

Commonwealth v. Able

Motion to suppress — Consent to blood testing — Enhanced punishment

The court granted motions to suppress and dismiss where a state trooper told defendant that refusing to consent to a blood test could lead to harsher punishment.

A state trooper observed defendant's vehicle cross the fog line, nearly missing a telephone pole. The trooper stated that the vehicle made jerking movements in an attempt to stay in its lane. After the vehicle again drifted over the fog line, the trooper initiated a traffic stop. The trooper testified that he detected the odor of an alcoholic beverage coming from defendant as he spoke. Defendant also had glassy and bloodshot eyes. The trooper then administered sobriety tests. When defendant failed those tests, the trooper arrested defendant and read him warnings and information regarding the implied consent laws. Defendant consented to a blood test, which revealed a blood alcohol level which was over the legal limit, as well as the presence of THC and cocaine. Defendant specifically asked the trooper what the consequences would be if he refused to submit to a blood test. The trooper responded that if he was convicted, defendant would be subjected to harsher punishment.

Defendant filed motions suppress and to dismiss all the charges against him. Relying on *Birchfield v. North Dakota*, 136 S.Ct. 2160, defendant argued that his consent to the blood test was invalid, because the trooper's comments threatened him with criminal penalties or enhanced punishment.

The facts relating to defendant's driving provided probable cause for the traffic stop. However, the trooper's response to defendant's question about the ramifications of refusing to consent to the blood test was an incorrect statement of the law, because Pennsylvania no longer imposed criminal punishments for a refusal. Instead, a refusal resulted only in civil penalties.

The commonwealth argued that the trooper's statement did not render defendant's choice involuntary, because defendant would not have actually received harsher criminal punishment, just harsher civil penalties. However, the court found that the trooper's response strongly implied the possibility of stronger criminal punishment for a refusal. Because the court had no way of knowing whether the trooper's inaccurate statement did not induce defendant to consent to the blood draw, it granted defendant's motion to suppress the evidence. Suppressing the evidence of the blood test necessarily meant that the

commonwealth would be unable to prove the two driving under the influence charges beyond a reasonable doubt, so the court also granted the motion to dismiss those charges.

C.P. Fayette County, PICS Case No. 21-0202

LESKINEN, *J.*, June 30, 2020—Before the Court is an Omnibus Pretrial Motion that includes a Motion to Suppress and a Motion to Dismiss. An evidentiary hearing was held on October 151, 2019. For the reasons stated herein, the Court must DENY Defendant’s Motion in part and GRANT the Motion in part.

FACTUAL BACKGROUND

Defendant is charged with DUI: General Impairment¹, DUI: High Rate of Alcohol², DUI: Controlled Substance — Schedule 1³, Controlled Substance — Schedule 2 or 3⁴, Possession of Controlled Substance By Person Not Registered⁵, Marijuana- Small Amount Personal Use⁶, Drug Paraphernalia⁷, and Disregarding Traffic Lane⁸. The incident giving rise to these charges occurred at approximately 2:18 a.m. on October 26th, 2018 in Dunbar Township, Fayette County, Pennsylvania.

According to Trooper Tony Anthony, Defendant was traveling on West Crawford Avenue when he observed him cross the right fog line and just miss striking a telephone pole. The Trooper also observed the vehicle made sudden jerking movements to stay in the lane as it began to cross

1. 75 Pa.C.S. § 3802(a)(1) Count 1.

2. 75 Pa.C.S. § 3802(b) Count 2.

3. 75 Pa.C.S. § 3802(d)(1)(i) Count 3.

4. 75 Pa.C.S. § 3802(d)(1)(ii) Count 4.

5. 35 Pa.C.S. § 780-113(a)(16) Count 5.

6. 35 Pa.C.S. § 780-113 (a)(31)(i) Count 6.

7. 35 Pa.C.S. § 780-113 (a)(32) Count 7.

8. 75 Pa.C.S. § 3309 1(s) Count 8.

the fog line again. After the Trooper initiated his vehicle's emergency lights and siren the Defendant's vehicle slowed abruptly and crossed the center double yellow line on multiple occasions.

When the Trooper spoke with Defendant he smelled the odor of an alcoholic beverage coming from Defendant as he spoke. He noticed that Defendant had red bloodshot/glassy eyes, slurred speech, and sluggish reactions to questions. He also noticed a clear plastic baggie containing a white powdery substance in the center console cup holder of the vehicle which resembled cocaine. Defendant was then asked to step out of the vehicle and to perform field sobriety tests. Based on his performance the Trooper found that Defendant was impaired. After being read both the O'Connell warnings and accurate Implied Consent laws, Defendant consented to a blood test at 2:42 a.m., which resulted in (1) a.163% BAC, (2) 6.7 ng/ml of Delta-9 THC, and (3) 34 ng/ml of cocaine. The Defendant specifically asked what would be the consequences if he refused a blood test, and the Trooper replied that, if Defendant was convicted he would be subjected to harsher punishment.

Defendant waived his preliminary hearing and filed this timely motion seeking to suppress the traffic stop, suppress the blood test results in light of the Supreme Court of the United States' holding in *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016), and to dismiss all of the charges.

DISCUSSION

75 Pa.C.S. § 1547 sets forth civil penalties for motorists who are arrested on suspicion of driving under the

influence of alcohol (DUI) and refuse to submit to chemical testing. These penalties include suspending the motorist's license for at least one year, 75 Pa.C.S. § 1547(b)(1), and expressly allowing evidence of the motorist's refusal to be admitted at his subsequent criminal trial on DUI charges. 75 Pa.C.S. § 1547(e) provides that, in any summary proceeding or criminal proceeding in which the defendant is charged with a violation of 75 Pa.C.S. § 3802 or any other violation of this title arising out of the same action, the fact that the defendant refused to submit to chemical testing as required by subsection (a) may be introduced in evidence along with other testimony concerning the circumstances of the refusal. No presumptions shall arise from this evidence but it may be considered along with other factors concerning the charge. *Id.*

Birchfield held that motorists cannot be deemed to have consented to submit to a blood test if they are threatened with criminal penalties or enhanced punishment. A warrantless blood test, which is conducted when no exceptions to the warrant requirement apply, violates the Fourth Amendment rights of a motorist suspected of driving under the influence of alcohol (DUI).

