

Adams County **Legal Journal**

Vol. 53

February 10, 2012

No. 39, pp. 278-285

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313. Telephone: (717) 334-1553

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NOTICE OF ACTION IN
MORTGAGE FORECLOSURE

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW

COURT OF COMMON PLEAS

CIVIL DIVISION

ADAMS COUNTY

NO. 11-SU-1638

Citimortgage, Inc., s/b/m to ABN Amro
Mortgage Group, Inc.

vs.

Mark A. Brown

NOTICE

TO: Mark A. Brown

You are hereby notified that on
November 2, 2011, Plaintiff,
Citimortgage, Inc., s/b/m to ABN Amro
Mortgage Group, Inc., filed a Mortgage
Foreclosure Complaint endorsed with a
Notice to Defend, against you in the
Court of Common Pleas of Adams
County, Pennsylvania, docketed to No.
11-SU-1638. Wherein Plaintiff seeks to
foreclose on the mortgage secured on
your property located at 6555 York
Road, New Oxford, PA 17350 whereup-
on your property would be sold by the
Sheriff of Adams County.

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

If you wish to defend, you must enter
a written appearance personally or by
attorney and file your defenses or objec-
tions in writing with the court. You are
warned that if you fail to do so, the case
may proceed without you and a judg-
ment may be entered against you with-
out further notice for the 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, GO TO OR
TELEPHONE THE OFFICE SET FORTH
BELOW. THIS OFFICE CAN PROVIDE
YOU WITH INFORMATION ABOUT
HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A
LAWYER, THIS OFFICE MAY BE ABLE

TO PROVIDE YOU WITH INFORMATION
ABOUT AGENCIES THAT MAY OFFER
LEGAL SERVICES TO ELIGIBLE
PERSONS AT A REDUCED FEE OR NO
FEE.

ADAMS COUNTY
COURT ADMINISTRATOR
ADAMS COUNTY COURTHOUSE
GETTYSBURG, PA 17325
(717) 334-6781, EXT. 213

LAWYER REFERRAL SERVICE
MIDPENN LEGAL SERVICES
128 BRECKENRIDGE STREET
GETTYSBURG, PA 17325
(717) 334-7624

2/10

INCORPORATION NOTICE

NOTICE is hereby given that a busi-
ness corporation known as BERWICK
FOODS, INC. has been incorporated
under the provisions of The Pennsylvania
Business Corporation Law of 1988.

CGA Law Firm
By: Frank H. Countess, Esq.

2/10

COMMONWEALTH VS. SHAFFER

1. Under the Confrontation Clause, a witness's testimony against a defendant is inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination.

2. The Supreme Court found that the certificates of analysis were testimonial in nature because the certificates were functionally identical to live, in-court testimony, doing precisely what a witness does on direct examination.

3. A report that is testimonial in nature is not admissible unless the author of that report is called to testify and subject to cross examination by the defense.

4. Appellant's right to confrontation was not violated because the Commonwealth was not required to call the phlebotomist who drew Appellant's blood sample. There was no report authored by the phlebotomist that the Commonwealth attempted to enter into evidence. The phlebotomist was merely an individual involved in the chain of custody of Appellant's blood sample.

5. A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict. Thus, the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner.

6. The critical question is whether or not 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. A weight of the evidence claim is addressed to the discretion of the trial court.

In the Court of Common Pleas of Adams County, Pennsylvania,
Criminal, No. CP-01-CR-423-2010, COMMONWEALTH OF
PENNSYLVANIA VS. SCOTT A. SHAFFER.

Amber Lane, Esq., Assistant District Attorney, for Commonwealth
Shawn M. Dorward, Esq., for Defendant
Campbell, J., August 19, 2011

OPINION PURSUANT TO Pa. R.A.P. 1925(a)

Appellant, Scott A. Shaffer, appeals his conviction of Driving Under the Influence ("DUI") – High Rate of Alcohol under 75 Pa. C.S.A. § 3802(b). For the reasons set forth below, it is respectfully requested that Appellant's conviction be affirmed.

