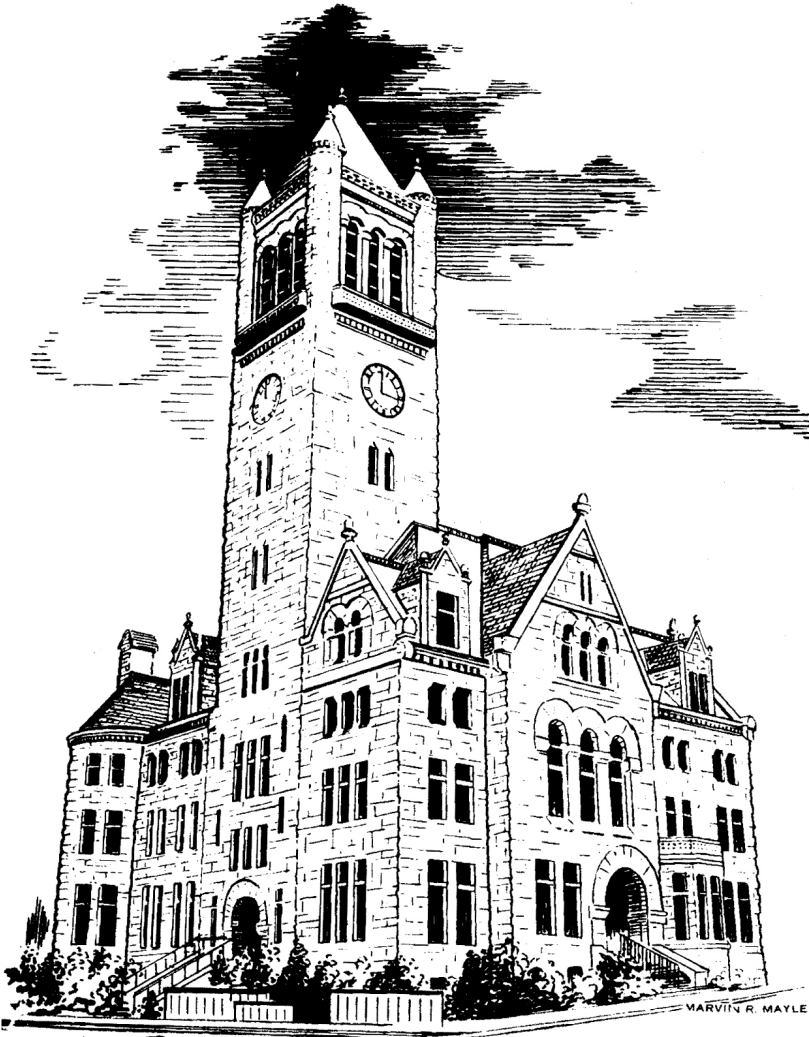


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FAYETTE LEGAL JOURNAL

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The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

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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

DANNY ADAMSON, A/K/A DANNY R. ADAMSON, late of Masontown, Fayette County, PA (3)

Co-Executors: Judith M. Ewing and Gregory Adamson
c/o 556 Morgantown Road
Uniontown, PA 15401
Attorney: John A. Kopas, III

RUTH LAVERNE FRAZEE, late of Henry Clay Township, Fayette County, PA (3)

Executor: Jonathan Adams
c/o Hajduk & Associates
77 South Gallatin Avenue
PO Box 1206
Uniontown, PA 15401
Attorney: Mary Lenora Hajduk

YVONNE J. PACKRONI, A/K/A YVONNE JOYCE PACKRONI, late of South Union Township, Fayette County, PA (3)

Executor: Ronald G. Packroni
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

RUDOLPH VELOSKY A/K/A RUDOLPH J. VELOSKY, SR., late of Redstone Township, Fayette County, PA (3)

Executor: David J. Velosky, Sr.
c/o 556 Morgantown Road
Uniontown, PA 15401
Attorney: John A. Kopas, III

MILDRED L. WALTERS, late of Menallen Township, Fayette County, PA (3)

