

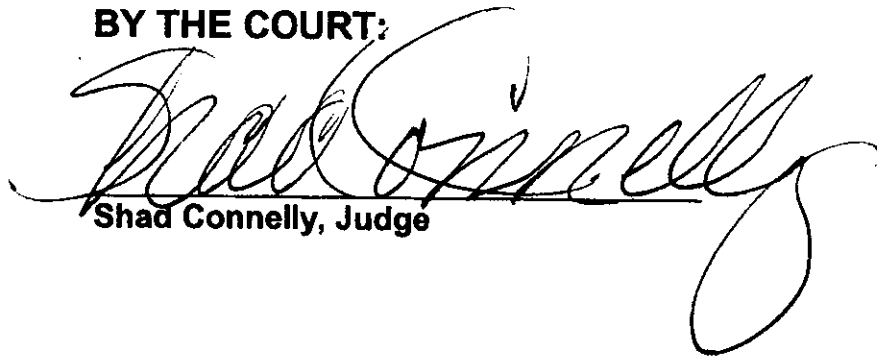
COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS  
v. : OF ERIE COUNTY, PENNSYLVANIA  
DANIEL GUNN : CRIMINAL DIVISION  
No. 3130 of 2013

**ORDER**

**AND NOW, TO-WIT**, this 10<sup>th</sup> day of January, 2014, the Court, having considered the Defendant's Motion to Quash Count One of the Criminal Information and the Commonwealth's Response to Defendant's Motion to Quash Count One of the Criminal Information, hereby **ORDERS** that the Defendant's Motion to Quash Count One of the Criminal Information is **GRANTED** as to Count 1, Burglary as an F1, and it shall be replaced by the charge of Burglary as an F2.

Where as here the Commonwealth, at the preliminary hearing through an Assistant District Attorney, specifically changes the grading of the charge of Burglary in the criminal complaint from an F1 to an F2, and said charge as amended is held to Court, due process and fundamental fairness dictate the Commonwealth may not unilaterally file an information increasing the grading to an F1 (particularly where the intent of such is not to correct a defect as to the description of the offense or error on the part of the magistrate, but rather merely to subsequently extricate a plea from the Defendant as to the lower graded offense).

**BY THE COURT:**

  
Shad Connelly, Judge

Matthew D. Cullen, Esquire  
Assistant District Attorney

Nicole Sloane, Esquire  
Attorney for Defendant

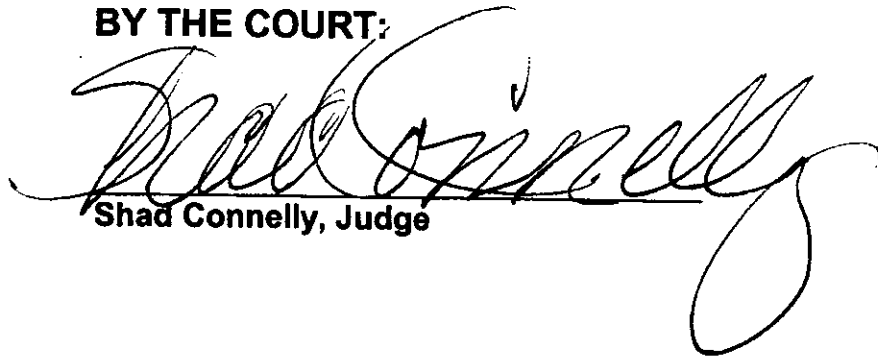
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V. : OF ERIE COUNTY, PENNSYLVANIA  
: CRIMINAL DIVISION  
DANIEL GUNN : NO. 3130 OF 2013

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CLERK OF COURTS  
16501

**Motion to Quash Count One of the Criminal Information**

AND NOW, this 30th day of January, 2013, comes the defendant, through undersigned counsel, urging the Court to Quash Count 1, Felony 1, Burglary. In support, the defendant states the following:

1. On September 18, 2013, Detective Sergeant James Stumpo of the Erie Police charged Defendant with F1 Burglary for a crime that is alleged to have occurred more than two years prior on July 20, 2011.
2. During the preliminary hearing on October 21, 2013, ADA Brian Krowicki changed the grading of Burglary to F2. (Exhibit "A")
3. The charge was held to court as an F2.
4. Less than a month later, without notice to defense counsel and without leave of court, the Commonwealth increased the grading at Count 1 to an F1. (Exhibits "B" and "C")
5. Defendant noticed the change while he was reviewing his discovery information and pointed it out to defense counsel.
6. Defense counsel contacted the Commonwealth inquiring as to why, without notice or leave of court, the Commonwealth changed the grading from an F2, punishable by up to 10 years of incarceration to an F1, punishable by up to 20 years of incarceration.