The Birchfield Court rejected criminal prosecution or enhanced criminal penalties as a valid consequence for refusing a warrantless blood test. Motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense. *Commonwealth v. Monarch*, 200 A.3d 51, (Pa. 2019). At the same time, the Court did not back away from its approval of other kinds of consequences for refusal, such as “evidentiary consequences.” *Id.*

Implied consent laws authorize a police officer to request a motorist's submission to a chemical test, at which point the motorist must choose either: (a) to comply with the test; or (b) to refuse and accept the civil penalties that accompany refusal. The choice may well be a difficult one, but this alone does not invalidate the "implied consent" created by the statute.

In the instant case, the observations the Trooper made that led him to believe Defendant was driving under the influence are readily visible on the MVR recording. The recording demonstrates Defendant did cross over the white fog line, crossed over the center double yellow line, and on at least one occasion made sudden jerking movements to stay in the lane. Thus, it is the conclusion of this Court that these instances give rise to both probable cause and reasonable suspicion that are a valid basis for the stop.

During the exchange the Defendant asked the Trooper what happened if he did not consent to the blood test. The Trooper replied that if the defendant was found guilty, he could receive a harsher punishment. The Trooper's statement was not correct since there are no longer any (criminal) punishments for a refusal. There are civil penalties, as noted above, and they apply independently of conviction. The Commonwealth argues that the Trooper's warning did not render the choice to submit involuntary because the Defendant would not have received "harsher punishment" after conviction, just harsher civil penalties whether or not he was convicted.

Unfortunately, the Trooper's answer in totality strongly implies enhanced criminal sentencing for a refusal. A refusal plus conviction equals "harsher punishment" than

a conviction alone. A conviction, of course, would be a criminal conviction, so the harsher punishment that would follow would necessarily be an enhanced criminal penalty.

It is impossible for this Court to find that the Trooper's inaccurate statement did not induce the Defendant to consent to the blood draw. As a result, this Court must suppress the test results. *Commonwealth v. Ennels*, 167 A.3d 716, (Superior Court 2017)

However, since granting the Defendant's Motion to suppress the blood test essentially converts the Defendant's consent into a refusal, the civil penalties should apply. The Defendant cannot say he consented to the blood test because of the civil penalties and simultaneously assert that he would have refused the test if not for non-existent criminal penalties. The Trooper can supply a copy of this OPINION and ORDER to PennDoT as proof of the Defendant's "retroactive" refusal, and if the Defendant's license is thereafter suspended for such refusal, that issue can be litigated in that proper forum.

The video evidence and the Trooper's testimony is amply sufficient to convict the Defendant of impaired driving-but it will be impossible to prove beyond a reasonable doubt that he had any specific level of drugs or alcohol in his system so as to convict him of a second or third tier offense. Because those offenses require blood test results showing a specific level of drugs and/or alcohol, the two DUI charges that depend on such results must be DISMISSED.

WHEREFORE, the Court enters the following Order:

ORDER

AND NOW, this 30th day of June, 2020, after a hearing on Defendant's Omnibus Pretrial Motion, it is hereby ORDERED and DECREED that the Motion is DENIED in part and GRANTED in part.

This Court finds that: (1) Trooper Anthony was able to articulate valid probable cause and reasonable suspicion for the traffic stop, which was confirmed by video evidence, so the stop is NOT SUPPRESSED; (2) the consent to the blood draw could have been induced in part by the inaccurate and inherently coercive answer the Trooper gave wherein he told the Defendant that he could be subjected to harsher punishment after conviction if he refused the blood test, so the results of the blood test are HEREBY SUPPRESSED; and (3) since the Commonwealth will therefore be unable to prove Counts 2 and 3, said COUNT 2 and COUNT 3 are HEREBY DISMISSED.

In all other respects, the Omnibus Pretrial Motion of the Defendant is DENIED.

Budai v. Country Fair, Inc.

Fair/accurate credit transaction act — Class action lawsuit — Traditional standing

The allegations in plaintiffs' putative class action complaint, which alleged that the defendant proprietor willfully violated the requirements of the Fair and Accurate Credit Transaction Act, satisfied all three factors necessary to attain standing under Pennsylvania's traditional standing. The court denied defendant's motion for reconsideration.

Defendant, Country Fair, Inc., operates a multistate chain of gas stations/convenience stores. Plaintiffs allegedly used their credit cards at defendant's stores between July 28, 2018, and July 30, 2018. According

to plaintiffs, defendant provided them with paper receipts displaying the first four and last four digits of each of their credit card numbers. Pursuant to the Fair and Accurate Credit Transaction Act no person that accepts credit or debit cards as payment “shall print more than the last [five] digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.” In this putative class action, plaintiffs claimed that defendant willfully violated FACTA’s truncation requirement, at 15 U.S.C. §1681c(g)(1). Defendant filed preliminary objections, challenging plaintiffs’ standing. The court overruled the objection, finding that because the interest plaintiffs sought to protect was established by statute, i.e. FACTA, the statute granted them arguable standing. Here, the court addressed defendant’s motion for reconsideration. The court concluded that Pennsylvania law governed plaintiffs standing. Standing to sue in Pennsylvania courts lacks the jurisdictional and constitutional dimensions fatal to so many cases aspiring to be adjudicated in federal court, the court explained. The state’s standing doctrine is a judicial creation rooted in prudential concerns designed to ensure that only parties sufficiently “aggrieved” may mount a court challenge. Pennsylvania state court standing comes from one of two sources: traditional standing doctrine or a grant of statutory standing by the state legislature. After finding that Pennsylvania law on standing applied, the court considered whether to analyze the case at bar under statutory standing or traditional principals. In the absence of statutory standing conferred by either congress or the Pennsylvania legislature, the court chose to analyze plaintiff’s standing to bring their FACTA claim using the traditional state standing doctrine. A party is adversely affected enough to file a claim in state court if the party had a substantial, direct and immediate interest in the litigation’s outcome. The suit alleged that plaintiffs patronized defendant’s stores and paid for purchased items with credit or debit cards and that defendant provided them with paper receipts containing more than the permissible amount of inform under FACTA. Thus, according to plaintiffs, defendant’s violation of FACTA caused harm to plaintiffs’ interests. “This cause-effect connection is neither too remote nor too speculative to escape adjudication in our courts.” The court construed the complaint allegations in the light most favorable to plaintiffs and found that they satisfied all three factors necessary to attain standing under Pennsylvania’s traditional standing. Thus, the court denied defendant relief, but granted its motion to certify the order for an interlocutory appeal.

