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FAYETTE LEGAL JOURNAL

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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

WESLEY ANDREW BOWERS, late of Dunbar Township, Fayette County, PA (3)

Personal Representative:

Suzette A. Becker

c/o Watson Mundorff, LLP

720 Vanderbilt Road

Connellsville, PA 15425

Attorney: Timothy J. Witt

EDWARD T. JACKSON, late of Wharton Township, Fayette County, PA (3)

Executrix: Tammy L. Jackson

c/o Higinbotham Law Offices

68 South Beeson Boulevard

Uniontown, PA 15401

Attorney: James E. Higinbotham, Jr.

JANET G. MARKER, late of North Union Township, Fayette County, PA (3)

Executor: Dewey L. Marker

c/o Higinbotham Law Offices

68 South Beeson Boulevard

Uniontown, PA 15401

Attorney: James E. Higinbotham, Jr.

ARTHUR P. METTS, SR., late of Uledi, Fayette County, PA (3)

Administrator: Arthur P. Metts, Jr.

468 Mountain Road

Uniontown, PA 15401

c/o Tremba, Kinney, Greiner & Kerr, LLC

302 West Otterman Street

Greensburg, PA 15601

Attorney: John K. Greiner

PAUL TIMOTHY PRIESTER, SR., a/k/a PAUL T. PRIESTER, SR., late of North Union Township, Fayette County, PA (3)

Personal Representative:

Paul Timothy Priester, Jr., a/k/a

Paul T. Priester, Jr.

c/o George & George

92 East Main Street

Uniontown, PA 15401

Attorney: Joseph M. George

SANDRA L. SOHYDA, late of Uniontown, Fayette County, PA (3)

Executor: David E. Sohyda

c/o Proden & O'Brien

99 East Main Street

Uniontown, PA 15401

Attorney: Wendy L. O'Brien

AGNES T. YABLUNOSKY, a/k/a AGNES THERESA YABLUNOSKY, late of South Union Township, Fayette County, PA (3)

Executrix: Donna Palermo

c/o Davis & Davis

107 East Main Street

Uniontown, PA 15401

Attorney: James T. Davis

Second Publication

ELOISE J. FESTOR, late of North Union Township, Fayette County, PA (2)

Executor: Edward C. Festor, Jr.

c/o Fitzsimmons and Barclay

55 East Church Street, Suite 102

Uniontown, PA 15401

Attorney: James N. Fitzsimmons, Jr.

JACQUELIN FRITTS, late of Uniontown, Fayette County, PA (2)

Administrator: John W. Fritts, Jr.

16 Pheasant Run Road

Smock, PA 15480

c/o Newcomer Law Offices

4 North Beeson Boulevard

Uniontown, PA 15401

Attorney: Ewing D. Newcomer

SHIRLEY WOLBERT, a/k/a SHIRLEY ELAINE WOLBERT, late of Fairchance Borough, Fayette County, PA ⁽²⁾
Administrator: Brian Wolbert
 c/o Kopas Law Office
 556 Morgantown Road
 Uniontown, PA 15401
Attorney: John Kopas

First Publication

ROGER ADAMS, late of Connellsville, Fayette County, PA ⁽¹⁾
Personal Representative: Clara S. Adams
 1 River Avenue
 Connellsville, PA 15425
 c/o Ogg, Murphy & Perkosky, PC
 245 Fort Pitt Boulevard
 Pittsburgh, PA 15222
Attorney: John Perkosky

NANCY DLUSKY, a/k/a NANCY A. DLUSKY, late of North Union Township, Fayette County, PA ⁽¹⁾
Executrix: Sister Melanie DePietro
 c/o Tremba, Kinney, Greiner & Kerr, LLC
 302 West Otterman Street
 Greensburg, PA 15601
Attorney: John K. Greiner

GEORGE J. W. DOWNS, late of North Union Township, Fayette County, PA ⁽¹⁾
Administratrix: Heather Mette
 399 Redstone Furnace Road
 Uniontown, PA 15401
 c/o Mette
 3401 North Front Street Fl. 2
 Harrisburg, PA 17110
Attorney: John B. Zonarich

MARY ELLEN FABRYCKI, a/k/a MARY E. FABRYCKI, late of Allison, Fayette County, PA ⁽¹⁾
Co-Administrators: Tina M. Derring and Richard T. Fabrycki, Jr.
 c/o 39 Francis Street
 Uniontown, PA 15401
Attorney: Jack R. Heneks, Jr.

