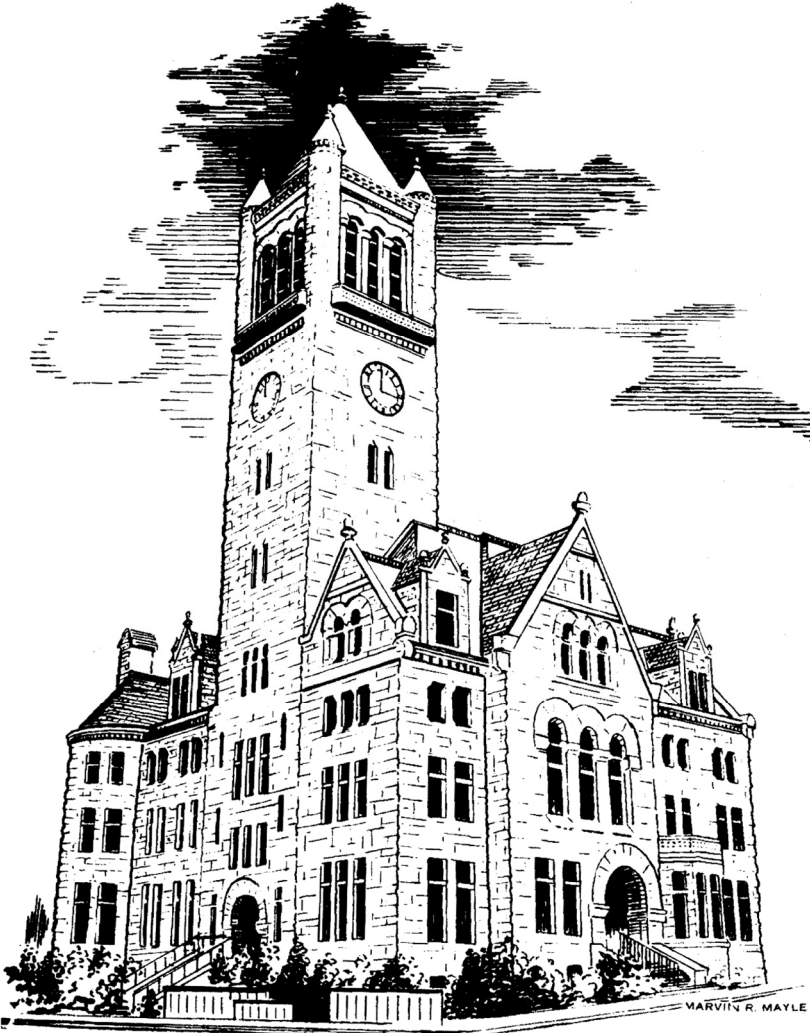


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Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay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

Third Publication

DIANA MARIE ANTOON, late of Menallen Township, Fayette County, PA ⁽³⁾

Administrator: Cody Alan Antoon
c/o P.O. Box 953
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

BAILEY H. BRYNER, late of Braddock Heights, Maryland ⁽³⁾

Executor: Nelson P. Bryner
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Z. House

DONALD W. CALDWELL, late of Bullskin Township, Fayette County, PA ⁽³⁾

Co-Administrators: Brian K. Caldwell and Russell Caldwell
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

BETTY J. COLBERT, a/k/a BETTY JEAN COLBERT, late of Dawson Borough, Fayette County, PA ⁽³⁾

Personal Representative: Patricia A. Lint
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

LINDSEY B. WALTERS, III, late of South Union Township, Fayette County, PA ⁽³⁾

Administrator: Brian S. Walters
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

Second Publication

ELMER J. DURITZA, JR., late of Menallen Township, Fayette County, PA ⁽²⁾

Personal Representative: Susan Marlier
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Robert A. Gordon

SANTANA MILAN HALL, late of Uniontown, Fayette County, PA ⁽²⁾

Administrator: Edward Hall
c/o 1500 Market Street, Suite 3500E
Philadelphia, PA 19102
Attorney: Kristen L. Behrens

EDWARD L. KING, late of Fairchance Borough, Fayette County, PA ⁽²⁾

Executrix: Cynthia King
c/o Fitzsimmons & Barclay
55 East Church Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons, Jr.

