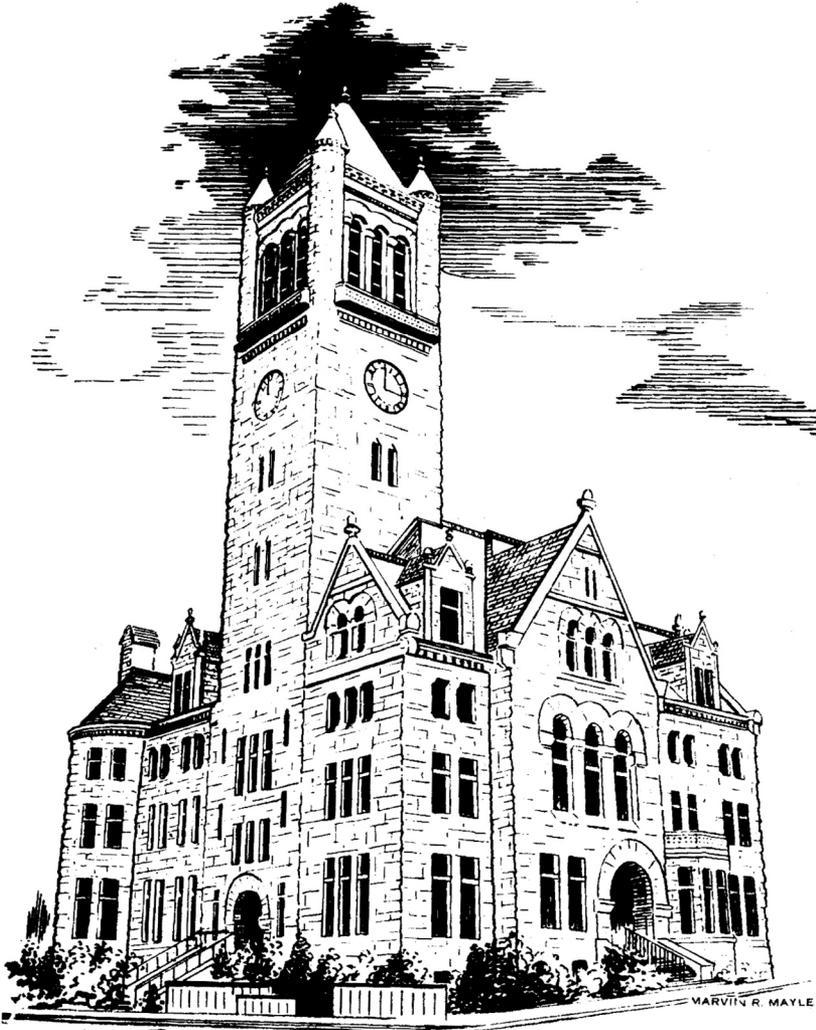


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ESTATE NOTICES

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

DONNA M. BEATTY, late of Connellsville,
Fayette County, PA (3)

Administrator: Ivana Beatty
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

JOSEPH HETZ, a/k/a JOSEPH PAUL HETZ, "Pully", late of Georges Township,
Fayette County, PA (3)

Executrix: Melissa A. Shawl
143 Poundstone Road
Uniontown, PA 15401-6807
c/o Lynch Law Group
375 Southpoint Boulevard, Suite 100
Canonsburg, PA 15317
Attorney: Frank Gustine

PAUL A. LAWS, late of Springfield Township,
Fayette County, PA (3)

Executor: John R. Laws
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

ELIZABETH MARUCCI, late of Redstone
Township, Fayette County, PA (3)

Executor: Vincent P. Marucci
127 Motorcycle Road
Grindstone, PA 15442
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

KENNETH C. SMITHLEY, late of Georges
Township, Fayette County, PA (3)

Executrix: Robin Calhoun
c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401
Attorney: Benjamin Goodwin

MARC TINSTMAN, late of Brownsville,
Fayette County, PA (3)

Administrator: Nathan Tinstman
130 Armour Street
Richeyville, PA 15301
c/o Neighborhood Attorneys, LLC
8 East Pine Avenue
Washington, PA 15301
Attorney: Jessica Roberts

TERRI TINSTMAN, late of Brownsville,
Fayette County, PA (3)

Administrator: Nathan Tinstman
130 Armour Street
Richeyville, PA 15358
c/o Neighborhood Attorneys, LLC
8 East Pine Avenue
Washington, PA 15301
Attorney: Jessica Roberts

Second Publication

GLORIA F. BREAKIRON, a/k/a GLORIA BREAKIRON, late of Hopwood, Fayette
County, PA (2)

Personal Representative:
Melanie Breakiron Ramage
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