HODGE, *J.*, Aug. 20, 2020—Presently before the Court is a reconsideration of Defendant Country Fair, Inc.’s Preliminary Objections to the Complaint filed by Plaintiffs in a putative class action lawsuit. After careful consideration of the legal arguments presented by the parties, the Court once again OVERRULES Defendant’s Preliminary Objections in their entirety.

This lawsuit concerns the Fair and Accurate Credit Transaction Act (FACTA), an act of Congress signed into law by President George W. Bush on December 4, 2003. Congress enacted FACTA in response to the unchecked identity theft and credit card R.C.P. No. 1028(a)(5). This Court set argument on the Preliminary Objections for February 24, 2020, and accepted briefing from the parties in the interim.

The Court heard argument as scheduled on February 24, 2020, and on March 16, 2020, issued an opinion and order overruling the Preliminary Objections. With respect to the objection over Plaintiffs’ standing, the Court agreed with Plaintiffs that because the interest they sought to protect was established by statute, in this case FACTA, the statute granted them arguable standing under *Milby v. Pote*, 189 A.3d 1065, 1076-77 (Pa. Super. 2018), *appeal denied*, 199 A.3d 340 (Pa. 2018). Therefore, the Court held that Plaintiffs had statutory standing under FACTA to bring this lawsuit and had no need to invoke the traditional principles of standing under Pennsylvania law. As to the demurrer, the Court held that, after evaluating their pleading in accordance with the customary standards for reading complaints at this stage, Plaintiffs sufficiently averred a willful violation of FACTA by Defendants.

On April 22, 2020, Defendant filed a Motion for Reconsideration and in the Alternative, Application for Amendment of Interlocutory Order to Set Forth Statement Specified in 42 Pa. C.S. §702(b) and Motion to Stay. The Court granted the motion and vacated the previous order of March 16, 2020. Once again, the Court invited the parties to submit briefing in anticipation of oral argument on July 27, 2020. The parties provided thoughtful and thorough briefs to the Court, and likewise, at oral argument on July 27, 2020, engaged in an impassioned yet collegial discussion of what the Court's decision should be on the Preliminary Objections. The Court, in reaching its decision today, has extensively reviewed and considered the oral and written arguments of counsel.

II. Factual Background

The Court now summarizes the factual averments of Plaintiffs' complaint, and in so doing recognizes that when a trial court is presented with preliminary objections in the nature of a demurrer, all material facts in the complaint, as well as all reasonable inferences therefrom, must be accepted as true. *O'Toole v. Pennsylvania Department of Corrections*, 196 A.3d 260, 264 (Pa. Cmwlth. 2018).

FACTA went into effect on December 4, 2003, and afterward, merchants who accept credit or debit cards were given exactly three years, until December 4, 2006, to come into full compliance with its provisions. Meanwhile, before, during, and after the enactment of FACTA, a consortium of hospitality and trade associations, payment processing vendors, and credit card companies mounted a vigorous multimedia campaign designed to apprise merchants of the law's mandates, including the truncation

requirement. Additionally, in the law's early years, the burgeoning number of class action lawsuits filed against merchants accused of printing excessive digits of the card number and/or its expiration date on paper receipts brought further attention to FACTA. In 2008, the Clarification Act renewed the spotlight on FACTA by granting amnesty to the subset of defendants in these class action lawsuits whose only violations were the printing of expiration dates, but not those whose noncompliance was rooted in printing too many of the card numbers on the receipt.

Defendant, the operator of a multistate chain of 71 gas stations/convenience stores, became generally acquainted with FACTA through these events in the news and more specifically via its agreements made with the various credit card companies, including VISA, MasterCard, and American Express, that included language advising Defendant of, *inter alia*, the truncation requirement. Moreover, Defendant contracted for its point of sale (POS) technology, and the agreements concluded with the POS vendors also contained language referencing the truncation requirement. Lastly, Defendant received notices and advisories from trade associations or other industry groups providing reminders of FACTA and its obligations. Therefore, Defendant had knowledge of FACTA and the truncation requirement it imposed on merchants accepting credit or debit cards as payment for goods or services.

Between July 28, 2018, and July 30, 2018, Plaintiffs Budai, Sciola, and Gennock patronized Defendant's convenience stores in New Castle, Pennsylvania, and Boardman, Ohio, and used their credit or debit cards to pay for their purchases. Additionally, Plaintiffs had shopped at

Defendant's stores in the past and had tendered payment then with their credit or debit cards. On one or more of these occasions, Defendant provided paper receipts to Plaintiffs displaying the first four and last four digits of each Plaintiffs card number, in violation of FACTA's truncation requirement, and accordingly placed Plaintiffs at a heightened risk of identity theft and credit card fraud. Although Plaintiffs have lost or discarded some of these offending receipts, they have saved others and stored them to prevent any possibility of them falling into the wrong hands. These affirmative steps, though burdensome to Plaintiffs, have been necessary to thwart the enhanced risk of theft and fraud.

Plaintiffs seek to certify a class of similarly situated persons who were provided a paper receipt from Defendant containing more than the last five digits of the card number and/or the card's expiration date within the two years predating the complaint, i.e. from August 23, 2016 to August 23, 2018. Plaintiffs seek to exclude from the class 655, 659 (Pa. 2005). The concept is employed by both federal and Pennsylvania courts to weed out those lawsuits unworthy of judicial consideration, but there are key differences in the specific legal standards and doctrines applied by the two systems when they do so. The cardinal distinction is the legal significance attributed by each system to a plaintiff's standing or lack thereof.

The United States district and circuit courts may only exercise the federal "judicial Power" over "cases" or "controversies" under Article III, Section 2 of the U.S. Constitution, making standing a necessary prerequisite for establishing a "case" or "controversy" capable of

invoking the court's limited jurisdiction. *Thorne v. Pep Boys — Manny, Moe & Jack, Inc.*, 397 F.Supp.3d 657, 665 (E.D. Pa. 2019). Thus, a plaintiff's ability to demonstrate standing is directly proportional to the federal court's ability to exercise its jurisdiction over the matter under Article III of the U.S. Constitution. It is for this reason that jurisdictional or constitutional standing in federal court is referred to as "Article III standing."

