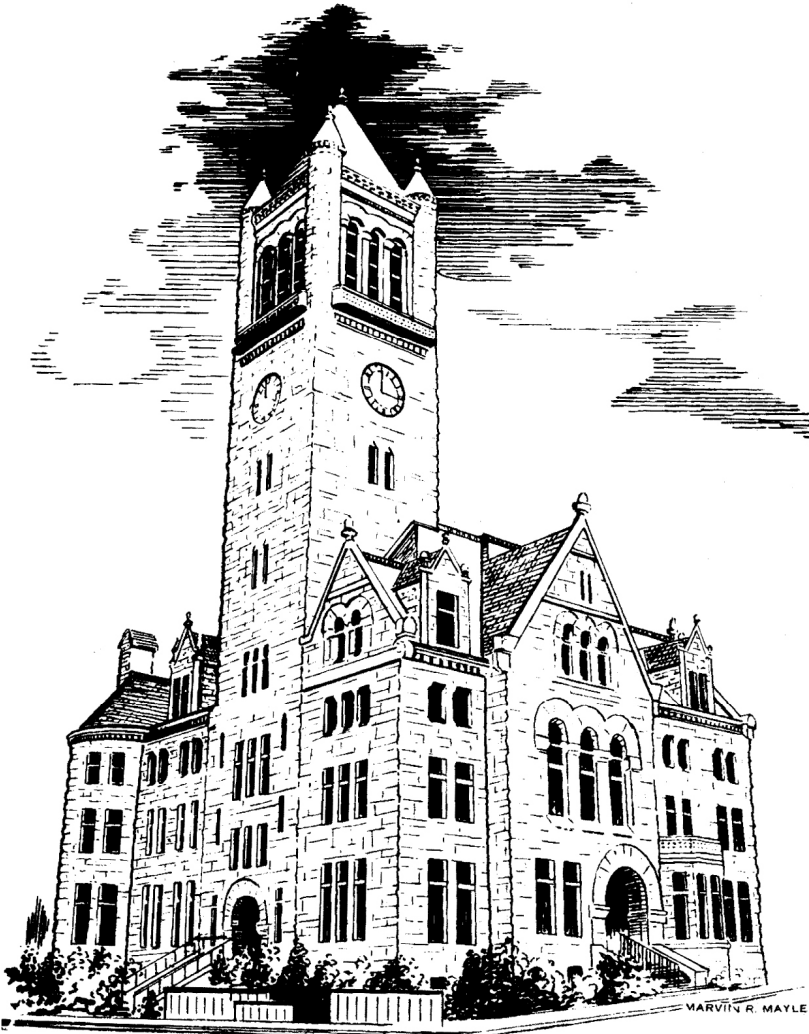


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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## ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

### Third Publication

**BRADLY BREAKWELL, a/k/a BRADLY VANCE BREAKWELL**, late of Georges Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Roy Hess  
707 Hancock Street  
Perryopolis, PA 15473  
c/o 4 North Beeson Boulevard  
Uniontown, PA 15401  
*Attorney:* Ewing D. Newcomer

**JOSEPHINE CHOMIAK, a/k/a JOSEPHINE L. CHOMIAK**, late of Redstone Township, Fayette County, PA <sup>(3)</sup>

*Administratrix:* Milissa A. Chomiak  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James E. Higinbotham, Jr.

**HELEN GODLA**, late of Perryopolis, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Gary Paul Godla  
c/o 107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

**VIVIAN M. KOVACH**, late of Fairchance, Fayette County, PA <sup>(3)</sup>

*Executor:* John J. Robba, III  
c/o P.O. Box 622  
Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

**MORRIS OSTROFF**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Edith A. Brooks  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**SALVADORE ROTOLO**, late of Port Saint Lucie, Saint Lucie County, FL <sup>(3)</sup>

*Personal Representative:* Patricia Bobish  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Charles W. Watson

**PAULA MARIE SOROKA**, late of Redstone Township, Fayette County, PA <sup>(3)</sup>

*Personal Representatives:* Wayne Edward Shumar and Angela Gay Shumar  
c/o Davis & Davis  
107 East Main Street  
Uniontown, Pa 15401  
*Attorney:* James T. Davis