ALICE M. GALTERIO, a/k/a ALICE GALTERIO, late of Uniontown, Fayette
County, PA (2)

Administratrix: Samantha Galterio
902 Fourth Street
Buffington, Pa 15468
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

KENNETH A. HAINES, a/k/a KENNETH HAINES, late of Henry Clay Township, Fayette County, PA (2)

Executrix: Debby Louise Haines
c/o Daniella A. Horn, Klenk Law, LLC
2202 Delancey Place
Philadelphia, PA 19103
Attorney: Daniella A. Horn

IGNATIUS JAMES HRUBECZ, late of Jefferson Township, Fayette County, PA (2)

Executor: Michael Kovach
c/o 39 Francis Street
Uniontown, PA 15401
Attorney: Jack R. Heneks, Jr.

ANNA KATHRYN KOVACH, late of Jefferson Township, Fayette County, PA (2)

Executor: Michael Kovach
c/o 39 Francis Street
Uniontown, PA 15401
Attorney: Jack R. Heneks, Jr.

JAMES W. MITCHELL, JR., late of German Township, Fayette County, PA (2)

Executor: James W. Mitchell, III
51 Nell Street
Hopwood, PA 15445
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

GEORGE H. RUE, JR., late of Washington Township, Fayette County, PA (2)

Executrix: Amanda Rue
1116 Third Street
Fayette City, PA 15438
c/o 401 Sixth Street at Washington Avenue
P.O. Box 1
Charleroi, PA 15022
Attorney: Alan Benyak

FLOYD A. STANGROOM, late of Luzerne Township, Fayette County, PA (2)

Executor: Floyd A. Stangroom, Jr.
15 Kirchner Drive
South Park, PA 15129
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Samuel J. Davis

DAYNA A. VEGHTS, late of Connellsville, Fayette County, PA (2)

Personal Representative: Gary D. Veghts
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, Pa 15425
Attorney: Timothy J. Witt

First Publication

MICHAEL ABBOTT, a/k/a MICHAEL J. ABBOTT, a/k/a MICHAEL J. ABBOTT, SR., late of Connellsville, Fayette County, PA (1)

Administratrix: Anita Abbott
10100 Sailwinds Boulevard North
Largo, Florida 337773
c/o Tremba, Kinney, Greiner and Kerr
13010 Morrell Avenue
Connellsville, PA 15425
Attorney: John Greiner

ROBERTA M. BASINGER, a/k/a ROBERTA MAE BASINGER, a/k/a ROBERTA BASINGER, late of Springfield Township, Fayette County, PA (1)

Administratrix: Barbara L. Weinberg
809 Village Way
Somerset, PA 15501
c/o 121 West Second Street
Greensburg, PA 15601
Attorney: Gregory C. Moore

MARGARET I. FRANKENBERY, late of North Union Township, Fayette County, PA (1)

Co-Executor: Lee R. Frankenbery, Jr.
104 Sabra Court
Uniontown, PA 15401
c/o Newcomer Law Offices
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing D. Newcomer

BETTY L. HALL, a/k/a BETTY LOU HALL, late of Saltlick, Fayette County, PA (1)

Executrix: Amy Hixson
386 Back Creek Road
Champion, PA 15622
c/o King Legal Group, LLC
114 North Maple Avenue
Greensburg, PA 15601
Attorney: Robert W. King

HEDWIG F. HORWATH, a/k/a HEDWIG HORVATH, late of Menallen Township, Fayette County, PA ⁽¹⁾

Personal Representative:

Rudolph G. Stanec, Jr.
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

ROBERT G. JONES, late of North Union Township, Fayette County, PA ⁽¹⁾

Executrix: Toni G. Jones
c/o Adams Law Offices, PC
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

WAYNE DOUGLAS KENNISON, JR., late of Masontown, Fayette County, PA ⁽¹⁾

Administrator: Wayne D. Kennison, Sr.
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

VICKY L. MONGELL, late of Connellsville, Fayette County, PA ⁽¹⁾

Executor: Paul Mongell
541 East Crawford Avenue
Connellsville, PA 15425
c/o 1004 Ligonier Street, 4th Floor
Latrobe, PA 15650
Attorney: James J. Conte

BARBARA TERRY, a/k/a BARBARA ANNE TERRY, late of Wharton Township, Fayette County, PA ⁽¹⁾

Administratrix: Maryland A. Reyer
7124 Forest Avenue
Hanover, Maryland 21076
c/o 206 Derrick Avenue
Uniontown, PA 15401
Attorney: Gary Altman

PAUL E. VERSKA, a/k/a PAUL EUGENE VERSKA, late of Masontown, Fayette County, PA ⁽¹⁾

Executrix: Evelyn Burchianti
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