Executrix: Terrie Ann Wynn
c/o George Port & George
92 East Main Street
Uniontown, PA 15401
Attorney: Wayne H. Port

Second Publication

GWENDOLYN FARMER, a/k/a GWENDOLYN J. FARMER, late of Uniontown, Fayette County, PA (2)

Co-Personal Representatives: Anita Farmer and Karen Farmer White
c/o Ruschell & Associates, LLC
PO Box 577
308 Eaton Avenue
Midway, PA 15060
Attorney: Natalie M. Ruschell

RICHARD G. HUDOCK, late of South Union Township, Fayette County, PA (2)

Personal Representatives: Patricia A. Myers and Audrey Palya
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

JESSE L. MOSER, late of Masontown, Fayette County, PA (2)

Executor: Wayne D. Moser
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

First Publication

JEANNETTE J. BALLING, a/k/a JEANNETTE JONES BALLING, late of Uniontown, Fayette County, PA (1)

Personal Representative: James G. Balling
c/o Watson Mundorff Brooks & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

MICHAEL A CAVALIER, late of Uniontown,
Fayette County, PA (1)

Administrator: Jana Cavalier
c/o Meyers Evans Lupetin & Unatin, LLC
707 Grant Street
Gulf Tower, Suite 3200
Pittsburgh, PA 15219
Attorney: Gregory R. Unatin

**THELMA FEDOR, A/K/A THELMA
LOUISE FEDOR, a/k/a THELMA L.
FEDOR**, late of Uniontown, Fayette County, PA (1)

Administratrix: Kimberly A. Duckett
564 Woodruff Lane
Culpeper, VA 22701

**ROBERT N. OBER, a/k/a ROBERT NEVIN
OBER**, late of Lower Tyrone Township, Fayette
County, PA (1)

Executrix: Lisa M. Negich
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

MARY MARGARET PIERCE, late of
Uniontown, Fayette County, PA (1)

Executrix: Betty Ackincloss
c/o One Oxford Centre, Suite 4300
301 Grant Street
Pittsburgh, PA 15219
Attorney: Amy Acheson

**JOHN JEROME POMPURA, A/K/A JOHN
POMPURA**, late of Connellsville, Fayette
County, PA (1)

Executrix: Kathleen Donaldson
c/o Donald McCue Law Firm, P.E.
Colonial Law Building
813 Blackstone Road
Connellsville, PA 15425
Attorney: Donald J. McCue

CHARLES SWEDA, late of Masontown,
Fayette County PA (1)

Executor: George M. Wallace
c/o Adams & Adams
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason F. Adams

LEGAL NOTICES

NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization, Domestic Limited Liability Company has been approved and filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on June 14, 2017, for a Limited Liability Company known as Two Shotz, LLC. Said Limited Liability Company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the Limited Liability Company is operation of a restaurant/bar and any other lawful purpose related thereto for which Limited Liability Companies may be organized under the Business Corporation Law.

Gary J. Frankhouser
107 East Main Street
Uniontown, Pennsylvania 15401

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
ACTION TO QUIET TITLE
No. 380 of 2016 G.D.
JUDGE CORDARO

NANCY C. CHOLOCK,

Plaintiff,

v.

**CHESTER M. ARETTA, his successors,
heirs, personal representatives, and assigns,
generally.**

Defendant.

TO: CHESTER M. ARETTA, his heirs,
successors and assigns, generally,

You are hereby notified that Nancy C. Cholock, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that he is the owner in possession of that certain lot of land situate in Masontown Borough, Fayette County, Pennsylvania having a mailing address of 103 North First Street, Masontown, Pennsylvania, 15461.

