

**IN THE SUPERIOR COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**No. 894 MDA 2017**

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**COMMONWEALTH OF PENNSYLVANIA,**

**Appellee,**

**v.**

**BRIAN SMETANA,**

**Appellant.**

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**BRIEF FOR APPELLANT BRIAN SMETANA**

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Appeal from Order of the Court of Common Pleas  
of Lebanon County, Pennsylvania dated April 24, 2017

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## **STATEMENT OF JURISDICTION**

Because this is an appeal from the Lebanon County Court of Common Pleas's entry of a final order of contempt, this Court has jurisdiction under 42 Pa. Cons. Stat. § 742.

## **ORDER IN QUESTION**

The trial court's order consisted of an oral ruling from the bench and a form completed by the court. The text of the oral ruling follows:

Judge: There you go. The Court finds the Defendant in contempt and directs he be incarcerated in the Lebanon County Correctional Facility for a period of thirty days. He may purge himself of this contempt by paying two hundred dollars on the arrears and paying the previously imposed support order as directed. The Court has no objection to immediate work release.

(R. 22a).

White: LCCF; Yellow: Clerk of Courts/Prothonotary; Pink: Adult Probation/Other

Lebanon County Clerk of Courts-Prothonotary  
Sentence/Commitment Form

DEFENDANT: Brian G. Smetana  
OFFENSE: F & C. Contempt

ACTION No. CP 33 CR-1461-2014  
S/L OTN: 1 875051-2  
SENTENCING JUDGE: S A Kline

SENTENCE: \_\_\_\_\_

LCCF      30 days  
Durge      200-  
Bal.      as set

SPECIAL CONDITIONS: \_\_\_\_\_

RECOMMENDED FOR WORK RELEASE: YES X / NO \_\_\_\_\_

ACUTE MEDICAL PROBLEMS: YES \_\_\_\_\_ / NO \_\_\_\_\_

DETAINERS: \_\_\_\_\_

HEARING DATE: \_\_\_\_\_

BAIL \_\_\_\_\_

AMOUNT: \_\_\_\_\_

BENCH WARRANT: \_\_\_\_\_

OTHER REMARKS: \_\_\_\_\_

JMV      04/24/17      \_\_\_\_\_  
(CLERK)      (DATE)      (COURT STENOGRAPHER)

PLEASE CONTACT LEBANON COUNTY CORRECTIONAL FACILITY UPON DEFENDANTS RELEASE

## STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

When reviewing a finding of contempt, this Court exercises an abuse of discretion standard of review. *See Commonwealth v. Baker*, 766 A.2d 328, 331 (Pa. 2001). A trial court abuses its discretion if it committed an error of judgment that “overrides or misapplies the law.” *Id.* The trial court also abuses its discretion if the evidence in the record shows that its judgment “is manifestly unreasonable or lacking in reason.” *Id.*

This Court reviews the trial court’s procedures *de novo*, as those issues are questions of law. *See Commonwealth v. Moody*, 125 A.3d 1, 6 (Pa. 2015). Accordingly, the Court uses a plenary scope of review for those issues. *Id.*

## STATEMENT OF THE QUESTIONS PRESENTED

The principal questions presented on appeal are:

1. Did the trial court err by holding Mr. Smetana in civil contempt for failure to pay his court fines and costs and incarcerating him without inquiring into his ability to pay?
2. Did the trial court abuse its discretion by holding Mr. Smetana in contempt when the evidence on the record demonstrated that he was unable to pay?
3. Did the trial court abuse its discretion by setting a dollar amount by which Mr. Smetana could purge his contempt and be released from incarceration without finding beyond a reasonable doubt that Mr. Smetana had the present ability to comply with the Court's order and meet that purge condition?
4. Did the trial court err by placing Mr. Smetana on a payment plan without inquiring into his financial circumstances and determining that the ordered payment was within his means and did not unreasonably impose a financial hardship?

The answer to each of these questions is “yes.” The trial court committed clear error by – implicitly – ruling otherwise.

## STATEMENT OF THE CASE

### A. Form of Action and Procedural History

This is a direct appeal from the Lebanon County Court of Common Pleas challenging the finding of contempt, sentence of imprisonment, and imposition of a payment plan entered against Appellant Brian Smetana on April 24, 2017.

On December 10, 2014, Mr. Smetana pled guilty in the Lebanon County Court of Common Pleas to loitering and prowling at night time, 18 Pa. Cons. Stat. § 5506, public drunkenness, 18 Pa. Cons. Stat. § 5505, trespassing, 18 Pa. Cons. Stat. § 3503(b)(1)(iii), and disorderly conduct towards a police officer (a municipal ordinance). (R. 3a). In total, the Hon. Judge Charles H. Bradford ordered Mr. Smetana to pay \$600 in fines and \$1,129 in costs. (R. 13-14a). As a result of payments to the court, Mr. Smetana currently owes \$928.50 in total fines and costs. (R. 14a).

The trial court scheduled Mr. Smetana for a Fines and Costs Contempt hearing on March 27, 2017, because he had failed to make payments on the fines and costs he owed. (R. 6a). Mr. Smetana did not appear for that hearing, and the court issued a bench warrant for his arrest. (R. 6a). Mr. Smetana was subsequently arrested on this warrant and brought before Judge Bradford for a bench warrant hearing on April 5, 2017. (R. 7a). Judge Bradford set bail at \$500 and ordered Mr. Smetana to appear for the court's next Fines and Costs Contempt hearing on April

24, 2017. (R. 18a). Mr. Smetana did not have \$500 for bail and therefore remained incarcerated. (R. 21a).

At the hearing on April 24, the Honorable Judge Samuel A. Kline held Mr. Smetana in civil contempt, sentenced him to 30 days in jail, and set a purge condition of \$200. (R. 22). The court also ordered Mr. Smetana to pay his fines and costs at a rate of \$100 per month. (R. 22a).

Mr. Smetana subsequently engaged undersigned counsel and filed a Petition for a Writ of Habeas Corpus with the trial court on May 2, 2017, with a request for a hearing. (R. 26-32a). However, because of the time Mr. Smetana had already spent in jail, he was released on May 4, before the court held a hearing, and Mr. Smetana then withdrew the petition. Mr. Smetana filed a timely appeal from the April 24, 2017, orders (1) finding him in contempt and jailing him; and (2) ordering him to pay \$100 a month toward his fines and costs. (R. 25a; R. 56a). On June 9, 2017, Mr. Smetana filed a Concise Statement of Errors Complained of on Appeal. (R. 9a; App. B). On August 1, 2017, in place of an opinion pursuant to Pa.R.A.P. 1925, the trial court issued an “Amended Order” that affirmed the April 24 order without explanation. (App. A.).

## **B. Factual Background**

Mr. Smetana was scheduled for a Fines and Costs Contempt hearing on March 27, 2017, because he had failed to make the \$100 per month payments

previously ordered by the Lebanon County Court of Common Pleas. (R. 6a). He failed to appear for that hearing and the court issued a bench warrant for his arrest. (R. 6a). He was arrested and brought before the Honorable Charles Bradford on April 5, 2017. (R. 7a). Judge Bradford asked Mr. Smetana with whom he was living, and Mr. Smetana explained he was staying with his “girlfriend and her ex-husband.” (R. 16a). In response to Judge Bradford’s question about whether he was working, Mr. Smetana stated that he had been working, but that his boss had gone out of town; when he returned, Mr. Smetana would be able to resume working. (R. 16a). Mr. Smetana stated that he had stopped paying his fines and costs because:

I was struggling with finances. I was doing good there for a while. I was putting a hundred every week, then I started having difficulties and I actually got thrown out of my sister’s home and that’s why I had to try to find a new place to live. I’m trying to get this job started up and then get back on track again.

(R. 17a). Mr. Smetana had four new pending charges and admitted that he had a drug problem and had been in treatment. (R. 17a).

Judge Bradford ordered him to appear at the next Fines and Costs Contempt hearing on April 24, 2017, set bail at \$500 cash, and advised Mr. Smetana of his right to counsel. (R. 18a). Judge Bradford then vacated the bench warrant. (R. 18a).

Mr. Smetana was unable to come up with the \$500 necessary for bail and consequently sat in jail from April 6 until the April 24 Fines and Costs Contempt hearing. (R. 7a). While imprisoned, he obtained the representation of the public

defender. (R. 7a). At that hearing, at which Judge Kline presided, Mr. Smetana was represented by counsel, and the Commonwealth was represented by staff from the Lebanon County Adult Probation Collections and Disbursement Unit, referred to on the transcript as “CDU Officer.” (R. 21a).

When the case was called, the CDU Officer explained to Judge Kline that this was the first time a bench warrant had been issued for Mr. Smetana, that he was on a payment plan of \$100 per month, that bail was set at \$500, and that he was \$860 past due on his payments. (R. 21a). Mr. Smetana’s attorney explained that he did not have any money with him and no one brought any money on his behalf. (R. 21a). She also explained that Mr. Smetana had work waiting for him as a house flipper and would be willing to have his wages garnished. (R. 21a).

Judge Kline then asked Mr. Smetana, “does anybody, do you have any money?” (R. 22a). Mr. Smetana responded, “Not as of today, my sister couldn’t get off work . . .” and he went on that he may be able to “get two hundred dollars” if he called her. (R. 22a). Without any further inquiry, the court held Mr. Smetana in contempt and directed “that he be incarcerated in the Lebanon County Correctional Facility for a period of thirty days. He may purge himself of this contempt by paying two hundred dollars on the arrears and paying the previously imposed support order as directed [at \$100 per month]. The Court has no objection

to immediate work release.” (R. 22a). At the request of the CDU Officer, Judge Kline gave him credit for the time he had already spent in jail. (R. 22a).

As explained in his Petition for a Writ of Habeas Corpus, if asked, Mr. Smetana could have established that he: 1) had no present income or other means and had only received \$100 from his work rehabbing houses several weeks earlier; 2) had been receiving public benefits; 3) had been entirely dependent on financial support from his girlfriend and sister; 4) had recently been homeless; 5) already owed his sister approximately \$4,000; and 5) struggled with alcoholism and PTSD, which severely impacted his ability to obtain and maintain gainful employment. (R. 29a; R. 38a). Mr. Smetana also could have explained, as evidenced on the docket, that he had made payments in 2016 when he was employed, and that he intended to continue making payments when he was employed once again and able to meet his basic life needs. (R. 12a; R. 36a).

Mr. Smetana was given credit for the time he had spent in jail on the bench warrant, and he was released on May 4. Two days before he was released, counsel filed a Petition for a Writ of Habeas Corpus. (R. 8a). However, the court scheduled the hearing on the Petition for after Mr. Smetana was released. Since the court could no longer grant the relief sought, Mr. Smetana subsequently withdrew the Petition.

## SUMMARY OF THE ARGUMENT

Under Pennsylvania and United States Supreme Court decisions dating back to the 1970s, courts cannot jail defendants for failure to pay without first holding a hearing and determining that the defendant has the ability to pay but is willfully refusing to do so. These decisions were intended to put an end to “debtors’ prisons”—the practice of jailing people who were too poor to pay their fines and costs. Pennsylvania’s Rules of Criminal Procedure forbid a court from jailing a person too poor to pay his fines and costs and from imposing a payment obligation that a defendant cannot reasonably meet. They require the court to make a determination “that the defendant is financially able to pay the fine or costs.” Pa.R.Crim.P. 706(A). *See also* 42 Pa. Cons. Stat. § 9730(b). Unfortunately, the Rule provides no guidance to judges about *how* to determine when a defendant is contemptuously refusing to pay or what is a reasonable payment plan.

The Lebanon County Court of Common Pleas held Mr. Smetana in civil contempt and imprisoned him for failure to pay \$100 per month without making any determination that Mr. Smetana was financially able to pay the fine or costs. And in fact, the evidence before the court was that he had no present source of income. There was no evidence that he willfully refused to pay his fines and costs. The court then set a condition for his release that he could not meet, without determining beyond a reasonable doubt that he was able to pay the so-called

“purge” amount that would end his imprisonment, and it maintained the same, unreasonable payment plan. The trial court violated the rules of court and due process by failing to inquire into Mr. Smetana’s financial status. By holding him in contempt, on a record that showed he was unable to pay, setting a purge amount that he could not afford, and placing him on an identical, unaffordable payment plan, the court abused its discretion by imposing manifestly unreasonable financial conditions that were not supported by the evidence in the record.

Through this case and a companion case (893 MDA 2017), this Court should provide clear guidance to the Court of Common Pleas for Lebanon County and to similar courts, as it has in different contexts, to ensure that court collection procedures comply with both the Rules and the Constitution. Accordingly, this Court should vacate the trial court’s April 24 order, and remand for a new proceeding with instructions on how to handle contempt proceedings when indigent defendants have failed to pay fines and costs.