BETTY J. WEIDO, late of New Salem, Fayette County, PA ⁽¹⁾

Executor: Robert P. Weido, Jr.
c/o P.O. Box 727
Uniontown, Pa 15401
Attorney: Bernadette K. Tummons

LEGAL NOTICES

NOTICE OF TRUST LILLIAN M. HYNES TRUST DATED JUNE 22, 1994

The Successor Trustees named below give notice of the death of Lillian M. Hynes on December 9, 2021, late of Washington Township, Fayette County, Pennsylvania, having created the Lillian M. Hynes Trust dated June 22, 1994, and having appointed William J. Hynes and Robert S. Hynes as Successor Trustees, notice is hereby given to all persons indebted to said trust and/or decedent to make immediate payment and to those having claims against said trust and/or decedent to present them, duly authenticated for settlement, to the following:

William J. Hynes
120 Hynes Lane
Fayette City, PA 15438

Robert S. Hynes
1131 Linn Drive
Belle Vernon, PA 15012

(2 of 3)

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 April 20, 2022, for a Limited Liability Company known as Gates Funeral Home and Crematory, 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 funeral home and crematory services and any other lawful purpose related thereto for which Limited Liability Companies may be organized under the Business Corporation Law.

James T. Davis, Esquire
DAVIS & DAVIS
107 East Main Street
Uniontown, PA 15401

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

Tuesday, July 5, 2022, at 9:30 A.M.

Account filed in the office of the Clerk of the Orphans' Court
of Common Pleas of Fayette County Pennsylvania:

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
11-OC-2020	NORMA M. SCOTT	Eric O'Connor - Vice President of River Communities Fiduciary Services, Inc.

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, July 18, 2022, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, Third 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 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

Tuesday, July 5, 2022, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2619-0270	WESTLEY T. DOMASKY A/K/A WESTLEY DOMASKY A/K/A WESLEY TIMOTHY DOMASKY	Christina M. Augustine, Administratrix
2620-0598	MARGARET REGINA SIMON A/K/A MARGARET R. SIMON	David M. Simon, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, July 18, 2022, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, Second 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.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE

E&O INSURED

WILL TRAVEL

ACCEPTING NEW CLIENTS

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OFF AYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,	:	
V.	:	
KRISTEN MARIE ROSS,	:	
Defendant.	:	: No. 2129 of 2020

OPINION AND ORDER

VERNON, J.

June 17, 2022

Before the Court is the Omnibus Pretrial Motion filed by Defendant Kristen Marie Ross in the nature of a Motion to Suppress – Miranda Warnings, Failure to Produce Social Media and Electronic Messaging/Devices, Motion to Suppress Cell Phone/Text Messages, and Motion to Dismiss Charges – Habeas Corpus/Insufficiency of Evidence.

At the time set for hearing, the Commonwealth admitted into evidence the record of the preliminary hearing from December 22, 2020, and the autopsy report and toxicology report of the victim, Gary Engle. See, Exhibits 1-3.

At the preliminary hearing, Donna Engle testified that on May 3, 2020, she picked her youngest son, Gary Engle, up from a fight with his girlfriend in Searights. Gary asked his mother to “go get him two bags of heroin. So [she] went to Kristen, Kristen Ross there, and got him two bags early, early that day in the afternoon. And he did them. He was fine.” N.T., 12/22/2020, at 3-4. Donna Engle identified Defendant Kristen Ross, stating that she gave Defendant twenty dollars and Defendant gave her in exchange two bags of heroin around one or two o’clock in the afternoon. Id. at 4-5.

Gary Engle “did” the two bags of heroin in a bathroom then helped “fix the car and stuff” that evening. Id. at 6. Around nine or ten o’clock, Gary “kept harassing” his mother to get him three more bags of heroin. Id. at 6. Gary gave his mother thirty dollars which Donna took back to Defendant’s apartment, gave to Defendant, and Defendant gave Donna three more bags of heroin. Id. at 7. Donna testified that she thought Gary “did” all three bags of heroin, but when the living room was cleaned the next morning after Gary died, two of the three bags were found under the corner of the couch. Id. at 7.

Gary was “making noises and stuff like he normally did and he would come out of it. So that night [Donna] laid him down on his pillow, covered him up, and to [her] it sounded like he was snoring, laying on the floor.” Id. at 8. Donna fell asleep and awoke to June screaming that Gary “was gone.” Id. After a 911 call, EMS arrived around three or four in the morning and failed to revive Gary Engle. Id. at 8-9.

Under cross-examination, Donna Engle testified that Defendant did not want to sell to Donna for Gary and that if it was for Gary “she was going to give him rat poison.” Id. at 10. Donna also testified that Gary had overdosed three or four days before his death but “he come perfectly fine out of it.” Id. at 12.