Title to the above described property was conveyed to Chester M. Aretta by a deed from Donald B. Christopher and Doris J. Christopher being recorded at the Recorder of Deeds Office at Record Book 1541, Page 211.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may entered against you by the court without further notice or any money claimed in the complaint, or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GOT TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PENNSYLVANIA BAR ASSOCIATION
PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-932-0311

By Jason F. Adams, Esq.
Adams & Adams
55 E. Church Street
Uniontown, PA 15401
(724) 437-2711

In The Court of Common Pleas
Of Fayette County, Pennsylvania
Civil Action-Law
No. 2017-136

Notice of Action in Mortgage Foreclosure

**Bayview Loan Servicing, LLC, a Delaware
Limited Liability Company,
Plaintiff,
vs.**

**Unknown Heirs, Successors, Assigns, and All
Persons, Firms, or Associations Claiming
Right, Title or Interest from or under Yvonne
Nicoletto, deceased, Christine Marie Bowman,
Known Heir of the Estate of Yvonne
Nicoletto, deceased, Heather Lynn Lohman,
Known Heir of the Estate of Yvonne
Nicoletto, deceased and Leaha Rae French,
Known Heir of the Estate of Yvonne
Nicoletto, deceased,
Defendants.**

NOTICE OF SHERIFF'S SALE OF REAL PROPERTY

TO: Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest from or under Yvonne Nicoletto, deceased, Defendant(s), whose last known address is 214 Whyel Avenue, Uniontown, PA 15401.

Your house (real estate) at: 214 Whyel Avenue, Uniontown, PA 15401, 25-23-0081, is scheduled to be sold at Sheriff's Sale on October 12, 2017, at 2:00 PM, at Fayette County Sheriff's Office, 61 E. Main St., Ste. 1B, Uniontown, PA 15401, to enforce the court judgment of \$54,620.38, obtained by Bayview Loan Servicing, LLC, a Delaware Limited Liability Company (the mortgagee) against you. - NOTICE OF OWNER'S RIGHTS - YOU MAY BE ABLE TO PREVENT THIS SHERIFF'S SALE - To prevent this Sheriff's Sale you must take immediate action: 1. The sale will be cancelled if you pay back to Bayview Loan Servicing, LLC, a Delaware Limited Liability Company the amount of the judgment plus costs or the back payments, late charges, costs, and reasonable attorneys fees due. To find out how much you must pay, you may call :(610)278-6800. 2. You may be able to stop the sale by filing a petition asking the Court to strike or open the judgment, if the judgment was improperly entered. You may also ask the

Court to postpone the sale for good cause. 3. You may be able to stop the sale through other legal proceedings. 4. You may need an attorney to assert your rights. The sooner you contact one, the more chance you will have of stopping the sale. (See notice below on how to obtain an attorney.) - YOU MAY STILL BE ABLE TO SAVE YOUR PROPERTY AND YOU HAVE OTHER RIGHTS EVEN IF THE SHERIFF'S SALE DOES TAKE PLACE - 5. If the Sheriff's Sale is not stopped, your property will be sold to the highest bidder. You may find out the price bid by calling (610)278-6800. 6. You may be able to petition the Court to set aside the sale if the bid price was grossly inadequate compared to the value of your property. 7. The sale will go through only if the buyer pays the Sheriff the full amount due in the sale. To find out if this has happened you may call 724-430-4030. 8. If the amount due from the buyer is not paid to the Sheriff, you will remain the owner of the property as if the sale never happened. 9. You have a right to remain in the property until the full amount due is paid to the Sheriff and the Sheriff gives a deed to the buyer. At that time, the buyer may bring legal proceedings to evict you. 10. You may be entitled to a share of the money, which was paid for your house. A schedule of distribution of the money bid for your house will be filed by the Sheriff no later than thirty days after the Sheriff Sale. This schedule will state who will be receiving the money. The money will be paid out in accordance with this schedule unless exceptions (reasons why the proposed distribution is wrong) are filed with the Sheriff within ten (10) days after the date of filing of said schedule. 11. You may also have other rights and defenses or ways of getting your house back, if you act immediately after the sale. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE LISTED BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. Fayette County Local Counsel, PA Lawyer Referral Service/PA Bar Assn., 100 South St., P.O. Box 186, Harrisburg, PA 17108, 800.692.7375. PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT YOU ARE ADVISED THAT THIS LAW FIRM IS DEEMED TO BE A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED

FOR THAT PURPOSE.