FRANK CLYDE HLATKY, a/k/a FRANK HLATKY, a/k/a FRANK C. HLATKY, late of German Township, Fayette County, PA ⁽¹⁾
Executor: Mark Hlatky
 c/o 9 Court Street
 Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

THERESA KENNEDY MAGARIO, a/k/a THERESA KENNEDY, a/k/a THERESA MAGARIO, late of Redstone Township, Fayette County, PA ⁽¹⁾
Co-Executrix: Deborah Davic and Maureen Lucking
 c/o Goodwin Como, P.C.
 108 North Beeson Boulevard, Suite 400
 Uniontown, PA 15401
Attorney: Amanda Como

SHIRLEY MARIE PROVANCE, a/k/a SHIRLEY PROVANCE, a/k/a SHIRLEY M. PROVANCE, late of Nicholson Township, Fayette County, PA ⁽¹⁾
Executor: Wesley Bruce
 c/o 9 Court Street
 Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

JOSEPH A. SLEZAK, late of 159 Keefer Road, Connellsville, Fayette County, PA ⁽¹⁾
Executor: Eric Slezak
 157 Keefer Road
 Connellsville, PA 15425
 c/o Diefenderfer, Hoover & Wood, LLP
 310 Grant Street, Suite 1420
 Pittsburgh, PA 15219
Attorney: James K. Wood

LEGAL NOTICES

CORPORATE DISSOLUTION

NOTICE IS HEREBY GIVEN that Bryan United Methodist Church, a Pennsylvania non-profit corporation, having its registered office located at 128 Chaintown Rd., Dawson, PA 15425, has filed Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania, and that the said corporation is winding up its affairs in the manner prescribed by said law, so that its corporate existence shall cease.

SHERIFF'S SALE

Date of Sale: September 19, 2024

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday September 19, 2024, at 2:00 pm at <https://fayette.pa.realforeclose.com>.

The Conditions of sale are as follows:

All bidders must complete the Realauction on-line registration process at <https://fayette.pa.realforeclose.com> to participate in the auction.

All bidders must place a 10% deposit equal to the successful bid for each property purchased to Realauction via wire transfer or ACH per Realauction requirements. Upon the auction's close, buyer shall have 10 business days to pay the remaining balance to the Fayette County Sheriff's Office via cashier's check. No cash will be accepted. Failure to comply with the Conditions of Sale, shall result in a default and the down payment shall be forfeited by the successful bidder and applied to the costs and judgments. The schedule of distribution will be filed no later than 30 days after the sale of real property. If no petition has been filed to set aside the sale or objections to the distribution are filed within 10 days of filing the distribution, the Sheriff will prepare and record a deed transferring the property to the successful bidder.

(1 of 3)

James Custer
Sheriff of Fayette County

No. 504 of 2024 GD
No. 147 of 2024 ED

**THE UNITED FEDERAL CREDIT UNION,
Plaintiff,
vs.
MARK E. BEATTY and JESSICA SARAH
DAWN BEATTY, his wife,
Defendants.**

ALL that certain piece or parcel of land located in Springhill Township, Fayette County, Pennsylvania containing an area of .3685 of an acre, located on Township Road 364, known as Tax Parcel No. 36-20-0005-0 I and more particularly described in a deed recorded in the Office of the Recorder of Deeds for Fayette County in Record Book 3305, page 2297.

The address of the subject property is 224 First Street, Gans, Pennsylvania 15435.