7. ADA Matt Cullen replied that he would amend the F1 back to an F2 only if Defendant was willing to plead to it.

8. Decisional law provides that for the purpose of amending the charges on the criminal information, a substantive amendment includes an amendment that changes the nature or the grade of the offense charged. **Commonwealth v. Gray**, 478 A.2d 822 (Pa. Super. Ct. 1984).

9. Pennsylvania Rules of Criminal Procedure provide the Commonwealth will a vehicle for which it can seek leave to amend the information. Specifically:

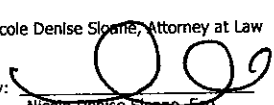
**Rule 564. Amendment of Information**

The court may allow an information to be amended when there is a defect in form, the description of the offense(s), the description of any person or any property, or the date charged, provided the information as amended does not charge an additional or different offense. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

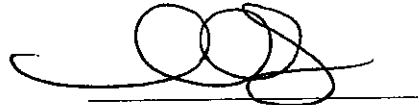
Pa.R.Crim.P. Rule 564.

10. The Commonwealth is not only ignoring the Rules of Criminal procedure including its obligation to prepare the criminal information based upon the charges held to court pursuant to Pa.R.Crim.P. Rule 560 but also violating criminal defendants right to notice and *due process* when the Commonwealth adds criminal charges, increases the grading of offenses, adds factual predicates and makes other changes to the criminal information after the charges are bound to court by the Magisterial District Judge.

**WHEREFORE**, Defendant urges the Court to quash Count 1, Burglary as an F1.<sup>1</sup>

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that on the <u>30</u> day of <u>Nov</u> 20 <u>13</u> a copy of the within document was duly served on all counsel of record and unrepresented parties, mailing the same to them at their designated offices by first class United States mail, postage prepaid, by personal service, by fax or by e-mail.	
Nicole Denise Sloane, Attorney at Law	
By: 	
Nicole Denise Sloane, Esq.	

Respectfully submitted,



Nicole Sloane, Esq.  
PA I.D. No.: 200044  
507 Sassafras Street  
Erie, PA 16507  
(814) 451-6505

<sup>1</sup> Unfortunately, the Commonwealth's decision to amend the criminal information without leave of court in the above-captioned case is not an isolated incident. The Commonwealth has been increasingly making significant changes to charges after cases have been bound to court. Recent changes without leave of court have included adding new criminal offenses (Commonwealth v. Jeffrey Loomis, 2812 of 2013).



## POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 09/18/2013	OTN/LiveScan Number	Complaint/Incident Number 201100030785
Defendant Name	First: DANIEL	Middle: FLOYD	Last: GUNN

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

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
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<input type="checkbox"/> 1	3502	(A)	PACC	1	F-2		
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code
PennDOT Data (if applicable)	Accident Number				<input type="checkbox"/> Safety Zone		<input type="checkbox"/> Work Zone

Statute Description (include the name of statute or ordinance): PACC 3502(a) Burglary.

Acts of the accused associated with this Offense: PACC 3502. Burglary. (a) Offense defined.—A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. To Wit: On July 20<sup>th</sup>, 2011 the defendant, Daniel Floyd GUNN, did enter the residence of 417 Vermont Ave with the intent to commit the crime of theft. The defendant was not licensed or privileged to enter the victims residence, who names are known to Your Affiant and designated with the initials L.D. and J.D.

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
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<input type="checkbox"/> 2	3921	(A)	PACC	1	F-2		
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code
PennDOT Data (if applicable)	Accident Number				<input type="checkbox"/> Safety Zone		<input type="checkbox"/> Work Zone

Statute Description (include the name of statute or ordinance): PACC 3921(a) Theft by unlawful taking or disposition.