## **ARGUMENT**

### **A. The Court of Common Pleas Improperly Held Mr. Smetana in Civil Contempt and Imprisoned Him for Nonpayment of Fines and Costs Without Inquiring into Whether Mr. Smetana’s Nonpayment Was Willful.**

In holding Mr. Smetana in “contempt” and sentencing him to jail, the trial court implicitly found Mr. Smetana’s failure to pay “willful,” but the court failed to actually inquire into whether he could pay, as required by the law. Instead, the

court asked only whether he had any money on his person or whether anyone brought money that day to court. (R. 22). The contempt finding should be vacated.

The civil contempt power allows a court to use sanctions—including imprisonment—to compel compliance with a court order from an individual who has willfully failed to comply. To hold a defendant in civil contempt, a court must find by a preponderance of the evidence: “(1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor’s violation was volitional; and (3) that the contemnor acted with wrongful intent.” *Lachat v. Hinchcliffe*, 769 A.2d 481, 488-89 (Pa. Super. Ct. 2001). In other words, the key question is whether a defendant willfully failed to comply with the court order. *See Barrett v. Barrett*, 368 A.2d 616, 620 (Pa. 1977) (civil contempt requires finding that contemnor “willfully and contemptuously violated the original orders”); *Commonwealth v. Rosser*, 407 A.2d 857, 859, 860 n.8 (Pa. Super. Ct. 1979) (noting that finding civil contempt for nonpayment of fines and costs requires evidence of willfulness of nonpayment, as only a “non-indigent person who willfully fails to pay fines or costs” may be imprisoned).

These principles are codified in both the Rules of Criminal Procedure, which prohibit incarceration “unless it appears after hearing that the defendant is financially able to pay the fine or costs,” Pa.R.Crim.P. 706(A), and in statute. *See*

42 Pa. Cons. Stat. § 9730(b)(2) (a court can impose imprisonment only if the “judge determines that the defendant is financially able to pay the fine or costs”). Without this determination, there can be no finding that a defendant willfully failed to pay.

Those rules originate in our commitment to fairness and due process. The United States Supreme Court has explained that imprisoning indigent defendants who are unable to pay their fines and costs is illegal unless the court first “inquire[s] into the reasons for the failure to pay” to determine if the defendant “willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983). Even before *Bearden*, our own Supreme Court held unconstitutional the practice of jailing indigent defendants for nonpayment, holding that they “must be given the opportunity to establish that they are unable to pay the fine. Upon a showing of indigency, [they] should be allowed to make payments in reasonable installments.” *Commonwealth ex. rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (granting a writ of habeas corpus for four defendants who were jailed for failure to pay fines, costs, and restitution).

For that reason, this Court has held that a trial court cannot find a probationer in violations of the terms of probation for failure to make payments unless the court has made an affirmative inquiry “into the reasons surrounding the

[defendant's] failure to pay, followed by a determination of whether the [defendant] made a willful choice not to pay." *Commonwealth v. Eggers*, 742 A.2d 174, 176 (Pa. Super. Ct. 1999). *See also Commonwealth v. Dorsey*, 476 A.2d 1308, 1312 (Pa. Super. Ct. 1984) (defendant's opportunity to provide evidence of indigence not sufficient for finding of willfulness, as "the lower court did not inquire into the reasons for appellant's failure to pay or did it make any findings pertaining to the willfulness of appellant's omission as required by *Bearden*").

Such an inquiry is necessary because the court needs to look at a defendant's entire financial picture when determining whether that defendant is able to pay. For example, mere knowledge that a defendant is employed "cannot alone provide a sufficient picture of appellant's finances so that an intelligent finding as to his ability to pay the fines and costs imposed can be made," *Commonwealth v. Ruiz*, 470 A.2d 1010, 1012 (Pa. Super. Ct. 1984), and even if the court is "well acquainted" with the defendant, it fails to hold an appropriate hearing when it asks "no questions that would have established the financial condition of [the defendant]," including information about the defendant's salary and "day to day expenses." *Commonwealth ex rel. Bashore v. Leininger*, 2 Pa. D. & C.3d 523, 528-29 (1977) (applying the same principle to incarceration for failure to pay a traffic ticket).

Here, the trial court did not inquire into the reasons for Mr. Smetana's

default, but instead only asked if he had any money on his person or if anyone came with money to the Fines and Costs Contempt hearing. (R. 22a). Although the court did not inquire about Mr. Smetana's financial condition, Mr. Smetana's attorney tried to explain that he had no present income—although he did have work waiting for him on his release. (R. 22a). The court already knew, of course, that Mr. Smetana had spent the last three weeks in jail after the court set \$500 bail, from which the court could have inferred that he did not have \$200. (R. 22a). And it apparently was either unaware of or ignored his testimony at the March 5 bench warrant hearing where he explained that he had not been working, had struggled with homelessness after being thrown out of his sister's home, had been in treatment, and had been too poor to pay his fines and costs. (R. 17a).

Instead of asking about the defendant's finances, the court at the Fines and Costs Contempt hearing focused only on whether he would be able to borrow money from anyone. (R. 22a). Mr. Smetana suggested that his sister may be able to post \$200 to keep him out of jail, and the court set his purge amount at that figure. (R. 22a). His sister in fact refused to post that money, as Mr. Smetana already owed her approximately \$4,000, which highlights the folly of the inquiry. (R. 44a). But this line of questioning, by improperly focusing on whether Mr. Smetana could borrow the money, ignored that the legal question is whether the *defendant* is able to pay, not whether the defendant's friends and relatives have financial resources.

*See, e.g.*, Pa.R.Crim.P. 706 (operative question is whether “*the defendant* is financially able to pay the fine or costs”). Undersigned counsel is unaware of any cases imputing another’s financial resources to a defendant who has failed to pay his fines and costs.

By not considering Mr. Smetana’s statements that he did not have any money to pay his fines and costs, and by not asking any additional questions before finding him in contempt and sentencing him to jail, the trial court violated Pennsylvania law, which flatly prohibits jailing indigent defendants for nonpayment of fines and costs. *See* Pa.R.Crim.P. 706(A), (D) (prohibiting imprisonment “unless it appears after hearing that the defendant is financially able to pay the fine or costs” and specifying that a defendant already on a payment plan cannot be imprisoned unless “the court finds the defendant is not indigent”); 42 Pa. Cons. Stat. § 9730(b)(2) (permitting imprisonment only if “the defendant is financially able to pay the fine or costs”).<sup>1</sup> *See also* *Bacik v. Commonwealth*, 434 A.2d 860, 863 (Pa. Commw. Ct. 1981) (hold that then-active rule governing summary cases, with language identical to Rule 706, “precludes the possibility of

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<sup>1</sup> While *Bearden* permits courts to incarcerate defendants who lack the ability to pay fines and costs if no alternative form of punishment would meet the state’s interests, Pennsylvania law does *not* permit incarceration of indigent defendants who lack the ability to pay under any circumstances. *See* Pa.R.Crim.P. 706(A), (D).

imprisonment ever being imposed upon one whose indigency is established”).

**B. The Court of Common Pleas Abused Its Discretion By Holding Mr. Smetana in Contempt When the Evidence Showed That He Was Destitute and Lacked the Ability to Pay.**

The evidence before the trial court showed that Mr. Smetana had no present income (although he had work available for him upon his release), was represented by the public defender, had struggled with homelessness, and stopped paying his fines and costs because he could not afford them (R. 16-17a; R. 22a). Had the court made the proper inquiries, it would have learned that Mr. Smetana had been receiving public benefits, was entirely dependent on financial support from his girlfriend and sister, already owed his sister approximately \$4,000, and struggled with alcoholism and PTSD, which severely impacted his ability to obtain and maintain gainful employment. (R. 29a; R. 38a). The evidence on the record demonstrated that Mr. Smetana was indigent and unable to pay, and it was manifestly unreasonable for the trial court to conclude otherwise.

Pennsylvania’s appellate courts have explained that receiving public assistance (*e.g.*, food stamps or Medicaid) and the services of the public defender’s office “invite the presumption of indigence.” *Eggers*, 742 A.2d at 176 n.1. That presumption should have guided the trial court, and cases such as *Ruiz*, 470 A.2d at 1011-12 and *Commonwealth v. Gaskin*, 472 A.2d 1154, 1157-58 (Pa. Super. Ct. 1984) indicate that courts need to look at a defendant’s entire financial picture

when determining ability to pay. The court abused its discretion by ignoring this well-established precedent.

Moreover, this Court has instructed trial courts to look to the “established processes for assessing indigency” through the *in forma pauperis* (“IFP”) standards when assessing a defendant’s financial status in criminal cases. *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008) (using the IFP standards and the appointment of counsel standards to determine whether to waive the cost of an expert in a criminal case, although the defendant failed to provide evidence of indigency). *See also Commonwealth v. Konias*, 136 A.3d 1014, 1020 (Pa. Super. Ct. 2016) (same); *Commonwealth v. Mead*, 446 A.2d 971, 974 (Pa. Super. Ct. 1982) (reviewing IFP application and petition for appointment of counsel to help determine financial status when setting a fine). This is because of the “dearth of case law” in criminal cases, compared with the “well-established principles governing indigency in civil cases.” *Commonwealth v. Lepre*, 18 A.3d 1225, 1226-27 (Pa. Super. Ct. 2011) (applying IFP standards to waive appeal costs). These same principles govern whether or what a defendant is able to pay under Rule 706, as indigence is indigence whether in a criminal or civil context.<sup>2</sup> The trial court

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<sup>2</sup> This Court uses “in poverty” and “indigent” interchangeably, and there is no legal distinction between the two terms. *See, e.g., Commonwealth v. Hernandez*, 917 A.2d 332 (Pa. Super. Ct. 2007); *Crosby Square Apartments v. Henson*, 666 A.2d 737 (Pa. Super. Ct. 1995); *Commonwealth v. Regan*, 359 A.2d 403 (Pa. Super. Ct.

misapplied the law by not heeding this Court’s precedents that look to the analogous IFP principles when adjudicating financial matters in criminal cases. Although this Court has not yet explicitly ruled on this with respect to fines and costs, there is simply no need to re-invent the wheel when the analogous IFP cases can easily provide that much-needed guidance.

When determining indigence in IFP petitions, the question is “not whether petitioners are unable to pay the costs but whether they are in poverty. If they are in poverty, it follows that they are unable to pay the costs, and their petition should be granted.” *Gerlitzki v. Feldser*, 307 A.2d 307, 308 (Pa. Super. Ct. 1973) (en banc). Inability to pay costs must be “read not with an accountant’s but a housewife’s eyes,” as poverty is not a question of net worth but instead “whether he is able to obtain the necessities of life.” *Id.* A petitioner with “no income except public assistance benefits” and “minimal” net worth is in poverty and thus eligible to proceed IFP. *Id.* Where the defendant has some income and/or assets, the courts’ review of those resources is specific and grounded in practicality. Thus, in *Gerlitzki*, the petitioner owned assets including a station wagon and a truck, and he had a small positive net worth. *Id.* He could have paid court costs, perhaps by selling a car—but as a matter of law, he was indigent and thus *unable* to pay. *Id.*

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1976). Accordingly, cases that set forth standards for determining whether an individual is in poverty are equally applicable to the inquiry under Rule 706 of whether a defendant is indigent.

*See also Koziatek v. Marquett*, 484 A.2d 806, 808 (Pa. Super. Ct. 1984) (plaintiff established “prima facie case of impoverishment” when the “sole source of support was a monthly disability payment”).

This approach has been adopted by the Pennsylvania Supreme Court, which views poverty as “not . . . a mere mathematical exercise” of income versus expenses but instead an analysis of “all the facts and circumstances of the situation, both financial and personal, [which] must be taken into the account.” *Stein Enterprises, Inc. v. Golla*, 426 A.2d 1129, 1132 (Pa. 1981). Accordingly, “if the individual can afford to pay court costs only by sacrificing some of the items and services which are necessary for his day-to-day existence, he may not be forced to prepay costs in order to gain access to the courts, despite the fact that he may have some ‘excess’ income or unencumbered assets.” *Id.* In that case, although the trial court did not view the petitioner’s automobile as a necessity, the Court found that he needed the car for “legitimate, necessary purposes” and was not required to sell it to pay his court costs. *Id.* at 1133.<sup>3</sup> *See also Amrhein v. Amrhein*, 903 A.2d 17, 22 (Pa. Super. Ct. 2006) (a “focus on only gross income ignores the unassailable expenses of life” including “rent, utilities, [and] the costs of health insurance”).