Seized and taken in execution as the property of Mark E. Beatty and Jessica Sarah Dawn Beatty, owners, at the suit of The United Federal Credit Union in the Court of Common Pleas of Fayette County, Pennsylvania at No. 504 of 2024, G.D.

McCABE, WEISBERG & CONWAY, LLC
1420 Walnut Street, Suite 1501
Philadelphia, PA 19102
215 790-1010

No. 362 of 2024 GD
No. 194 of 2024 ED

**PennyMac Loan Services, LLC
Plaintiff
v.
Sarabeth R. Burkholder
Defendant**

All that certain piece or parcel or Tract of land situate in Saltlick Township, Fayette County, Pennsylvania, and being known as 123 Second Street, Indian Head, Pennsylvania 15446.

Being known as: 123 Second Street, Indian Head, Pennsylvania 15446

Title vesting in Sarabeth R. Burkholder by deed from Chris W. Resh and Valeria M. Resh, Husband and Wife dated July 15, 2022 and recorded July 26, 2022 in Deed Book 3521, Page 1919 Instrument Number 202200008257.

Tax Parcel Number: 31-19-0186 and 31-19-0187

No. 2316 of 2022 GD
No. 175 of 2024 ED

UNITED BANK,
Plaintiff,
vs.
JOSEPH CELLURALE, JR.
Defendant.

ALL that certain piece or parcel of land located in Dunbar Township, Fayette County, Pennsylvania containing an area of .54 of an acre located on University Drive and Cellurale Drive, known as Tax Parcel No. 09-31-0036-02, and more particularly described in a deed recorded in the Office of the Recorder of Deeds for Fayette County in Record Book 1519, page 281.

The address of the subject property is 2052 University Drive, also known as 1 20 Cellurale Drive, Lemont Furnace, Pennsylvania 15456.

Seized and taken in execution as the property of Joseph Cellurale, Jr., owner, at the suit of United Bank in the Court of Common Pleas of Fayette County, Pennsylvania at No. 2316 of 2022, G.D.

McCABE, WEISBERG & CONWAY, LLC
1420 Walnut Street, Suite 1501
Philadelphia, PA 19102
215 790-1010

No. 242 of 2024 GD
No. 181 of 2024 ED

Lakeview Loan Servicing, LLC
Plaintiff
v.
Christina L. Cociardo
Defendant

ALL THAT CERTAIN tract of land situate in South Union Township, Fayette County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at an iron pin in the side of the road known as Watson Drive and the Northwestern corner of lot of Frank Pukl; thence by land of Frank Pukl, South 24 degrees 17 minutes East, 103.62 feet to the Southwestern corner of said Pukl lot; thence by other land of W. Clyde Bryson and of which this is a part, South 65 degrees 10 minutes West, 155 feet to an iron pin; thence still by other lands of W. Clyde Bryson, North 18 degrees 29 minutes 30 seconds West, 100.13 feet to a point in the Southern side of the road known as Watson

Drive; thence by the Southern side of the road known as Watson Drive, North 63 degrees 33 minutes East, 145 feet to the place of beginning, according to the plan recorded in Book 9, page 98.

EXCEPTING AND RESERVING, thereout and therefrom, a strip of ground containing 401 square feet situate between Lots No. 14 and 15 in the Bryson Plan of Lots which was conveyed by John T. Kukla and Madeline Kukla, his wife, to Peter C. Rendina and Dorothy J. Rendina, his wife, by deed dated July 30, 1960, and recorded in the Recorder's Office of Fayette County, Pennsylvania, in Deed Book Volume 934, page 622.

BEING the same premise conveyed to Christina L. Cociardo by deed of James E. Churilla, Jr. and Brenda L. Churilla, his wife, dated December 16, 1998, and recorded in the Recorder's Office of Fayette County, Pennsylvania, in Record Book Volume 2236, Page 257, et seq.