**MARLENE STEWART, a/k/a MARLENE S. STEWART**, late of Redstone Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Paul K. Stewart  
P.O. Box 650  
Grindstone, PA 15442

**HENRY L. WILSON, a/k/a HENRY LEE WILSON**, late of Jefferson Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Carline H. Jackson  
c/o Mahady & Mahady  
223 South Maple Avenue  
Greensburg, PA 15601  
*Attorney:* George Allen Butler

**MELINDA WOOD**, late of Franklin Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Brandi Wood  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

## Second Publication

**GEROME A. GARBUTT**, late of Smock,  
Fayette County, PA (2)

Administrators: Gary L. Garbutt and  
Gerald R. Garbutt  
c/o DeHaas Law, LLC  
51 East South Street  
Uniontown, PA 15401  
Attorney: Ernest P. DeHaas, III

**IRA WADE MURPHY**, late of Dawson,  
Fayette County, PA (2)

Executor: Robert Murphy  
c/o Fieschko & Associates, Inc.  
436 7th. Avenue, Suite 2230  
Pittsburgh, PA 15219  
Attorney: Joseph E. Fieschko, Jr.

**PAUL D. WILLIAMS**, late of Uniontown,  
Fayette County, PA (2)

Executor: Kristen A. Williams  
167 Hague Lane  
Uniontown, PA 15401  
c/o 310 Grant Street, Suite 11009  
Pittsburgh, PA 15219  
Attorney: Rosalie P. Wisotzki

**ELAINE LACLAIR**, late of Uniontown,  
Fayette County, PA (1)

*Administrator:* Scott LaClair  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

**MARIE E. FERRANTI**, late of Masontown,  
Fayette County, PA (1)

*Executrix:* Joann Bernadette Young  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Anthony S. Dedola

**SCOTT EDWARD ECKLES, a/k/a SCOTT  
E. ECKLES, a/k/a SCOTT ECKLES**, late of  
Point Marion, Fayette County, PA (1)

*Administratrix:* Wilma J. Lincoln  
c/o John & John  
96 East Main Street  
Uniontown, PA 15401  
*Attorney:* Simon B. John

## First Publication

**ENRICO VENINCASA**, late of South Union  
Township, Fayette County, PA (1)

*Personal Representative:* Donald L. Williams  
c/o 2 West Main Street, Suite 110  
Uniontown, PA 15401  
*Attorney:* Ricardo J. Cicconi

**GERALD MALCOM MELENIA, a/k/a  
GERALD M. MELENIA**, late of Luzerne  
Township, Fayette County, PA (1)

*Executor:* Brian M. Melenia  
c/o 339 Old Haymaker Road, Suite 1101  
Monroeville, PA 15146  
*Attorney:* Brenda B. Sebring

## LEGAL NOTICES

### NOTICE

RE: Change of Name of Michael Edward Grena also known as Michael John Grena an adult individual:

To Whom It May Concern:

Be advised that the Court of Common Pleas of Fayette County, Pennsylvania, will hear the Petition for the Change of Name of Michael Edward Grena also known as Michael John Grena, an adult individual, on November 21, 2018, at 9:00 a.m. in Courtroom No. 4. All interested individuals may attend at that date and time.

DAVIS & DAVIS

BY: Gary J. Frankhouser, Esquire  
107 East Main Street  
Uniontown, PA 15401

### NOTICE

Notice is hereby given that Articles of Incorporation have been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on September 18, 2018 for a Domestic Nonprofit Corporation known as Troop B Camp Cadet Fayette, Inc.

The purpose or purposes of the corporation is/ are: To promote self-discipline, teamwork and self-esteem to co-ed youths, within a one (1) week camp. This corporation will remain a non-profit organization, funded through community contributions, donations, and fundraising events. Camp Cadet means to foster personal and physical self-development, good moral character, self-discipline, civic and social responsibility and better understanding relationships between youth and Law Enforcement agencies.