Christopher A. DeNardo, Kristen D. Little, Kevin S. Frankel, Samantha Gable, Daniel T. Lutz, Leslie J. Rase, Alison H. Tulio & Katherine M. Wolf, Attys. for Plaintiff
 SHAPIRO & DeNARDO, LLC
 3600 Horizon Dr., Ste. 150
 King of Prussia, PA 19406
 610.278.6800

NOTICE OF ACTION IN LAW

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

CIVIL ACTION – LAW

COURT OF COMMON PLEAS
 CIVIL DIVISION
 WESTMORELAND COUNTY
 NO. 3133 OF 2017

**Duane E. Stahl and Bonny J. Stahl,
 Plaintiffs,
 vs.**

**Wineland-Gilmore Coal & Coke Co., its
 Successors, Assigns, and All Other Persons
 claiming Any Interest in the property
 described in this Action,
 Defendant.**

NOTICE

To: WINELAND GILMORE COAL & COKE CO., UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST, FROM OR UNDER WINELAND GILMORE COAL & COKE CO.

You are hereby notified that on June 19, 2017, the above-named Plaintiffs filed a Complaint to Quiet Title endorsed with a Notice to Defend, against you in the Court of Common Pleas of WESTMORELAND County Pennsylvania, docketed to No. 3133 of 2017 wherein Plaintiffs seek to be awarded ownership of the oil and gas rights to lands situate in the Township of South Huntingdon, County of Westmoreland and Commonwealth of

Pennsylvania, known as Tax Assessment Map No. 59-14-00-0-069-00-000, containing 153.10 acres, the oil and gas portion of said lands consisting of 72.8754 acres.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERRAL SERVICE
WESTMORELAND BAR ASSOCIATION
P.O. BOX 565 GREENSBURG, PA 15601
(724) 834-8490
<http://lrs.westbar.org>

FAYETTE COUNTY TAX CLAIM BUREAU
61 East Main Street
Uniontown, PA 15401
Telephone 724-430-1208

TO THE OWNERS OF PROPERTIES AND TO ALL HAVING TAX AND MUNICIPAL CLAIMS, MORTGAGES, LIENS, CHARGES AND ESTATES OF WHATEVER KIND, EXCEPT GROUND RENTS, SEPARATELY TAXED, AGAINST SUCH PROPERTIES:

Notice is hereby given that the properties exposed in September 2015 & 2009 --will be sold Freed and cleared of their respective tax and municipal claims, Liens, mortgages, and/or ground rents, by the Fayette County Tax Claim Bureau for non-payment of delinquent taxes under the Provisions of the Act of July 1947, P. L. 351, its amendments and supplements on July 31st, 2017 10:00 AM in Courtroom #1 located in the Fayette County Courthouse at 61 East Main Street, Uniontown, PA 15401 on the 2nd floor. List available at the Tax Claim Bureau or on the website www.co.fayette.pa.us

These properties were exposed to the upset sale on September 28th, 2015 advertised in the Daily Courier and Herald Standard in August, 2015 & 2009 and Fayette Legal Journal in August 2015 & 2009. **THE TERMS OF THE SALE** are cash and no sale shall be made except to the County, unless a bid equal to the costs as indicated by the approximate upset price (MINIMUM PRICE) set forth for each property.

****NO ONE OWING DELINQUENT TAXES CAN BID ON PROPERTIES IN THE TAX SALE.****

Fayette County Tax Claim Bureau
Sarah E. Minnick, Director

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2616-0218	JOHN FRITSKY, JR.	Deborah J. Bigam, Administratrix DBNCTA
2615-0634	ROBERT M. HUSTON a/k/a ROBERT MCCREADY HOUSTON	Mary E. Benne, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 21, 2017 at 9:30 A.M.