All that certain piece or parcel or Tract of land situate in South Union Township, Fayette County, Pennsylvania, and being known as 142 Watson Drive, Hopwood, Pennsylvania 15445.

Being known as: 142 Watson Drive, Hopwood, Pennsylvania 15445

Title vesting in Christina L. Cociardo by deed from James E. Churilla, Jr. and Brenda L. Churilla, His Wife dated December 16, 1998 and recorded December 21, 1998 in Deed Book 2236, Page 0257 Instrument Number 9800022671.

Tax Parcel Number: 34-12-0119

Brock & Scott, PLLC

No. 1142 of 2023 GD
No. 190 of 2024 ED

KEYBANK NATIONAL ASSOCIATION
S/B/M FIRST NIAGARA BANK. N.A.

v.

LINDA JANE KINDERVATER A/K/A
LINDA J. KINDERVATER EXECUTRIX
OF THE ESTATE OF HAROLD FUEHRER
A/K/A HAROLD E. FUEHRER,
DECEASED

KEYBANK NATIONAL ASSOCIATION
S/B/M FIRST NIAGARA BANK. N.A. v.
LINDA JANE KINDERVATER A/K/A LINDA
J. KINDERVATER EXECUTRIX OF THE
ESTATE OF HAROLD FUEHRER A/K/A
HAROLD E. FUEHRER, DECEASED, owner
(s) of property situate in the NORTH UNION

TOWNSHIP, FAYETTE County, Pennsylvania, being 34 LEXINGTON AVE, NORTH UNION, PA 15401

Tax ID No. 25-19-0008

Improvements thereon: RESIDENTIAL DWELLING

Judgment Amount: \$37,284.40

No. 1455 of 2023 GD
No. 205 of 2024 ED

FANNIE MAE,
Plaintiff,
v.
MARQUIS AID PROPCO LLC, a Delaware
limited liability company,
Defendant.

Property of: Marquis Aid Propco LLC
Case No. 1455-2023
Judgement Amount: \$448,533,980.86
Attorney: Jared S. Roach (307541)

ALL, RIGHT, TITLE, INTEREST AND CLAIM OF: GREER AID PROPCO LLC IN AND TO:

PROPERTY LOCATED IN:
TOWNSHIP OF SOUTH UNION,
FAYETTE COUNTY
KNOWN AS MARQUIS GARDEN PLACE, 660 CHERRY TREE LANE UNIONTOWN, PA 15401

BEING THE SAME PREMISES WHICH ALC PROPERTIES II, LLC, A NEVADA LIMITED LIABILITY COMPANY, BY DEED DATED JULY 1, 2013, RECORDED JULY 26, 2013 IN FAYETTE COUNTY, AS DOCUMENT NO. 201300008832, GRANTED AND CONVEYED ONTO MARQUIS AID PROPCO LLC, A DELAWARE LIMITED LIABILITY COMPANY, IN FEE.

TAX PARCEL: 34-05-0206-11

No. 1125 of 2023 GD
No. 132 of 2024 ED

PennyMac Loan Services, LLC
Plaintiff
vs.
Erica T. Mickens
Defendant(s)

All that certain lot or land situate in the Third Ward of the City of Uniontown, Fayette County, Pennsylvania.

BEING THE SAME PREMISES which

Roy Matthew Fischer, by Deed dated 1/30/2017 and recorded in the Office of the Recorder of Deeds or Fayette County on 2/6/2017 in Deed Book Volume 3332, Pages 82-85, Instrument No.201700001392, granted and conveyed unto Robert L. Mickens and Erica T. Mickens.

Robert L. Mickens departed this life on 8/26/2021.

PARCEL # 38040655

No. 295 of 2024 GD
No. 133 of 2024 ED

FIRST NATIONAL BANK OF PENNSYLVANIA,
Plaintiff,
vs.
SUZANNE RUSH,
Defendant.

