation, Cordaro claimed she never discussed Rudnik's DUI arrest in September of 2011 with her sister in the months leading up to the preliminary hearing. Although Cordaro admitted she was likely aware of Rudnik's arrest within a week or so of its occurrence, she took no steps to

³ Cordaro was elected Judge in the Court of Common Pleas of Fayette County in 2013, and was sworn in the first week of January, 2014.

⁴ ADAs in Fayette County are permitted to maintain an outside law practice provided they do not engage in criminal defense work.

inform her office or that of MDJ Shaner of her obvious conflict in prosecuting a case in which her nephew was the defendant. In fact, Cordaro did not alert anyone, according to her, of the conflict and her need to recuse herself until minutes before the hearing was set to begin on December 13, 2011.

Trooper Ross appeared at the office of MDJ Shaner on the morning of December 13, 2011, completely unaware that Cordaro would not be representing the Commonwealth. Ross believed that he would be the only necessary witness for a preliminary hearing and therefore made no effort to contact any of the witnesses (Thomas Brown or Amber Glunt) that had provided information on the night of the Rudnik arrest. He informed the Grand Jury that he believed his testimony alone would be sufficient in the event a preliminary hearing was held. Ross believed this to be the case because neither witness actually observed Rudnik driving, and Ross personally observed the damage to Brown's guardrail and mailbox as well as the damage to Rudnik's vehicle consistent with striking both items. Ross also personally observed Rudnik minutes later and noted obvious signs of intoxication, and Rudnik admitted to drinking and then driving home.

It was with this mindset Ross pulled into MDJ Shaner's office that December morning. In the parking lot, he encountered Cordaro, who informed him for the first time that Rudnik was her nephew and that she would not be handling the preliminary hearing. Cordaro then asked a question of Ross that "threw up a red flag for [him]." She asked him if he had any witnesses coming to Court that day. He found this troubling for two reasons. First, he firmly believed he did not need any other witnesses for the hearing. Second, he did not see why Cordaro would ask him such a question if she would not be handling the case. Cordaro told the Grand Jury that she did not ask him about the case, but merely informed Ross that she would not handle the matter.

Rudnik was represented at the preliminary hearing by Attorney Jeremy Davis of the law firm of Davis & Davis. After running into Cordaro in the parking lot, Ross entered the building and encountered Davis and Rudnik near the waiting area of MDJ Shaner's office. Davis approached Ross and asked him if his witnesses were coming. Ross informed the Grand Jury he found this question "weird," particularly on the heels of the conversation he had with Cordaro in the parking lot. Almost immediately after this conversation, Ross was called into MDJ Shaner's courtroom. The Rudnik DUI happened to be one of the first cases called out of the approximately thirty-five matters listed on the docket.

At the time of the hearing, MDJ Shaner had been a Judge for approximately twenty-six years, all serving the same Magisterial District. Cordaro had been the ADA working with him every week for the prior five years. Cordaro notified MDJ Shaner, according to both of them, of her need to recuse herself from the Rudnik case the morning of the hearing. This happened despite the fact that, as Cordaro acknowledged, she knew about the existence of the case for approximately two months before the December 13 hearing. MDJ Shaner did not recuse himself from deciding the case, as would have been his option, by notifying the President Judge of Fayette County. Tammy Lambie, Deputy Court Administrator in Fayette County, indicated that, due to the long-standing relationship between MDJ Shaner and Cordaro, he (MDJ Shaner) should have recused himself from the Rudnik case, as outlined in the Pennsylvania Code of Judicial Conduct. Instead, MDJ Shaner called the case in the courtroom and set off a chain of events that almost resulted in Rudnik escaping justice for his DUI and hit-and-run offenses.

MDJ Shaner called the Rudnik case at around 9:30 a.m. The following relevant people were present in the courtroom: Trooper Ross; Robert Rudnik and his mother Deborah; Rudnik's attorney Jeremy Davis; and MDJ Shaner himself. By all accounts, Cordaro was not present in

the courtroom. At that point, Ross was acting without the benefit of an ADA and was presenting the Rudnik matter on behalf of the Commonwealth.⁵ For the third time in a matter of minutes, Ross was asked if he had witnesses present. This time, it was MDJ Shaner who asked from the bench. Ross, who is not an attorney or a prosecutor, now believed that he had a problem and he responded to MDJ Shaner that "since everybody thinks I need a witness I guess I would just ask for a continuance." Attorney Davis objected to the request on behalf of Rudnik and asked that the case be dismissed. MDJ Shaner denied the request by Ross and promptly dismissed the case with little explanation. Ross, feeling he was the victim of some questionable activity, was visibly upset by the ruling.