Jamie Holland is an Officer with the Uniontown City Police Department. Id. at 14. He testified that the Uniontown City Police recovered two white stamp bags of heroin that have the name Kobe and a helicopter stamped on them. Id. at 15. The stamp bags were examined at the Pennsylvania State Police Crime Lab Drug Identification Unit and were identified to have 0.03 grams of heroin and fentanyl. Id. at 15-16. The toxicology report revealed 4-ANPP, caffeine, naloxone, morphine-free, hydrocodone-free, oxycodone-free, tramadol, xylazine, fentanyl, and norfentanyl. See, Exhibit 3; id. at 17. The autopsy report identified the manner of death as accidental with the cause of death a result of acute combined drug toxicity of fentanyl, Rompun, Ultram, Opana, Vicodin, and opiates. See, Exhibit 2; id. at 18.

Officer Holland testified that Ms. Lease had picked up the two stamp bags from underneath the couch and advised the police that was where Gary Engle was laying on the floor the night when EMS was working on him. Id. at 19. According to Officer Holland, Ms. Lease gave the police the stamp bags wrapped in a dollar bill and they were then placed in an evidence bag. Id.

Donna Engle testified again at the hearing for the within Motion before this Court. N.T., 12/31/2021, at 7. Donna repeated that she purchased three stamped bags from Defendant on the night of May 3, 2020, for her son, Gary Engle. Id. at 7-8. Donna Engle testified that “June and Gary stayed in the car. I went up by myself.” Id. at 8. Donna identified the bags as having a helicopter stamp and the word “Kobe.” Id. at 10. Donna testified that one bag was prepared but she watched Defendant bag up the other two bags on a little nightstand beside an air mattress. Id. at 10.

Donna testified that “a week prior” to Gary’s death, Defendant said if Donna was coming there for Gary to buy anything that she was going to put rat poison in it because he owed her \$150.00. Id. at 12. Donna lied to Defendant that she was not buying for her son, Gary Engle, and offered “to do a little line to prove they weren’t [for Gary], and she said [that Donna] didn’t have to do that.” Id. at 13.

Donna denied buying anything else for Gary on the day he passed away. Id. at 14. Donna testified that June Lease found two stamp bags after Gary died. See, Exhibit 4; id. at 15.

On cross-examination, Donna testified that she only went to Defendant’s apartment once on May 3rd, at night to purchase three bags. Id. at 17. Donna also testified that she told Defendant the drugs were not being purchased for her son, Gary Engle. Id. at 19. Donna directed that no one in the house was to give Narcan to Gary. Id. at 20. Donna did not use Narcan “[b]ecause he seemed fine. He has always come out of it before.” Id. at 21.

Officer Holland also testified before this Court. Id. at 23. Officer Holland conducted a search warrant on the decedent’s Facebook page records to include Facebook Mes-

senger for the account of www.facebook.com/gary.engle.7564. Id. at 27; see, Exhibit 7. The decedent's family provided screenshots of a conversation between Gary Engle and "Kristen Barbabella" which Officer Holland identified as being the Defendant's screen name. Id; Exhibit 7. The Facebook records are reflected in Exhibit 8. The records reflect messages between Gary Engle and Kristen Ross, sent on April 27, 2020, as follows:

Kristen: When you gonna pay me ?! I did nothing but help you and you lied to me and ran me dry till you decide to go to your baby moms you used me and I'm not okay with that I thought of you better but should of known when you tried to play me about my money the first time now this time I'm not gonna be so nice so hope no one comes to get bags for you from me cause they getting rat poison so you know

Gary: I don't do shit anymore so try again retard and this is why you won't get shit period

Kristen: Okay and you'll see Pussy

Gary: Don't run your mouth

Kristen: Fuck you no one sacred of you or none of your retard ass bitches you fuck

Gary: If you wouldn't run your mouth then I would of paid you

Kristen: How did I ran my mouth when The first time anything was asked was when you was on the phone with ope the other day besides when Jen said aunt Donna was coming to get off you from me

Kristen: That's all I said and when I ask you you blow me off I shouldn't have to be nice when you don't plan to pay me at all

Gary: You ran your mouth then

Kristen: You been owed me and I didn't mothering to help you you think I'm not mad get real Gary I have every right to run my mouth when money came out my pockets to cover what you fronted you Got me fucked all the way up dog

Gary: And I definitely wasn't sending anyone there bc I don't do shit

Gary: I'm not a dog

Kristen: Yea yea okay just like Stefan brought you something and you od off it stop lying I was already told lol

Kristen: Fuck you you don't pay me and watch I'm done playing with all y'all

Gary: I'm not scared and trust me your not untouchable

Kristen: Okay and 176 Lenox is where I been so bring who ever tf

Gary: Trust me I know everything

Kristen: Idc what you know honestly

Gary: Don't fucking message me again

Kristen: Fuck you I'll do what I want I'll make statuses I'll do all that I'd care about you you're a fein lol

Gary: I don't do shit your the Fein that shoots up and is a prostitute

See, Exhibits 7 and 8.