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND BEING SITUATE AND LAYING IN THE TOWNSHIP OF HENRY CLAY, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, AS MORE FULLY DESCRIBED IN A CERTAIN DEED DATED SEPTEMBER 30, 1988, FROM BEAVER CREEK MOUNTAIN ESTATES, INC., TO SUZANNE RUSH AND WILLIAM W. SILBAUGH, AS JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON, AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF FAYETTE COUNTY, PA ON OCTOBER 3, 1988, IN DEED BOOK VOLUME 480, PAGE 58. SAID WILLIAM W. SILBAUGH DIED ON OR ABOUT SEPTEMBER 3, 2018, AND UPON HIS DEATH, TITLE VESTED IN SUZANNE RUSH AS SURVIVING JOINT OWNER, BY OPERATION OF LAW.

IMPROVEMENT THEREON: A manufactured residential dwelling being known and numbered 1276 Beaver Creek Road, Farmington, Pennsylvania 15437.

TAX PARCEL NUMBER: 16-07-0001-16.

Property seized and taken in Execution as the property of Suzanne Rush

No. 2455 of 2023 GD
 No. 197 of 2024 ED

JPMorgan Chase Bank, National Association
Plaintiff,
 vs.
Robin E. Schomer, AKA Robin Schomer;
Jacky Schomer, AKA Jacky J. Schomer; Iris
W. Brown; Rodney L. Brown
Defendants.

ALL that certain parcel of land lying and being situate in the Township of Springfield, County of Fayette, and Commonwealth of Pennsylvania, known as 373 Grimes Road, Normalville, PA 15469 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 35-10-0167

BEING the same premises which Iris W. Brown, Rodney L. Brown, Robin E. Schomer and Rebecca L. Brown, by Deed dated July 26, 2007 and recorded in and for Fayette County, Pennsylvania in Deed Book 3036, Page 2454, granted and conveyed unto Iris W. Brown, Rodney L. Brown, Robin E. Schomer, Jacky Schomer, and Rebecca L. Brown.

No. 1835 of 2023 GD
 No. 206 of 2024 ED

FRICK TRI-COUNTY FEDERAL
CREDIT UNION now known as FRICK:
FINANCIAL FEDERAL CREDIT UNION,
Plaintiff,
 v.
JAMES W. SHAFFER and AMY LYNN
COLEMAN,
Defendants.

ALL that certain piece, parcel or tract of land, lying and situate in the Town hip of North Union, County of Fayette, and Commonwealth of Pennsylvania, known as 375 Main Street, Lemont Furnace, PA 15456, having erected thereon a dwelling house.

Being known and designated as Tax ID No: 25-34-0026.

BEING the same property conveyed to the Amy Lynn Coleman, a single woman, and James W. Shaffer, a single man, Defendants herein by deed dated November 9, 1992, and recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania, at Record Book 1089, Page 001.

Robert Flaccoco, Esq.
 1325 Franklin Avenue, Suite 160
 Garden City, NY 11530
 (212) 471-5100

No. 476 of 2024 GD
 No. 169 of 2024 ED

U.S. Bank Trust Company, National
Association, not in its individual capacity but
solely in its capacity as Indenture Trustee of
CIM Trust 2023-NR2

v.

Brian A. Slampak; Kimberly A. Slampak

By virtue of Writ of Execution No. 169 of 2024 ED, U.S. Bank Trust Company, National Association, not in its individual capacity but solely in its capacity as Indenture Trustee of CIM Trust 2023-NR2 v Brian A. Slampak; Kimberly A. Slampak

Docket Number: 2024-00476

Property to be sold is situated in the Borough of Uniontown, County of Fayette and Commonwealth of Pennsylvania.