Both MDJ Shaner and Cordaro attempted to explain that a dismissal of a first listing such as this was not all that unusual. This does not appear to be the case, however, particularly when factoring in the Cordaro recusal at such a late hour. Kimberly Jacobs has worked as a secretary for MDJ Shaner for seventeen years, and part of her duties includes handling all of the paperwork for the criminal cases every Tuesday. Jacobs indicated that it was particularly unusual for MDJ Shaner not to grant a continuance request by the Commonwealth on a "first listing." In fact, she could not recall a single instance in seventeen years when MDJ Shaner had denied such a request. She also found it particularly odd that the continuance was denied when it involved Cordaro's nephew.

Trooper Ross felt as though something strange had happened to his case. He explained to the Grand Jury that he found it curious that Cordaro, Davis, and MDJ Shaner had all asked about whether he had witnesses. His request for a continuance, where he did not even have the benefit of a prosecutor to argue the merits of having more time, was quickly denied by MDJ Shaner. As

⁵ While it would on occasion happen that a police officer or trooper would handle a case without an ADA, Cordaro or another ADA would typically be present at MDJ Shaner's office to present the Commonwealth's case pursuant to Pa.R.Crim P. 542.

Ross gathered himself to leave, MDJ Shaner asked him to step into his private judicial office attached to the courtroom. They walked in and MDJ Shaner shut the door. Ross remembered MDJ Shaner lighting a cigarette. Ross testified MDJ Shaner told him, "Hey, Trooper, I hope you understand ... I'm catching some heat from Linda [Cordaro] because that is her nephew." Ross responded very curtly, informed MDJ Shaner that he would refile the charges, and left the room.

Ross was so disturbed about what had transpired that he stormed out of the office and immediately went back to the Uniontown PSP station and informed his supervisors about what occurred at MDJ Shaner's office. In fact, he documented the experience in a contemporaneous report explaining the dismissal of charges. Ross had no previous problems or animosity with MDJ Shaner.⁶ Ross described all of his other dealings with MDJ Shaner as largely positive experiences.

MDJ Shaner claimed that he only dismissed the case because Ross never asked for a continuance. He suggested that Ross, who was denied the benefit of having an ADA argue the merits of the continuance once Cordaro recused herself, simply informed him he had no witnesses present but never formally requested a continuance. This position is belied by the available evidence, however, as Ross, Jeremy Davis, and Deborah Rudnik all specifically recalled Ross asking for a continuance and the request being denied.⁷ The explanation itself makes little sense because MDJ Shaner seems to have been holding a PSP trooper to an arbitrary standard of formal legality. This is particularly curious given that Ross was informed minutes before the hearing that he would be without the benefit of an ADA to review his case, call

⁶ In fact, MDJ Shaner described how they knew one another. He informed the Grand Jury that Ross is married to MDJ Shaner's wife's cousin and that MDJ Shaner attended Ross's wedding. MDJ Shaner could offer no explanation as to why Ross might not be truthful about his conversations with MDJ Shaner.

⁷ It is important to note that, because a MDJ is not a court of record, these types of proceedings are often not recorded by a court reporter. That appears to be the case with the court proceedings that led to the dismissal of the Rudnik DUI case.

witnesses, and make legal arguments on behalf of the Commonwealth. The Grand Jury does not find MDJ Shaner's explanation credible and believes it to be directly contradicted by multiple witnesses. It was, in fact, an effort to explain the dismissal of a case that occurred for an improper and illegal purpose.

ATTEMPTS TO REFILE CHARGES

Although the available evidence points to MDJ Shaner dismissing the Rudnik case for improper reasons and under questionable circumstances, the Fayette County District Attorney's Office still had the opportunity to remedy or cure the action by simply refiling the complaint. In the Commonwealth of Pennsylvania, an MDJ does not make a final, binding determination on the merits of any felony or misdemeanor offense, and therefore the constitutional principle of double jeopardy does not attach. The Fayette County District Attorney simply could have approved the refiling of criminal charges consistent with their vigorous, aggressive policies toward DUI cases in general.