in Court Room No. 1 of the Honorable STEVE P. LESKINEN, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2613-0029	ELOUISE R. EBERLY	Mary Katherine Zickefoose, Administratrix DBNCTA
2612-0837	ALVERTA PORTERFIELD a/k/a ALVERTA M. PORTERFIELD	Cynthia Knieriem Wielock, Administratrix
2616-0014	LOIS J. JOHNSON	Lori Ann Suitoer, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 21, 2017 at 9:30 A.M.

in Court Room No. 2 of the Honorable JOHN F. WAGNER or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
----------------------	--------------------	-------------------

Accounts filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Fayette County Pennsylvania

24-OC-2009	Third and Interim Account for LAFAYETTE MEMORIAL PARK	PNC BANK, NATIONAL ASSOCIATION, TRUSTEE
------------	--	--

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 21, 2017 at 9:30 A.M.

in Court Room No. 1 of the Honorable STEVE P. LESKINEN, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, August 7, 2017
at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
----------------------	--------------------	-------------------

Accounts filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas of Fayette County Pennsylvania

25-OC-2009	Third & Interim Account for SYLVAN HEIGHTS PERPETUAL CARE TRUST #618	PNC BANK, NATIONAL ASSOCIATION, TRUSTEE
------------	--	--

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on
Monday, August 21, 2017 at 9:30 A.M.

in Court Room No. 2 of the Honorable JOHN F. WAGNER or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN

Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (1 of 2)

JUDICIAL OPINION

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

COMMONWEALTH OF	:
PENNSYLVANIA,	:
	:
vs.	:
	:
	:
MICHAEL WRIGHT,	: No. 870 of 2016
Defendant	: JUDGE LINDA R. CORDARO

OPINION & ORDER

Cordaro, J.

June 29, 2017

Before the Court is Defendant's Omnibus Pre-Trial Motion, wherein he seeks to dismiss the charges of criminal homicide, endangering the welfare of children, and recklessly endangering another person. In addition, Defendant's Motion seeks to suppress statements, suppress evidence, change venue, and sever his case from that case filed against Andrea Dusha. Upon careful review of the transcript of the preliminary hearing (Commonwealth's Exhibit "1"), and the testimony presented at the hearing held March 1, 2017, along with the arguments of counsel and the relevant legal authority, the Defendant's Omnibus Pretrial Motion is hereby DENIED as to the Writ of Habeas Corpus, Motion to Suppress Statement, Motion to Suppress Evidence, and Motion to Change Venue. The Defendant's Motion to Sever is hereby GRANTED.

BACKGROUND

Defendant was charged with the crimes of criminal homicide, endangering the welfare of children, and recklessly endangering another person, in connection with the death of Lydia Wright on February 24, 2016. Lydia was born March 9, 2014, making her just two weeks shy of her second birthday. Lydia was the daughter of the Defendant and Andrea Dusha (hereinafter "Dusha"). The Defendant and Dusha also had two sons together, ages five and four.

On February 24, 2016, Dusha appeared with Lydia at the emergency department of the Uniontown Hospital at approximately 11:20 a.m. Dr. Michael Bradmon testified that Lydia was unresponsive, appeared lifeless, and she was deceased when he first attended to her. Nonetheless, Dr. Bradmon began emergency treatment in an attempt to revive the child. Despite life-saving efforts made at the hospital, Lydia could not be resuscitated. Considering the rigidity and stiffness of the child's body, her dry mucus membranes and dry eyes, and her pale white color, it appeared to Dr. Bradmon that Lydia had been deceased for a few hours prior to being brought to the hospital. An autopsy report con-

cluded that Lydia's death was due to malnutrition and dehydration. Lydia weighed only ten pounds. Lydia had been in the care of her parents during the days preceding her death.

After an investigation into the facts leading up to the child's death, both of her parents were criminally charged in connection with her death. On June 15, 2016, the Commonwealth filed Notice of Aggravating Circumstances and is seeking the death penalty should the Defendant be convicted of first degree murder. The Commonwealth alleges the aggravating circumstances include torture, killing while in the perpetration of a felony, and the victim was a child under the age of twelve.