Article III standing relies on the plaintiff showing three "irreducible constitutional minimum" elements: (1) the plaintiff suffered an injury in fact; (2) the injury in fact is traceable to the defendant's challenged conduct; and (3) this conduct is likely to be redressed by a favorable judicial decision. *Spokeo, Inc., v. Robins*, 136 S.Ct. 1540, 1547 (2016); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The most difficult to satisfy prong of Article III standing, by far, is injury in fact, which in turn requires the putative plaintiff to show an additional two elements: an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. *Lujan*, 504 U.S. at 560 (internal citations caused harm to the party's interest, and an immediate interest if it the causal connection is not remote or speculative. *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009). These three factors represent a pragmatic standard that permit Pennsylvania's state courts to be "much more expansive in finding standing than their federal counterparts." *Hershey I*, 867 A.2d at 684; accord *Markham v. Wolf*, 136 A.3d 134, 148 (Pa. 2016) (Dougherty, J., concurring) ("It appears the Court has adopted a practical and flexible approach to standing.").

The foregoing principles may be characterized as “traditional” standing doctrine, and are the default rules utilized by state and federal courts to evaluate standing unless a party claims another source of their right to sue. This latter scenario is implicated here, Plaintiffs argue, by virtue of so-called “statutory standing” because their right to file suit derives directly from the statute, FACTA, thus avoiding any need for analysis under the traditional principles.

In their Response to the Motion for Reconsideration, Plaintiffs cited many cases in which Pennsylvania courts have recognized standing pursuant to a legislative grant. Among these cases was the decision and passage relied on by the Court in the March 16, 2020 Order and Opinion, *Milby v. Pote*, 189 A.3d 1065, 1076-77 (Pa. Super. 2018) (“...traditional standing requirements apply only when a specific statutory provision for standing is lacking...”). Defendant has primarily attacked this statement from *Milby* as dicta unsupported by any other precedential decision from a Pennsylvania court, and alternatively, insofar as this statement is good law, Defendant has argued it only applies to the specific statute at issue in that case. Thus, Defendant argues that the Court should have then and should now consider only traditional principles in evaluating Plaintiffs’ standing.

Preliminarily, we agree with Plaintiffs that the contested statement from *Milby* is good law. Although it is true the *Milby* Court does not cite to any Pennsylvania appellate decision directly in support of this proposition, when this statement from *Milby* is reviewed in conjunction with the other cases cited by Plaintiffs, it is clear that standing can

be conferred by the state legislature in lieu of the traditional principles. In particular, the Court notes the Pennsylvania Supreme Court's pronouncements in *Penn. Nat. Mut. Cas. Ins. Co. v. Dep't of Labor and Ind., Prevailing Wage Appeals Bd.*, 715 A.2d 1068, 1071 (Pa. 1998) (emphasis added) ("Standing may be conferred by statute or by having an interest deserving of legal protection.") and in *County of Chester*, 730 A.2d at 941 ("If a statute properly enacted by the Pennsylvania legislature furnishes authority for a party to proceed in Pennsylvania's courts, [a lack] of standing under [traditional standing doctrine] will not be deemed a bar to an exercise of [state court] jurisdiction.").

It is worth repeating that standing to sue in Pennsylvania court is not a jurisdictional or constitutional requirement, because the legislature sets the jurisdiction for the courts at every level of our judiciary. *See, e.g.*, Pa. Const., Art. V, Section 5(b) (emphasis added) (The Courts of Common Pleas shall have "unlimited original jurisdiction in all cases except as may *otherwise be provided by law*"). Free from the clutches of the Article III jurisdictional bar or a state-level analogue, Pennsylvania state court standing comes from one of two sources: traditional standing doctrine or a grant of statutory standing by the Pennsylvania General Assembly. *Milby*, 189 A.3d at 1076-77; *Penn. Nat. Mut. Cas. Ins. Co.*, 715 A.2d at 1071; *Press-Enterprise, Inc. v. Benton Area Sch. Dist.*, 604 A.2d 1221, 1223 (Pa. Cmwlth. 1992) (emphasis added) ("...we agree...that traditional standing requirements are applicable *only* where a specific statutory provision for standing is lacking").¹

1. However, a grant of statutory standing in Pennsylvania is not absolute; courts may employ a "zone of interests" test to ensure that the putative plaintiff is among those the statute was meant to protect. *Milby*,

By way of contrast, statutory standing is far more circumscribed in the federal arena: Congress can “create a statutory right or entitlement the alleged deprivation of which *can* confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of the statute.” *Warth v. Seldin*, 422 U.S. 490, 514 (1975) (emphasis added). The word “can” connotes the limitations on this power to create new rights and the ability to sue for their enforcement, because any congressional initiatives of this sort are subject to the ineluctable proviso that the minimum requirements of Article III standing can never be legislated away. *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979).

The U.S. Supreme Court recently reaffirmed this principle in *Spokeo*, 136 S.Ct. at 1549, when it cautioned that congressional elevation of an intangible harm to a legal right does not automatically raise the violation of that right to an injury in fact. In other words, even when a prospective plaintiff is confronted with a violation of his or her statutory right, he or she must still demonstrate this violation amounted to a concrete injury. *Id.* In some cases, the procedural violation of a statutory right may, by itself, be enough of a concrete injury, but in other cases the procedural violation alone, without averments showing an additional risk of material harm, will not suffice for Article III standing. *Id.* at 1550.

2. Survey of Federal Circuit Court Decisions in Similar FACTA Cases

189 A.3d at 1076-77; *Malt Beverages Distributors Ass’n v. Pa. Liquor Control Bd.*, 881 A.2d 37, 41 (Pa. Cmwlth. 2005) (citing *William Penn Parking Garage, Inc.*, 346 A.2d at 280-81).