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<sup>3</sup> The underlying statute in *Stein Enterprises* and *Gerlitzki* allowed petitioners to proceed IFP if they “by reason of poverty [are] unable to pay the costs of the suit.” *Gerlitzki*, 307 A.2d at 308 (alteration in original). This is practically identical to the “unable to pay the fine” standard in *Cliff*, suggesting that there is no principled distinction between the two lines of authority. *Cliff*, 304 A.2d at 161.

The principles from these cases highlight the trial courts' existing obligations to determine ability-to-pay fines and costs: they must look at a defendant's entire financial picture of income and expenses, such as through an ability-to-pay form that—like the civil IFP petition found in Pa.R.C.P. 240—requires a defendant provide clear financial information for the court to consider. This body of IFP cases, however, has the advantage of having been substantially litigated, with multiple reported opinions from this Court that actually provide dollar figures, making it easy for trial courts to import those standards and have a common point of reference. Following this Court's instructions in other criminal cases, the trial court should have applied these standards when determining whether Mr. Smetana was able to pay. But it failed to do so, and thus abused its discretion by unlawfully holding Mr. Smetana in contempt and incarcerated him.

**C. The Court of Common Pleas Abused Its Discretion By Imposing A Purge Condition Mr. Smetana Could Not Meet.**

When it sentenced Mr. Smetana to jail unless he immediately paid \$250, the trial court further abused its discretion by setting a “purge” amount that, on the record before the court, was manifestly unreasonable. (R. 22a). Our Supreme Court has explained that, when a court imposes a civil contempt purge condition, it must find “[b]eyond a reasonable doubt, from the totality of the evidence before it,” that the defendant was capable of paying the purge amount at the time that he was found in contempt. *Barrett*, 368 A.2d at 620-21. This separate inquiry and higher

evidentiary standard is required because the foundation of a civil contempt order is the principle that the defendant holds the key to his own release: if he cannot, in fact, effect his own release through compliance with the purge condition, then the sentence is the same as a criminal sentence, but without the “safeguards of criminal procedure.” *Id.* at 621. That violates the law. *See Durant v. Durant*, 489 A.2d 266, 268 (Pa. Super. Ct. 1985) (“There must be sufficient evidence from which the trial court may find beyond a reasonable doubt that appellant has the present ability to purge himself of the contempt citation. After a thorough review of the entire record, however, we find nothing further to indicate that appellant has access to the sum of \$4,766.00 or may readily obtain that amount.”).

None of the evidence before the trial court at the April 24 hearing supported a finding that Mr. Smetana had any present ability to pay the \$200 purge set by the court. Indeed, all of the evidence available to the court suggested the opposite. Mr. Smetana had not paid the \$500 bail set just three weeks before, and his counsel unequivocally told the court that he did not have any money with him. (R. 21a). When the court asked if anyone could bring money, Mr. Smetana responded that he could try calling his sister to ask for \$200, and the court immediately responded, “There you go,” and set that as the purge amount. (R. 22a). There is no question that the trial court used that as the basis for its purge condition, but that exchange conclusively demonstrates that Mr. Smetana did *not* have \$200 to purge his

contempt; his sister hypothetically may have had the money, but that cannot be imputed to him. As the Supreme Court explained, “the crucial question is not whether he willfully and contemptuously violated the original orders, but whether he had the present ability to comply with the conditions set by the court *for purging himself* of his contempt.” *Barrett*, 368 A.2d at 620-21 (emphasis added).

At the April 24 hearing, the trial court noted that it did not object to Mr. Smetana participating in work release while incarcerated, which may indicate that the court intended him to meet his purge condition through work while imprisoned. (R. 39a). This Court addressed a substantially similar situation in *Hyle v. Hyle*, 868 A.2d 601, 605-06 (Pa. Super. Ct. 2005), where the Court invalidated the trial court’s purge condition that the contemnor earn money through work release to pay his purge amount. The *Hyle* Court emphasized that the relevant legal question is whether the trial court condition is set “in such a way as the contemnor has the **present ability** to comply with the order.” *Id.* at 605 (emphasis in original). Here, as in *Hyle*, Mr. Smetana lacked the ability to pay his purge condition at the time he was held in contempt, meaning that the trial court imposed an unlawful purge condition—and therefore imposed a criminal contempt sentence—without the “procedural rights and safeguards afforded to criminal defendants.” *Id.* at 606. This both misapplied the law and—to the extent that the trial court believed Mr.

Smetana was capable of meeting the purge condition—was a manifestly unreasonable conclusion.

**D. The Court of Common Pleas Abused Its Discretion By Placing Mr. Smetana on An Unreasonable Payment Plan in Light of His Financial Circumstances.**

At the conclusion of the hearing, after Mr. Smetana had spent three weeks in jail on \$500 bail and had been held in contempt with a purge amount of \$200 that he could not pay, the trial court re-imposed a payment plan of \$100 per month. (R. 7a; R. 21a; R. 22a). In so doing, the trial court abused its discretion, as such a payment plan was manifestly unreasonable in light of the evidence before the court.

When a court sets a payment plan, it must take “into account the financial resources of the defendant and the nature of the burden its payments will impose.” Pa.R.Crim.P. 706(B). When, as here, the court is considering modifying an existing payment plan, its actions must be “just and practicable under the circumstances of record,” and the defendant has the burden to show that he is “without the means to meet the payment schedule.” *Id.* at 706(D). All of this is also subject to the Supreme Court’s admonishment that payment plans must be “reasonable.” *Cliff*, 304 A.2d at 161.

The trial court’s failure to inquire into Mr. Smetana’s financial status provided it with insufficient evidence to craft a reasonable payment plan that took

into account the burden it would place upon Mr. Smetana. As noted, the limited evidence on the record at the time demonstrated that he was in dire financial straits and not in a position to afford a \$100 per month payment plan. Indeed, in such circumstances and in accordance with this Court's precedents, the appropriate course of action would instead be to suspend Mr. Smetana's payments temporarily until he had an opportunity to get back on his feet. As this Court has explained, Rule 706 enforces the constitutional requirement that there is a "duty of paying costs 'only against those who actually become able to meet it without hardship.'" *Commonwealth v. Hernandez*, 917 A.2d 332, 337 (Pa. Super. Ct. 2007) (quoting *Fuller v. Oregon*, 417 U.S. 40, 54 (1974)). In *Hernandez*, this Court cited with approval *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984), which held that a court must consider "the other demands on [the defendant's] own and family's finances, and the hardships he or his family will endure if repayment is required. The purpose of this inquiry is to assure repayment is not required as long as he remains indigent."

The facts in the record all show that Mr. Smetana is indigent. He spent three weeks in jail because he could not come up with \$500 for bail, and he spent another week in jail after the Fines and Costs Contempt hearing because he could not come up with \$200. (R. 20a; R. 38-39a). Prior to his incarceration, Mr. Smetana had started a new job, but had only made \$100. (R. at 36a). He had

struggled with homelessness and stopped paying his fines and costs because he could not afford them (R. 16-17a; R. 22a). Had the court inquired, it would have learned that Mr. Smetana had been receiving public benefits, was entirely dependent on financial support from his girlfriend and sister, already owed his sister approximately \$4,000, and struggled with alcoholism and PTSD, which severely impacted his ability to obtain and maintain gainful employment. (R. 29a; R. 38a).

As noted above, had the trial court properly applied the IFP standards established by this Court and our Supreme Court to determine indigence, it would have found that Mr. Smetana was at least temporarily unable to afford to pay any fines and costs. By not heeding this Court's guidance in *Cannon* that trial courts should use the "established processes for assessing indigency" found in the IFP line of cases, the trial court further abused its discretion by misapplying the law. *Cannon*, 954 A.2d at 1226. Under those cases, Pennsylvania's appellate courts have repeatedly found that indigent individuals who make far more than Mr. Smetana are, as a matter of law, unable to pay any amount of money. *See, e.g., Stein Enterprises, Inc.*, 426 A.2d at 1132 (granting IFP status for petitioner making \$273 per month (\$13,652 annually today)); *Crosby Square Apartments v. Henson*, 666 A.2d 737, 738 (Pa. Super. Ct. 1995) (granting IFP status for petitioner with

monthly income of \$1,425 (\$27,737 annually today) for a family of five).<sup>4</sup> By not applying these principles to determine that Mr. Smetana’s inconsistent income was too low to support placing him on any payment plan, let alone \$100 per month, the trial court abused its discretion.

### **REQUEST FOR PUBLICATION**

Pursuant to Pa.R.A.P. 3519(a), Mr. Smetana respectfully requests that this Court publish its disposition in this matter because of the substantial public importance of the issues raised in this appeal. Mr. Smetana’s case is typical of the modern debtors’ prison cases that, at the request of the Supreme Court, were recently the subject of a report by the Pennsylvania Interbranch Commission on Gender, Racial and Ethnic Fairness in its report “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform.” Thousands of Pennsylvanians are jailed each year because they are indigent and unable to pay their fines, costs, and restitution. *See* Pa. Interbranch Comm’n on Gender, Racial and Ethnic Fairness, “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform” (July 10, 2017), [http://www.pa-interbranchcommission.com/\\_pdfs/Ending-Debtors-Prisons-in-PA-Report.pdf](http://www.pa-interbranchcommission.com/_pdfs/Ending-Debtors-Prisons-in-PA-Report.pdf).

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<sup>4</sup> All of these figures were updated for inflation as of March 2017 using the U.S. Department of Labor Bureau of Labor Statistic’s Consumer Price Index inflation calculation tool available at <https://data.bls.gov/cgi-bin/cpicalc.pl>.

In addition, Mr. Smetana’s appeal is (but for one issue) identical to the appeal of William Diaz in Superior Court Docket No. 893 MDA 2017. Both hearings occurred as part of the same series of Fines and Costs Contempt day hearings, which occur monthly in Lebanon County. As the transcripts in these cases show, Mr. Diaz’s was the 29th case that day, while Mr. Smetana’s was the 116th. These cases were not outliers within the Lebanon County Court of Common Pleas or in the state as a whole. Two other appeals, those of Gregory Mauk in 461 WDA 2017 and William Ettison in 1063 WDA 2017, are currently pending before this Court and raise similar issues arising from fines and costs proceedings in other courts of common pleas. It is clear from these cases and the Interbranch Commission’s report that our trial courts need guidance on how to appropriately exercise their contempt powers when a defendant defaults on payments, as well as how to set appropriate payment plans. The Court’s decision in this matter is desperately needed to provide that guidance.<sup>5</sup>

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<sup>5</sup> In the event that the Commonwealth chooses to not participate in this matter, this Court should still issue a full opinion and not simply vacate and remand. In the Supreme Court’s seminal case on these issues, which arose out of a group of petitions for writs of habeas corpus, neither the warden nor the District Attorney defended the court’s actions or participated in the proceedings. *Cliff*, 304 A.2d at 159 n.2. Nevertheless, “because of the immediate public importance of the legal principles herein,” the Court not only heard the case and issued an opinion, it also bypassed the normal appeals process and took a direct appeal from the court of common pleas. *Id.* at n.1 This Court should similarly recognize the grave importance of the issues raised herein and issue an opinion instructing trial courts on how to act with respect to fines and costs.

## CONCLUSION

For the foregoing reasons, the Court should hold that the trial court exceeded its authority by holding Appellant Brian Smetana in civil contempt without inquiring into his ability to pay, by imposing a purge condition he was unable to afford, and by putting him on an unreasonable payment plan with which he will be unable to comply. Accordingly, this Court should vacate the trial court's April 24 order, clarify the standards that the trial court must follow, and remand for new proceedings. The Court should take the opportunity to remind Pennsylvania's courts that, "in Pennsylvania, we do not imprison the poor solely for their inability to pay fines." *Eggers*, 742 A.2d at 176.

Respectfully submitted,

/s/ Andrew Christy

Andrew Christy

PA ID No. 322053

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Date: October 19, 2017

*Counsel for Appellant*

**CERTIFICATE OF COMPLIANCE**

I hereby certify, pursuant to Pa.R.A.P. 2135, that this brief does not exceed 14,000 words.

*/s/ Andrew Christy*

Date: October 19, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served upon the parties at the addresses and in the manner listed below:

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/s/ Andrew Christy

Date: October 19, 2017

# Appendix A

**COPY**

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

**CRIMINAL DIVISION**

**COMMONWEALTH OF PENNSYLVANIA** :  
 :  
**V.** : **CP-38-CR-1421-2014**  
 :  
**BRIAN SMETANA** :

**ORDER**

AND NOW, this 31<sup>st</sup> day of July, 2017, upon consideration of Appellant's Concise Statement of Errors Complained of on Appeal, we hereby affirm our Order dated April 24, 2017.

Pursuant to Pa.R.A.P. 1931, the Clerk of Courts of the Court of Common Pleas of Lebanon County is hereby directed to transmit this case's record, including this Order ~~and attached Opinion~~, to the Superior Court of Pennsylvania immediately.