Defendant filed the within Omnibus Pre-Trial Motion on July 13, 2016, and a hearing was held March 1, 2017.

DISCUSSION Writ of Habeas Corpus

The first issue before this Court is whether the Commonwealth has presented sufficient evidence that could establish that Defendant intentionally, knowingly, recklessly or negligently caused the death of Lydia Wright by failing to provide care for her to thrive.

A trial court may grant a defendant's Petition for Writ of Habeas Corpus where the Commonwealth has failed to present a prima facie case against the defendant. *Commonwealth v. Santos*, 876 A.2d 360 (Pa. 2005). The purpose of a preliminary hearing is to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish a crime was committed and the probability the defendant could be connected with the crime. *Commonwealth v. Wojdak*, 502 Pa. 359, 466 A.2d 991 (1983). The prosecution, therefore, has the burden of establishing at least prima facie that a crime has been committed and the accused is the one who committed it. *Commonwealth v. Prado*, 481 Pa. 485, 393 A.2d 8 (1978), citing *Commonwealth v. Ruza*, 511 Pa. 59 (Pa. 1986).

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove the defendant's guilt beyond a reasonable doubt, but must put forth sufficient evidence to establish a prima facie case of guilt. *Commonwealth v. Karetny*, 2005 Pa. Lexis 1710 (Pa. 2005). "[A] prima facie case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense." *Commonwealth v. Santos*, 876 A.2d 360 (Pa. 2005). The evidence must be considered in the light most favorable to the Commonwealth so that inferences that would support a guilty verdict are given effect. *Commonwealth v. Santos*, 876 A.2d 360 (Pa. 2005). (See also *Commonwealth v. Huggins*, 575 Pa. 395, 402 (Pa. 2003)) Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Ka-*

retny, 583 Pa.514, 880 A.2d 505 (2005).

The three elements of first-degree murder are: (1) a human being was unlawfully killed; (2) the defendant was responsible for the killing; and (3) the defendant acted with malice and a specific intent to kill. 18 Pa.C.S. § 2502(a); Commonwealth v. Houser, 610 Pa. 264, 18A.3d 1128, 1133 (2011). First-degree murder is an intentional killing, i.e., a "willful, deliberate and premeditated killing." 18 Pa.C.S. § 2502(a), (d); Commonwealth v. Burno, 626 Pa. 30, 94 A.3d 956, 969 (2014). An intentional killing is a "[k]illing by means of poison, or by lying in wait, or any other kind of willful, deliberate and premeditated killing." 18 Pa.C.S. § 2502(d). The Commonwealth can prove this specific intent to kill from circumstantial evidence. Commonwealth v. Brown, 551 Pa. 465, 711 A.2d 444 (1998). In this case, there is no dispute that this 23 month old child died from malnutrition and dehydration. The issue is whether the mens rea element of the statute was satisfied by the Commonwealth producing prima facie evidence that the child's death was the specific intent of the Defendant.

It is undisputed that the Defendant was one of two adult individuals, the parents, who were responsible for the care of their minor child. The Defendant, through his own admission, knew his minor child was in another room where he couldn't see her, strapped into her infant car seat, without the means or ability to feed herself. The Defendant remained lying on a mattress in a different room with his two minor sons from 8:00 or 9:00 p.m. until 11:00 a.m. the next morning. Dusha was already gone from the home when the Defendant woke up. The Defendant never got up to check on the baby, and he failed to take any measures at least during the two days preceding the child's death to attempt to feed her. The Defendant's conduct may be construed as deliberate mistreatment of his minor child, since he took no steps whatsoever to tend to her most essential needs.

He never took any measure to check in on her for at least a fourteen hour period of time when he was at home. His conduct demonstrates a hardness of heart toward his only daughter, in that he ignored her as if she didn't exist during the time that she was likely struggling to remain alive. This Court therefore finds that the Commonwealth has presented a prima facie case for the charge of first degree murder, as well as the remaining two charges.