Spokeo, a watershed moment in federal standing jurisprudence, had its rationale applied by the Third Circuit in *Kamal*, a case to which Defendant urges the Court accord great deference. In *Kamal*, the eponymous plaintiff, Ahmed Kamal, alleged that he patronized three separate J. Crew outlet stores in Maryland, Delaware, and New Jersey between mid-December 2014 and early January 2015, and was provided printed receipts for each purchase that showed the first six and last four digits of his credit card number. *Kamal*, 918 F.3d at 107. He then filed suit against the retailer for this procedural violation of FACTA. *Id.* Significantly, Kamal did not allege that any third parties obtained his receipts or that he suffered identity theft or fraud, but stated that if his receipts fell into the wrong hands, a criminal could piece together the necessary information and commit those crimes using his account. *Id.* at 108. Eventually, the U.S. District Court for the District of New Jersey dismissed the suit for lack of Article III standing, reasoning that Kamal had not pleaded a concrete injury in fact under *Spokeo*. *Id.* at 109.

Kamal's appeal to the Third Circuit followed, in which a unanimous panel affirmed the district court's decision. Specifically, the panel reasoned that while Kamal undoubtedly had a right under FACTA not to have excessive digits from his credit card printed on the receipts, Kamal had failed to plead any facts showing that J. Crew's bare procedural violation created any material risk of harm to him amounting to a concrete injury in fact. *Id.* at 115-16. Instead, because Kamal only pleaded a tenuous and "highly speculative chain of future events" premised on a thief obtaining his discarded receipts and then piecing together the unseen portions of the credit

card number, the panel agreed with the district court that Kamal failed to “plausibly aver how J. Crew’s printing of the six digits present[ed] a material risk of concrete, particularized harm.” *Id.* at 116. Thus, the panel concluded, Kamal failed to plead “a sufficient degree of risk” able to elevate J. Crew’s alleged procedural violation of FACTA to a concrete injury in fact creating Article III standing. *Id.* at 117.

As pointed out by Defendant in its brief and separately by the Third Circuit in *Kamal*, numerous other federal district and circuit courts have reached identical conclusions in FACTA cases alleging facts virtually indistinguishable from Plaintiffs herein, including *Katz v. Donna Karan Co., LLC*, 872 F.3d 114 (2d Cir. 2017), *Noble v. Checker Cab Corp.*, 726 F.App’x 582 (9th Cir. 2018), and *Hullinger v. Park Grove Inn, Inc.*, 2018 WL 3040571 (E.D. Tenn. 2018). On the other hand, Defendant acknowledges, albeit while emphasizing the group’s comparatively thinner ranks, that other federal district and circuit courts have reached opposing conclusions in other materially similar FACTA cases, most prominently the U.S. Court of Appeals for the Eleventh Circuit in *Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019) (*Muransky I*), opinion vacated and reargument *en banc* granted, 939 F.3d 1278 (11th Cir. 2019) (*Muransky II*).

In *Muransky I*, 922 F.3d at 1181, the putative class action plaintiff, Dr. David S. Muransky, alleged that a receipt for purchases he made at a Godiva chocolate store contained the first six and last four digits of his credit card number, in violation of FACTA. Like Plaintiffs and Kamal, Muransky did not allege that any third parties saw

or obtained the offending receipt or used it for nefarious purposes. *Id.* Instead, he sued Godiva on the theory that he suffered from an elevated and increased risk of identity theft. *Id.* Eventually, the question of Muransky's standing reached the Eleventh Circuit, which sided with Muransky and drew a line in the sand, noting that "Congress made it unlawful to print more than the last five digits of a credit card number...*irrespective* of whether anyone saw the receipt." *Id.* at 1190 (emphasis added). Hence, the Eleventh Circuit held that any bare procedural violation of FACTA was enough to suffice for a concrete injury in fact creating Article III standing. *Id.*²

In another noteworthy FACTA case featuring similar factual circumstances, *Jeffries v. Volume Services America, Inc.*, 928 F.3d 1059 (D.C. Cir. 2019), the U.S. Court of Appeals for the District of Columbia Circuit took somewhat of a hybrid approach. In *Jeffries*, the putative class action plaintiff was allegedly handed a receipt containing her full credit card number, expiration date, and credit card issuer, and she immediately recognized the receipt's compromising nature. *Id.* at 1062-63. Accordingly, she then held onto the receipt for safekeeping to prevent any third parties from glimpsing or stealing her confidential information. *Id.* at 1063. The district court dismissed her lawsuit for want of a concrete injury in fact, and *Jeffries* appealed. *Id.* On appeal, the D.C. Circuit declined to take the strict approach embraced by the Eleventh Circuit in *Muransky I* that *any* procedural violation of FACTA's

2. We recognize that *Muransky I* was vacated and scheduled for reargument before the Eleventh Circuit en banc. *Muransky II*, 939 F.3d at 1278. Nevertheless, the Court finds the Eleventh Circuit's vacated analysis in *Muransky I* an illuminating and useful perspective on the matters at hand.

truncation requirement creates a concrete injury in fact, but also noted that Jeffries faced a much more “egregious” FACTA violation and materially increased risk of identity theft than that considered by the Third Circuit in *Kamal* because Jeffries’ receipt “bore sufficient information for a criminal to defraud her.” *Id.* at 1065-66. Therefore, the D.C. Circuit reversed the district court and held that Jeffries had pleaded a concrete injury in fact sufficient to trigger Article III standing. *Id.* at 1067.

Clearly, there is wide room for nuance and disagreement among the federal courts in FACTA cases depending on the precise nature of the facts pleaded in the complaint. Ultimately, what a federal court decides in a FACTA truncation case alleging only a bare procedural violation appears to turn on just how many of the cardholder’s digits were printed on the receipt. The cases show a discernible trend that an increasing amount of forbidden information printed on the receipt translates into a more concrete and less speculative injury in fact for purposes of Article III standing. *See Jeffries*, 928 F.3d at 1065-66, and *Kamal*, 918 F.3d at 116 (“Our analysis would be different if, for example, *Kamal* had alleged that the receipt included all sixteen digits of his credit card number, making the potential for fraud significantly less conjectural.”).

3. Standing Applied to the Instant Matter

With this somewhat expansive background on federal and state standing in mind, the Court returns to a threshold issue, which is what body of law to apply in deciding Plaintiffs’ standing.