Commonly known as: 171 Edison Street, Uniontown, PA 15401 Parcel Number: 25-31-0063

Improvements thereon of the residential dwelling or lot (if applicable):

Judgment Amount: \$89,610.35

Jill M. Fein, Esquire
 Hill Wallack LLP
 1000 Floral Vale Blvd., Suite 300
 Yardley, PA 19067
 (215) 579-7700

No. 104 of 2024 GD
 No. 179 of 2024 ED

Plaintiff: FEDERAL HOME LOAN
MORTGAGE CORPORATION, AS
TRUSTEE FOR THE BENEFIT OF THE
FREDDIE MAC SEASONED CREDIT RISK
TRANSFER TRUST, SERIES 2020-3

v.

Defendant: STEPHANIE TREAT

By virtue of a writ of execution case number: 2024-104

Plaintiff: FEDERAL HOME LOAN MORTGAGE CORPORATION, AS TRUSTEE FOR THE BENEFIT OF THE FREDDIE MAC SEASONED CREDIT RISK TRANSFER TRUST, SERIES 2020-3

v.

Defendant: STEPHANIE TREAT

Owners of property situate in North Union Township, Fayette County, Pennsylvania, being pin number 25-31-0007

Property being known as: 548 NORTH GALLATIN AVE, UNIONTOWN, PA 15401

Improvements thereon: Residential Property

No. 2523 of 2023 GD

No. 137 of 2024 ED

**Carrington Mortgage Services, LLC
PLAINTIFF**

vs.

**Tiffany D. Vrabel
DEFENDANT**

ALL that certain lot or piece of ground situate in the CITY of CONNELLSVILLE, County of FAYETTE and Commonwealth of Pennsylvania, being Lot No. 120 in the MCKEE Plan of Lots as REVISED AND ENLARGED BY LLOYD JOHNSTON and as recorded in the Office of the Recorder of Deeds of FAYETTE County, Pennsylvania in Plan Book Volume 1, Page(s) 58.

IDENTIFIED as Tax/Parcel #: 05-12-0018 in the Deed Registry Office of FAYETTE County, Pennsylvania.

HAVING erected a dwelling thereon known as 411 E WASHINGTON AVENUE, CONNELLSVILLE, PA 15425

UNDER AND SUBJECT TO any and all oil and gas leases, the sale of coal and mining rights and all rights relating thereto, building lines, rights-of-way, zoning regulations, building restrictions, reservations, restrictive covenants, easements, rights and obligations, encroachments, party walls, maintenance fees, association fees and/or dues, if any, etc., as the same may be contained in prior instruments of record, set forth in the recorded plan and/or as shown on a survey of the property.

COMMONLY KNOWN AS: 411 East Washington Avenue, Connellsville, PA 15425
TAX PARCEL NO. 05120018

*** END SHERIFF'S SALE ***

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



DiBella Weinheimer

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JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA :
v. :
NICHOLAS PAYTON, : No. 63 of 2024
Defendant. : Honorable Linda R. Cordaro

OPINION AND ORDER

Linda R. Cordaro, J.

June 26, 2024

Before this Court is the Defendant's Omnibus Pretrial Motion for writ of habeas corpus. A hearing on the Motion was held on June 12, 2024, at which the January 11, 2024 preliminary hearing transcript and photographic exhibits were admitted into evidence, and respective counsel gave brief argument.

After consideration, and for the following reasons, the Defendant's Motion is granted.

FINDINGS OF FACT

The following facts were established according to the transcript of the January 11, 2024 preliminary hearing. {1} On or about August 31, 2023, Samantha McFadden was outside on the porch of her residence in Smock, Fayette County which she shared with her three children, her boyfriend, and the Defendant. According to her testimony, she received via text a photograph of the Defendant along with several text messages with statements such as "Fine bye because that's what you want" and "Just decided your [sic] done with me ok." The photograph depicted the top half of the Defendant's face and head with the muzzle of a firearm pointed at his right temple. Ms. McFadden testified that she recognized the firearm as the Defendant's concealed carry weapon. She also recognized a picture in the photograph as the one above her child's crib. She stated that, when she received the photograph and messages, her one-year-old was asleep in the crib. Neither the photograph nor text messages bear a date or time stamp.