CHAD M. MORRIS, late of Uniontown, Fayette County, PA ⁽²⁾

Administratrix: Rhonda Morris
c/o 11 Pittsburgh Street
Uniontown, PA 15401
Attorney: Thomas W. Shaffer

First Publication

MARY A. BUBARTH, late of Connellsville,
Fayette County, PA (1)

Personal Representative: Robert J. Bubarth
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

**THOMAS R. COLEMAN, a/k/a THOMAS
COLEMAN**, late of North Union Township,
Fayette County, PA (1)

Executor: Marshall Ray Coleman
c/o John & John
96 East Main Street
Uniontown, PA 15401
Attorney: Anne N. John

MARVIN DILLON, late of Bullskin Township,
Fayette County, PA (1)

Personal Representative: Mark A. Dillon
c/o Watson Mundorff
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

EUGENE L. GAGGIANI, late of Redstone
Township, Fayette County, PA (1)

Personal Representative:
Diane M. Gaggiani
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

BERNADETTE HAMBORSKY, late of North
Union Township, Fayette County, PA (1)

Personal Representative: John T. Yohman
811 Center Avenue
Charleroi, PA 15022

WALTER KASIEWICZ, late of Bullskin
Township, Fayette County, PA (1)

Executrix: Diana Lynn Kasiewicz
165 Wiltrot Hollow Road
White, PA 15490
c/o 201 North Chestnut Street
P.O. Box 342
Scottsdale, PA 15683
Attorney: James Lederach

**MARTHA E. LAMBERT, a/k/a MARTHA
CRAMER ELLEN LAMBERT**, late of
Brownsville, Fayette County, PA (1)

Executor: James D. Cramer
c/o Halbruner, Hatch & Guise, LLP
3435 Market Street
Camp Hill, PA 17011
Attorney: Craig A. Hatch

TOBY RAY MAYKUTH, late of Masontown,
Fayette County, PA (1)

Administratrix: Mary Maykuth
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Jeffrey Proden

**MICHAEL MEYOKOVICH, a/k/a MIKE
MARK MEYOKOVICH, SR., a/k/a
MICHAEL M. MEYOKOVICH, SR.**, late of
South Union Township, Fayette County, PA (1)

Personal Representative:
Michael M. Meyokovich, Jr.
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

MILDRED J. STITH, late of German
Township, Fayette County, PA (1)

Executor: Kerry Stith
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

CIVIL DIVISION
NO. 542 of 2023 G.D.

COMPLAINT IN MORTGAGE
FORECLOSURE

First Federal Savings & Loan Association of
Greene County, a corporation,
Plaintiff,
v.

ESTATE OF MARGIE C. BURNS, deceased,
AND ALL KNOWN AND UNKNONWN
HEIRS, DEVISEES, REPRESENTATIVES,
SUCCESSORS, and ASSIGNS, and ALL
PERSONS, FIRMS OR ASSOCIATIONS
CLAIMING ANY RIGHT, TITLE OR
INTEREST FROM OR UNDER MARGIE C.
BURNS, DECEASED; CRYSTLE MARSH,
IN HER CAPACITY AS HEIR OF MARGIE C.
BURNS, DECEASED, KYONA GILLIAM, IN
HER CAPACITY AS HEIR OF MARGIE C.
BURNS, DECEASED, and JULIAN MARSH
IN HIS CAPACITY AS HEIR OF MARGIE C.
BURNS, DECEASED.
Defendants.

TO: ALL KNOWN AND UNKNOWN
HEIRS, DEVISEES, REPRESENTATIVES,
SUCCESSORS, and ASSIGNS, and ALL
PERSONS, FIRMS or ASSOCIATIONS
CLAIMING ANY RIGHT, TITLE OR
INTEREST FROM OR UNDER MARGIE C.
BURNS, DECEASED; CRYSTLE MARSH, IN
HER CAPACITY AS HEIR OF MARGIE C.
BURNS, DECEASED, KYONA GILLIAM, IN
HER CAPACITY AS HEIR OF MARGIE C.
BURNS, DECEASED, and JULIAN MARSH
IN HIS CAPACITY AS HEIR OF MARGIE C.
BURNS, DECEASED.