Both parties have acknowledged the U.S. Supreme

Court's statement in *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989) that "the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law." The Pennsylvania Supreme Court adopted this statement from *ASARCO* into its own jurisprudence, noting that a federal court's determination of standing does not control how a Pennsylvania court would answer the same question. *Erfer v. Commonwealth*, 794 A.2d 325, 329 (Pa. 2002), *abrogated on other grounds*, *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018). More broadly, "decisions of the federal district courts and courts of appeal...are not binding on Pennsylvania courts, even when a federal question is involved...[however, decisions] of the federal courts lower than the United States Supreme Court possess a persuasive authority." *Martin v. Hale Products, Inc.*, 699 A.2d 1283, 1287 (Pa. Super. 1997) (internal citation omitted).

Accordingly, the Court holds that Pennsylvania law on the question of standing will apply to the Preliminary Objections *sub judice*, and that the Court is not bound by any federal decisions on standing in FACTA cases, whether it be the Third Circuit's decision in *Kamal* or any other federal district or circuit court case, which possess, at most, persuasive authority.

Next, within the confines of Pennsylvania standing, the Court must decide whether to analyze Plaintiffs' case under statutory standing or the traditional principles. Plaintiffs have repeatedly urged the Court to reaffirm that FACTA granted them statutory standing, and have cited numerous

cases from all levels of the Pennsylvania judiciary on the broader point. *See* Plaintiffs' Response to Def.'s Motion for Reconsideration at 3-5 (collecting cases). Although the Court agrees that statutory standing is a concept generally recognized in Pennsylvania jurisprudence, we note that in each of the cases cited by Plaintiffs, the legislative grant of the right to sue came from the *Pennsylvania General Assembly* regarding specific issues of state law, not the United States Congress on matters of federal law.

On the contrary, the Court agrees with Defendant's argument, *see* Def.'s Reply Brief in Support of Motion for Reconsideration at 3-5, that no published authority stands for the proposition that Congress can confer standing to sue in state court. Defendant cited and excerpted in its Reply Brief what is likely the only case passing directly on this issue, *Smith v. Ohio State University*, 2017 WL 6016627 (Ohio Ct. App., 10th Dist. 2017), an unpublished Ohio intermediate appellate case that answered the question in the negative.

In *Smith*, a group of Ohio State University employees filed suit against the school in federal court under the Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681 *et seq.*, the parent statute of FACTA. *Id.* Their claims were initially dismissed by the federal district court for failure to plead an injury in fact sufficient for Article III standing. *Id.* After the case was remanded to state court, the state court also dismissed for failure to plead an injury in fact sufficient to attain standing under Ohio law.³ *Id.* On appeal, the *Smith*

3. Unlike Pennsylvania, standing to sue in Ohio courts is essentially identical to Article III standing. Ohio's constitution limits their courts' jurisdiction to "justiciable matters," making standing a jurisdictional rather than prudential requirement. Ohio Const., Art. IV, Sect. 4(B). To

plaintiffs argued that they did not have to satisfy Ohio's traditional standing doctrine, and specifically the injury in fact requirement, because Congress had bestowed statutory standing when it enacted the FCRA. *Id.*

Preliminarily, the *Smith* Court acknowledged that Ohio law permits statutory standing as a means of bypassing the traditional standing requirements, but only if the Ohio General Assembly inserts into the pertinent statute a clear expression of its intent to “abrogate the common law requirements for standing.” *Id.* (quoting *ProgressOhio.org, Inc. v. JobsOhio*, 13 N.E.3d 1101, 1107 (Ohio 2014)). Finding no indication that Congress intended for the FCRA to supplant Ohio's traditional standing doctrine, the *Smith* Court declined to recognize the FCRA as falling within this limited exception to the common law requirements, and therefore affirmed the lower court's dismissal of the suit for failure to plead an injury in fact. *Id.* Moreover, the *Smith* Court expressed cogent concerns about the propriety and legality of having an act of Congress determine standing to sue in state courts. *Id.* Indeed, the *Smith* Court remarked that yielding to a supposed congressional grant of statutory standing in state court would set a dangerous precedent on the separation of powers between federal and state government and furthermore would be an “anomaly” given Congress' obvious inability to bypass the strictures of Article III standing in federal court.⁴ *Id.*

uphold this requirement, the Ohio Supreme Court has delineated a three-factor test for standing copied directly from the U.S. Supreme Court: a plaintiff must show (1) an injury in fact (2) fairly traceable to the defendant's allegedly illegal conduct (3) that will likely be redressed by the requested relief. *Moore v. Middletown*, 975 N.E.2d 977, 982 (Ohio 2012) (citing *Luian*, 504 U.S. at 560-61)

4. Rejecting the proposition that Congress can grant statutory standing to sue in state court is not, despite Plaintiffs' assertion,

Although *Smith* is not binding precedent on the Court, we find its constitutional and policy arguments logical and persuasive on the point of Congress' ability to confer statutory standing in state courts. The Court, therefore, rejects Plaintiffs' position that a supposed grant of statutory standing by Congress (which, as already noted, is a power always circumscribed by the overriding mandates of Article III standing) should be treated by Pennsylvania state courts as identical to a conferral of statutory standing by the Pennsylvania General Assembly. Accordingly, in the absence of statutory standing conferred by either Congress or the Pennsylvania General Assembly, the Court will analyze Plaintiffs' standing to bring their FACTA claim using only the traditional Pennsylvania standing doctrine.

Other state courts have been trailblazers in this regard. In *Duncan v. FedEx Office and Print Services, Inc.*, 123 N.E.3d 1249, 1252 (III. App. Ct. 1st Dist. 2019), Karen Duncan filed a lawsuit against FedEx's office store subsidiary in Illinois state court alleging they had provided her a receipt that printed the first two and last four digits of

discrimination against federal causes of action. On the contrary, the Court is keenly aware of its obligation under the Supremacy Clause to adjudicate all properly presented federal claims that are not subject to the exclusive jurisdiction of the federal judiciary. *In re Stevenson*, 12 A.3d 273, 276 (Pa. 2010); *Haywood v. Drown*, 556 U.S. 729, 734-36 (2009).