Defendant sent three subsequent messages on April 27, 2020, to Gary Engle that were "unsent" and "deleted" on March 5, 2021. N.T., 12/22/2020, at 32. Commonwealth's Exhibit 9 is the profile picture identifying Defendant Kristen Ross as Kristen Barbabella. Id. at 33-34.

In another Facebook comment, Defendant identified as Kristen Barbabella wrote:

Crystal Hartman [tagged] first the fuck off I was talking shit and come at you learn your facts for two weeks after that message Donna was coming and getting shit but just so that night I guess that was Gary's money and did something to them fuck outta my face well why isn't Donna dead oh yea her n June was feeding him bags left in right buying it for him I never knew anything was Gary's idaf what anyone you got to say talks spreading false ass rumors let's be real if I knew it was his money I would of kept it cause he owed me for me helping him when he had nothing fuck outta my face when it comes back that rat poison wasn't in his system then what why ain't Donna dead but he was doing coke n pill that whole day how come at 11130 when he started to fall out all they did was lay him down not get him help of any one needs charged it's them ask them why when he started to throw up at 11 why no one got him help just cleaned him up and said oh he'll sleep it off I didn't give Gary nothing so fuck you and anyone else I can't wait for his report to come back but like I said they was getting shit for a week after that comment was made I don't sell shit I got ppl shit that's about it so know your fucking facts aunt Donna bought him shit and lied to everyone when I told her don't come to me for him period I ran my mouth but anyone who knows me knows I would never so I'm sorry for your loss but gain how for a week they got the same shit and then that night came n got more and Donna did it to why outta of a whole that night I just all a sudden made those ones bad if you have a brain use it but again they were doing coke n pill an dope all day what do you think was gonna happen but like I said when he started to fall out at 11 June n ope carried him in the house cleaned him up and layed him down and he wasn't even Coherent then why the fuck didn't no one call the cops or get him help then aunt Donna got him them drugs and did em with him but what I only had someone poison two of the bags not all 4 she got fuck outta here y'all sound dumb he had od like 5 times before this what do you think was gonna happen

mixing coke dope n pills all day but I'm the guilty one for running my mouth duck outta here

Id. at 34-36; see, Exhibit 9.

The Court then recognized Officer Holland as an expert in the field of drug trafficking. Id. at 40. Officer Holland opined the weight of the stamp bags was typical. Id. at 41.

At the time set for hearing, the Commonwealth presented no evidence of statements requiring suppression or failure to provide Miranda warnings to the Defendant. The Defendant also made no arguments to this court regarding discovery violations or with regard to her Motion to Suppress Cell Phone/Text Messages. Remaining before this Court is the Motion to Dismiss Charges – Habeas Corpus/Insufficiency of Evidence.

The burden of proof required at a habeas corpus hearing is the same as that at a preliminary hearing, *Commonwealth v. Prosdocimo*, 479 A.2d 1073, 1074, citing, *Commonwealth ex rel. Scolio v. Hess*, 27 A.2d 705 (Pa.Super. 1942), which is as follows:

The question for determination by this Court, following a review of the record from the court below, is to determine whether the evidence received at the preliminary hearing presented sufficient probable cause to believe that the appellees committed the offenses for which they are charged. The quantity and quality of evidence presented there 'should be such that if presented at trial in court, and accepted as true, the judge would be warranted in allowing the case to go to the jury.' The Commonwealth's burden at a preliminary hearing is to establish at least prima facie that a crime has been committed and that the accused is the one who committed it. This means that at a preliminary hearing, the Commonwealth must show the presence of every element necessary to constitute each offense charged and the defendant's complicity in each offense. Proof beyond a reasonable doubt is not required, nor is the criterion to show that proof beyond a reasonable doubt is possible if the matter is returned for trial. However, proof, which would justify a trial judge submitting the case to the jury at the trial of the case, is required. Inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case. Prosecutorial suspicion and conjecture are not evidence and are unacceptable as evidence.

Commonwealth v. Snyder, 483 A.2d 933, 935 (Pa. Super. 1984).

