

# Adams County Legal Journal

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NOTICE OF SHERIFF'S SALE  
IN THE COURT OF COMMON PLEAS  
OF ADAMS COUNTY, PENNSYLVANIA  
NO. 09-S-778

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION, s/b/m TO CHASE  
HOME FINANCE, LLC

vs.

DAVID O. SMITH

NOTICE TO: DAVID O. SMITH

NOTICE OF SHERIFF'S SALE OF REAL  
PROPERTY

Being Premises: 7 BROOKE COURT,  
UNIT 91, GETTYSBURG, PA 17325-  
6628

Being in MT. JOY TOWNSHIP, County  
of Adams, Commonwealth of

Pennsylvania, 30, F18-0087---000

Improvements consist of residential  
property.

Sold as the property of DAVID O.  
SMITH

Your house (real estate) at 7 BROOKE  
COURT, UNIT 91, GETTYSBURG, PA  
17325-6628 is scheduled to be sold at  
the Sheriff's Sale on November 16, 2012  
at 10:00 a.m., at the Adams County  
Courthouse, 111 Baltimore Street,  
Room 4, Gettysburg, PA 17325, to  
enforce the Court Judgment of  
\$421,084.64 obtained by JPMORGAN  
CHASE BANK, NATIONAL  
ASSOCIATION, s/b/m TO CHASE  
HOME FINANCE, LLC (the mortgagee),  
against the above premises.

Phelan Hallinan & Schmieg, LLP  
Attorney for Plaintiff

NAME CHANGE NOTICE

Given that on the 30th day of July  
2012, the Petitioner, Michelle Pickett,  
mother of minor child Taylor Lynn  
Guarnera, was filed in the Court of  
Common Pleas of Adams County,  
Pennsylvania, on behalf of the minor  
child, praying to have the name changed  
to Taylor Lynn Pickett.

The Court has affixed the date of  
October 5, 2012 at 8:30 a.m. in  
Courtroom 4 on the third floor of the  
Adams County Courthouse as the time  
and place for the hearing on said  
Petition when and where all persons  
interested may appear and show cause  
why the wishes of said petition should  
not be granted for Taylor.

Wayne G. Gracey, Esq.  
6864 Susquehanna Trail South  
York, PA 17403

8/17

8/17

## COMMONWEALTH VS. JOHNSON

1. A motion for change of venue is addressed to the sound discretion of the trial court. The moving party has the burden to prove a fair and impartial trial would not be possible in the currently assigned county.

2. To be entitled to a change of venue/venire, the defendant must show pretrial publicity has resulted in actual or presumptive prejudice. Prejudice is established where it is shown the empanelling of an impartial jury has been made impossible.

3. Prejudice is presumed whenever a defendant demonstrates pretrial publicity:

(1) was sensational, inflammatory, and slanted toward conviction, rather than factual and objective; (2) revealed the defendant's prior criminal record, if any, or referred to confessions, admissions, or reenactments of the crime by the defendant; or (3) derived from official police or prosecutorial reports.

4. A motion for change of venue/venire is not warranted unless the defendant also demonstrates that the pretrial publicity was so extensive, sustained, and pervasive that the community must be deemed to have been saturated with it, and that there was insufficient time between the publicity and the trial for any prejudice to have dissipated.

In the Court of Common Pleas of Adams County, Pennsylvania, Criminal, No. CP-01-CR-1180, 2010, COMMONWEALTH OF PENNSYLVANIA VS. CHRISTOPHER LYNN JOHNSON.

Shawn C. Wagner, Esq., District Attorney, for Commonwealth

Kristin L. Rice, Esq., Public Defender, for Defendant

George, J., February 2, 2012

### OPINION

Before the Court is Defendant's Motion to Change Venue or Venire. Defendant alleges the pervasive publicity surrounding this case has fueled prejudice against him to the extent that he is unable to obtain a fair and impartial jury in Adams County. The Commonwealth opposes Defendant's Motion, asserting pretrial publicity has not actually or presumptively prejudiced Defendant. The Commonwealth requests this Court to defer ruling on this matter until a full and intensive *voir dire* has been conducted, which allegedly will demonstrate a sufficient "cooling off" period has occurred between any publicity and jury selection.

A motion for change of venue is addressed to the sound discretion of the trial court. *Commonwealth v. Bethea*, 828 A.2d 1066, 1075 (Pa. 2003) (citation omitted). The moving party has the burden to prove a fair and impartial trial would not be possible in the currently assigned county. *Id.*; see also, Pa. R. Crim. P. 584 (A). To be entitled to a change of venue/venire, the defendant must show pretrial publicity has resulted in actual or presumptive prejudice.