Motion to Suppress Statement

Although the Omnibus Pretrial Motion filed in this matter lacks specificity as to which of the Defendant's statements should be suppressed, this Court will nonetheless review the statements made by the defendant to different officers at different times, along with the relevant authority.

A law enforcement officer must administer Miranda warnings prior to custodial interrogation. Commonwealth v. Johnson, 373 Pa.Super. 312, 541 A.2d 332, 336 (1988). The standard for determining whether an encounter with the police is deemed

"custodial" or police have initiated a custodial interrogation is an objective one based on a totality of the circumstances, with due consideration given to the reasonable impression conveyed to the person interrogated. *Commonwealth v. Gwynn*, 555 Pa. 86, 723 A.2d 143, 148 (1998). Custodial interrogation has been defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way." *Johnson*, 541 A.2d at 336 quoting *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694, 706 (1966). "Interrogation" is police conduct "calculated to, expected to, or likely to evoke admission." *Id.* quoting *Commonwealth v. Simala*, 434 Pa. 219, 226, 252 A.2d 575, 578 (1969). When a person's inculpatory statement is not made in response to custodial interrogation, the statement is classified as gratuitous, and is not subject to suppression for lack of warnings. *Id.*

The test for determining whether a suspect is being subjected to custodial interrogation so as to necessitate *Miranda* warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation. *Commonwealth v. Busch*, 713 A.2d 97, 100 Pa.Super.1998) quoting *Commonwealth v. Rosario*, 438 Pa.Super. 241,652 A.2d 354, 365-66 (1994) (en banc), appeal denied, 546 Pa. 668, 685 A.2d 547 (1996) (other citations omitted). Said another way, police detentions become custodial when, under the totality of the circumstances, the conditions and/ or duration of the detention become so coercive as to constitute the functional equivalent of arrest. *Commonwealth v. Ellis*, 379 Pa.Super. 337, 549 A.2d 1323, 1332 (1988), appeal denied, 522 Pa. 601, 562 A.2d 824 (1989), citing *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, 77 L.Ed.2d 1275 (1983). See also *Commonwealth vs. Mannion*, 725 A.2d 196 (1999).

The first law enforcement official to come into contact with the Defendant was Corporal Michael Bittner with the Uniontown Police Department, who was asked to provide a courtesy transport of the Defendant to the Uniontown Hospital from the Defendant's home in Uniontown. Officer Bittner did not question the Defendant in relation to Lydia; and, in fact, Officer Bittner didn't have any facts surrounding the child's death. Upon his arrival at the hospital, Officer Bittner was asked by Detective Gmitter to go into the room and stay with the Defendant. While there, the Defendant made several statements; however, the Defendant was not in custody at the time, and there was no interrogation by Corporal Bittner. Therefore, any statements made by the Defendant to Corporal Bittner will not be suppressed.

Detective Donald Gmitter, who was on duty with the Uniontown Police Department on February 24, 2016, spoke to the Defendant at the Uniontown Hospital. Detective Gmitter informed the Defendant that his purpose was to find out what happened to the baby. Detective Gmitter advised the Defendant that he was free to leave, and the Defendant was not under arrest. The Defendant was not restrained in any way, and Detective Gmitter gave the Defendant no reason for the Defendant to believe that he was under arrest. Therefore, any statements made by the Defendant to Detective Gmitter will

not be suppressed.

Trooper James Pierce with the Pennsylvania State Police talked to the Defendant on two separate occasions. Trooper Pierce first spoke to the Defendant at the Uniontown Hospital on February 24, 2016. At this time, there was no reported cause of death, and the investigation into the baby's death was just beginning. The Defendant was not placed under arrest, and he was free to leave. The circumstances would not have caused the Defendant to believe that his freedom of movement was restricted in any way. Trooper Pierce spoke to the Defendant again on February 25, 2016, at the Uniontown Barracks of the Pennsylvania State Police. This was a prearranged meeting with the Defendant, and the Defendant agreed to come in to the barracks to speak to Trooper Pierce. Trooper Pierce did not Mirandize the Defendant, and the Defendant was advised that he was not under arrest. This interview with the Defendant lasted 58 minutes, and it was recorded. The Defendant was advised that he could leave anytime. This Court finds that there was not custodial interrogation at this time considering the totality of the circumstances. The Defendant appeared at the barracks voluntarily, he was told that he was not under arrest, and he was free to leave anytime. Accordingly, any statements made by the Defendant to Trooper Pierce will not be suppressed.