The Information alleges:

Count 1: Criminal Homicide – 18 Pa.C.S.A. §2501(A) – the defendant did deliver a fatal dose of heroin and fentanyl to Gary Engle resulting in his death;

Count 2: Conspiracy – Criminal Homicide – 18 Pa.C.S.A. §903 – the defendant did conspire with June Lease and Donna Engle to deliver Heroin and Fentanyl to Gary Engle resulting in his death;

Count 3: Drug Delivery Resulting in Death – 18 Pa.C.S.A. §2506(A) – the defend-

ant did sell Heroin and Fentanyl to Donna Engle who then gave it to Gary Engle resulting in his death;

Count 4: Conspiracy – Drug Delivery Resulting in Death – 18 Pa.C.S.A. §903 – the defendant did conspire with Donna Engle and June Lease to sell Heroin and Fentanyl to Donna Engle to give to Gary Engle resulting in his death;

Count 5: Manufacture, Delivery or Possession with Intent to Manufacture or Deliver – 35 Pa.C.S.A. §780-113(A)(30) – the defendant did deliver Heroin and Fentanyl to Donna Engle;

Count 6: Manufacture, Delivery or Possession with Intent to Manufacture or Deliver – 35 Pa.C.S.A. §780-113(A)(30) – the defendant did deliver Heroin and Fentanyl to Donna June Lease [sic];

Count 7: Conspiracy – Manufacture, Delivery or Possession with Intent to Manufacture or Deliver – 18 Pa.C.S.A. §903 – the defendant did deliver Heroin and Fentanyl to Donna Engle;

Count 8: Conspiracy – Manufacture, Delivery or Possession with Intent to Manufacture or Deliver – 18 Pa.C.S.A. §903 – the defendant did deliver Heroin and Fentanyl to June Lease;

Count 9: Intentional Possession Controlled Substance – 35 Pa.C.S.A. §780-113(A)(16) – the defendant did possess 0.03 grams of Heroin, a Schedule I Controlled Substance and Fentanyl a Schedule II Controlled Substance;

Count 10: Intentional Possession Controlled Substance – 35 Pa.C.S.A. §780-113(A)(16) - the defendant did possess 0.03 grams of Heroin, a Schedule I Controlled Substance and Fentanyl a Schedule II Controlled Substance;

Count 11: Conspiracy – Intentional Possession Controlled Substance – 18 Pa.C.S.A. §903 – the defendant did conspire with June Lease to possess 0.03 grams of Heroin, a Schedule I Controlled Substance and Fentanyl a Schedule II Controlled Substance; and

Count 12: Conspiracy – Intentional Possession Controlled Substance – 18 Pa.C.S.A. §903 – the defendant did conspire with Donna Engle to possess 0.03 grams of Heroin, a Schedule I Controlled Substance and Fentanyl a Schedule II Controlled Substance.

Initially the Court notes the lack of evidence that June Lease purchased or delivered or conspired to purchase or deliver drugs to the decedent, Gary Engle. Specifically, Donna Engle testified that June Lease remained in the car when she purchased the stamp bags from Defendant. N.T., 12/31/2021, at 8. Accordingly, the Court will grant the Motion to Dismiss at Count 6: Manufacture, Delivery or Possession with Intent to Manufacture or Deliver; Count 8: Conspiracy – Manufacture, Delivery or Possession with Intent to Manufacture or Deliver; and Count 11: Conspiracy – Intentional Possession Controlled Substance as to Defendant with regard to June Lease. The Court will

further dismiss Count 2: Conspiracy – Criminal Homicide and Count 4: Conspiracy – Drug Delivery Resulting in Death only as Defendant’s charge of conspiracy with June Lease.

At Count 1 Defendant was charged with Criminal Homicide when she is alleged to have “delivered a fatal dose of heroin and fentanyl to Gary Engle resulting in his death”, and at Count 3 she was charged with Drug Delivery Resulting in Death alleging that she sold “heroin and fentanyl to Donna Engle who then gave it to Gary Engle resulting in his death.” Defendant argues at both Count 1 and Count 3 that she cannot be held liable for Gary Engle’s death because she refused to sell drugs directly to him, the decedent’s death was not principally caused by heroin, and because Donna Engle lied to her that the drugs were not going to be given to Gary Engle.

Criminal Homicide is defined as when a person “intentionally, knowingly, recklessly or negligently causes the death of another human being.” 18 Pa.C.S. § 2501. Drug delivery resulting in death, a felony of the first degree, occurs when a “person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of [...] The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.” 18 Pa.C.S. § 2506(a).