Nevertheless, as a byproduct of our federalist system of government that gives us 50 state courts established by 50 state constitutions in addition to the federal judiciary, each of these jurisdictions applies its own conceptions of standing when hearing these federal claims. This is each state's prerogative as recognized by the U.S. Supreme Court in *ASARCO*, 490 U.S. at 617. The result, inevitably, is a patchwork of standing requirements in what one law review article appropriately termed the "federal-state standing gap," especially in states where standing requirements are "comparatively lax" when compared to Article III standing. Peter N. Salib and David K. Suska, *The Federal-State Standing Gap: How to Enforce Federal Law in Federal Court Without Article III Standing*, 26 Wm. & Mary Bill Rts. J. 1155 (2018).

her credit card number. Duncan averred that these receipts demonstrated FedEx's willful noncompliance with FACTA's truncation requirement and that, as a result, she and thousands of other FedEx customers had been placed at a heightened risk of identity theft and fraud. *Id.* FedEx moved to have Duncan's complaint dismissed for failure to allege an injury in fact sufficient to confer standing to sue. *Id.* The Circuit Court of Cook County, Illinois, granted the motion to dismiss, and Duncan then appealed to the First District of the Appellate Court of Illinois. *Id.* at 1253.

On appeal, FedEx urged the appellate court to affirm and follow the precedents set by the federal district and circuit courts in similar FACTA cases, including *Katz*, 872 F.3d 114, *Hullinger*, 2018 WL 3040571, and *Soto v. Great America LLC*, 2018 WL 2364916 (N.D. Ill. 2018), all of which concluded under *Spokeo*, 136 S.Ct. 1540, that a bare procedural violation of FACTA failed to suffice as a concrete injury in fact for Article III standing. 123 N.E.3d at 1253. The *Duncan* Court rejected this suggestion, first noting the disagreements among federal courts in similar FACTA cases (*see, e.g., Muransky I*, 922 F.3d at 1181, and *Guarisma v. Microsoft Corp.*, 209 F.Supp.3d 1261 (S.D. Fla. 2016)) and further reiterating that Illinois state courts are not bound by federal doctrines on standing and justiciability. *Id.* at 1255-57 (citing *Greer v. Illinois Housing Dev. Auth.*, 524 N.E.2d 561 (Ill. 1988)).

Instead, the *Duncan* Court countered that standing in Illinois is prudential, not jurisdictional, and observed that Illinois courts "generally are not as restrictive as federal courts in recognizing the standing of a plaintiff to bring a claim." *Id.* at 1257. The *Duncan* Court then turned to

Illinois' traditional standing doctrine and, after evaluation of her complaint, concluded that Duncan qualified thereunder to bring her FACTA claim. *Id.* Accordingly, the trial court was reversed and the lawsuit was permitted to move forward. *Id.* at 1257-58. As with *Smith*, *Duncan* is persuasive authority that is nonbinding on Pennsylvania courts. Nevertheless, the Court finds the *Duncan* Court's approach a helpful and informative template on how to resolve questions of standing surrounding FACTA claims brought in state court.

Finally, the Court reaches the merits of Plaintiffs' standing under Pennsylvania law. As a brief reminder, Plaintiffs must have a substantial, direct, and immediate interest in this litigation in order for the Court to find standing. *Fumo*, 972 A.2d at 496. Based on the facts pleaded in Plaintiffs' complaint, and construing those averments in the light most favorable to them, the Court holds that all three factors are met.

First, Plaintiffs have shown a substantial interest in the litigation. Plaintiffs' interest far outstrips that of ordinary citizens in procuring obedience to the law, because it was Plaintiffs' personal information that was printed on the offending receipts. It is their credit card or debit card information that has been violated, an intrusion which gives them more of an interest in the enforcement of FACTA than the average, unaffected citizen.

Second, Plaintiffs have a direct interest in this litigation's outcome. Under FACTA, in order to minimize the risks of identity theft and fraud, Congress granted all Americans paying with a credit or debit card the right to receive paper receipts that contain no more than the last four digits of

the card number. Defendant allegedly violated this right by tendering receipts containing the first four and last four digits of Plaintiffs' credit or debit card numbers, in excess of the information and level of risk permissible under FACTA. Accordingly, there is a causal relationship between Defendant's conduct and the harm to Plaintiffs' rights to enjoy the protections of FACTA.

Third, Plaintiffs have shown they have an immediate interest in the litigation; the causal connection is not remote or speculative. On the contrary, the causal connection has already occurred, and was complete when Defendant tendered the allegedly illegal receipts to Plaintiffs in July 2018. The chain of events averred in the complaint is straightforward: Plaintiffs patronized Defendant's convenience stores and paid for their purchases with credit or debit cards, Defendant provided a paper receipt, and the receipts contained more than the permissible amount of information under FACTA. Simply put, Defendant, by its lack of compliance with FACTA, caused the alleged harm to Plaintiffs' interests, and this cause-effect connection is neither too remote nor too speculative to escape adjudication in our courts.

Based on the Court's reading of the complaint, Plaintiffs have successfully pleaded all three elements needed to attain standing under Pennsylvania's traditional standing doctrine. *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003). Plaintiffs have averred that they are aggrieved and adversely affected by Defendant's conduct, and it is appropriate that their challenge be resolved in our state courts.

The Court is not unsympathetic to Defendant's

impassioned arguments that permitting these types of FACTA lawsuits to proceed, despite the rejection of them by so many federal courts, poses massive risks to merchants and businesses across the country that they will be liable based on threadbare allegations lacking any indication of actual identity theft or fraud. Courts at every level and in every corner of our state and federal judiciaries have grappled, struggled, and debated how to handle the deluge of class action lawsuits for procedural violations of FACTA. Each judicial opinion we have studied on the issue has presented smart, detailed, and cogent reasons for why these lawsuits have been dismissed in some jurisdictions but allowed to proceed in others. This debate has now reached the humble confines of Lawrence County and presented the Court with an issue of first impression under Pennsylvania law. It is for this reason, as a recognition of the tremendous divergence of case law at the state and federal levels, that the Court grants Defendant's motion to certify the attached order for an interlocutory appeal under 42 Pa. C.S. §702(b).