You have been named as Defendants in a
civil action instituted by First Federal Savings &
Loan Association of Greene County, a
corporation, against you in this Court. This
mortgage foreclosure action has been instituted
to foreclose upon property located at 247
Prospect Street, Brownsville, PA 15417, Tax
Map No. 02-07-0272, and proceed to Sheriff's
Sale.

NOTICE

If you wish to defend, you must enter a
written appearance personally or by attorney and
file your defenses or objections in writing with
the court. You are warned that if you fail to do
so the case may proceed without you and a
judgment may be entered against you without
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 PAPER 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
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Anne N. John, Esquire
Attorney for Plaintiff
PA ID Number 38961
96 East Main Street
Uniontown, PA 15401
(724) 438-8560

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 1816 of 2023
JUDGE STEVE P. LESKINEN

IN RE: 2017 JEEP CHEROKEE
VIN 1C4PJMDB3HW604830

**TO: JENNIFER HARDEN and JOHN
CRAMER their heirs, successors and assigns,
generally,**

You are hereby notified that Mary Beth’s Towing, LLC, the Petitioner has filed a Petition at the above number and term in the above-mentioned court in an action to involuntary transfer a vehicle title wherein it is alleged that she is in possession of a 2017 Jeep Cherokee having a VIN No: 1C4PJMDB3HW604830.

Said Petition sets forth that the Petitioner is in possession of the above-described vehicle. The Petition 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 vehicle and to transfer the title to Petitioner.

You are hereby notified that a hearing has been scheduled for **October 24, 2023 at 9:30 a.m. in Courtroom No. 1** of the Fayette County Courthouse in Uniontown, Fayette County, Pennsylvania to terminate your rights to the above captioned vehicle. If you do not attend, the hearing will go on without you and the Judge will render a final decision in your absence.

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**

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AFFORD ONE, GOT TO OR TELEPHONE
THE OFFICE SET FORTH BELOW TO
FIND OUT WHERE YOU CAN GET
LEGAL HELP.**

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HARRISBURG, PA 17108
1-800-932-0311

By Jason F. Adams, Esq.
Adams Law Offices, PC
55 E. Church Street
Uniontown, PA 15401

COURT OF COMMON PLEAS OF FAYETTE, PA - CIVIL ACTION - LAW - MORTGAGE FORECLOSURE – NO. 186 OF 2023ED - Pennsylvania Housing Finance Agency, Plaintiff vs. Micah E. Spaugy, Defendant - To: Micah E. Spaugy, Defendant - You are hereby notified that on 11/16/23, a Sheriff Sale of Real Property will be held at 2:00PM at the Fayette County Courthouse, 61 E. Main St., Uniontown, PA 15401. The location of the property to be sold is 110 Long Street, Newell, PA 15466. whereupon this property would be sold by the Sheriff of Fayette County. The said writ of execution has been issued as judgment in Mortgage Foreclosure Action at execution NO 186 OF 2023 in the amount of \$42,624.74. NOTICE - You have been sued in Court. If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses of objections in writing with the Court. You are warned that if you fail to do so, the case may proceed without you and a Judgment may be entered against you without 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.** PA Lawyer Referral Service, PA Bar Assn., 100 South St., P. O. Box 186, Harrisburg, PA 17108, 800.692.7375. Leon P. Haller, Atty. for Plaintiff, 1719 N. Front St., Harrisburg, PA 17102, 717-234-4178

IN THE COURT OF COMMON PLEAS
 FAYETTE COUNTY
 CIVIL ACTION - LAW
 ACTION OF MORTGAGE FORECLOSURE
 Term No. 2257 of 2022
 NOTICE OF ACTION IN MORTGAGE
 FORECLOSURE

LAKEVIEW LOAN SERVICING, LLC
 Plaintiff
 vs.