Acts of the accused associated with this Offense: PACC 3921. Theft by unlawful taking or disposition. (a) Movable property.—A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof. To Wit: On July 20<sup>th</sup>, 2011 the defendant, Daniel Floyd GUNN did unlawfully take or exercise unlawful control over a Macbook Pro laptop computer Serial Number C17FRMRYPDH2G (valued at \$1200 more or less), which was later recovered during the course of a Millcreek Township Police investigation. The defendant did unlawfully take a Ruger Model P97D semi automatic pistol Serial Number 66301060 (valued at \$500 more or less). The defendant also unlawfully took the Ruger pistol case for said firearm, which said case was later recovered during the course of this investigation.

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903
------------------	--	---	---

<input type="checkbox"/> 3	3925	(A)	PACC	1	F-2		
Lead?	Offense#	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Offense Code
PennDOT Data (if applicable)	Accident Number				<input type="checkbox"/> Safety Zone		<input type="checkbox"/> Work Zone

Statute Description (include the name of statute or ordinance): PACC 3925(a) Receiving stolen property.

Acts of the accused associated with this Offense: PACC 3925. Receiving stolen property. (a) Offense defined.—A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner. To Wit: On July 20<sup>th</sup>, 2011 the defendant, Daniel Floyd GUNN did receive, retain or dispose of stolen property taken in a burglary at victim L.D. and J.D.'s residence, which were the following items: A Macbook Pro laptop computer Serial Number C17FRMRYPDH2G (valued at \$1200 more or less), which was later recovered during the course of a Millcreek Township Police investigation. The defendant did unlawfully take a Ruger Model P97D semi automatic pistol Serial Number 66301060 (valued at \$500 more or less). GUNN did unlawfully take a Ruger pistol case for said firearm, which said case was later recovered during the course of this investigation.

DEFENDANT'S  
EXHIBIT  
A

# Magisterial District Judge 06-2-01

## DOCKET TRANSCRIPT

Docket Number: MJ-06201-CR-0000178-2013

## Criminal Docket



Commonwealth of Pennsylvania

v.

Daniel Gunn

Page 2 of 4

### DEFENDANT INFORMATION

Name: Gunn, Daniel Sex: Male  
Date of Birth: 12/07/1991 Race: White  
Address(es):  
Home  
1048 East 10th St.  
Apt #1  
Erie, PA 16503

Advised of His Right to Apply for Assignment of Counsel? Yes  
Public Defender Requested by the Defendant? No  
Application Provided for Appointment of Public Defender? No  
Has the Defendant Been Fingerprinted? Yes

### CASE PARTICIPANTS

Participant Type	Participant Name	OTN	Docket Number	Was Sworn In?	Has Testified?
Prosecution	Commonwealth of Pennsylvania			No	No
Complainant	Dewalt, John			No	No
Crime Victim	Dewalt, Lisa Ann			No	No
Defendant	Gunn, Daniel			No	No
Arresting Officer	Stumpo, James T			No	No
Additional Officer	Williams, Robert E			No	No

### BAIL

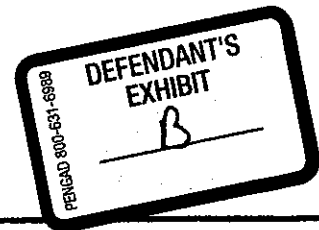
**Bail Set:**

Bail Action Type	Bail Action Date	Bail Type	Percentage	Amount
Set	09/29/2013	Monetary		\$25,000.00

### CHARGES

*MJ 11/13/13*

# Charge	Grade	Description	Offense Dt.	Disposition
1 18 § 3502 §§ A	<del>F1</del>	Burglary	07/20/2011	Held for Court
2 18 § 3921 §§ A	F2	Theft By Unlaw Taking-Movable Prop	07/20/2011	Held for Court
3 18 § 3925 §§ A	F2	Receiving Stolen Property	07/20/2011	Held for Court



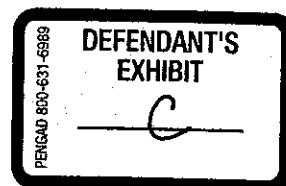
COMMONWEALTH OF PENNSYLVANIA	)	IN THE COURT OF COMMON PLEAS
	)	OF ERIE COUNTY, PENNSYLVANIA
v.	)	CRIMINAL DIVISION
	)	
DANIEL FLOYD GUNN	)	NO. 3130 of 2013
	)	T 341900-6

**INFORMATION**

The District Attorney of Erie County by this Information charges that on or about July 20, 2011, in the said County of Erie and State of Pennsylvania, the said DANIEL FLOYD GUNN did enter a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense no person was present, with the intent to commit a crime therein, to-wit: the said DANIEL FLOYD GUNN did enter the residence of victims, John Dewalt and Lisa Dewalt, without their permission, occurring at 417 Vermont Avenue, Erie, Erie County, Pennsylvania; thereby the said DANIEL FLOYD GUNN did commit the crime of BURGLARY, a Felony of the First Degree.