According to testimony by Officer Zlatan Avdic, a report was made to 911 about a male locked inside a bedroom with a gun to his head. Officer Avdic and other police officers responded to Ms. McFadden's residence around 10:48 p.m. They surrounded the residence and made several commands for the Defendant to come outside. When the Defendant did so, he stated that there was a weapon in the bedroom, inside the dresser. Officer Avdic went inside the residence and found the one-year-old in the bedroom, uninjured and asleep in a crib. The officer also found a loaded firearm in the dresser of the room. He testified that the firearm did resemble the one depicted in the photograph of the Defendant. A photocopied screen shot from Ms. McFadden's phone showing the photograph of the Defendant and the text messages, a copy of a magnified version of the photograph, and a photocopy of a photograph of the wall over a crib were admitted into evidence at the hearing as a single exhibit. {2}

{1} Commonwealth's Exhibit 1.

{2} Commonwealth's Exhibit 2.

DISCUSSION

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). A pre-trial petition for writ of habeas corp¹/_s is similar in its purpose to a preliminary hearing in that it seeks to prevent unlawful detention for a crime which was never committed, or for a crime for which there is no evidence of the accused's connection. *Id.* at 937. Accordingly, 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).

"[T]he Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense. 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."

Commonwealth v. Little, 305 A.3d 38, 45 (Pa. Super. Ct. 2023) (quoting *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. Ct. 2001)).

Here, the Defendant is charged with endangering the welfare of children {3} and recklessly endangering another person.⁴ The Defendant's Motion challenges that the Commonwealth cannot sustain its burden to present evidence of all elements of the crimes charged since there is no evidence of when the photograph of the Defendant was taken, no evidence that the child was in the crib at the time the photograph was taken, and no evidence that the firearm was loaded.

As charged, here, the crime of endangering the welfare of children occurs when a parent, guardian or other person supervising the welfare of a child under 18 years of age knowingly endangers the welfare of the child by violating a duty of care, protection or support. The crime is a specific intent offense and requires that there be a knowing violation of a duty of care. *Commonwealth v. Foster*, 764 A.2d 1076, 1082 (Pa. Super. Ct. 2000).

As to the charge of recklessly endangering another person, this offense is committed when one recklessly engages in conduct which places or may place another in danger of death or serious bodily injury. The Pennsylvania Superior Court has held that reckless endangerment occurs when an actor consciously disregards a known risk of death or great bodily harm to another person, he commits some wrongful deed or guilty act, and he thereby creates danger of death or serious bodily injury. *Commonwealth v. Brockington*, 230 A.3d 1209, 1215 (Pa. Super. Ct. 2020) (quoting *Commonwealth v. Emler*, 903 A.2d 1273, 1278 (Pa. Super. Ct. 2006)).

{3} 18 Pa.C.S.A. § 4304(a)(1). Assistant District Attorney John Kopas conceded at the preliminary hearing that the Commonwealth could not sustain its burden with respect to this charge, however, the magisterial district court still held over the charge. At the June 12, 2024 hearing on the instant Motion, Assistant District Attorney Brian Pavina did not concede.

{4} 18 Pa.C.S.A. § 2705

Viewing all evidence in a light most favorable to the Commonwealth, even if it is assumed that the firearm was loaded and that the Defendant pointed it at his own head while next to the sleeping child, there is no evidence of the Defendant's knowing violation of a duty of care to the child or that his action put the child in danger. There is no evidence, for example, showing that the Defendant pointed the weapon at the child, waived the firearm in the air, or discharged the firearm. The evidence presented does not show that the Defendant violated some duty of care or that his action created danger to anyone but himself.

Therefore, the Court enters the following:

ORDER

AND NOW, this 26th day of June, 2024 in consideration of Defendant's Omnibus Pretrial Motion and after a review of the preliminary hearing transcript and photographic exhibit admitted into evidence, is hereby ORDERED and DIRECTED that Defendant's Motion is GRANTED, and all charges are DISMISSED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

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