B D A MINOR Solely in His/Her Capacity as
 Heir of BRANDON DONLEY, Deceased, C D
 A MINOR Solely in His/Her Capacity as Heir of
 BRANDON DONLEY, Deceased &
 UNKNOWN HEIRS OF BRANDON DONLEY
 Mortgagor and Real Owner
 Defendant

TO B D A MINOR Solely in His/Her Capacity
 as Heir of BRANDON DONLEY, Deceased, C
 D A MINOR Solely in His/Her Capacity as Heir
 of BRANDON DONLEY, Deceased &
 UNKNOWN HEIRS OF BRANDON
 DONLEY, MORTGAGOR AND REAL
 OWNER, DEFENDANT whose last known
 address is C/O Breann Lynch 409 White Street
 Greensburg, PA 15601.

THIS FIRM IS A DEBT COLLECTOR AND
 WE ARE ATTEMPTING TO COLLECT A
 DEBT OWED TO OUR CLIENT. ANY
 INFORMATION OBTAINED FROM YOU
 WILL BE USED FOR THE PURPOSE OF
 COLLECTING THE DEBT.

You are hereby notified that Plaintiff
 LAKEVIEW LOAN SERVICING, LLC, has
 filed a Mortgage Foreclosure Complaint
 endorsed with a notice to defend against you in
 the Court of Common Pleas of FAYETTE
 County, Pennsylvania, docketed to No. 2257 of
 2022 wherein Plaintiff seeks to foreclose on the
 mortgage secured on your property located, 28
 Wilmac Street Uniontown, PA 15401
 whereupon your property will be sold by the
 Sheriff of FAYETTE.

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 the 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 claim in the Complaint of 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 PAPER TO
 YOUR LAWYER AT ONCE. IF YOU DO
 NOT HAVE A LAWYER OR CANNOT
 AFFORD ONE, 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.
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 800-692-7375

Michael T. McKeever
 Attorney for Plaintiff
 KML Law Group, P.C., PC
 Suite 5000, BNY Independence Center
 701 Market Street
 Philadelphia, PA 19106-1532
 215-627-1322

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, November 6, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2621-0702	STEPHANIE BALIK, deceased	Joseph C. Takacs, Executor
2623-0080	MELVA P. ROLAND, deceased	Carolyn W. Maricondi, Executrix
2622-1060	JAMES N. McKEVITT, deceased	Brian Sean McKeivitt, Executor

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

Monday, November 20, 2023, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable President Judge 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.

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

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

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JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA :
v. :
 :
 :
SEAN ERIN CRUMP, : No. 1960 of 2022
Defendant. : Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

October 2, 2023

Before this Court is Defendant's Omnibus Pretrial Motion for writ of habeas, severance of the persons not to possess charges, and severance of the above-captioned case into two separate cases. A hearing on the Motion was held on June 26, 2023, at which the October 12, 2022 preliminary hearing transcript was admitted into evidence. At the conclusion of the hearing, counsel for the Defendant requested time to provide a brief on the case law cited by the Commonwealth. Both parties thereafter submitted briefs within the 60 days allotted by this Court.

After consideration of the evidence, the respective briefs, and the relevant case law, for the following reasons, Defendant's Motion is denied in part and granted in part.

FINDINGS OF FACT

The following facts were established in the transcript of the October 12, 2022 preliminary hearing and in testimony at the June 26, 2023 hearing on Defendant's Motion.

On January 30, 2022, at or around 4:00 p.m., four individuals - Keonte McCargo, Kobe Cramer, Isaiah ("Zeta") Farrell, and a minor, A.G. - were in a vehicle at a stop sign near Pershing Court in Uniontown, Pennsylvania. Farrell was driving the vehicle, McCargo was in the front passenger seat, Cramer was in the back behind the driver's seat, and A.G. was in the back behind the passenger seat. According to A.G.'s testimony, a vehicle passed them and then stopped in the road. Inside that vehicle was Jacob Crump and an individual nicknamed "Bounce." The other vehicle then sped off, and Mr. Farrell continued driving to A.G.'s "pap's house," also in Uniontown. However, after briefly stopping at the house, Farrell and the other three continued traveling down Park Avenue. The vehicle reached the bottom of the hill, where A.G. saw the Defendant on the sidewalk when the vehicle reached a stop sign. A.G. testified that he saw the Defendant with a gun. He then heard gunshots and put his head down until he heard Cramer yelling McCargo's name. A.G. looked up to see McCargo leaned over in the seat, blood dripping onto his shoulder. Farrell sped off in the vehicle, and A.G. saw the Defendant, Jacob Crump, and "Bounce" in the location of where he had heard the gunshots.