*Commonwealth v. Briggs*, 12 A.3d 291, 313-14 (Pa. 2011). Prejudice is established where it is shown the empanelling of an impartial jury has been made impossible. *Id.* at 113.

Actual prejudice is currently not applicable as it can only be shown after *voir dire* has been undertaken. See *Id.* at 313 (citations omitted). However, appellate courts have recognized there may be certain instances in which pretrial publicity is so pervasive and inflammatory that prejudice is presumed. *Commonwealth v. Robinson*, 864 A.2d 460, 484 (Pa. 2004). Prejudice is presumed whenever a defendant demonstrates pretrial publicity:

- (1) was sensational, inflammatory, and slanted toward conviction, rather than factual and objective; (2) revealed the defendant's prior criminal record, if any, or referred to confessions, admissions, or reenactments of the crime by the defendant; or (3) derived from official police or prosecutorial reports.

*Commonwealth v. Tharp*, 830 A.2d 519, 529 (Pa. 2003) (citations omitted). Although a finding of any of these elements may be sufficient to establish presumptive prejudice, a motion for change of venue/ venire "is not warranted unless the defendant also demonstrates that the pretrial publicity was so extensive, sustained, and pervasive that the community must be deemed to have been saturated with it, and that there was insufficient time between the publicity and the trial for any prejudice to have dissipated." *Id.* Therefore, the critical finding is "recent and pervasive presence of 'inherently prejudicial' publicity, the likely effect of which is to render a fair trial impossible." *Commonwealth v. Casper*, 392 A.2d 287, 293 (Pa. 1978) (citations omitted).

In *Robinson*, 864 A.2d 460, the Supreme Court recognized, in certain circumstances, "it is conceivable that pre-trial publicity could be so extremely damaging that a court might order a change of venue no matter what the prospective jurors said about their ability to hear the case fairly and without bias..." 864 A.2d at 484 (citations omitted). Nevertheless, the Court, acknowledging such extremely damaging publicity is a rarity, instructed the better practice is for the trial court to investigate prospective jurors' opinions about their ability to be impartial. *Id.* Only where the defendant "demonstrates that the pretrial publicity was so extensive, sustained, and pervasive that the community must be deemed to have been saturated with it, and that

there was insufficient time between the publicity and the trial for any prejudice to have dissipated,” is the grant of a change of venue/ venire based upon presumed prejudice warranted. *Commonwealth v. Tharp*, 830 A.2d 519, 529 (Pa. 2003) (citation omitted).

It is without question that media coverage of the charges against Defendant have included references to alleged statements made by Defendant while in custody and to the existence of his prior criminal record. Although the existence of a criminal record is an element of both charges filed against Defendant<sup>1</sup> and an aggravating circumstance to be sought by the Commonwealth at sentencing,<sup>2</sup> at least one newspaper article includes references to inadmissible criminal conduct, and all articles discussing Defendant’s prior criminal history do so in conclusive terms. Moreover, several newspaper articles include detailed factual descriptions of the prior convictions. Such accounts are presumptively prejudicial.

Having found the existence of presumptive prejudice, the critical focus turns to the likelihood of sufficient time elapsing between publicity and trial for the prejudice to have dissipated. In determining whether such a sufficient “cooling off” period exists, the court must determine (1) whether the community was saturated with inherently prejudicial materials and (2) if so, whether the prejudice has had time to dissipate. *Commonwealth v. Romeri*, 470 A.2d 498, 503 (Pa. 1983). If such saturation and lack of dissipation is found, “an impartial jury cannot be empanelled regardless of the good intentions of jurors who may honestly believe that they can disregard what they have read or heard about the case.” *Id.*

Instantly, to date, press coverage of this case has resulted in 150 articles<sup>3</sup> and televised newscasts by four stations. In total, the newspapers covering this case have an average of over 15,000 subscribers in Adams County<sup>4</sup>, in addition to those who view these publications electronically. As for televised coverage, those stations that aired

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<sup>1</sup> The Defendant is charged with unlawful possession of a firearm, 18 Pa. C.S.A. § 6105(a)(1).

<sup>2</sup> 42 Pa. C.S.A. § 9711(d)(9).

<sup>3</sup> These articles appeared in printed and electronic form.