Appellant was charged by criminal complaint with DUI – General Impairment under 75 Pa. C.S.A. § 3802(a)(1), DUI – High Rate of Alcohol under 75 Pa. C.S.A. § 3802(b), Driving on Roadways Laned for Traffic (summary offense) under 75 Pa. C.S.A. § 3309(1), and Careless Driving (summary offense) under 75 Pa. C.S.A. § 3714(a).¹ On March 18, 2011, this Court held a nonjury trial, which revealed the following facts. On March 7, 2010 at approximately 2:16 a.m., Trooper

¹ According to the Commonwealth, Appellant was offered admission into the ARD program numerous times, but Appellant declined admission.

James David of the Pennsylvania State Police was on duty and in full uniform conducting routine patrol on Bon-Ox Road in Adams County, Pennsylvania.² At this time, Trooper David observed a red Ford Ranger truck with Pennsylvania registration YTE-0936. The red Ford Ranger truck crossed the fog line with its passenger side wheels approximately four (4) times. On one occasion, while negotiating a left-hand curve, Trooper David believed that the red Ford Ranger was going to run off the roadway. Based on his observations, Trooper David effectuated a traffic stop of the red Ford Ranger and made contact with Appellant, the driver of the vehicle. While speaking with Appellant, Trooper David observed that Appellant showed the classic signs of intoxication, including bloodshot and glassy eyes as well as a strong odor of alcohol emanating from his breath. Appellant also admitted to consuming alcohol. Trooper David asked Appellant to exit his vehicle to perform standard field sobriety tests, specifically the walk and turn test and the one-leg stand test. Prior to administering each test, Trooper David explained the test to Appellant. Trooper David testified that he believed that Appellant failed both the walk and turn test and one-leg stand test. Trooper David formed an opinion that Appellant was under the influence of alcohol to a degree that rendered him incapable of safe driving. Appellant's driving and performance of field sobriety testing was captured on Trooper David's motor vehicle recorder ("MVR"), which revealed that it was questionable whether Appellant actually failed field sobriety testing. Trooper David placed Appellant under arrest and transported him to Gettysburg Hospital for blood alcohol testing. Trooper David advised Appellant of his implied consent and O'Connell warnings, and Appellant agreed to submit a blood sample. In Trooper David's presence, at approximately 2:50 a.m., Rachel McLaughlin, lab technician at Gettysburg Hospital, drew Appellant's blood. Also in Trooper David's presence, Appellant's blood sample was sealed, signed and sent to the Pennsylvania State Police's laboratory in Harrisburg for blood alcohol testing. Christina Zurad, a forensic analyst at the Pennsylvania State Police criminal laboratory,³ performed headspace gas chromatographic analysis on Appellant's blood sample.

² Testimony revealed that Trooper David was accompanied by Trooper Schrader on this evening; however, Trooper Schrader did not testify.

³ This Court took judicial notice that the Pennsylvania State Police criminal laboratory was an approved testing facility by the Department of Health under 75 Pa. C.S.A. § 1547(c)(2)(i).

Ms. Zurad testified that on or about March 9, 2010, she received a package from Gettysburg Hospital containing Appellant's blood sample. When Appellant's blood sample arrived, it was sealed. Ms. Zurad opened the package containing Appellant's blood sample, and inside the package were two grey topped tubes of blood. The tubes indicated that they contained sodium fluoride, a preservative, and potassium oxalate, an anticoagulant. Appellant's blood samples were labeled with the Pennsylvania State Police's laboratory number and stored in a refrigerated evidence vault at the Pennsylvania State Police laboratory until testing.