Farrell drove to the nearby house of A.G.'s friend, Darion Seehoffer, at 159 Connellsville Street. A.G. and Farrell then got out of the vehicle, and Cramer drove McCargo to the hospital. A.G. and Farrell went into Seehoffer's house where Amayah Jenkins, the mother of Seehoffer's child, also lived. She was there at the same time as A.G. and

Farrell, along with her child, D.S., and Seehoffer's mother, Rita Lowry. A.G. and Farrell then left the residence.

According to Jenkins' testimony, she was on the front porch talking with a friend on Facetime when she saw a vehicle coming slowly down the street. She looked down to see a "green beam" on her chest, and when she looked up, she saw the Defendant, who was in the vehicle, shoot multiple times at the house. She ran inside where Rita Lowry called the police.

According to the preliminary hearing testimony of Detective Jamie Holland, police actually responded to three different incidents that day. The first was a shooting at the intersection of Liberty and Park in Uniontown around 4:40 p.m. A second report came in at 4:42 p.m. of a shooting at the intersection of Thomas Street and Collins, three blocks west from the first location. The third call came in around 5:24 p.m. related to 159 Connellsville Street. All three locations were within three to three and a half blocks of one another.

Detective Holland also testified that the Defendant previously had been adjudicated as a delinquent for aggravated assault, which prohibited him from legally possessing a firearm and that he had no valid license or permit to carry one at the time. Detective Holland also testified that two projectiles were recovered from 159 Connellsville Street, and approximately five casings were recovered from the intersection of Liberty and Park Avenue. The vehicle Farrell was driving was processed by police and gunshot residue was found in that vehicle, along with one bullet. No weapons were recovered, although casings from both scenes were matched to the same unknown firearm. Finally, Detective Holland testified that police received word from Ruby Hospital that Keonte McCargo died on January 31, 2022. According to the autopsy report, his death was determined to be a homicide from a gunshot wound to the head.

DISCUSSION

The Defendant is charged with criminal homicide; {1} one count of aggravated assault with a deadly weapon; {2} six counts of aggravated assault with extreme indifference; {3} one count of firearms not to be carried without a license; {4} one count of discharge of firearm into an occupied structure; {5} two counts of persons not to possess firearms; {6} seven counts of recklessly endangering another person; {7} two counts of weapon possession; {8} and one count of criminal mischief- damage to property. {9}

{1} Information Count 1 -- 18 Pa.C.S.A. § 2501(a), with respect to Keonte McCargo

{2} Information Count 2 -- 18 Pa.C.S.A. § 2702(a)(4), with respect to Keonte McCargo

{3} Information Counts 3 through 8 -- 18 Pa.C.S.A. § 2702(a)(1), with respect to Kobe Cramer, A.G., Isaiah Farrell, Rita Lowry, Amayah Jenkins, and Jenkins' child, D.S.

{4} Information Count 9 -- 18 Pa.C.S.A. § 6106(a)(1)

{5} Information Count 10 -- 18 Pa.C.S.A. § 2707.1(a)

{6} Information Counts 11 and 12 -- 18 Pa.C.S.A. § 6105(a)(1)

{7} Information Counts 13 through 19 -- 18 Pa.C.S.A. § 2705, with respect to Keonte McCargo, Kobe Cramer, A.G., Isaiah Farrell, Rita Lowry, Amayah Jenkins, and Jenkins' child, D.S.