Motion to Suppress Evidence

Defendant's Omnibus Pretrial motion includes a nonspecific, generic request to suppress evidence, including suppression of items removed from the Defendant. This Court notes that there was no search of the Defendant's person, and this issue will therefore not be discussed. Additionally, neither party has requested that this Court review the affidavit of probable cause supporting the issuance of the search warrant. It appears to this Court that the Defendant waives this issue.

Motion to Change Venue

Defendant's Omnibus Pretrial Motion includes a request to change venue. This is made through nonspecific, generic allegations that fail to demonstrate to this Court that the Defendant is prejudiced in any way unless a change of venue is granted.

The determination of whether to grant a change of venue rests within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *Commonwealth v. Rucci*, 543 Pa. 261, 670 A.2d 1129, 1140 (1996). This is primarily because the trial court is in the best position to assess the atmosphere of the community and to judge the necessity of an y requested change. *Commonwealth v. Karenbauer*, 552 Pa. 420, 715 A.2d 1086, 1092 (1998). The mere existence of pretrial publicity does not warrant a change of venue. *Commonwealth v. Chambers*, 546 Pa. 370, 685 A.2d 96, 103 (1996). Ordinarily, a defendant is not entitled to a change of venue unless he or she can demonstrate that the pretrial publicity resulted in actual prejudice that prevented the impaneling of an impartial jury. *Karenbauer*, 715 A.2d at 1092. Prejudice will be presumed, however, if the defendant is able to show that the pretrial

publicity: (1) was sensational, inflammatory, and slanted toward conviction, rather than factual and objective; (2) revealed the defendant's prior criminal record, if any, or referred to confessions, admissions or reenactments of the crime by the defendant ; or (3) derived from official police or prosecutorial reports. *Id.*; *Commonwealth v. Gorby*, 527 Pa. 98, 588 A.2d 902, 906 (1991). Even if the defendant proves the existence of one or more of these circumstances, a change of venue is not warranted unless the defendant also demonstrates that the pretrial publicity was so extensive, sustained, and pervasive that the community must be deemed to have been saturated with it, and that there was insufficient time between the publicity and the trial for any prejudice to have dissipated. *Karenbauer*, 715 A.2d at 1092; *Commonwealth v. Pursell*, 508 Pa. 212, 495 A.2d 183, 187 (1985). See also *Commonwealth vs. Tharp*, 574 Pa. 202, 830 A.2d 519 (2003).

The Defendant's request to change venue lacks any of the specific information necessary to cause this Court to grant this request.

CONCLUSION

Based on the testimony presented and the arguments of counsel, this Court finds that the Commonwealth has presented a prima facie case for all charges lodged against the Defendant. For the reasons set forth above, this Court denies the motions for suppression and change of venue. The Order of this Court will grant the Defendant's request to sever his case from that of Andrea Dusha.

ORDER

AND NOW, this 29th day of June, 2017, upon consideration of Defendant's Omnibus Pre-Trial Motion, the Court hereby finds and holds that the Commonwealth has presented a prima facie case for charges of criminal homicide, endangering welfare of children, and recklessly endangering another person. It is hereby ORDERED and DIRECTED that Defendant's Motion to Suppress Statements is hereby DENIED; Defendant's Motion to Suppress Evidence is hereby DENIED; and Defendant's Motion to Change Venue is hereby DENIED. Defendant's Motion to Sever is hereby GRANTED, and the Commonwealth shall list this case for trial, to be severed from Commonwealth of Pennsylvania vs. Andrea Dusha.

BY THE COURT:
LINDA R. CORDARO, JUDGE

Attest:
Clerk of Courts

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