<sup>4</sup> An average of 5,398 residences subscribe to *Gettysburg Times* (published 42 articles), 7,211 to the *Hanover Evening Sun* (published 36 articles), 688 daily and 1,827 on Sunday to the *York Daily Record* (published 16 articles), and 130 daily and 1,921 on Sunday to *The Patriot-News* (published 19 articles).

broadcasts regarding this case have a total average viewer base of 4,969 households<sup>5</sup> out of 5,364 Adams County households<sup>6</sup> watching television between the hours of 7 a.m. and 1 a.m. Of the 150 published articles, 77 were published in 2010<sup>7</sup> and 73 in 2011<sup>8</sup>, with articles appearing most frequently in the area's two most popular news publications – the *Gettysburg Times* and the *Hanover Evening Sun*. The tone of many of the articles and news stories contain a similar story line: Officer Grove was killed in the line of duty by a convicted felon who was illegally poaching and did not want to go back to jail. In doing so, the articles repeatedly cite statements allegedly attributed to the Defendant and speak in conclusive language.

In addition to the saturation of the community by media accounts, there have been numerous memorial services for Officer Grove, including public statements by Pennsylvania's previous governor and other elected officials. Public tributes in memory of Officer Grove include the erection of a plaque, the dedication of an Adams County bridge, and, most recently, a memorial run. News accounts reflect these memorials have been well attended by the citizenry of Adams County. Collectively, media accounts, memorial services, and obvious public discussion of this incident have created a perception that Officer Grove was acting gallantly in faultlessly performing his duty when murdered viciously by a convicted felon seeking to avoid going back to jail. The facts may very well establish this version of the events is accurate. Nevertheless, and despite editorials and newspaper accounts to the contrary, the true events surrounding the unfortunate death of Officer Grove will not be known until the Defendant has received a fair and impartial trial before an unbiased jury of his peers.

The Commonwealth properly argues community saturation with inherently prejudicial material does not preclude conducting trial in this county if the prejudice has had the time to dissipate prior to trial.

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<sup>5</sup> WGAL (NBC 8): 2,546 households; WHP (CBS 21): 780 households; WHTM (ABC 27): 799 households; and WPMT (Fox 43): 844 households.

<sup>6</sup> In addition to the above, WITF: 228 households and WLYH: 167 households.

<sup>7</sup> *Gettysburg Times*: 17 articles; *Hanover Evening Sun*: 16 articles; *York Daily Record*: 8 articles; *Record Herald*: 11 articles; WGAL (NBC 8): 7 articles; WHTM (ABC 27): 13 articles; WPMT (Fox 43): 6 articles.

<sup>8</sup> *Gettysburg Times*: 25 articles; *Hanover Evening Sun*: 20 articles; *York Daily Record*: 8 articles; *Record Herald*: 8 articles; WGAL (NBC 8): 3 articles; WHTM (ABC 27): 4 articles; WPMT (Fox 43): 4 articles.

In an effort to show sufficient time will have elapsed prior to trial, the Commonwealth notes the most significant media coverage of this event occurred in late 2010 and early 2011, close in time to the underlying incident. Indeed, it is accurate that since early 2011, media coverage has been less frequent, focuses primarily on memorial tributes to Officer Grove and issues related to court scheduling and pretrial litigation, and is generally objectively presented.

Nevertheless, it is this Court's belief that it is extremely unlikely that the clear community hostility towards the Defendant will sufficiently dissipate prior to trial. Unquestionably, every occurrence in this litigation is prominently, and perhaps properly, carried by media outlets. In addition, as mentioned, regular memorials to Officer Grove continue, with each reinforcing the perception of a gallant Officer Grove and murderous Defendant. Interestingly, and perhaps not coincidentally, a memorial run for Officer Grove has been arranged to occur just two days prior to the long-scheduled trial of this matter. Although the memorial run is slated to occur in neighboring York County, it is certain to receive media coverage as flyers for the event have been found circulating in public areas of the Adams County Courthouse. Each of the flyers speaks to honoring the memory of Officer Grove and reference a Pennsylvania Game Commission official as a source for further information.

Based on the foregoing, this Court concludes presumptively prejudicial information has saturated the local community to the extent that it is unlikely to dissipate prior to trial. While awaiting actual *voir dire*, as the Commonwealth suggests, is the only conclusive way to determine the publicity's impact on the ability to select a fair jury, this Court has before it sufficient information to conclude that such a practice will result in unnecessary delay and expense in bringing this matter to trial. Waiting until April 2012 to reach what is a foregone conclusion will result in over a two-month delay in trial, great expense, and an inconvenience to Adams County and its citizens.