{8} Information Counts 20 through 21 -- 18 Pa.C.S.A. § 907(b)

{9} Information Count 22 -- 18 Pa.C.S.A. § 3304(a)(5)

{10} The relevant section of Defendant's Motion lists Information Counts 2 through 6 as the subject of the writ of habeas, but the Motion itself only addresses the evidence with respect to Counts 2 through 5. Therefore, this Court will not consider the writ of habeas as applicable to Count 6 (regarding aggravated assault against Rita Lowry).

The Defendant's Motion presents three counts: (1) a writ of habeas for homicide at Count 1, for aggravated assault at Counts 2-5,10 and for recklessly endangering another person at Counts 13-16; (2) a motion to sever the persons not to possess charges at Counts 11 and 12; and (3) a motion to sever the charges into two separate cases so that one case addresses the shooting at the vehicle and the other addresses the shooting at the residence.

Habeas

A petition for a writ of habeas is "the proper means for testing a pre-trial finding that the Commonwealth has sufficient evidence to establish a prima facie case" against a defendant. *Commonwealth v. Scott*, 578 A.2d 933,936 (Pa. Super. Ct. 1990). In order to establish its prima facie case, the Commonwealth must present evidence as to each material element of the crimes charged and establish sufficient probable cause that the accused is the person who committed the offenses. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). The Commonwealth may establish guilt using circumstantial evidence, provided the combination of evidence links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Hardcastle*, 546 A.2d 1101, 1105 (Pa. 1988).

First, Defendant asserts that there is insufficient evidence for first-degree murder since there is no evidence that the Defendant shot into the vehicle. "There are three elements of first-degree murder: ([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." *Commonwealth v. Jordan*, 65 A.3d 318,323 (Pa. 2013). An intentional killing is willful, deliberate, and premeditated, and premeditation and deliberation exist whenever an actor possesses a conscious purpose to bring about death. *Id.* Furthermore, a specific intent to kill as well as malice may be inferred from the use of a deadly weapon upon a vital part of the victim's body. *Id.* Whether or not the accused formed the intent to kill is a question of fact for the jury. *Id.*

Here, the Defendant concedes that there is evidence that the witness-passenger, A.G., heard gunshots. However, A.G. also testified at the preliminary hearing that he saw the Defendant with a gun as he stood on the sidewalk with Jacob Crump and "Bounce." N.T., 10/12/22, at 15-16. The Commonwealth has presented evidence that the Defendant was on the side of the road near the vehicle, that he was seen with a gun, that gunshots were heard by at least one of the passengers in the vehicle, and that McCargo was struck by a bullet which led to his death. This is sufficient for a prima facie case of first-degree murder.

Next, the Defendant argues there is a lack of evidence for second-degree murder. The Commonwealth has conceded in its brief that the case does not meet the requirements for second-degree murder and stated that it would not proceed to prosecute the crime as second-degree murder at trial.

Finally, the Defendant argues there is a lack of evidence for third-degree murder. Third-degree murder requires that the Commonwealth establish that the death of another was brought about by one whose intentional act consciously disregarded the extremely high risk that the act might cause death or serious bodily harm. *Commonwealth v. Johnson*, 719 A.2d 778,785 (Pa. Super. Ct. 1998). Again, there is evidence that the Defendant was on the side of the road near the vehicle, he was seen with a gun, gunshots were heard, and McCargo was struck with a bullet, which led to his death. This is sufficient for a prima facie case of third-degree murder. The presence (or absence) of intention or malice is for a jury to decide. Therefore, Defendant's Motion for writ of habeas with respect to the charge of criminal homicide is denied.

As to the charges of aggravated assault, Defendant challenges Information Counts 2 through 5, which are with respect to McCargo, Cramer, A.G., and Farrell. Defendant again asserts that no one saw him fire a gun. However, as discussed, there is evidence that the Defendant had a gun at the scene at the time gunshots were heard. Therefore, Defendant's Motion with respect to Counts 2 through 5 is denied.

Similarly, the Defendant challenges the reckless endangerment at Counts 13 through 16 in regard to McCargo, Cramer, A.G., and Farrell on the assertion that there is no evidence that the Defendant fired a gun. For the same reasons as above, the Motion is denied as to these charges as well.