BY THE COURT:

  
\_\_\_\_\_, J.  
SAMUEL A. KLINE

cc: District Attorney's Office  
Andrew Christy, Esq.  
Jennifer Traxler, Esq., Deputy Prothonotary of the Superior Court

# Appendix B

**IN THE COURT OF COMMON PLEAS  
FOR LEBANON COUNTY**

**CRIMINAL DIVISION**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	)	
	)	
v.	)	<b>Case No. CP-38-CR-1421-2014</b>
	)	<b>OTN: L8750512</b>
<b>BRIAN SMETANA</b>	)	
	)	
_____	)	

**CONCISE STATEMENT OF ERRORS COMPLAINED OF ON APPEAL**

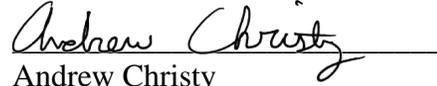
Defendant Brian Smetana, through counsel, hereby files this Concise Statement of Errors Complained of on Appeal in accordance with Pa.R.A.P. 1925(b) and the Order of this Court dated May 24, 2017.

On appeal, Mr. Smetana intends to raise the following issues:

1. In violation of Pa.R.Crim.P. 706 and *Bearden v. Georgia*, 461 U.S. 660 (1983), the Court erred by holding Mr. Smetana in civil contempt for failure to pay his court fines and costs and incarcerating him without finding that his failure to make those payments was willful and not a result of his inability to pay.
2. In violation of *Barrett v. Barrett*, 368 A.2d 616 (Pa. 1977), the Court erred by setting a dollar amount by which Mr. Smetana could purge his contempt and be released from incarceration without finding beyond a reasonable doubt that Mr. Smetana had the present ability to comply with the Court’s order and meet that purge condition, thereby unlawfully converting the civil contempt sentence into one of criminal contempt.
3. In violation of Pa.R.Crim.P. 706 and *Com. ex. Rel. Parrish v. Cliff*, 304 A.2d 158 (Pa. 1973), the Court erred by placing Mr. Smetana on a payment plan without inquiring into his financial circumstances and determining whether such a plan was reasonable in light

of such circumstances.

Respectfully submitted,



Andrew Christy

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## CERTIFICATE OF SERVICE

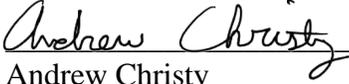
I hereby certify that the foregoing document was served upon the parties at the addresses and in the manner listed below:

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Date: June 8, 2017

**IN THE SUPERIOR COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

---

**No. 894 MDA 2017**

---

**COMMONWEALTH OF PENNSYLVANIA,**

**Appellee,**

**v.**

**BRIAN SMETANA,**

**Appellant.**

---

**APPELLANT'S REPRODUCED RECORD**

---

Appeal from Order of the Court of Common Pleas  
of Lebanon County, Pennsylvania dated April 24, 2017

---

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1. Docket Entries .....	R. 01a-14a
2. April 5, 2017 Hearing Transcript .....	R. 15a-19a
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5. May 2, 2017 Petition for a Writ of Habeas Corpus .....	R. 26a-R. 55a
6. May 22, 2017 Notice of Appeal .....	R. 56a-R. 57a
7. Trial Court Opinion .....	Reproduced as Appendix A to Appellant’s Brief

# COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001421-2014  
**CRIMINAL DOCKET**

Court Case



Commonwealth of Pennsylvania

Page 6 of 22

v.

Brian G. Smetana

Supreme Court No: 314064

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Representing: Smetana, Brian G.

Name: Andrew Chapman Christy  
Private

Supreme Court No: 322053

Rep. Status: Active

Phone Number(s):

Address:  
Address Unknown

ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 (1)	07/08/2014		Smith, Michael D.
Bail Set - Smetana, Brian G.			
1 (2)	07/22/2014		Shepp, Benard D.
Bail Posted - Smetana, Brian G.			
2 (3)	07/22/2014		Capello, Thomas M.
Order Granting Motion for Modification of Bail - Smetana, Brian G.			
1	07/24/2014	07/25/2014	Jones, Charles T. Jr.
Order Granting Motion for Appointment of Conflict Counsel			
(4)	08/20/2014		Shirk, Meaghan Marie
Motion for ReAppointment of Conflict Counsel			
2 (5)	08/20/2014	08/22/2014	Tylwalk, John C.
Order Granting Motion for ReAppointment of Conflict Counsel			
Eggert, Heather		Lebanon County Clerk of Courts	
08/25/2014	First Class		
Lebanon County Court Administration		Lebanon County Clerk of Courts	

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001a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

**SECURE DOCKET**

Docket Number: CP-38-CR-0001421-2014  
**CRIMINAL DOCKET**

Court Case



Commonwealth of Pennsylvania  
v.  
Brian G. Smetana

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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
Service To			Service By
Issue Date	Service Type	Status Date	Service Status
08/25/2014	Interoffice		Lebanon County Clerk of Courts
Lebanon County District Attorney's Office			
08/25/2014	Interoffice		Lebanon County Clerk of Courts
Lebanon County Public Defender's Office			
08/25/2014	Interoffice		Lebanon County Clerk of Courts
Shirk, Meaghan Marie			
08/25/2014	First Class		Lebanon County Clerk of Courts
Smetana, Brian G.			
08/25/2014	First Class		Lebanon County Clerk of Courts
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1 (1)	08/21/2014		Lebanon County Court Administration
Notice: Three Date Letter			
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1 (7)	08/27/2014		MDJ-52-1-01
Original Papers Received from Lower Court			
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1 NCA	09/05/2014		Lebanon County Court Administration
Arraignment Scheduled 09/17/2014 8:30AM			
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2 NCA	09/05/2014		Lebanon County Court Administration
Call of the List Scheduled 10/23/2014 8:30AM			
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3 NCA	09/05/2014		Lebanon County Court Administration
Crim Jury Trial Scheduled 11/03/2014 8:30AM			
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1 (8)	09/15/2014		Commonwealth of Pennsylvania
Information Filed			
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1 (9)	09/17/2014		Smetana, Brian G.
Waiver of Appearance at Arraignment			
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1 NCA	09/18/2014		Lebanon County Court Administration
Arraignment Cancelled			
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1 (10)	10/23/2014		Eby, Robert J.
Guilty Plea - Negotiated			

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002a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

SECURE DOCKET

Docket Number: CP-38-CR-0001421-2014  
**CRIMINAL DOCKET**

Court Case



Commonwealth of Pennsylvania  
v.  
Brian G. Smetana

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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
2 (10) cont Guilty Plea Colloquy	10/23/2014		Smetana, Brian G.
3 (11) Sentencing Hearing Notice	10/23/2014		Lebanon County District Attorney's Office
1 MIA Crim Jury Trial Cancelled	10/28/2014		Lebanon County Court Administration
2 MIA Assigned to Judge: Charles, Bradford H.	10/28/2014		Court of Common Pleas - Lebanon County
3 MIA Sentencing Scheduled 12/10/2014 8:30AM	10/28/2014		Lebanon County Court Administration
4 MIA Event Track changed to Plea from Standard Court Case	10/28/2014		Court of Common Pleas - Lebanon County
1 (12) Written Post-Sentence Colloquy	12/10/2014		Smetana, Brian G.
2 MIA Order - Sentence/Penalty Imposed Summ.# a, seq. 2, Pay costs, fine \$300; Summ.# b, seq. 3, Merges w/Ct.# 1; Summ.# c, seq. 4, Pay costs, fine \$200	12/10/2014		Charles, Bradford H.
4 (13) Notice to Surety of Disposed Case Shepp, Benard D. 12/10/2014	12/10/2014		Smith, Barbara A. Lebanon County Clerk of Courts
3 (14) Sentence/Penalty Order Filed Summ.# a, seq. 2, Pay costs, fine \$300; Summ.# b, seq. 3, Merges w/Ct.# 1; Summ.# c, seq. 4, Pay costs, fine \$200 CDU Adult Probation 12/11/2014	12/11/2014	12/10/2014	Charles, Bradford H. Lebanon County Clerk of Courts

Printed: 08/09/2017

CPCMS 9082

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003a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

**SECURE DOCKET**

Docket Number: CP-38-CR-0001421-2014  
**CRIMINAL DOCKET**

Court Case



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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
Service To	Service Type	Status Date	Service Status
Eggert, Heather 12/11/2014	First Class		Lebanon County Clerk of Courts
Lebanon County Adult Probation Unit 12/11/2014	Interoffice		Lebanon County Clerk of Courts
Lebanon County Correctional Facility 12/11/2014	Interoffice		Lebanon County Clerk of Courts
Lebanon County District Attorney's Office 12/11/2014	Interoffice		Lebanon County Clerk of Courts
-----			
1 <i>MLA</i>	12/17/2014		Court of Common Pleas - Lebanon County
Penalty Assessed			
-----			
1	01/12/2015		Eggert, Heather
Motion for Counsel Fees			
-----			
2 <i>15</i>	01/12/2015	01/13/2015	Charles, Bradford H.
Order Granting Motion for Counsel Fees to Heather Eggert-esq. service: crt adm, attmy			
-----			
1 <i>16</i>	03/11/2015		Lebanon County Adult Probation Unit
Release of Prisoner - IPP Confinement service: Judge Charles, LCCF-records, prob, defend-LCCF			
-----			
1 <i>17</i>	06/25/2015		Lebanon County Adult Probation Unit
Detainer Issued			
-----			
1 <i>18</i>	07/02/2015		Lebanon County Adult Probation Unit
Release of Prisoner			
Lebanon County Adult Probation Unit 07/02/2015	Interoffice		Lebanon County Clerk of Courts
Lebanon County Correctional Facility 07/02/2015	Interoffice		Lebanon County Clerk of Courts
-----			
1 <i>19</i>	09/03/2015		Lebanon County Adult Probation Unit
Release of Prisoner			

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GPCMS 9082

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004a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

**SECURE DOCKET**

Docket Number: CP-38-CR-0001421-2014  
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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
Service To	Service By	Issue Date	Service Status
Lebanon County Adult Probation Unit	Lebanon County Clerk of Courts	09/03/2015	Interoffice
Lebanon County Correctional Facility	Lebanon County Clerk of Courts	09/03/2015	Interoffice
<hr/>			
2 <i>(20)</i>	09/03/2015		Lebanon County Adult Probation Unit
Detainer Issued	Lebanon County Clerk of Courts	09/03/2015	Interoffice
Lebanon County Correctional Facility	Lebanon County Clerk of Courts	09/03/2015	Interoffice
<hr/>			
1. <i>MIA</i>	01/27/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 63 Days Overdue			
<hr/>			
1 <i>MIA</i>	02/23/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 90 Days Overdue			
<hr/>			
1 <i>MIA</i>	03/23/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 89 Days Overdue			
<hr/>			
1 <i>MIA</i>	05/24/2016		Court of Common Pleas - Lebanon County
Payment Plan Introduction Letter			
<hr/>			
1 <i>MIA</i>	09/07/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 44 Days Overdue			
<hr/>			
1 <i>MIA</i>	10/07/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 74 Days Overdue			

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CPCMS 9082

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005a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
1	MIA 11/07/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 105 Days Overdue			
1	MIA 12/08/2016		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 134 Days Overdue			
1	MIA 01/09/2017		Lebanon County Probation Department
Contempt Fines and Costs Scheduled 03/27/2017 9:00AM			
2	(21) 01/09/2017		Court of Common Pleas - Lebanon County
Delinquency Notice - Hearing Scheduled March 27, 2017 Smetana, Brian G. CDU Adult Probation 01/09/2017 First Class			
3	MIA 01/09/2017		Court of Common Pleas - Lebanon County
Delinquency Notice Filed - 168 Days Overdue			
1	MIA 03/27/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
1	(22) 03/28/2017	03/27/2017	Kline, Samuel A.
Bench Warrant Issued for Contempt Fines and Costs - 03/27/2017 - Bail \$900. Cash Only			
Lebanon County Fines and Costs Collection		Lebanon County Clerk of Courts	
03/28/2017	Interoffice		
Lebanon County Sheriff's Department		Lebanon County Clerk of Courts	
03/28/2017	Hand Delivered		
Smetana, Brian G.		Lebanon County Clerk of Courts	
03/28/2017	First Class		
1	(23) 04/04/2017		Lineaweaver, James L. III
Bench Warrant - Failure to Appear (Returned Served - Closed)			