Perhaps the Superior Court, should it permit the interlocutory appeal, will see the issue differently and require the dismissal of Plaintiffs' complaint for lack of standing. Until that day, the Court's role is to interpret, construe, and apply the law as it currently stands. *Commonwealth v. Sutley*, 378 A.2d 780, 783 (Pa. 1977). Our understanding of Pennsylvania law begets the conclusion that Plaintiffs have standing under Pennsylvania's traditional doctrine to bring their FACTA claim. Admittedly, the Court erred in the March 16, 2020 Order and Opinion by relying on *Milby*, 189 A.3d at 1076-77, and holding that Plaintiffs' arguably had statutory standing. Nevertheless, by

reconsidering Defendant's objection through the prism of Pennsylvania's traditional principles of standing, the Court reaches the same conclusion: Plaintiffs have standing to file this lawsuit. *Fumo*, 972 A.2d at 946; *Hickson*, 821 A.2d at 1243. Accordingly, this Preliminary Objection remains OVERRULED.

B. Demurrer to Plaintiffs' Claim

The Court next revisits Defendant's Preliminary Objection in the form of a demurrer to Plaintiffs' claim. Essentially, Defendant ties this objection to the standing question, arguing in the Motion for Reconsideration that Plaintiffs' failure to allege an injury in fact also results in failure to state a claim upon which relief can be granted. In support, Defendant cites a decision by the Honorable Eugene Fike, Senior Judge, in *Michael Locke v. Ward Manufacturing, Inc.*, No. 10555 of 2013, C.A., that sustained a demurrer based upon a lack of standing.

Other Pennsylvania courts have decided preliminary objections conflating standing with a more general demurrer under Pa. R.C.P. No. 1028(a)(4). *Danko Holdings, L.P. v. Forestry Inc.*, 2019 WL 7305100 (Pa. Com. Pl. Lackawanna, Dec. 12, 2019); *Boady v. Phila. Mun. Auth.*, 699 A.2d 1358 (Pa. Cmwlth. 1997); *Clifton v. Suburban Cable TV Co., Inc.*, 642 A.2d 512 (Pa. Super. 1994). Insofar as Defendant's demurrer in the instant matter is premised on standing, the Court reiterates and incorporates by reference the reasoning and conclusions at Part III. A., supra, that Plaintiffs have standing under Pennsylvania law to bring their FACTA claims.

In the interest of leaving no issue unaddressed, the

Court will briefly analyze Defendant's demurrer under the usual standards applied to that objection. A Preliminary Objection in the form of a demurrer under Pa. R.C.P. No. 1028(a)(4) challenges the legal sufficiency of a complaint and presents the question of "whether, on the facts averred, the law says with certainty that no recovery is possible." *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 274 (Pa. 2005). All well-pleaded facts averred in the complaint, and any reasonable inferences flowing therefrom, must be accepted as true by the trial court. *Smolsky v. Governor's Office of Administration*, 990 A.2d 173, 174 (Pa. Cmwlth. 2010). A demurrer should be overruled unless the court determines, with certainty, that upon the facts averred the law will not permit any recovery by the plaintiff. *R.W. v. Manzek*, 888 A.2d 740, 749 (Pa. 2005). Conversely, a demurrer should be sustained when the court finds, based on the pleaded facts, there are no legal grounds upon which the claim can stand. *Weiley v. Albert Einstein Med. Ctr.*, 51 A.3d 202, 208 (Pa. Super. 2012).

Under FACTA, 15 U.S.C. §1681n(a)(1)(A) provides that actual damages or statutory damages between \$100 and \$1000 may be imposed for willful noncompliance with the truncation requirement. A willful violation of FACTA occurs when one knowingly or recklessly disregards the statute's mandate. *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57-58 (2007). Conduct that results from an objectively unreasonable reading of the statute amounts to a willful violation. *Id.* at 69. Plaintiffs aver in their complaint that Defendant learned of FACTA's truncation requirement through multiple sources between 2003 and 2008, and received further reminders of the same

from its contracts with the credit card service providers and guidance from industry trade groups. Nevertheless, Plaintiffs aver, Defendant failed to respect FACTA's truncation requirement and provided receipts containing the first four and last four digits of Plaintiffs' card numbers. If proven to be true, Defendant's conduct had no basis in the statutory text and therefore was an objectively unreasonable deviation from the statute.

Based on these facts, which are nearly identical to those averred in dozens of lawsuits across the county, Plaintiffs would be entitled to recover the statutory damages for Defendant's willful violation of FACTA. *See Thompson v. Rally House of Kansas City, Inc.*, 2016 WL 9023433 (W.D. Mo. 2016) (collecting similar FACTA cases in which the pleadings survived an equivalent motion to dismiss under Fed. R. Civ. P. 12(b)(6)). Because it is far from certain that the law would not permit Plaintiffs to recover based on these facts, Defendant's demurrer shall remain OVERRULED.

III. Conclusion

After careful reconsideration of our earlier decisions, the Court once again OVERRULES Defendant's Preliminary Objections. However, because of the substantial disagreement among courts on standing to sue for procedural violations of FACTA, a Superior Court decision on this question would materially benefit this and any future FACTA litigation in Pennsylvania courts. Thus, the Court GRANTS Defendant's motion to certify the order for interlocutory appeal under 42 Pa. C.S. §702(b).

ORDER OF COURT

AND NOW, this 20th day of August, 2020, this case having been before the Court on July 27, 2020, for argument on Defendant's Motion for Reconsideration, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Defendant's two Preliminary Objections, an objection to Plaintiffs' standing under Pa. R.C.P. No. 1028(a)(5) and a demurrer to Plaintiffs' complaint under Pa. R.C.P. No. 1028(a)(4), are OVERRULED en toto for the reasons set forth in the attached Opinion.

2. The Court is of the opinion that the question of Plaintiffs' standing is one as to which there is a substantial ground for difference of opinion and in which an immediate appeal will materially advance the ultimate termination of this matter. Therefore, the Court GRANTS Defendant's motion to certify this order for interlocutory appeal under 42 Pa. C.S. §702(b).

3. Defendant shall have thirty (30) days from the date of this Order to file an answer to Plaintiffs' complaint. However, should Defendant elect to file a Notice of Appeal from this Order within the period set forth by Pa. R.A.P. 903(a), the deadline for filing the answer shall be stayed pursuant to Pa. R.A.P. 1701(a) pending the disposition of the appeal by the Superior Court.

4. The Prothonotary of Lawrence County shall serve notice of this Order and attached Opinion upon all counsel of record.