Section (a)(30) of the Controlled Substance, Drug, Device and Cosmetic Act prohibits the delivery of a controlled substance by an unregistered or unlicensed person. See, 35 P.S. § 780-113(a)(30). Heroin and fentanyl are Schedule I controlled substances. See, 35 P.S. § 780-104(a)(ii)(10), (23). The Superior Court has recently analyzed the dangerous nature of heroin and the mens rea required for drug delivery resulting in death, therein explaining:

Regarding the dangerous nature of heroin and related opiates, the Court in *Kakhankham* observed that “[a]lthough the overwhelming majority of heroin users do not die from a single injection of the narcotic, it nevertheless is an inherently dangerous drug and the risk of such a lethal result certainly is foreseeable.... The intravenous self-administration of illegally-purchased heroin ... is a modern form of Russian roulette.” *Kakhankham*, 132 A.3d at 996. “One can reasonably conclude that the consumption of heroin in unknown strength is dangerous to human life, and the administering of such a drug is inherently dangerous and does carry a high possibility that death will occur.” *Id.* at 996 n.14 (quoting *Commonwealth v. Catalina*, 407 Mass. 779, 556 N.E.2d 973, 980 (1990)). We ultimately concluded “that reckless conduct ... may result in criminal liability under Section 2506.” *Id.* at 996.

In summary, the applicable mens rea for the crime of drug delivery resulting in death is two-fold. First, the delivery, distribution or sale of the contraband must be intentional. *Kakhankham*, 132 A.3d at 992. Second, the actual death must be the reckless result of the actions of the defendant. *Id.* at 995. As such, the crime is an intentional act in providing contraband, with a reckless disregard of death from the use of the contraband.

Commonwealth v. Carr, 227 A.3d 11, 16–17 (Pa.Super. 2020) quoting *Commonwealth v. Kakhankham*, 132 A.3d 986 (Pa. Super. 2015).

For purposes of proving Drug Delivery Resulting in Death, “[a] person acts recklessly ... when [s]he consciously disregards a substantial and unjustifiable risk that [death] will result from h[er] conduct.” 18 Pa.C.S.A. § 302(b)(3). “The risk must be of such a nature and degree that, considering the nature and intent of the actor’s conduct and the circumstances known to h[er], its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation.” *Id.* “Since the dangers of heroin are so great and well-known, [the Superior Court of Pennsylvania] concluded that the sale of heroin, itself, is sufficient to satisfy the recklessness requirement when a death occurs as a result of the sale.” *Commonwealth v. Storey*, 167 A.3d 750, 757 (Pa.Super. 2017).

The evidence presented by the Commonwealth establishes a *prima facie* case for criminal homicide where Defendant delivered the stamped bags of heroin and fentanyl to Donna Engle and the same were ultimately ingested by the decedent, Gary Engle, resulting in his death. The autopsy report of the decedent identified the manner of his death as accidental and the cause of death as a result of acute combined drug toxicity of fentanyl, Rompun, Ultram, Opana, Vicodin, and opiates. See, Exhibit 2. Circumstantial evidence exists supporting the charge of criminal homicide in the way of Facebook Messenger messages from Defendant to the decedent that she would give him “rat poison.” Further evidence of the drug delivery is supported by Defendant’s Facebook comment that she provided the drugs to Donna Engle.

Defendant’s defense that she would not sell or deliver directly to Gary Engle does not act as an excuse for her behavior in delivering deadly heroin. “Clearly, it is foreseeable that, if you give a person a lethal dose—or even a potentially lethal dose—of heroin, that person could die.” *Commonwealth v. Proctor*, 156 A.3d 261, 269 (Pa.Super. 2017).

The evidence presented also establishes a *prima facie* case for drug delivery resulting in death in that Defendant delivered heroin and fentanyl to Donna Engle and Gary Engle’s death resulted from the delivery. The intentionality of the delivery is not in question as the case law establishes that the sale of heroin, in and of itself, when a death occurs establishes recklessness.

Defendant argues that Donna Engle’s actions were superseding and/or intervening causes when she misrepresented to Defendant who the drugs were purchased for and when she failed to administer Narcan (naloxone) to the decedent.

Under the holding of *Kakhankham* and the statute’s own words, this difference is immaterial. The statute requires that “another person dies as a result of using the substance [sold].” 18 Pa.C.S.A. § 2506(a) (emphasis added). It does not require the death of the person to whom the defendant originally sold the illegal substance. See *Orlosky v. Haskell*, 304 Pa. 57, 155 A. 112 (1931) (holding that legislature must be intended to mean what it plainly expresses.) Therefore, section 2506 clearly applies to [the Defendant’s] conduct; but for [the Defendant’s] illegal sale of drugs, [the victim] would not have died. *Kakhankham*, 132 A.3d at 993.

Commonwealth v. Storey, 167 A.3d 750, 757 (Pa.Super. 2017).