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CPCMS 9082

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006a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
1 <i>NIA</i>	04/05/2017		Court of Common Pleas - Lebanon County
Pursue Delinquency			
2 <i>NIA</i>	04/05/2017		Lebanon County Court Administration
Contempt Fines and Costs Scheduled 04/24/2017 9:00AM			
3 <i>(24)</i>	04/05/2017	04/05/2017	Jones, Charles T. Jr.
Bench Warrant - Failure to Appear (Vacated - Closed)			
Lebanon County Adult Probation Unit		Lebanon County Court Administration	
04/05/2017	Interoffice		
Lebanon County Correctional Facility		Lebanon County Clerk of Courts	
04/05/2017	Hand Delivered-Open Court		
Lebanon County Court Administration		Lebanon County Clerk of Courts	
04/05/2017	Hand Delivered		
Lebanon County District Attorney's Office		Lebanon County Court Administration	
04/05/2017	Interoffice		
Lebanon County Solicitor		Lebanon County Court Administration	
04/05/2017	Fax		
Smetana, Brian G.		Lebanon County Clerk of Courts	
04/05/2017	Hand Delivered-Open Court		
4	04/05/2017		Jones, Charles T. Jr.
Bail Set - Smetana, Brian G.			
1 <i>(25)</i>	04/12/2017		Rupert, Lora Brooke
Entry of Appearance			
1 <i>NIA</i>	04/24/2017		Court of Common Pleas - Lebanon County
Do Not Pursue Delinquency			
1 <i>(26)</i>	04/25/2017	04/24/2017	Kline, Samuel A.
Contempt Order of Court- Remand to LCCF for 1 Month			
Lebanon County Correctional Facility		Lebanon County Clerk of Courts	
04/25/2017	Interoffice		
Lebanon County Fines and Costs Collection		Lebanon County Clerk of Courts	

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CPCMS 8082

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007a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
<b>Service To</b>			
<b>Service By</b>			
<u>Issue Date</u>	<u>Service Type</u>	<u>Status Date</u>	<u>Service Status</u>
04/25/2017	Interoffice		
Lebanon County Sheriff's Department		Lebanon County Clerk of Courts	
04/25/2017	Interoffice		
Smetana, Brian G.		Lebanon County Clerk of Courts	
04/25/2017	First Class		
-----			
2	04/25/2017		Christy, Andrew Chapman
Transcript Request			
To Ct Reporter for 4/24/17 proceedings			
-----			
1	05/02/2017		Christy, Andrew Chapman
Entry of Appearance			
-----			
2	05/02/2017		Lesser, Jacqueline Michele
Entry of Appearance			
-----			
3	05/02/2017		Christy, Andrew Chapman
Petition for Writ of Habeas Corpus			
-----			
4	05/02/2017		Court of Common Pleas - Lebanon County
Order Unsigned			
Christy, Andrew Chapman			
Lebanon County Clerk of Courts			
05/04/2017 First Class			
Lebanon County District Attorney's Office			
Lebanon County Clerk of Courts			
05/04/2017 Interoffice			
-----			
5	05/02/2017	05/02/2017	Kline, Samuel A.
Rule to Show Cause			
Christy, Andrew Chapman			
Lebanon County Clerk of Courts			
05/04/2017 First Class			
Lebanon County District Attorney's Office			
Lebanon County Clerk of Courts			
05/04/2017 Interoffice			

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008a

# COURT OF COMMON PLEAS OF LEBANON COUNTY

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**ENTRIES**

Sequence Number	CP Filed Date	Document Date	Filed By
1 (21)	05/09/2017		Christy, Andrew Chapman
Transcript Request To CI Reporter for proceedings 4/5/17			
1 (32)	05/16/2017	05/12/2017	Tylwalk, John C.
Order Granting Motion for Transcripts Fee Waiver Christy, Andrew Chapman                      Lebanon County Clerk of Courts 05/16/2017                      First Class Lebanon County Court Administration                      Lebanon County Clerk of Courts 05/16/2017                      Interoffice			
1 K1A	05/18/2017		Court of Common Pleas - Lebanon County
Payment Plan Introduction Letter			
1	05/22/2017		Christy, Andrew Chapman
Notice of Appeal to the Superior Court			
2	05/22/2017		Christy, Andrew Chapman
Motion to Proceed in In Forma Pauperis			
3 (33)	05/22/2017		Christy, Andrew Chapman
Motion for Transcript Fee Waiver			
4	05/22/2017	05/24/2017	Kline, Samuel A.
Order Granting Motion to Proceed In Forma Pauperis			
1 (34)	05/24/2017	05/24/2017	Kline, Samuel A.
Concise Statement Order Christy, Andrew Chapman                      Lebanon County Clerk of Courts 05/24/2017                      First Class Lebanon County District Attorney's                      Lebanon County Clerk of Courts Office                      Interoffice 05/24/2017 Smetana, Brian G.                      Lebanon County Clerk of Courts 05/24/2017                      First Class Superior Court of Pennsylvania - Middle                      Lebanon County Clerk of Courts District 05/24/2017                      First Class			

Printed: 08/09/2017

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# COURT OF COMMON PLEAS OF LEBANON COUNTY

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ENTRIES

Sequence Number	CP Filed Date	Document Date	Filed By
1 MIA  Pursue Delinquency	06/05/2017		Court of Common Pleas - Lebanon County
2 MIA  Do Not Pursue Delinquency	06/05/2017		Court of Common Pleas - Lebanon County
1 (35) Appeal Docket Sheet from Superior Court of PA 894 MDA 2017	06/08/2017		Superior Court of Pennsylvania - Middle District
1 (36) Concise Statement of Errors Complained on Appeal	06/09/2017		Christy, Andrew Chapman
1 (37) Mail Returned	06/13/2017		Court of Common Pleas - Lebanon County
1 (38) Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record Fines & Costs April 24, 2017 transcribed by Stephanie Axarlis, Court Administrator	06/19/2017		Lebanon County Court Administration
2 (39) Transcript of Proceedings Filed Fines & Costs April 24, 2017 transcribed by Stephanie Axarlis, Court Administrator	06/19/2017		Lebanon County Court Administration
3 (40) Pa.R.A.P. 1922(a) Notice of Lodging Transcript of Record Fines & Costs April 24, 2017 (Individual Case) transcribed by Stephanie Axarlis, Court Administrator	06/19/2017		Lebanon County Court Administration
4 (41) Transcript of Proceedings Filed Fines & Costs April 24, 2017 (Individual Case) transcribed by Stephanie Axarlis, Court Administrator	06/19/2017		Lebanon County Court Administration

Printed: 08/09/2017

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# COURT OF COMMON PLEAS OF LEBANON COUNTY

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### ENTRIES

<u>Sequence Number</u>	<u>CP Filed Date</u>	<u>Document Date</u>	<u>Filed By</u>
1	05/09/2017		Christy, Andrew Chapman
Transcript Request			
To Ct Reporter for proceedings 4/5/17			

### PAYMENT PLAN SUMMARY

<u>Payment Plan No</u>	<u>Payment Plan Freq.</u>	<u>Next Due Date</u>	<u>Active</u>	<u>Overdue Amt</u>	
<u>Responsible Participant</u>			<u>Suspended</u>	<u>Next Due Amt</u>	
38-2014-P000002690	Monthly	07/25/2016	Yes	\$928.50	
Smetana, Brian G.			No	\$60.00	
Payment Plan History:					
	<u>Receipt Date</u>	<u>Payment</u>	<u>Payor Name</u>	<u>Participant Role</u>	<u>Amount</u>
	01/04/2016	Payment	Smetana, Brian G.	Defendant	\$0.50
	02/03/2016	Payment	Smetana, Brian G.	Defendant	\$50.00
	03/03/2016	Payment	Smetana, Brian G.	Defendant	\$50.00
	04/15/2016	Payment	Smetana, Brian G.	Defendant	\$100.00
	04/29/2016	Payment	Smetana, Brian G.	Defendant	\$100.00
	07/01/2016	Payment	Smetana, Brian G.	Defendant	\$100.00
	07/08/2016	Payment	Smetana, Brian G.	Defendant	\$100.00
	07/20/2016	Payment	Shirey, Sherrie	Payor	\$100.00
	08/02/2016	Payment	Shirey, Sherrie	Payor	\$100.00
	08/24/2016	Payment	Shirey, Sherrie	Payor	\$100.00

# COURT OF COMMON PLEAS OF LEBANON COUNTY

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### CASE FINANCIAL INFORMATION

Last Payment Date: 08/24/2016

Total of Last Payment: -\$100.00

Smetana, Brian G. Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
<b>Costs/Fees</b>					
ATJ	\$4.00	-\$4.00	\$0.00	\$0.00	\$0.00
Admin-Co-Misd/Fel Cases (Lebanon)	\$38.50	-\$38.50	\$0.00	\$0.00	\$0.00
All Misd & Fel Cases Disp During/After Trial (Leb)	\$173.00	-\$173.00	\$0.00	\$0.00	\$0.00
Automation Fee (Lebanon)	\$5.00	-\$5.00	\$0.00	\$0.00	\$0.00
Booking Center Fee (Lebanon)	\$300.00	-\$300.00	\$0.00	\$0.00	\$0.00
CJES	\$2.25	-\$2.25	\$0.00	\$0.00	\$0.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$10.05	-\$0.95	\$0.00	\$0.00	\$9.10
County Court Cost (Act 204 of 1976)	\$32.70	-\$3.09	\$0.00	\$0.00	\$29.61
Crime Victims Compensation (Act 96 of 1984)	\$35.00	-\$3.31	\$0.00	\$0.00	\$31.69
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	-\$0.95	\$0.00	\$0.00	\$9.05
Firearm Education and Training Fund	\$5.00	-\$0.48	\$0.00	\$0.00	\$4.52
JCPS	\$21.25	-\$21.25	\$0.00	\$0.00	\$0.00
Judicial Computer Project	\$8.00	-\$8.00	\$0.00	\$0.00	\$0.00
Public Safety Fee (Lebanon)	\$50.00	-\$50.00	\$0.00	\$0.00	\$0.00
State Court Costs (Act 204 of 1976)	\$11.75	-\$1.11	\$0.00	\$0.00	\$10.64
Victim Witness Service (Act 111 of 1998)	\$25.00	-\$2.37	\$0.00	\$0.00	\$22.63
All Proceedings in Summary Matters (Lebanon)	\$38.00	-\$38.00	\$0.00	\$0.00	\$0.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$8.35	-\$0.79	\$0.00	\$0.00	\$7.56
County Court Cost (Act 204 of 1976)	\$30.80	-\$2.91	\$0.00	\$0.00	\$27.89
Crime Victims Compensation (Act 96 of 1984)	\$35.00	-\$3.31	\$0.00	\$0.00	\$31.69
Domestic Violence Compensation (Act 44 of 1988)	\$10.00	-\$0.95	\$0.00	\$0.00	\$9.05
State Court Costs (Act 204 of 1976)	\$8.35	-\$0.79	\$0.00	\$0.00	\$7.56
Victim Witness Service (Act 111 of 1998)	\$25.00	-\$2.37	\$0.00	\$0.00	\$22.63
All Proceedings in Summary Matters (Lebanon)	\$38.00	-\$38.00	\$0.00	\$0.00	\$0.00
Commonwealth Cost - HB627 (Act 167 of 1992)	\$8.35	-\$0.79	\$0.00	\$0.00	\$7.56

# COURT OF COMMON PLEAS OF LEBANON COUNTY

## DOCKET

Docket Number: CP-38-CR-0001421-2014  
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### CASE FINANCIAL INFORMATION

<b>Smetana, Brian G.</b> Defendant	<u>Assessment</u>	<u>Payments</u>	<u>Adjustments</u>	<u>Non Monetary Payments</u>	<u>Total</u>
County Court Cost (Act 204 of 1976)	\$30.80	-\$2.91	\$0.00	\$0.00	\$27.89
State Court Costs (Act 204 of 1976)	\$8.35	-\$0.73	\$0.00	\$0.00	\$7.62
Summary Offenses (Lebanon)	\$38.00	-\$38.00	\$0.00	\$0.00	\$0.00
Civil Judgment (Lebanon)	\$39.50	\$0.00	\$0.00	\$0.00	\$39.50
Sheriff's Fee - Bench Warrant Service Cost (Leb)	\$79.00	\$0.00	\$0.00	\$0.00	\$79.00
Costs/Fees Totals:	\$1,129.00	-\$743.81	\$0.00	\$0.00	\$385.19
<b>Fines</b>					
Crimes Code, etc.	\$100.00	-\$9.45	\$0.00	\$0.00	\$90.55
Title 18 - Payable to Municipality	\$300.00	-\$28.34	\$0.00	\$0.00	\$271.66
Local Ordinance	\$200.00	-\$18.90	\$0.00	\$0.00	\$181.10
Fines Totals:	\$600.00	-\$56.69	\$0.00	\$0.00	\$543.31
Grand Totals:	\$1,729.00	-\$800.50	\$0.00	\$0.00	\$928.50

\*\* - Indicates assessment is subrogated



PROCEEDINGS

JUDGE: Okay folks, we'e electronically recording this hearing.