Ross knew that he needed the approval of Fayette County District Attorney Jack Heneks to refile the charges. Within a week or two after the dismissal by MDJ Shaner, Ross called Heneks to request permission to refile the case. Heneks informed Ross that he would not approve refiling the charges because no one could place Rudnik behind the wheel at the time of the crash. Ross informed Heneks of the following facts: Rudnik was Linda Cordaro's nephew; there were two eyewitnesses who observed either the vehicle or Rudnik near the crash scene; the vehicle was registered to Rudnik; the vehicle had damage consistent with striking the guardrail and mailbox at the Brown residence; and Rudnik admitted to driving the vehicle during the crash and exhibited obvious signs of intoxication. At no time did Ross indicate he would have any

problem locating and issuing subpoenas for any potential witnesses. Ross, although thoroughly frustrated by the decision, decided he could not refile the charges without the permission of the District Attorney and subsequently closed the file in late December 2011.

District Attorney Heneks informed the Grand Jury that he did in fact receive a call from Ross asking to refile the charges. Heneks acknowledged he was aware of the relationship between Cordaro and Rudnik. His explanation for advising Ross not to refile the charges centered on his stated belief that there would be problems securing witnesses who could place Rudnik behind the wheel of his own vehicle. Ross told the Grand Jury, however, that he never informed Heneks that he could not secure witnesses. In fact, all of the necessary witnesses lived on the same road where the accident occurred. Thomas Brown could have testified that he heard the crash, saw the vehicle driving up the road toward the Glunt residence, and promptly reported the accident at around 1:55 a.m. Amber Glunt could have testified about her interactions with Rudnik and how he left the scene shortly before the arrival of PSP. Nevertheless, Heneks maintained that there were issues with the ability to prosecute this matter and he therefore advised Ross not to refile.

CHARGES REFILED BY OFFICE OF ATTORNEY GENERAL

In March of 2013, nearly fifteen months after the dismissal of the Rudnik case by MDJ Shaner, a complaint about the handling of the Rudnik case was made to the OAG. On May 9, 2013, District Attorney Heneks asked the OAG to accept jurisdiction of the original Rudnik DUI matter pursuant to the Commonwealth Attorneys Act, citing a possible conflict of interest in the matter. The referral was accepted and, after review of the matter, the OAG refiled criminal charges of DUI and Accidents Involving Damage to Unattended Vehicle or Property. The

refiling took place at the office of MDJ Shaner on Friday, July 12, 2013. The case was later transferred to a specially assigned MDJ due to the circumstances of the case. A preliminary hearing was held on September 9, 2013, and all charges were held for court.

Rudnik subsequently entered a guilty plea before a Judge of the Fayette County Court of Common Pleas on February 25, 2014, to one count of DUI, 75 Pa.C.S. § 3802(b), and one count of Accidents Involving Damage to Unattended Vehicle or Property, 75 Pa.C.S. § 3745. Rudnik was sentenced for the DUI count to six months of Intermediate Punishment, with the first 60 days to be served on house arrest with electronic monitoring. He also was ordered to pay all applicable fines (including a mandatory \$1,000.00) and to pay \$100.00 in restitution to Thomas Brown for the damaged mailbox. His driver's license also was suspended for one year and he was ordered to perform fifty hours of community service. Rudnik was also ordered to pay a \$300.00 fine for the Accidents Involving Damage to Unattended Vehicle or Property charge. This plea and sentencing, given all of the events described above, took place nearly thirty months after Rudnik first was arrested and charged in the fall of 2011.

RECOMMENDATION OF CHARGES

Based on the evidence we have obtained and considered, which establishes a *prima facie* case, we, the members of the Thirty-Sixth Statewide Investigating Grand Jury, recommend that the Attorney General, or her designee, institute criminal proceedings against the following:

Dwight Shaner:

Obstructing Administration of Law of other Governmental Function

18 Pa.C.S. § 5101, M2

Perjury

18 Pa.C.S. § 4902(a), F3

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Dwight Shaner	:	
Former Magisterial District Judge	:	2 JD 14
MDJ Court 14-3-06	:	
Fayette County	:	

PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on September 11, 2014, a copy of the Board's Petition For Interim Suspension was sent by first class mail, return receipt requested to Heidi Eakin, Esquire, counsel for Former MDJ Shaner, who agreed to accept service on his behalf, at the following address:

Heidi Eakin, Esquire
Costopolous, Foster, and Fields
831 Market Street
Lemoyne, PA 17043-0222

Respectfully submitted,

ROBERT A. GRACI,
Chief Counsel

DATE: September 11, 2014



BY: James P. Kleman, Jr.
Assistant Counsel

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