The same facts constitute a prima facie case for delivery and possession at Counts 5, 9, and 10. Remaining for the Court's disposition are the charges for conspiracy with Donna Engle. Defendant is charged as a co-conspirator with Donna Engle at Count 2 – Criminal Homicide; Count 4 – Drug Delivery Resulting in Death; Count 7 – Manufacture, Delivery or Possession with Intent to Manufacture or Deliver; and Count 12 – Intentional Possession Controlled Substance.

The Pennsylvania Crimes Code defines conspiracy as follows:

(a) Definition of conspiracy.—A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

* * *

(e) Overt act.—No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

18 Pa.C.S. § 903(a), (e).

To sustain a conviction for criminal conspiracy, the Commonwealth must establish, beyond a reasonable doubt, that: (1) the defendant entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent, and (3) an overt act was done in furtherance of the conspiracy. *Commonwealth v. Smith*, 69 A.3d 259, 263 (Pa. Super. 2013). “This overt act need not be committed by the defendant; it need only be committed by a co-conspirator.” *Id.*

[W]ith regard to conspiracy to commit drug delivery resulting in death, a drug user's death need not be the objective of the conspirators because the consequence of an overdose is a foreseeable result of the delivery, distribution, or sale of drugs to the victim. In short, the conspiracy to commit an overt act binds the conspirators to the foreseeable consequences of the conduct. Here, the conspiring parties need not specifically anticipate the death of the user of the drug. A conspiracy to commit the overt act of an intentional drug delivery links the conspirators to the foreseeable consequence that the drug user may die.

Commonwealth v. Carr, 227 A.3d 11, 17–18 (Pa. Super. 2020).

On a charge of conspiracy, there will rarely be an overt statement from one of the conspirators to the other agreeing to commit a crime. *Commonwealth v. Davalos*, 779 A.2d 1190, 1193 (Pa. Super. 2001). Instead, the trier of fact must infer from the totality of the circumstances and from circumstantial evidence whether a conspiracy existed. *Id.* “A conspiracy may be proven inferentially by showing the relation, conduct, or circumstances of the parties, and the overt acts of alleged coconspirators are competent as proof that a criminal confederation has in fact been formed.” *Commonwealth v. Kenne-*

dy, 395, 453 A.2d 927, 930 (Pa. 1982).

Pennsylvania case law instructs “that a defendant may conspire to commit a crime that includes an unintentional death as an element of the offense, so long as the defendant acted with another to intentionally perform the act that resulted in the death. Commonwealth v. Arrington, 247 A.3d 456, 461 (Pa.Super. 2021). Even though the killing was “not specifically contemplated by the parties ... responsibility attaches ... to a homicide which is a contingency of the natural and probable execution of the conspiracy[.]” Commonwealth v. Fisher, 80 A.3d 1186, 1191 (Pa. 2013).

The intentionality of the act is satisfied by the very nature of delivering heroin. The Commonwealth has presented evidence that Defendant provided stamped bags of heroin to Donna Engle who then gave the illegal drugs to her son, Gary Engle, resulting in his death. These facts as presented support a prima facie case as to the conspiracy charges.

WHEREFORE, we will enter the following Order granting in part and denying in part Defendant’s Omnibus Pretrial Motion.

ORDER

AND NOW, this 17th day of June, 2022, upon consideration of the Omnibus Pretrial Motion filed by Defendant Kristen Marie Ross, the record, and after hearing, it is hereby ORDERED and DECREED that:

1. the Motion Dismiss is GRANTED at Count 6: Manufacture, Delivery or Possession with Intent to Manufacture or Deliver; Count 8: Conspiracy – Manufacture, Delivery or Possession with Intent to Manufacture or Deliver; and Count 11: Conspiracy – Intentional Possession Controlled Substance, as the Commonwealth has failed to present a prima facie case as to alleged co-conspirator June Lease. The Court will further dismiss Count 2: Conspiracy – Criminal Homicide and Count 4: Conspiracy – Drug Delivery Resulting in Death ONLY AS to alleged co-conspirator June Lease.
2. the Motion is DENIED as to all other Counts in accordance with the foregoing Opinion

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Clerk of Courts

MEMORIAL SERVICE

The Fayette County Bar Association will hold a memorial service before the Court for Peter J. Daley II, Esquire and William H. Soisson III, Esquire at the Fayette County Courthouse in Courtroom No. 1 on Wednesday, July 6, 2022, at noon.

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, July 20th from 12:00 p.m. to 1:00 p.m.**
- Location: Courtroom No. 3 of the Fayette County Courthouse
- Discussion topics: **Pro bono and low bono needs and opportunities**
- Presenter: **Brian V. Gorman, Esquire -**
Southwestern Pennsylvania Legal Aid

CLE Credit

1.0 hours of Substantive CLE credit for the program.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or email to cindy@fcbar.org on or before Monday, July 18th.

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