CLERK: Will you please raise your right hand? Do you swear or affirm the testimony which you shall give to the Court in the issue now trying shall be the truth, the whole truth and nothing but the truth?

DEFENDANT: Yes.

CLERK: Please state your name and your address:

DEFENDANT: Brian Smetana, 446 North Fifth Street, Lebanon.

CLERK: Pennsylvania? And your zip code?

DEFENDANT: Oh. PA – 17046.

CLERK: Thank you.

\* \* \*

JUDGE: So, Mr. Smetana.

DEFENDANT: Yes, sir.

JUDGE: Who do you live with at the address you gave?

DEFENDANT: My girlfriend and her ex-husband.

JUDGE: Are you working?

DEFENDANT: I was working and my boss had left for the Bahamas for a, what do you call those, like a charity thing down there, and I'm supposed to go back this morning. He's back in town. We flip homes.

JUDGE: So the answer is no, right now?

DEFENDANT: Right now, no.

JUDGE: Do you have any charges pending?

DEFENDANT: I do.

JUDGE: How many sets of charges?

DEFENDANT: I have four sets. I think it's a retail theft.

JUDGE: How'd they pick you

DEFENDANT: Inaudible.

JUDGE: How'd they pick you up on this bench warrant?

DEFENDANT: I was down at, coming down past Gary's Sports Bar and they saw my vehicle was in there, saw me outside and they called me back.

JUDGE: So the Sheriff picked you up or the police?

DEFENDANT: It was the police. Lebanon City.

JUDGE: Why'd you stop paying on your fines and costs?

DEFENDANT: I was struggling with finances. I was doing good there for awhile. I was putting a hundred every week, then I started having difficulties and I actually got throwed out of my sister's home and that's why I had to try to find a new place to live. I'm trying to get this job started up and then get back on track again.

JUDGE: Well my problem is you have four new sets of charges and you stopped paying in August. Usually when people are stealing, they're stealing to get by or stealing because they have a drug habit. Do you have a drug habit, Mr. Smetana?

DEFENDANT: I do.

JUDGE: Okay.

DEFENDANT: I've been in treatment in plans, I've been out there for a year. They have me in Crossroads.

JUDGE: Okay, Mr. Smetana. I'm going to set your bail at \$500 cash. If you post that, you need to make sure you show up or that money is lost. It doesn't go to fines and costs, it doesn't help you at all. It goes to the County. Okay? Your next Court date will be for fines and costs contempt court on April 24th at 9:00 a.m. in Courtroom 2. You have a right to be represented by counsel at that hearing which means you can hire somebody or you can apply to the public defender's office. If you're in jail, you're eligible for them, you should apply. Okay? The bench warrant's vacated. Any previous bail forfeiture set aside and his bail is set at \$500 cash. Any questions, Mr. Smetana?

DEFENDANT: No.

JUDGE: Okay, good luck to you, sir.

(Whereupon, the proceeding concluded)

I hereby certify that the transcript of the record of the within proceedings has been lodged this date June 19, 2017 in the Office of the Clerk of Courts. If no objection is made to said transcript within five (5) days from this date, it will be duly filed of record in the case.

I hereby certify that the proceedings are contained fully and accurately in the audio recording made by the Court on the hearing in the above cause, and that this copy is a correct transcription of the same.

  
Stephanie Axarlis

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

  
CHARLES T. JONES, JR.

IN THE COURT OF COMMON PLEAS  
LEBANON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 vs. : CP-38-CR-1421-2014  
 :  
 BRIAN SMETANA :

TRANSCRIPT OF PROCEEDINGS

FINES & COSTS

April 24, 2017

COURTROOM NO. 2

Before

HON. SAMUEL A. KLINE,  
JUDGE

Transcribed by:  
Stephanie Axarlis, Esquire  
Court Administrator

PROCEEDINGS

CDU OFFICER: Number 116 – Brian Smetana  
#116 BRIAN SMETANA

CLERK: Please raise your right hand. Do you swear or affirm the testimony which you shall give to the Court shall be the truth, the whole truth and nothing but the truth?

DEFENDANT: Yes, ma'am.

CLERK: Please state your full name

DEFENDANT: Brian George Smetana.

CDU OFFICER: Your Honor, this was the first bench warrant that was issued for Mr. Smetana. His payment plans were set at a hundred dollars a month. He was picked up on the warrant that was issued March 27<sup>th</sup>. Bail was set at five hundred dollars, obviously not paid and he is eight hundred and sixty dollars past due your Honor.

JUDGE: Counsel?

ATTY RUPERT: Thank you, your Honor. On behalf of Mr. Smetana, he doesn't have any money to pay today. Nor did anyone bring him any money. This is the first time he's been late. The last time he paid was a few months ago.

JUDGE: What do you mean by a few months ago? Define a few.  
8/24/2016 – the last payment we received.

DEFENDANT: So that's seven months.

JUDGE: I believe, let's see. How about September, October, November, December, January, February, March – one, two, three, four, five, six, seven. Yep, at least seven. At least seven. So a few is one or two. Seven is another number. Okay.

ATTY RUPERT: He does have employment waiting for him through Al Merce it's a situation where he flips homes. He's willing to do a wage attachment he would need...

JUDGE: Well, I'll give him work release...

ATTY RUPERT: Okay.

JUDGE: But does anybody, do you have any money?

DEFENDANT: Not as of today, my sister couldn't get off work...

JUDGE: Well, if you called your sister, how much can you get me?

DEFENDANT: I could get two hundred dollars.

JUDGE: There you go. The Court finds the Defendant in contempt and directs he be incarcerated in the Lebanon County Correctional Facility for a period of thirty days. He may purge himself of this contempt by paying two hundred dollars on the arrears and paying the previously imposed support order as directed. The Court has no objection to immediate work release.

CDU OFFICER: Your Honor, would you be opposed to time credit from April 5 til today?

JUDGE: No, I don't. That's fine. All right folks keep your voices down because we're voice recording and I can't have anybody chatting

in the area so try to keep your voices down so I don't pick up the back feed. All right.

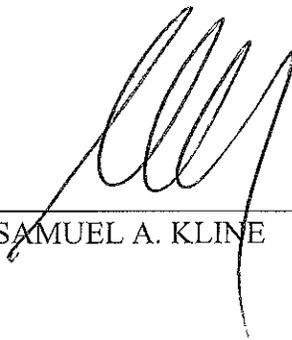
(Whereupon, the proceeding concluded)

I hereby certify that the transcript of the record of the within proceedings has been lodged this date June 19, 2017 in the Office of the Clerk of Courts. If no objection is made to said transcript within five (5) days from this date, it will be duly filed of record in the case.

I hereby certify that the proceedings are contained fully and accurately in the audio recording made by the Court on the hearing in the above cause, and that this copy is a correct transcription of the same.

  
Stephanie Axarlis

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

  
\_\_\_\_\_, J.  
SAMUEL A. KLINE

White: LCCF; Yellow: Clerk of Courts/Prothonotary; Pink: Adult Probation/Other

Lebanon County Clerk of Courts-Prothonotary  
Sentence/Commitment Form

DEFENDANT: Brian G. Smetana  
OFFENSE: F & C. Contempt

ACTION No. CP 30 CR-1421-2014  
S/L OTN: L 275051-2  
SENTENCING JUDGE: J A Kline

SENTENCE: \_\_\_\_\_

LCCF      30 days  
Purge      200=-  
Bal.      as set

SPECIAL CONDITIONS: \_\_\_\_\_

RECOMMENDED FOR WORK RELEASE: YES X / NO \_\_\_\_\_  
ACUTE MEDICAL PROBLEMS: YES \_\_\_\_\_ / NO \_\_\_\_\_  
DETAINERS: \_\_\_\_\_  
HEARING DATE: \_\_\_\_\_

BAIL AMOUNT: \_\_\_\_\_  
BENCH WARRANT: \_\_\_\_\_  
OTHER REMARKS: \_\_\_\_\_

JMV (CLERK)      04/24/17 (DATE)      \_\_\_\_\_ (COURT STENOGRAPHER)

**IN THE COURT OF COMMON PLEAS  
FOR LEBANON COUNTY**

**CRIMINAL DIVISION**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	)	
	)	
v.	)	<b>Case No. CP-38-CR-1421-2014</b>
	)	
<b>BRIAN SMETANA</b>	)	
	)	
	)	
	)	
	)	

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**PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Brian Smetana, by his undersigned attorneys, hereby petitions this Honorable Court for immediate release from the custody of the Lebanon County Correctional Facility on a Writ of Habeas Corpus, and as grounds therefor avers as follows:

**I. Background**

1. As a result of prior criminal convictions, Mr. Smetana currently owes \$928.50 in CP-38-CR-1421-2014 in fines and costs, all of which is listed as overdue. Mr. Smetana has been incarcerated since April 5, 2017: he was held on \$500 bail until April 24, which he was unable to pay, and he has been held since April 24 because he lacks the \$200 necessary to pay a purge amount for a contempt entered that day.
2. Mr. Smetana is an alcoholic who has struggled with that addiction and disability for several years. *See* Exhibit A, Declaration of Brian Smetana at ¶¶1 and 9; Exhibit B, Declaration of Sherrie Shirey at 1; Exhibit D, Excerpts from Philhaven Behavioral Health Records. He has been diagnosed with a long history of depression, post-traumatic stress disorder (“PTSD”), and alcoholism. *See* Ex. D.
3. Mr. Smetana’s life has taken a turn for the worst in the past eighteen months. In 2015 and 2016, he worked for three landscaping companies and with a temp agency, but he lost all

of those jobs because he missed work due to his drinking and psychological problems. *See* Ex. A at ¶¶2–4. Mr. Smetana has attempted to seek psychological and medical help—he spent three weeks in an alcohol rehabilitation program at White Deer Run and attended a day program at Philhaven Behavioral Health to seek help regarding his alcoholism, his chronic depression, and PTSD—but those efforts have so far been unsuccessful, despite his cooperation in those programs. *See* Ex. B at ¶5; Ex. D. He hopes to enter a residential treatment facility upon his release from jail. *See* Ex. A at ¶10; Ex. B at ¶9.

4. Mr. Smetana’s last job was through Uni-Temp at Henry Molded Products, but he lost that job in October 2016. At the time, he had been living with his sister Sherrie Shirey because he was unable to afford to live on his own. *See* Ex. A at ¶2; Ex. B at ¶2, Exhibit C, Declaration of Melissa Eiler at ¶2. Ms. Shirey helped him financially, and she also helped him try to organize and take control of his life. *See* Ex. B at ¶2. As is reflected by the court docket, he made regular payments on his court fines and costs while he was regularly employed and living with Ms. Shirey.
5. But after losing his job in October 2016, Ms. Shirey kicked him out of her house, and he was homeless, living in his car. *See* Ex. A at ¶5; Ex. B at ¶¶6-7. He eventually moved in with his now-girlfriend Melissa Eiler, but he remained unemployed and without any income. *See* Ex. A at ¶7; Ex. B at ¶7. His alcoholism also continued, as he regularly drank with the friends and acquaintances who bought him alcohol. *See* Ex. A at ¶5; Ex. B at ¶3. At the time that he was arrested in this matter, Mr. Smetana had just started a construction job with an individual who flips houses, which had so far paid him \$100. Ex. A at ¶8; Ex. C at ¶3. Otherwise, he had no income or assets, and he had shelter only

due to the generosity of Ms. Eiler. *See* Ex. A at ¶¶11; 20, Ex. B at ¶8. Mr. Smetana remains hopeful that this work will still be available for him after he is released from jail.

6. In each of his criminal cases, Mr. Smetana has been represented by the office of the public defender, including in several ongoing criminal cases such as CP-38-CR-473-2017. Until his imprisonment in this matter, he was receiving public assistance in the form of food stamps and Medicaid. *See* Exhibit E, Records of Pennsylvania Dep't of Human Services. These facts regarding his financial status “invite the presumption of indigence.” *Com v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999). Mr. Smetana’s income in 2016—and certainly his lack of income in 2017—was below the federal poverty guidelines, which are currently \$12,060 for a single individual. *See* U.S. Dep't of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, “Poverty Guidelines,” <https://aspe.hhs.gov/poverty-guidelines>.
7. Mr. Smetana appeared for the April 24, 2017<sup>1</sup> contempt hearing with an attorney from the office of the public defender. A Collections Officer with the Lebanon County Probation Collections and Disbursement Unit with training and experience in these proceedings represented the county at the hearing.
8. At that hearing before the Hon. Samuel A. Kline, the Court asked Mr. Smetana whether he was working, and Mr. Smetana informed the Court that he had a job lined up with the house-flipper. The Court then asked whether he had any money on him and how much he could come up with that day. At that point, Mr. Smetana had been in jail for three weeks because he could not post the \$500 bail previously set by the Court. Mr. Smetana

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<sup>1</sup> The hearing was originally scheduled for March 27, 2017, with notice mailed January 9, 2017. However, at the time Mr. Smetana was living with Ms. Eiler and did not receive the notice. He was subsequently arrested and held on bail since April 5.

informed the Court that he might be able to get a hold of his sister and get \$200, which would have been Ms. Shirey's money, and not his, and the Court instructed him to do so. *See* Ex. A at ¶¶19-20. The Court did not inquire further about Mr. Smetana's employment history or financial means.

