that the child visits his father on each of these weekends.

ORDER OF COURT

January 14, 1980, the prayer of the petition for visitation rights for Roger L. Grooms and Beulah V. Grooms is granted, and Roger L. Grooms and Beulah V. Grooms are granted joint visitation rights with Jeffrey L. Creamer, Roger L. Grooms' son, on Saturday, January 26, 1980 from 9:00 in the morning until Sunday, January 27, 1980 at 6:00 in the evening and every second weekend thereafter. Beulah V. Grooms shall provide all transportation for the exercise of these visitation rights and on each occasion shall provide transportation for the child to visit with Roger L. Grooms at his place of confinement at least once during the weekend.

In addition, Roger L. Grooms and Beulah V. Grooms are granted joint visitation rights to be exercised as above, on holidays, according to a schedule to be developed by the parties. If the parties cannot work out such a schedule, on application, the court will make an appropriate order.

The parties shall each pay their own costs.

COMMONWEALTH v. BARNETT, C.P. Cr. D, Fulton County Branch, No. 83 of 1978

Criminal Procedure - Evidence - Guilty Plea - Admission

1. The actual plea of guilty may not be introduced at trial after it is withdrawn since it is a conviction and not a mere admission or extra judicial confession.

2. Statements by a defendant made in connection with entering a guilty plea will be admitted into evidence although the plea is later withdrawn.

Gary D. Wilt, District Attorney, Attorney for the Commonwealth

Richard L. Shoap, Esq., Attorney for the Defendant

OPINION

EPPINGER, P.J., October 23, 1979:

Richard Lee Barnett entered a plea of guilty to robbery, a felony of the third degree. During the colloquy prior to the court's accepting the plea, Barnett was asked what he did that led him to plead guilty to the charge. In his response Barnett said he assaulted the victim and the victim gave him money, and since he didn't want the money, he assaulted the victim again. He later stated that he took the money.

The Court accepted the plea and Barnett signed it on the complaint. Later, after Barnett filed a motion to withdraw the guilty plea, the court found that the crime of robbery had not been sufficiently explained to the defendant and granted the motion. *Commonwealth v. Tabb*, 477 Pa. 115, 383 A. 2d 849 (1978). The plea was withdrawn. Before trial, Barnett moved to suppress all statements made in connection with the entry of the guilty plea. We denied the motion, except that we ruled that the actual guilty plea as entered on the information could not be introduced into evidence.

In *Commonwealth v. Henderson*, 217 Pa. Super 322, 272 A. 2d 202 (1970), the district attorney cross-examined the defendant at trial concerning his earlier guilty plea. The appellate court held that to be error, citing *U.S. ex rel. Spears v. Rundle*, 268 F. Supp. 691 (1967). The court also relied upon *Kercheval v. United States*, 274 U. S. 220, 47 S. Ct. 582, 71 L. Ed 1009 (1927), where it was said:

> A plea of guilty differs in purpose and effect from a mere admission or an extra-judicial confession; it is itself a conviction. Like a verdict of a jury it is conclusive.

The *Kercheval* court held that under proper circumstances a guilty plea could be withdrawn, a plea of not guilty substituted and a trial had.

It is clear then that the actual plea of guilty may not be introduced at trial after it is withdrawn because, as the *Kercheval* court said, it is not a mere admission or extra-judicial confession, but a conviction. What we permitted to be introduced falls into the former category, an admission, though it was made at the time the defendant was entering a guilty plea. The defendant's rights had been explained to him. He stated what he did. Whether his statements, together with the other evidence to be introduced at trial, constituted the crime of robbery was a matter for the jury to determine, and there was no cause to keep these statements from the jury.

No hearing was held in the matter because it was agreed

by counsel that all matters to be considered by the court were of record.

This opinion is filed in support of our order made October 10, 1979.

IN RE: APPEAL OF LOWE, C.P. C.D. Franklin County Branch, Misc. Doc. Vol. X, Page 300

Pa. Municipalities Planning Code - 53 P.S. Sec. 10508 - Denial of Subdivision - Notice to landowner

1. Where a municipality fails to give a landowner written notice of disapproval of a subdivision plan within the time limits established in Municipalities Planning Code, 53 P.S. Sec. 10508, an appeal may be taken to the Court of Common Pleas under 53 P.S. Sec. 11006 of the Municipalities Planning Code.

Robert S. Bennett, Jr., Esq., Counsel for Appellant

Frederic G. Antoun, Jr., Esq., Counsel for Intervenors

OPINION AND ORDER

KELLER, J., January 25, 1980

Appellant, William E. Lowe, Jr., filed his Application for Development Review dated April 25, 1979 as the Developer/Agent presumably with Beverly J. Bobb, secretary to the Letterkenny Township Board of Supervisors. The secretary to the Supervisors received it on April 26, 1979. The Franklin County Planning Commission reviewed the application and proposed subdivision plan for a mobile home park at its regularly scheduled meeting on May 10, 1979, returned the same with comments, presumably to the Board of Supervisors. On June 26, 1979 the "Plan Revision Module" was denied by the Board of Supervisors "due to the fifteen comments of Franklin County Planning Commission and deficiencies recorded by William Brindle..."

On July 19, 1979 Robert S. Bennett, Jr., attorney for the appellant filed his Zoning Appeal Notice pursuant to Section 1006 of the Pennsylvania Municipalities Planning Code in the Office of the Prothonotary of Franklin County. The appeal notice alleges as grounds for relief:

> "5. As of the date of this Appeal, July 17, 1979, the Board of Supervisors of Letterkenny Township has failed to communicate its written decision to Appellant in violation of Sec. 508 (1) of the Pennsylvania Municipalities Planning Code.
>
> "6. As of the date of this Appeal, July 17, 1979, the Board of Supervisors of Letterkenny Township has failed to specify the defects found in Appellant's subdivision application in violation of Sec. 508 (2) of the Pennsylvania Municipalities Planning Code.
>
> "7. No written extension of time was granted by Appellant to the Board of Supervisors of Letterkenny Township.
>
> "8. The decision of the Board of Supervisors of Letterkenny Township is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law."

The prayer of the appeal notice provides:

> "WHEREFORE, Appellant files this Zoning Appeal Notice and requests the Prothonotary of Franklin County to send notice of this Zoning Appeal to the Board of Supervisors of Letterkenny Township directing it to certify to the Court the record before it. THEREAFTER, Appellant requests your Honorable Court, in conformity with Sec. 508 (3) of the Pennsylvania Municipalities Planning Code, to decree Appellant's plan approved and to order the Board of Supervisors to sign said plan."

Pursuant to the appeal notice a writ of certiorari was issued to the Board of Supervisors of Letterkenny Township, and service was accepted by the solicitor for the Board on July 27, 1979.

On August 16, 1979 the secretary for the Board of Supervisors filed a certified copy of the record in the office of the Prothonotary.

On August 16, 1979 Frederic G. Antoun, Jr., and DeEtta A. Antoun, his wife, filed their Notice of Intervention and certified copies of the notice were served on all interested parties. On September 26, 1979 the intervenors filed their Motion to Quash Appeal, and certified to the service of copies of the motion on all interested parties or their counsel.

The matter was placed on the December Argument Court List and heard on December 6, 1979. It is ripe for disposition.