Ms. Zurad tested one of the tubes containing Appellant's blood using headspace gas chromatographic technology. According to Ms. Zurad, headspace gas chromatographic analysis involves the instrument injecting vapor above the blood sample, and the gas chromatograph separates the vapor from other components in the blood sample except the ethanol, allowing the analyst to determine the amount of ethanol in the blood sample. Ms. Zurad also runs several control samples to ensure that the gas chromatograph instrument is working properly. The control samples contain a predetermined amount of ethanol, and the control sample results should generate a value within an acceptable range if the instrument is working properly. When Ms. Zurad ran control samples with Appellant's test, all control samples returned values within the acceptable ranges. Following testing of Appellant's blood sample, Ms. Zurad sealed Appellant's blood sample back into the kit with a separate piece of evidence tape. Ms. Zurad also testified that from the time she opened Appellant's blood kit to the time that she tested it and resealed it, Appellant's blood samples remained in her custody and control at all times. Ms. Zurad generated a report approximately one (1) day after testing Appellant's blood sample. Ms. Zurad's report indicated that Appellant's blood alcohol content (BAC) was .150 percent within two (2) hours of driving. Importantly, Ms. Zurad's report was admitted into evidence without objection by Appellant's counsel.

On cross-examination, Ms. Zurad indicated that she was not familiar with Gettysburg Hospital's protocols and procedures relating to blood draws. Ms. Zurad also testified that she did not know the specific amounts of sodium fluoride and potassium oxalate contained within Appellant's blood samples, but the samples indicated

that they contained sodium fluoride and potassium oxalate. Additionally, Ms. Zurad testified that “carryover” studies are conducted to ensure that there is no cross-contamination between different samples.

Following Ms. Zurad’s testimony, Appellant’s counsel made an oral motion for judgment of acquittal alleging that Appellant’s right to confrontation had been violated because the Commonwealth failed to call the phlebotomist who drew Appellant’s blood sample. After reviewing *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009) and *Commonwealth v. Barton-Martin*, 5 A.3d 363 (Pa. Super. 2010), this Court denied Appellant’s motion for judgment of acquittal. Appellant was ultimately found guilty of DUI – High Rate of Alcohol, but was acquitted of the remainder of the charges. Sentencing occurred on June 2, 2011, and that same day, Appellant filed his Post-Sentence Motion in open court. Appellant filed his Brief in Support of his Post-Sentence Motion on June 13, 2011. The Commonwealth filed its Brief in Opposition to Appellant’s Post-Sentence Motion on June 23, 2011. By Order dated June 27, 2011, this Court denied Appellant’s Post-Sentence Motion. The instant appeal followed.

Appellant alleges that his Confrontation Clause rights were violated because the Commonwealth did not present testimony of the phlebotomist who drew Appellant’s blood and submitted the sample to the Pennsylvania State Police criminal laboratory for testing.

Both the United States Constitution and the Pennsylvania Constitution provide that a defendant has the right to confront the witnesses against him in criminal prosecutions.⁴ U.S. CONST. amend. VI; PA. CONST. art. 1, § 9. Recently, in *Melendez-Diaz v. Massachusetts*, the United States Supreme Court held that the admission of certificates of analysis sworn by analysts without requiring in-court testimony by the analysts violated Melendez-Diaz’s Sixth Amendment right to confront witnesses against him. *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2532 (2009). Under the Confrontation Clause, “[a] witness’s testimony against a defendant is inadmissible unless the witness appears at trial or, if the witness is

⁴ The Sixth Amendment applies to the States via the Fourteenth Amendment. *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527, 2531 (2009) (citing *Pointer v. Texas*, 380 U.S. 400, 403 (1965)).

unavailable, the defendant had a prior opportunity for cross-examination.” *Id.* at 2531. Testimonial statements covered by the Confrontation Clause include:

ex parte in-court testimony or its functional equivalent – that is, materials such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; extrajudicial statements ... contained in formalized testimonial materials such as affidavits, depositions, prior testimony or confessions; statements which are made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

Id. (quoting *Crawford v. Washington*, 541 U.S. 36, 51-52 [2004]).