9. The Court then found Mr. Smetana in civil contempt and sentenced him to 30 days of incarceration unless he purged the contempt by paying \$200. Ex. A at ¶21. The Court did not make a finding that he was able to pay and was willfully refusing to do so, nor could the Court have done so based on the evidence presented at the hearing. Undersigned counsel requested a copy of the transcript on April 25 but has not yet received it.
10. Mr. Smetana lacked the ability to pay the purge amount on the day of the hearing and has no ability to pay the purge amount set by the Court. As a result, he has remained incarcerated since April 24, 2017. *See* Ex. A at ¶¶12-14, 22
11. If asked, Mr. Smetana could have established that he had no income or other means, had been receiving public benefits, that he has been entirely dependent on financial support from Ms. Shirey and Ms. Eiler, that he currently owes Ms. Shirey approximately \$4,000, and that his struggles with his alcoholism and PTSD have severely impacted his ability to obtain and maintain gainful employment. *See* Ex. A at ¶¶2, 5, 7, 9; 12-14, Ex. B at ¶¶3, 5; Ex. D. Mr. Smetana also could have explained, as evidenced on the docket, that he had made payments in 2016 when he was gainfully employed, and that he will begin to make payments when he is again gainfully employed in the future.

## **II. Argument**

### **A. Mr. Smetana's imprisonment is unlawful because there was no proper finding that he was able to pay and willfully refusing to do so.**

12. Both the United States and Pennsylvania Supreme Courts have explicitly held that

defendants who have defaulted on their fines and costs “must be given the opportunity to establish that they are unable to pay the fine. Upon a showing of indigency, [they] should be allowed to make payments in reasonable installments.” *Com. ex. Rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (granting a writ of habeas corpus for four defendants who were jailed for failure to pay fines and costs). The right to due process prohibits imprisoning a defendant for failure to pay court fines, costs, or restitution without first “inquir[ing] into the reasons for the failure to pay.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

13. These constitutional provisions require that courts affirmatively inquire “into the reasons surrounding the [defendant’s] failure to pay, followed by a determination of whether the [defendant] made a willful choice not to pay.” *Eggers*, 742 A.2d at 176. Courts are prohibited from jailing defendants “unless it appears after [a] hearing that the defendant is financially able to pay the fine or costs.” Pa. R. Crim. P. 706(A).

**B. Mr. Smetana’s imprisonment is unlawful because he cannot pay the purge amount.**

14. A court can only find a defendant guilty of civil contempt for nonpayment if it finds “[b]eyond a reasonable doubt, from the totality of the evidence before it,” that the defendant was capable of paying the purge amount at the time that he was found in contempt. *Barrett v. Barrett*, 368 A.2d 616, 620-21 (Pa. 1977). The foundation of a civil contempt order is the principle that the defendant holds the key to his own release: if he cannot, in fact, effect his own release, then the sentence is the same as a criminal sentence, but without the “safeguards of criminal procedure.” *Id.* at 621. That violates the law.
15. None of the evidence adduced at the hearing of April 24, 2017 supported a finding that

Mr. Smetana had any present ability to pay his outstanding court debt. Indeed, all of the evidence available to the Court suggested the opposite. The Court may have disbelieved Mr. Smetana when he explained that he had no money or income aside from a possible loan of \$200 from his sister, but there was no evidence before the Court to support a finding “[b]eyond a reasonable doubt, from the totality of the evidence” that Mr. Smetana was himself capable of paying the purge amount at the time that he was found in contempt. *Barrett*, 368 A.2d at 620-21 (“ . . . the crucial question is not whether he willfully and contemptuously violated the original orders, but whether he had the present ability to comply with the conditions set by the court for purging himself of his contempt.”). In fact, as Mr. Smetana’s declaration sets forth, he has not had the means to meet his own basic needs, much less pay his court debt. Moreover, Mr. Smetana’s sister has been unwilling to give him the \$200 necessary to purge in this matter. *See* Ex. B at ¶8.

16. That Mr. Smetana has been represented by the office of the public defender and has received public assistance “invite the presumption of indigence.” *Eggers*, 742 A.2d at 176 n.1. The Court did not make the required determination that Mr. Smetana was able to pay the \$200 purge amount set by the Court despite the apparent indicia of indigency. That Mr. Smetana was held since April 6 on \$500 bail and was unable to pay that bail amount further underscores his inability to pay the purge amount.

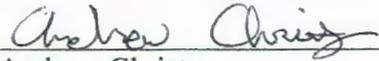
\* \* \*

17. As a result of the April 24 hearing, Mr. Smetana remains unlawfully imprisoned in the Lebanon County Correctional Facility. This Court should either issue the writ of habeas corpus forthwith and order Mr. Smetana released or require a response and hold a hearing

on this matter, at which Mr. Smetana is present, forthwith. *See* 42 Pa. Cons. Stat. § 6504; *Balsamo v. Mazurkiewicz*, 611 A.2d 1250, 1253 (Pa. Super. Ct. 1992) (hearing must be held if petitioner has made a prima facie case entitling him to habeas relief).

WHEREFORE, Petitioner respectfully requests that this Honorable Court schedule this matter for a hearing forthwith and/or grant a writ of habeas corpus ordering his release from confinement forthwith.

Respectfully submitted,



Andrew Christy  
Pa. I.D. No. 322053  
American Civil Liberties Union  
of Pennsylvania  
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Philadelphia, PA 19102  
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BAKER HOSTETLER

By: /s/ Jacqueline M. Lesser  
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Fax: 215-568-3439  
jlesser@bakerlaw.com

Date: 5/2/2017

# Exhibit A

**IN THE COURT OF COMMON PLEAS  
FOR LEBANON COUNTY**

**CRIMINAL DIVISION**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	)	
	)	
v.	)	<b>Case No. CP-38-CR-1421-2014</b>
	)	
<b>BRIAN SMETANA</b>	)	
	)	
	)	
<hr/>	)	

**Declaration of Brian Smetana**

I, Brian Smetana, hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. Further, I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 (relating to unsworn falsification to authorities).

1. I am an alcoholic. My alcoholism led to my underlying criminal charges in this matter, and it has led to my steady decline in the past two years. I am at the point where I am currently unemployed and destitute. I would be homeless, except my girlfriend is letting me stay with her.
  
2. Initially, when I finished my sentence for the underlying offense in this matter in 2015, I was doing well. I was employed by Lawn Care by Blackie and had my own apartment. But my alcoholism caught up with me, and I ended up with a probation violation. I entered rehab at White Deer Run, which lasted for three weeks (I had to end a week early because my father was dying). Because of all of this, I lost my job at Lawn Care by Blackie. I could also no longer afford my own apartment, so I moved in with my sister Sherrie Shirey.

3. After rehab, starting in 2016, I worked at Second Nature Landscape. I was driving a cheap junker of a car, which my sister purchased for me so that I could get to work without her or her husband having to drive me. But I was not always able to make it to work, both because of car trouble and because I sometimes overslept as a result of drinking. I was told by my employer that I was no longer needed. Over the summer, I started working instead for Sunset Designs and Landscaping. That job ended in August after I damaged a lawnmower and the manager stopped calling me into do jobs.
4. I was then unemployed until October, when I got a job through the temp agency Uni-Temp at Henry Molded Products. That job lasted about a week because I missed one day of work because of a car problem, and I missed a second day because I overslept after drinking. Although I continued to look for work after the Uni-Temp position, I was unable to find anything else prior to my incarceration.
5. After losing the Uni-Temp position, my sister threw me out of her house. She had been supporting me but was frustrated that I could not abstain from drinking and could not maintain regular employment. During the time that I lived with her, to help me manage my accounts, I often gave her my paycheck so that she could pay my bills and court fines and costs directly out of my money. Also, she sometimes gave me money to help pay my fines and costs. She also paid for a cellphone for me. In total, I owe my sister about \$4,000 for all of the money she has given me over the past few years to help me live.
6. After my sister threw me out, I was homeless. For a while, I slept in my car for a few months—but I could not afford the fee to have an ignition interlock, so it was inoperable. My sister, who held the title to the car, subsequently sold it.

7. After a few weeks of homelessness, I started staying occasionally with my now-girlfriend Melissa Eiler. I eventually moved in with Ms. Eiler, who though impoverished lives rent-free in the home she maintained during her marriage, until her ex-husband can buy her share of the house. I was staying with Ms. Eiler at the time I was arrested.
8. At the time I was arrested, I had just begun working with an individual who flips houses and had received only \$100 from him. My job would be to do the construction work necessary to rehab the houses. I have been unable to further pursue this work because of my incarceration.
9. Despite some attempts to address my alcoholism, I have been unable to control my addiction, which is related to my mental health problems. In 2016, I spent a month in Philhaven Behavioral Health in Mt. Gretna. There, I was diagnosed with post-traumatic stress disorder (“PTSD”) and anxiety. The PTSD stems from several violent acts I have witnessed, including seeing friends shot and murdered and being present when a motorcyclist struck my car and died. Although my time at Philhaven helped, my decline continued after I ended treatment.
10. My goal after being released from jail and dealing with my other pending criminal matters is to get into a six-month residential rehabilitation program to help me control my alcoholism.
11. As my payment history reflects, when I have had gainful employment, I have made payments towards my fines and costs. However, I currently lack any financial resources. If not for the generosity of Ms. Eiler, I would be homeless.

12. Even when I have been employed, I have never come near to being able to pay my own basic expenses. Since I lost my last job, I have had no money to pay towards court fines and costs. I have continually had to live off the generosity of friends and family.
13. I have no financial resources or property of value.
14. At the time I was arrested, I received public benefits in the form of food stamps (SNAP) and Medicaid.
15. In all of my criminal proceedings since the first case was filed against me in 2004, I have received the services of a public defender because I have been unable to afford counsel. I am currently represented by the public defender in several unrelated cases, including CP-38-CR-473-2017.
16. According to the Court docket, the Lebanon County Probation Collections and Disbursement Unit mailed me a delinquency notice on January 9, 2017 to appear at a fines and costs hearing on March 27, 2017. At the time, I was residing with Ms. Eiler and did not receive the notice, as it was initially sent to my sister's house.
17. After I was arrested on the bench warrant issued at the March 27 hearing, I was brought before the Court for a bail hearing on April 5, 2017. The Hon. Charles T. Jones set my bail at \$500. I was unable to post that bail and remained incarcerated until the fines and costs hearing on April 24, 2017.
18. At the hearing, a representative from the Lebanon County Probation Collections and Disbursement Unit presented the Court with information about how much I owe. I was one of many defendants present in the courtroom for contempt hearings that day for failure to pay court fines and costs. In every case I recall hearing, the Court placed the other defendants on payment plans, most of which were \$100 a month—although

defendants who received disability benefits were given payment plans of \$50 a month. I could not afford to pay \$50 a month, let alone \$100.

19. At the hearing, presided over by Hon. Samuel A. Kline, the Court asked me whether I was working, and I informed the Court that I am not but that I anticipate being able to work with a house flipper shortly after my release. The Court asked me how much money I had on me, and I had none. The Court's final question was how much I could come up with "today," and I said I may be able to get a hold of my sister to provide me with \$200. The Court instructed me to get that \$200 from her to purge the contempt.
20. After I advised the Court that I had no ability to pay and provided the information described above, the Court made no further inquiry regarding my ability to pay. Had the Court asked, I would have told the Court that I: 1) had only started receiving a small income but had no savings; 2) was receiving food stamps; 3) was on Medicaid; and 4) was receiving the services of the public defender's office in another criminal case. I would have further explained the severity and impact of my alcoholism and that I had been homeless only a few months prior.
21. At the conclusion of the hearing, the Court stated that I was in contempt for failure to pay and had to serve 30 days in jail unless I purged \$200. The Court further set my payments at \$100 per month.
22. I have subsequently spoken with my sister, but she is unwilling to provide me with the \$200 necessary to purge. Regardless, any money received from her would be a loan that I would be expected to pay back. I made it clear to the Court that the money would have been my sister's and not my own.

23. I was represented by a public defender at the hearing. However, I do not recall her providing any information to the Court about my financial situation.

24. I have been and remain imprisoned in the Lebanon County Correctional Facility since the April 5, 2017 bench warrant hearing.