**COUNT TWO:**

AND THE DISTRICT ATTORNEY FURTHER CHARGES that on the day and year aforesaid in the said County of Erie and State of Pennsylvania, the said DANIEL FLOYD GUNN did unlawfully take or exercise control over movable property of another, to-wit: a Macbook Pro laptop computer, a Ruger Model P97D semi-automatic pistol and a Ruger semi-automatic pistol case, having a total value of \$1,700, more or less, belonging to John Dewalt and Lisa Dewalt, occurring at 417 Vermont Avenue, Erie, Erie County, Pennsylvania, with the intent to deprive said owner thereof; thereby the said DANIEL FLOYD GUNN did commit the crime of THEFT BY UNLAWFUL TAKING OR DISPOSITION, a Felony of the Second Degree.



**COUNT THREE:**

AND THE DISTRICT ATTORNEY FURTHER CHARGES that on the day and year aforesaid in the said County of Erie and State of Pennsylvania, the said DANIEL FLOYD GUNN did intentionally receive, retain or dispose of movable property of another, to-wit: a Macbook Pro laptop computer, a Ruger Model P97D semi-automatic pistol and a Ruger semi-automatic pistol case, having a total value of \$1,700, more or less, belonging to John Dewalt and Lisa Dewalt, occurring at 417 Vermont Avenue, Erie, Erie County, Pennsylvania, the said DANIEL FLOYD GUNN knew or had reason to believe that said property was stolen; thereby the said DANIEL FLOYD GUNN did commit the crime of RECEIVING STOLEN PROPERTY, a Felony of the Second Degree.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.

(XX) Notice is hereby given, per Pa.R.Crim.P. 582 (B)(1), that this Information will be tried with any and all other Informations for this defendant.

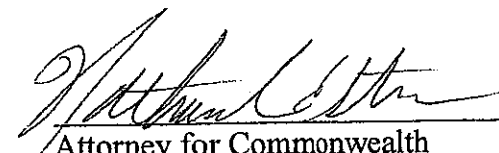
(XX) Notice is hereby given, per Pa.R.Crim.P. 582 (B)(1), that your case will be tried together with all co-defendant(s) since you are alleged to have participated in the same act or transaction.

18 P.S. 3502(a)(2)

18 P.S. 3921(a)

18 P.S. 3925(a)

Citation of Statute & Section

  
Attorney for Commonwealth

11/13/25  
Date

COMMONWEALTH OF PENNSYLVANIA: IN THE COURT OF COMMON PLEAS  
V. : OF ERIE COUNTY, PENNSYLVANIA  
: CRIMINAL DIVISION  
:  
DANIEL GUNN : NO. 3130 OF 2013

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_ 2013, upon  
consideration of the within petition and upon motion of Nicole Sloane, Esq., attorney for  
the Daniel Gunn, Counts 1, Burglary graded as an F1 is HEREBY QUASHED with  
prejudice.

\_\_\_\_\_  
J.

Cc: Matt Cullen, ADA  
Nicole Sloane, APD

COMMONWEALTH OF PENNSYLVANIA: IN THE COURT OF COMMON PLEAS  
: OF ERIE COUNTY, PENNSYLVANIA  
V. : CRIMINAL DIVISION  
:  
DANIEL GUNN : NO. 3130 OF 2013

**RULE TO SHOW CAUSE**

AND NOW, TO WIT, this \_\_\_\_ day of \_\_\_\_\_, 2013, upon consideration of the foregoing Motion to Quash, a Rule is hereby issued upon the Attorney for the Commonwealth to appear and show cause, if any he has, why the relief requested therein should not be granted.

Said Rule to be made returnable on the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ at \_\_\_\_\_.M. in Courtroom No. \_\_\_\_\_.

BY THE COURT,

\_\_\_\_\_  
J.

cc: Matt Cullen, Esq. (ADA)  
Nicole Sloane, Esq. (APD)  
Court Administration