The Supreme Court found that the certificates of analysis were testimonial in nature because the certificates were “functionally identical to live, in-court testimony, doing ‘precisely what a witness does on direct examination.’” *Id.* at 2532 (quoting *Davis v. Washington*, 547 U.S. 813, 830 [2006]). Because the certificates of analysis were testimonial, the Supreme Court held that “[a]bsent a showing that the analysts were unavailable to testify at trial and that [Melendez-Diaz] had a prior opportunity to cross-examine them, [Melendez-Diaz] was entitled to ‘be confronted with’ the analysts at trial.” *Id.* at 2532 (quoting *Crawford*, 541 U.S. at 54) (emphasis original). Therefore, according to the Supreme Court, “[t]he Sixth Amendment does not permit the prosecution to prove its case via *ex-parte* out of court affidavits, and the admission of evidence against Melendez-Diaz was error.” *Id.* at 2542.

Similarly, in *Commonwealth v. Barton-Martin*, the Commonwealth introduced a lab report and offered testimony of the custodian of records to establish that Barton-Martin’s blood alcohol content was .16 percent or higher within two hours of driving. *Commonwealth v. Barton-Martin*, 5 A.3d 363, 368 (Pa. Super. 2010). The Commonwealth did not present testimony of the laboratory technician who performed the test on Barton-Martin’s blood sample. *Id.* The Pennsylvania Superior Court held that “pursuant to the Supreme

Court's holding in *Melendez-Diaz*, absent a showing that the laboratory technician was unavailable, and [Barton-Martin] had the opportunity to cross-examine her, the laboratory technician's failure to testify in the Commonwealth's case-in-chief violated [Barton-Martin's] Sixth Amendment right to confrontation." *Barton-Martin*, 5 A.3d at 369. Essentially, the lesson of *Melendez-Diaz* and *Barton-Martin* is that a report that is testimonial in nature is not admissible unless the author of that report is called to testify and subject to cross examination by the defense. See *Melendez-Diaz*, 129 S. Ct. at 2532; *Barton-Martin*, 5 A.3d at 369.

Instantly, the Commonwealth presented the testimony of the analyst, Ms. Zurad, who tested Appellant's blood and prepared a report based on her test results, and Appellant was afforded an opportunity to cross-examine Ms. Zurad. Notably, Appellant's counsel did not object when the Commonwealth sought to admit Ms. Zurad's lab report based on her testing of Appellant's blood sample.⁵ Accordingly, Ms. Zurad's lab report, which indicated that Appellant's BAC was .150 percent, was properly admitted and could be considered by this Court as evidence of Appellant's blood alcohol content. In summary, the Commonwealth complied with the mandates of *Melendez-Diaz* and *Barton-Martin* by presenting the testimony of Ms. Zurad, the analyst who tested Appellant's blood and prepared the lab report based on her testing, which was admitted into evidence without objection.

Additionally, Appellant's right to confrontation was not violated because the Commonwealth was not required to call the phlebotomist who drew Appellant's blood sample. There was no report authored by the phlebotomist that the Commonwealth attempted to enter into evidence. The phlebotomist was merely an individual involved in the chain of custody of Appellant's blood sample. See, e.g., *Melendez-Diaz*, 129 S. Ct. at 2532 n.1 (stating that "we do not hold, and it is not the case, that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of a sample, or accuracy of a testing device must appear in person as part of the prosecution's case"). Based on *Melendez-Diaz*, as well as

⁵ Ms. Zurad's lab report marked as Commonwealth's Exhibit 3 was admitted during the Commonwealth's direct examination of Ms. Zurad. Appellant's counsel made his oral motion for judgment of acquittal after cross-examination of Ms. Zurad.

Barton-Martin, the Commonwealth was not required to call each and every individual involved in the blood testing process.⁶ Rather, the Commonwealth complied with the mandates of *Melendez-Diaz* and *Barton-Martin*. Therefore, Appellant's right to confrontation was not violated.