Pursuant to 18 Pa. Cons. Stat. § 4904, I, Brian Smetana, declare under penalty of perjury that the foregoing is true and correct.

DATED April 27, 2017

  
\_\_\_\_\_  
Brian Smetana

# Exhibit B

**IN THE COURT OF COMMON PLEAS  
FOR LEBANON COUNTY**

**CRIMINAL DIVISION**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	)	
	)	
v.	)	<b>Case Nos. CP-38-CR-1421-2014</b>
	)	
<b>BRIAN SMETANA</b>	)	
	)	
	)	
	)	
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**Declaration of Sherrie Shirey**

I, Sherrie Shirey, hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. Further, I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 (relating to unsworn falsification to authorities).

1. I am Brian Smetana’s sister. I reside in Lebanon County. I have been in contact with Mr. Smetana since his arrest and last visited him on April 23 and April 30, 2017.
2. Mr. Smetana is an alcoholic. He has been in an inpatient treatment facility. I have housed him and paid some of his bills, and I have provided him with a stable environment for a period of time. I remain in contact with him. Based on my experience, he needs a structured environment. His actions in the past few years have demonstrated that, if he has insufficient structure in his life, he will revert to self-destructive behaviors.
3. I have at various points in Mr. Smetana’s adult life been at least partially responsible for his living accommodations. For most of 2016, Mr. Smetana lived with me. Even before he lived with me, I helped pay his rent on his apartment. But once he moved into my home, I also subsidized his living so that he could try to get back on his feet. I prohibited him from drinking in my house, but he still went out and drank at bars where his friends

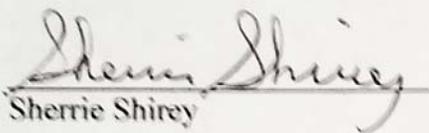
and acquaintances would give him alcohol. To help keep him on the right path, I usually took his paycheck, which I used solely so that I could directly pay his bills and court fines and costs. Even then, sometimes I pitched in my own money. In all, he owes me approximately \$4,000.

4. Mr. Smetana has been open about his struggles with alcoholism. I am aware that, while he was employed with Lawn Care by Blackie, he eventually had to go to rehab at White Deer Run in September 2015. Unfortunately, I had to pull him out after only three weeks because our father was dying. By that point, he had lost his apartment and came to live with me.
5. After one alcohol-induced conflict, Mr. Smetana agreed to go to Philhaven for mental health treatment. He was in a day program at Philhaven, and he did the best there that I have seen him in years. He continued to live with me during that time and spoke openly about his mental health diagnoses and treatment. I know that he has post-traumatic stress disorder (“PTSD”) from several violent incidents that he witnessed. He has seen his friends murdered. And when he was 19, he was driving a car when a motorcyclist struck the car and died. Although he does not like to talk about the incident, I know it had a profound effect on him.
6. In 2016, I bought him a cheap car, and it was fitted with an ignition interlock. Mr. Smetana worked at several landscaping businesses while he lived with me, but his drinking habits interfered with his ability to work. Ultimately, he got a job through Uni-Temp with Henry Molded Products. The job did not last long—only a few days—because he skipped work due to his drinking. In October, I felt that I had no choice but to throw him out of my house.

7. I know that, after I kicked him out, he lived in his car and was homeless. He eventually started staying with Melissa Eiler, who is now his girlfriend. In March 2017, I gave away the car I had previously purchased for him.
8. Mr. Smetana does not have a single penny to his name. He is absolutely poor and cannot afford to make any payments, let alone \$200 to get out of jail. He asked me if I would pay the money for him, but I cannot: I have spent too much money trying to help him already, and I cannot afford to spend any more.
9. I hope that after he is released, Mr. Smetana can go into a residential treatment facility to help his alcohol addiction. When I visited him at jail, we discussed residential treatment programs. Mr. Smetana has also expressed an interest in such a program to me in a letter.

Pursuant to 18 Pa. Cons. Stat. § 4904, I, Sherrie Shirey, declare under penalty of perjury that the foregoing is true and correct.

DATED May 1, 2017

  
Sherrie Shirey

# Exhibit C

IN THE COURT OF COMMON PLEAS  
FOR LEBANON COUNTY

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	)	
	)	
v.	)	Case Nos. CP-38-CR-1421-2014
	)	
BRIAN SMETANA	)	
	)	
_____	)	

**Declaration of Melissa Eiler**

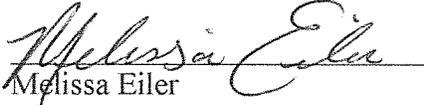
I, Melissa Eiler, hereby state that the facts set forth below are true and correct to the best of my knowledge, information, and belief. Further, I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. § 4904 (relating to unsworn falsification to authorities).

1. I am Brian Smetana's girlfriend. I have known Mr. Smetana for several years. Although it is my impression that he seemed to once be a good worker and responsible, he has declined in the past several years. I am most directly familiar with his financial situation since October 2016.
2. In October 2016, Mr. Smetana lost his job through Uni-Temp with Henry Molded Products. He had lived with his sister Sherrie Shirey, who threw him out of her house when he lost his last job, and he was homeless and living in his car. I began to allow him to stay with me periodically, and after several weeks he stayed with me fulltime. He had no place else to go and no money.
3. At the time he was arrested, Mr. Smetana had just started working with an individual who flips houses. This was his first job in several months, and I hope that it is still available to him after he leaves jail.

4. Mr. Smetana is an alcoholic. Since he has been staying with me, he drinks almost every day. His friends and acquaintances enable his drinking by giving him alcohol when he goes to the bar. He is even friends with a bartender who gives him alcohol to take with him.
5. Even before his arrest, Mr. Smetana and I talked about him going to a rehabilitation program, but we did not get far in the planning before he went to jail.
6. Mr. Smetana has absolutely no money, and certainly not hundreds of dollars to pay the Court.
7. I also do not have any money. I do some baby-sitting, which helps me scrape by, but I have no significant source of money or assets. My ex-husband is supposed to buy me out of the house in which I currently live, but until he does so I am effectively able to live rent-free; otherwise, I would not be able to afford housing. I cannot afford to help Mr. Smetana with his court debt.

Pursuant to 18 Pa. Cons. Stat. § 4904, I, Melissa Eiler, declare under penalty of perjury that the foregoing is true and correct.

DATED May 1, 2017

  
Melissa Eiler

# Exhibit D

**PHILHAVEN**  
283 South Butler Road  
P.O. Box 550  
Mt. Gretna, PA 17064  
(717) 273-8871

### **ASSESSMENT AND FORMULATION**

Smetana, Brian - 608695

ADMISSION DATE: 05/25/2016

EVALUATION DATE: 5/25/16

BIRTH DATE: 04/11/1968

#### **ADULT DAY HOSPITALIZATION/IOP PROGRAM**

IDENTIFYING DATA:

He is a 48-year-old single Caucasian male currently living with his sister in Lebanon County. He is referred from Lebanon Crisis.

CHIEF COMPLAINT:

Having a bad couple of weeks."

HISTORY OF PRESENT ILLNESS:

This gentleman had been in our Day Program from December 2015 until March of 2016 and was discharged and had followup, but in the interim, he says that he slowly began to become somewhat more depressed and struggling with some mood symptoms. He ran out of his Concerta for about a week and a half and really struggled quite a bit and he even relapsed on alcohol and during that relapse became argumentative with his brother-in-law with whom he was staying with to the extent that his sister had to call the police. The police were involved. The patient is now concerned that this may violate his probation and he may need to return to jail. Also a result of his behaviors, he informed his job about it and based on his past history and this most recent relapse, he was let go from his job and so that is another burden for him. He is now staying with his other sister, but he acknowledges that he is struggling with sleep. His energy, motivation are all off. His thoughts are racing, it is hard to concentrate. He is now back on his Concerta, but still feels very depressed, not actively suicidal, but wishes that everything was just stop and be all better. He continues to ruminate over his past mistakes, loss of his parents [REDACTED]. He is grieving the murder of his friend, which he witnessed and the suicide of another friend and so all of these thoughts are kind of racing and running through his head and not letting him think and to stay focused.

PERTINENT PAST HISTORY:

He has a long history of psychiatric treatment with multiple medication trials in the past. He has had a number of stents in rehab at White Deer Run and is currently in AA and attending classes at White Deer Run. He has had numerous medication trials as well. Medical history is significant for arthritis, hypertension and dermatitis. Family history is quite significant for alcohol use in siblings and both sets of parents.

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For Professional Use Only

"The confidentiality of the information contained in this document is protected by State statute. Further disclosure of this information without prior written consent of the person whom it concerns is prohibited."

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**ASSESSMENT AND FORMULATION**

Smetana, Brian - 608695

Date: 05/25/2016

Page 2

STRENGTHS/ASSETS:

He appears to be motivated for treatment.

MENTAL STATUS EXAMINATION:

He is casually dressed, cooperative with good eye contact. Speech is fluent and coherent, overinclusive at times. His insight and judgment is fair. No active suicidal ideation or homicidal ideation. No hallucinations, no paranoia. Intellectual functioning appears to be about average. No psychotic processes.

ASSESSMENT/FORMULATION:

A 48-year-old gentleman with history of depression and polysubstance dependence, presents with a recent decompensation and relapse on substances, increased dysphoric symptoms, multiple psychosocial stressors. We will need to get him back on his meds and titrate them to more effective dose, encourage abstinence from substances and build supports.

TREATMENT PROBLEMS:

- 1. Depressive mood
- 2. Financial stress
- 3. Legal problems, substance use.

PROGNOSIS:

<input type="checkbox"/>	Good
<input checked="" type="checkbox"/>	Fair
<input checked="" type="checkbox"/>	Guarded
<input type="checkbox"/>	Poor

DIAGNOSIS:

DSM-5/ICD-10

- 1. Major Depression, recurrent, severe, without psychosis
- 2. Alcohol Use Disorder.
- 3. [REDACTED]
- 4. Post Traumatic Stress Disorder
- 5. Arthritis,
- 6. Hypertension,
- 7. Dermatitis

PSYCHOSOCIAL STRESSORS:

- 1. Legal issues.
- 2. Unemployed

INITIAL TREATMENT PLAN:

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# Exhibit E

# My COMPASS Account Benefit Details

38 | 0124462

4/28/2017 2:49:28 PM

**Name:** BRIAN G. SMETANA  
**Address:** 625 S 8TH ST, LEBANON, PA 17042  
**Phone Number:** 717-272-2620  
**School District:** Lebanon  
**Language:** English  
**County:** Lebanon County  
**Office:** Assistance Office  
**County/RN:** 38/0124462  
**Case Status:** Open

## Household Member Information

Name	Sex	Date of Birth	Citizen Status	Marital Status
BRIAN G. SMETANA	Male	4/11/1968	US Citizen	Single/Never Married

## Notice Preference

Current Notice Preference  
Mail Manual

## Food Stamps

Program	Status	Members	Benefit	Next Payment Due	Renewal Date
Supplemental Nutrition Assistance Program (Food Stamps)	Open 4/1/2017	BRIAN G. SMETANA	\$194 monthly	5/8/2017	2/28/2018

## Cash

Program	Status	Members	Benefit	Next Payment Due	Renewal Date
None					

## Healthcare

Program	Status	Members	Benefit	Managed Care Physical	Managed Care Behavioral	Renewal Date
Medical Assistance	Open 6/12/2016	BRIAN G. SMETANA	Adult	UPMC	CBHNP	2/28/2018

LIHEAP						
Program	Status	Direct Pay	Vendor Name	Energy Season	Budget Open Date	Budget Amount
None						

Please notify your Caseworker at your local CAO if the information above is incorrect or has changed:	Lebanon County Assistance Office Lebanon County Assistance Office
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IN THE COURT OF COMMON PLEAS  
FOR LEBANON COUNTY

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA )

v. )

BRIAN SMETANA )  
\_\_\_\_\_)

Case No. CP-38-CR-1421-2014  
OTN: L8750512

NOTICE OF APPEAL

Notice is hereby given that Brian Smetana, defendant above named, hereby appeals to the Superior Court of Pennsylvania from the order entered in the matter on April 24, 2017. This order has been entered in the docket as evidenced by the attached copy of the docket entry. The order and relevant docket entries are attached hereto, along with the transcript order forms.

Dated: May 22, 2017

Respectfully submitted,



Andrew Christy  
Pa. I.D. No. 322053  
American Civil Liberties Union  
of Pennsylvania  
P.O. Box 60173  
Philadelphia, PA 19102  
P: 215-592-1513 x138  
F: 215-592-1343  
achristy@aclupa.org

*Jacqueline Lesser*

\_\_\_\_\_  
Jacqueline M. Lesser, Esq.  
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