This decision should not be interpreted as an opinion as to the integrity or fairness of the citizenry of Adams County. To the contrary, this Court has been continuously impressed with the ability of Adams County jurors to honestly participate in the *voir dire* process and fairly deliberate toward verdict. Rather, it is a confirmation of that integrity as the Court recognizes *voir dire* will reveal a majority

of jurors who, despite best intentions, are unable to separate the emotion, outrage, and sympathy naturally triggered by such an event in their community from the obligation to conduct a neutral and detached examination of the facts and applicable law. In light of the high stakes of this capital case, it may very well be unfair to expect the same.

For the foregoing reasons, Defendant's request for change of venue/venire is granted. Taking into account the potential cost and convenience of transporting the witnesses, parties, and counsel, a change of venire will be Ordered.

### ORDER

AND NOW, this 2nd day of February 2012, Defendant's request for change of venire is granted. The Adams County Court Administrator is directed to certify a copy of this Order forthwith to the Pennsylvania Supreme Court. Upon receipt of designation of the county from which the jury is to be empanelled, a further scheduling Order shall be issued.

**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 CHARLES C. CARBAUGH, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: Anthony Laughman, 1210 Westminster Avenue, Hanover, PA 17331

Attorney: Donald W. Dorr, Esq., 846 Broadway, Hanover, PA 17331

**ESTATE OF ALICE G. HOAK, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrices: Susan G. Hoak, 2937 North Sixth Street, Harrisburg, PA 17110; Nancy D. Hoak, 3063 York Road, Gettysburg, PA 17325

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF LEROY R. RUDISILL, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Wendy K. Rudisill, 46 East Middle Street, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF JENNIFER L. WEAVER, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Brooke H. Barrett, 736 Harrison Drive, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**SUCCESSOR TRUSTEE'S NOTICE**

NANCY T. ASHMORE, formerly NANCY B. WORCESTER, Settlor of the Nancy B. Worcester Revocable Trust dated November 12, 2001, late of Oxford Township, Adams County, Pennsylvania, deceased. All persons indebted thereto are requested to make immediate payment, and those having claims or demands against the same will present them without delay for settlement to the undersigned:

Successor Trustee: Susan E. Miller, 217 South Street, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., Shultis Law, LLC, 1147 Eichelberger Street, Suite F, Hanover, PA 17331

**SECOND PUBLICATION****ESTATE OF MELVIN W. BARTELS, DEC'D**

Late of the Borough of New Oxford, Adams County, Pennsylvania

Administrator: Timothy J. Bupp, c/o Jon C. Countess, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Jon C. Countess, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

**ESTATE OF BETTY JANE SANDERS, DEC'D**

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

Co-Administrators: Linda S. Hoke, 525 Funt Road, Aspers, PA 17304; Vicky I. Miller, 1132 South Pleasant Avenue, Dallastown, PA 17313

Attorney: John C. Zepp III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

**ESTATE OF EDWARD SHAPIRO, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrator: Douglas J. Shapiro, 119 East Middle Street, Gettysburg, PA 17325

Attorney: John J. Murphy III, Esq., Patrono & Associates, LLC, 28 West Middle Street, Gettysburg, PA 17325

**ESTATE OF ALMA C. TYLER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executrix: Clara J. Wivell-Kaiser, 15449 Orchard Avenue, Blue Ridge Summit, PA 17214

Attorney: Teeter, Teeter & Teeter, 108 West Middle Street, Gettysburg, PA 17325

**THIRD PUBLICATION****ESTATE OF WALTER D. CLAPSADDLE a/k/a WALTER DAVID CLAPSADDLE, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Jean H. Clapsaddle, 1745 Highland Avenue Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe & Rice, LLC, 47 West High Street, Gettysburg, PA 17325

**ESTATE OF EARL D. FRIES, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Craig L. Fries, 33 North Carolina Avenue, Sinking Spring, PA 19608

Attorney: Stephen J. Gring, Esq., Treeview Corporate Center, 2 Meridian Boulevard, Suite 100, Wyomissing, PA 19610

**ESTATE OF RONALD LEE HUDZICK a/k/a RONALD L. HUDZICK a/k/a RONN HUDZICK, DEC'D**

Late of Union Township, Adams County, Pennsylvania

Executor: Paul David Hudzick, 245 Wren Street, Indiana, PA 15701

Attorney: Wayne A. Kablack, Esq., Simpson, Kablack & Bell, LLC, 834 Philadelphia Street, Suite 200, Indiana, PA 15701

**ESTATE OF ROBERT S. PLANK a/k/a ROBERT SAMUEL PLANK, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: Robert M. Plank, 629 Natural Dam Road, Gettysburg, PA 17325

Attorney: Christina M. Simpson, Esq., 28 East High Street, Gettysburg, PA 17325