Severance of Counts 11 and 12 (Persons Not to Possess a Firearm)

The Defendant has moved to sever two of the charges related to possession of a firearm and argues that the Commonwealth's evidence would unfairly prejudice the Defendant to a jury. As set forth in 18 Pa.C.S.A. § 6105(a)(1), persons convicted of certain offenses enumerated in subsection (b) of the statute are prohibited from possessing a firearm. Therefore, in order to successfully prosecute its case against the Defendant, the Commonwealth must show that (1) the Defendant was among the persons prohibited from possessing a firearm at the time because of a prior conviction and (2) the Defendant did possess a firearm.

The Commonwealth intends to present evidence that the Defendant has a prior adjudication for aggravated assault with a deadly weapon, and the Commonwealth's brief discusses that this prior adjudication arose from an incident in which he fired a weapon at multiple people. The Commonwealth opposes severance of the charges and argues that evidence of the Defendant's prior adjudication would not be unfairly prejudicial and any prejudice that might result could be mitigated by cautionary jury instruction.

Furthermore, the Commonwealth takes the position that the evidence would be admissible in order to prove motive, intent, absence of mistake, identification, and/or common plan or scheme as permitted under Pa.RE. 404(b)(2).

A motion for severance is left to the discretion of the trial court, and, as under Pa.R.Crim.P. 583, the court may order separate trials of offenses if it appears that any party may be prejudiced by the offenses being tried together. *Commonwealth v. Melendez-Rodriguez*, 856 A.2d 1278, 1282-83 (Pa. Super. Ct. 2004).

To support its position, the Commonwealth cites to *Commonwealth v. Jemison*, in which the Pennsylvania Supreme Court held that it was not unfairly prejudicial to admit evidence of a defendant's prior conviction of a "specific, identified, predicate offense," especially if proper cautionary instruction is given. 98 A.3d 1254, 1262 (Pa. 2014).

The Commonwealth's brief theorizes that it should be able to introduce evidence of Defendant's prior adjudication because the similarities between that prior circumstance and the facts of the instant case tend to prove the Defendant's motive, intent, absence of mistake, or a common scheme, plan or design and so are admissible under Rule 404(b)(2).

However, this argument is unpersuasive. First, in *Jemison*, the controversy arose when the appellant sought to stipulate to his prior conviction without specifying the crime. 98 A.3d at 1256. The issue on appeal was that the trial court still permitted the Commonwealth to introduce evidence of the appellant's prior conviction for robbery despite his willingness to stipulate. *Id.* Ultimately, the Court concluded that because the Pennsylvania legislature had delineated specific disqualifying offenses, there was no question that the "relevant specific enumerated offense is an essential element of [the]

crime." *Id.* at 1261. However, here, the Commonwealth discusses that the evidence it should be permitted to present includes not only the specific offense but also the specific circumstances involved (that the Defendant fired a weapon at multiple people). These details exceed the scope of *Jemison* and are irrelevant to showing whether the Defendant is legally prohibited from possessing a firearm, since the prohibition is based on the adjudication, not the facts of the prior case.

Second, it is not clear how the Commonwealth's evidence of the Defendant's prior adjudication is relevant to the second element of the firearms possession charge - that the Defendant did possess a firearm. The Commonwealth has stated that its evidence tends to prove motive, intent, absence of mistake, or common scheme, plan or design, but it does not specify which one (or more) of these it believes is applicable. Furthermore, the Commonwealth does not indicate whether it intends to present evidence consisting of certified records, testimony, or something else. Therefore, it is not possible at this time to assess whether the Commonwealth's evidence may be relevant to proving the Defendant possessed a firearm without also causing unfair prejudice to him. {11}

Third, if the charges are not severed, there is a significant risk that a jury will struggle to distinguish among the crimes and the evidence it is to consider for each. This is true even if this Court were to issue cautionary instruction as to the persons not to possess charges. In contrast, if those charges were severed, a jury could better distinguish the crimes and appropriately apply the relevant evidence. In addition, severance would mitigate the risk of prejudice to the Defendant without also unfairly hindering the Commonwealth in its prosecution.