Appellant also argues that the verdict was against the weight of the evidence. Again, it appears that Appellant's argument is largely based on the assertion that Commonwealth failed to produce the phlebotomist who drew Appellant's blood. A verdict is against the weight of the evidence only when the fact finder's verdict is so contrary as to shock one's sense of justice. *Commonwealth v. Rivera*, 983 A.2d 1211, 1225 (Pa. 2009) (citation omitted). "The weight of the evidence is exclusively for the finder of fact who is free to believe all, part or none of the evidence and to determine the credibility of witnesses." *Commonwealth v. Lewis*, 911 A.2d 558, 565 (Pa. Super. 2006) (citations omitted). "A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict. Thus, the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner." *Id.* (citations omitted). A new trial should not be granted because of a mere conflict in testimony or because a judge on the same facts would have reached a different conclusion. *Rivera*, 983 A.2d at 1225. The critical question is whether or not 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.* A weight of the evidence claim is addressed to the discretion of the trial court. *Id.*

Instantly, the verdict was not against the weight of the evidence. As previously stated, the Commonwealth presented the testimony of Ms. Zurad, who tested Appellant's blood and prepared a report based on her test results. Appellant had the opportunity to cross-examine Ms. Zurad. Importantly, Ms. Zurad's lab report indicating Appellant's blood alcohol content was admitted into evidence without objection. As such, the lab report was properly admitted and considered by the

⁶ To give any merit to Appellant's assertion would produce absurd results. For instance, under Appellant's theory, the Commonwealth would be required to call every conceivable individual in the chain of custody including, for example, the FedEx carrier, the manufacturer of the needle, and any other person who may have had little interaction with the blood sample.

Court as evidence of Appellant's blood alcohol content. This Court also found Ms. Zurad's testimony to be credible. Based on the properly admitted lab report and Ms. Zurad's credible testimony regarding the testing procedures, this Court could properly find that Appellant's blood alcohol content was .150 percent within two hours of driving. Accordingly, the guilty verdict for DUI – High Rate of Alcohol under 75 Pa. C.S.A. § 3802(b) was not against the weight of the evidence.

Therefore, for all the reasons stated herein, it is respectfully requested that Appellant's conviction be affirmed.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF SUSANNE LOUISE BURBAN, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Percy D. Muschamp, 700 Iron Springs Road, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF PATSY IRENE KEENEY, DEC'D

Late of Thurmont, Frederick County, Maryland

Personal Representative: Benjamin David Keeney, 531 Water Street, Fairfield, PA 17320

Attorney: Robert L. McQuaide, Esq., 18 Carlisle Street, Suite 204, Gettysburg, PA 17325

ESTATE OF JOANNE V. KINCIUS a/k/a JO ANNE KINCIUS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: William A. Kump, Jr., c/o Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

Attorney: Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

ESTATE OF STEWART H. MOYER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Ella Louise Toomey, 47 Bay State Road, Melrose, MA 02176

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF JOSEPH C. STORM, DEC'D

Late of the Borough of McSherrytown, Adams County, Pennsylvania

Executors: Helen M. Warner, 30 Fern Drive, New Oxford, PA 17350; Thomas L. Storm, 52 South Avenue, Gettysburg, PA 17325

Attorney: Larry W. Wolf, Esq., Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

ESTATE OF RACHEL E. WOLFF, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Bruce William Wolff, 314 Belmont Place, SW, Leesburg, VA 20175

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF BURNELL H. GRIM a/k/a BURNELL HOKE GRIM, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: William S. Grim and Joseph M. Grim, c/o James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF DORA E. HARTLAUB, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: David W. Hartlaub, 575 Storms Store Road, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF BRENDA M. MENGES, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: Theron J. Menges, 340 Forest Drive, New Oxford, PA 17350; Lisa M. Kessel, 421 Abbottstown Street, Apt. #6, East Berlin, PA 17316

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF MARY E. MILLER a/k/a MARY ELLEN MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert Lee Miller, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF KEVIN M. WAREHIME a/k/a KEVIN MICHAEL WAREHIME, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Mary K. Warehime, c/o Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Matthew L. Guthrie, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF DAVID D. HOOD, DEC'D**

Late of the Borough of York Springs, Adams County, Pennsylvania

Executor: Brady G. Hood, 28 Valley Road, Shrewsbury, PA 17361

ESTATE OF DOROTHY E. SCHROEDER, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Karen A. Decker, 874 Elderwood Avenue, Tipp City, OH 45371

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