DELLAROSE LAW OFFICE, PLLC

BY: Melinda Deal Dellarose, Esquire  
99 East Main Street, Suite 101  
Uniontown, PA 15401

IN THE COURT OF COMMON PLEAS  
OF FAYETTE COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW  
NO. 2297 of 2017-D

**THE SCOTTTDALE BANK & TRUST  
COMPANY**

**Plaintiff**  
vs.

**KIMBERLY SUE YEZEK and DONALD M.  
DAVIES,**  
**Defendants**

### NOTICE FOR ENTRY OF JUDGMENT

TO: KIMBERLY SUE YEZEK  
196 W. HILLS RD.  
GREENSBURG, PA 15601

DONALD M. DAVIES  
710 GEORGE ST.  
SCOTTTDALE, PA 15658

You are hereby notified that Judgment in the amount of \$75,484.68 was entered against you and in favor of the Plaintiff in the above captioned case on October 16, 2018.

JOHN S. TOOHEY  
ATTORNEY FOR PLAINTIFF  
749 North Church Street  
Mt. Pleasant, PA 15666  
(724) 547-7557



**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
 CRIMINAL DIVISION

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
vs.	:	
	:	
WILEY ESTILL GAMBREL,	:	No. 1777 of 2017, G.D.
Defendant.	:	Honorable Steve P. Leskinen

**STATEMENT IN LIEU OF OPINION**

LESKINEN, J. October 22, 2018

Before the Court is a "Notice of Appeal" of Defendant Wiley Estill Gambrel, (hereinafter "Defendant"). Defendant appeals from the judgement of sentence entered on July 18, 2018.

The Defendant raises two issues on appeal. They are numbered and listed below in bold, followed by the Court's statement in normal type.

1. **Whether the evidence was legally and factually sufficient to prove that Defendant committed the crime of murder in the third degree when the Commonwealth failed to prove, beyond a reasonable doubt, that the Defendant killed the victim, James Plance, or in the alternative, that the Defendant acted with malice aforethought?**

The Defendant was found guilty by a jury, beyond a reasonable doubt, of murder in the third degree. The Defendant was found to have murdered James Plance (hereinafter Victim).

There was testimony by Deana Hughes (hereinafter Hughes) that the Defendant entered the house with a gun and shot the Victim. Trial Tr. day 2, 116:12. The Commonwealth presented an audio tape of the Defendant giving a detailed confession and admitting to State Troopers that he shot the Victim. Trial Tr. day 5, 13:2-6.

The Defendant's confession provided that the Victim entered the residence and stated that the Defendant needed to get more crack cocaine. Trial Tr. day 5 Supp., 46:15-25. The Defendant told the Victim he could not afford to purchase the drugs. Trial Tr. day 5 Supp., 46:16-20. The Defendant picked up the rifle that was leaning near the door and attempted to exit the residence. Trial Tr. day 5 Supp., 47:9-12. A short time after the Defendant picked up the gun, the Victim picked up a knife. Trial Tr. day 5 Supp., 47:13

-15. The Victim was coming toward the Defendant with the knife and the Defendant pointed the gun at the Victim. Trial Tr. day 5 Supp., 48:7-11. The Victim said, "Are you going to point that gun at me?" Trial Tr. day 5 Supp., 48:12-15. Then the Defendant "freaked out", pulled the trigger, and killed the Victim. Trial Tr. day 5 Supp., 49:9-11.

The Defendant admitted that he cared about Hughes. Trial Tr. day 5, 54:11-12. He stated that, in his opinion, the Victim did not treat her well. Trial Tr. day 5, 54:5-6. Hughes testified that the Victim had grabbed her around the neck in the past. Trial Tr. day 2, 184:15.

The Defendant testified that he was the one who regularly supplied the crack cocaine for Hughes, the Victim and himself. Trial Tr. day 5, 53:1-15. Hughes also testified that it was the Victim's idea that the individuals, occasionally, engage in sexual "threesomes" as a form of payment to the Defendant for the crack cocaine. Trial Tr. day 2, 71:1-13. The Defendant provided in his confession and in testimony that, in the week leading up to the shooting, he would spend six-hundred dollars (\$600) a day on crack cocaine to be used by the group. Trial Tr. day 5, 53:6-11.