A failure to sever the persons not to possess charges would result in unfair prejudice to the Defendant that even cautionary instruction could not adequately mitigate. Therefore, Defendant's Motion to sever Information Counts 11 and 12 is granted.

Severance of Cases

The Defendant also has moved to sever the above-captioned case so that the incident related to the shooting at the vehicle is prosecuted separately from the incident related to the shooting at the residence. Defendant argues that the charges are factually distinct, and evidence of each crime would not be admissible in a separate trial for the other crime, citing to Pa.R.Crim.P. 563 and 582 and *Commonwealth v. Lark*, 543 A.2d 491 (Pa. 1988).

Where the defendant moves to sever offenses not based on the same act or transaction that have been consolidated in a single indictment or information, or opposes joinder of separate indictments or informations, the court must therefore determine: whether the evidence of each of the offenses would be admissible in a separate trial for the other; whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and, if the answers to these inquiries are in the affirmative, whether the defendant will be unduly prejudiced by the consolidation of offenses.

Id. at 496-97. The Defendant further asserts that there are no shared details of fact between the incidents and points out that the elements of homicide are distinct from the elements of the crime of firing a weapon into an occupied structure.

{11} There is no record yet that the Commonwealth has provided written notice to the Defendant of its intent to offer prior bad acts evidence as required by Pa.R.E. 404(b)(3). As the Comment to the Rule states:

Notice should be sufficiently in advance of trial so the defendant and court have adequate opportunity to assess the evidence, the purpose for which it is offered, and whether the requirements of Pa.R.E. 403 have been satisfied notwithstanding that a final determination as to the admissibility of the evidence must await trial.

However, as Lark also discusses, evidence of other crimes may be admissible when part of a chain or sequence of events that formed "part of the natural development of the facts." *Id.* at 497. The Commonwealth argues that this circumstance applies to the instant case and again asserts that it may introduce evidence of prior acts to establish identity, motive, or a common scheme or plan.

Despite the Defendant's assertion that there are no shared details of fact between the cases, there are multiple points of connection, including: (1) A.G. and Farrell were at both locations, having gone to Seehoffer's house after the vehicle shooting; (2) Seehoffer's house is a few blocks from where the vehicle shooting occurred; (3) there is testimony that the Defendant had a firearm at both scenes; (4) the two shootings occurred within about 45 minutes of one another; (5) multiple casings from both scenes were matched to the same unknown firearm; and (6) the police investigated the incidents as a chain of events, not dissociated occurrences.

The Lark analysis here weighs against the Defendant. First, even if the shooting at the vehicle were prosecuted separately from the shooting at the residence, evidence related to each incident could be admissible at the other trial insofar as it may tend to establish the Defendant's identity, motive, and/or plan. The incidents also could be considered as sequential in a chain of events, or the "natural development of the facts." Next, the shooting at the vehicle and the shooting at the residence still are sufficiently distinct that a jury would be able to separate the evidence relevant to each. Finally, since evidence related to each incident would be admissible with respect to the other, there is no indication that the Defendant would be unduly prejudiced by the Commonwealth's prosecution of the incidents as a single case.

CONCLUSION

After consideration of the evidence and the briefs of the parties, Defendant's Motion is granted with respect to severance of the persons not to possess charges (Information Counts 11 and 12). The Motion is denied as to writ of habeas and severance of the incidents as separate cases.

ORDER

AND NOW, this day of October, 2023, in consideration of Defendant's Omnibus Pretrial Motion, it is hereby ORDERED and DIRECTED that Defendant's Motion is GRANTED IN PART and DENIED IN PART.

The Motion is DENIED with respect to writ of habeas and severing the incidents into separate cases. The Motion is GRANTED with respect to severing Information Counts 11 and 12. These Counts shall be tried separately from, and subsequently to, the other charges.

Furthermore, the Commonwealth shall comply with Pa.RE. 404(b)(3) and provide written notice within a reasonable time before trial specifying the evidence of prior acts it intends to present and for what purpose(s).

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

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