At trial, there was evidence presented that, hours before the shooting, the Victim sent a text message to the Defendant stating that he wanted to end the friendship between himself, Hughes, and the Defendant. Trial Tr. day 5, 92:13-23.

Albert Lattanzi testified that there were characteristic particles of gunshot residue found on the Defendant's hands. Trial Tr. day 3 Afternoon, 20. Specifically, the residue was on the Defendant's right palm, left palm, and the back of the left hand. *Id.* There were also indictive particles of gunshot residue found on the backs and palms of both the Defendant's hands. *Id.*

The Defendant claims that the Commonwealth did not establish the third-degree murder conviction beyond a reasonable doubt, or, in the alternative, that the Commonwealth did not prove beyond a reasonable doubt that the Defendant acted with malice aforethought.

The statutory definition of third-degree murder is simply, "All other kinds of murder [other than first-or second-degree murder] shall be murder of the third degree. Murder of the third degree is a felony of the first degree." 18 Pa.C.S.A. § 2502(c).

Importantly, § 2502(c) does not set forth the requisite mens rea for third degree murder. *Id.* However, § 302(c) of the Crimes Code provides, "When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly or recklessly with respect thereto." *Commonwealth v. Fisher*, 80 A.3d 1186 (Pa. 2013).

In order to convict a defendant of the offense of third degree murder, the Commonwealth need only prove that the defendant killed another person with malice. Common-



wealth v. Santos, A.2d 360, 363 (Pa. 2005). "The jury need not consider whether the defendant had a specific intent to kill, nor make any finding with respect thereto." Fisher, 80 A.3d at 1191. "This Court has long held that malice comprehends not only a particular ill-will, but ... [also a] wickedness of disposition, hardness of heart, recklessness of consequences, and a mind regardless of social duty, although a particular person may not be intended to be injured." Id.

In this case the Commonwealth provided overwhelming evidence for a jury to find beyond a reasonable doubt that the Defendant was guilty of third-degree murder. Hughes provided testimony that the Defendant entered the residence, pointed a gun at the Victim and shot him. The Defendant also admitted to having shot the Victim in his confession.

The only evidence that the Defendant did not kill the Victim came from the Defendant's own self-serving testimony. The Defendant attempted to recant his confession and blame the murder on Hughes. That was the first time since the murder occurred that the Defendant ever proclaimed his innocence or offered any other suspect for the killing.

The jury was justified in disregarding the Defendant's testimony and finding that the overwhelming evidence supported that the Defendant did in fact kill the Victim.

Further, the evidence showed that a jury could conclude that the Defendant had animosity towards the Victim. The Defendant did not approve of the way the Victim treated Hughes. The Defendant had feelings for Hughes. The Defendant spent a large sum of money on crack cocaine for the Victim. The Defendant could no longer afford to spend so much money to provide the drugs to the Victim. The Victim sent a text message to the Defendant that attempted to end their friendship.

The jury could have found that any one of these factors individually or any combination thereof contributed toward the malice requirement of Third Degree Murder. Therefore, the Commonwealth had sustained their burden of providing sufficient evidence and proving that the Defendant was guilty of Third Degree Murder beyond a reasonable doubt.

2. Whether the verdict as to murder of the third degree was against the weight of the evidence when the verdict was so contrary to the evidence as to shock one's sense of justice?

A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. Commonwealth v. Widmer, 319, 744 A.2d 745, 751-52 (Pa. 2000). Rather, "the role of the trial judge is to determine that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.' "Id. at 752. It has often been stated that "a new trial should be awarded

when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." *Commonwealth v. Brown*, 435, 648 A.2d 1177, 1189 (Pa. 1994).

In this case, as discussed *supra*, the only evidence to support the Defendant's innocence came from his own testimony. The jury heard testimony from Hughes and a taped confession from the Defendant that identified the Defendant as the shooter.

These accounts were supported by the physical evidence. There was overwhelming evidence that supported the finding that the Defendant was guilty of the crimes charged. The verdict was not against the weight of the evidence and did not shock the conscience of the undersigned.

BY THE COURT:  
LESKINEN, J.

ATTEST:  
Janice Snyder  
Clerk of Courts



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