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Commonwealth v. Rhodes

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INDEX

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Erie County Bar Association
Calendar of Events and Seminars

WEDNESDAY, MARCH 25, 2009
22nd Annual Civil Litigation Update
PBI Groupcast Seminar
Bayfront Convention Center
9:00 a.m. - 4:45 p.m.
LUNCH INCLUDED
$244 (member) $224 (admitted after 1/1/05)
$264 (nonmember)
Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: $219 (member) $199 (admitted after 1/1/05) $239 (nonmember)
5 hours substantive / 1 hour ethics

SUNDAY, MARCH 29, 2009
8th Annual Easter Egg Hunt
Asbury Barn - 4106 Asbury Road
2:00 p.m. - 4:00 p.m.
free to all ECBA members and their children (12 and under)

TUESDAY, MARCH 31, 2009
E-mail & Blogs: Employer Liability, Policies and Prevention
PBI Video Seminar
Bayfront Convention Center
9:00 a.m. - 12:30 p.m.
$119 (member) $99 (admitted after 1/1/05)
$139 (nonmember)
3 hours substantive

THURSDAY, APRIL 2, 2009
Ethics Potpourri: Motivational Intervention- When to Assist and When to Hold Accountable
PBI Video Seminar
Bayfront Convention Center
9:00 a.m. - 10:00 a.m.
$39 (member) $49 (nonmember)
1 hour ethics

TUESDAY, APRIL 7, 2009
Criminal Law Update
PBI Video Seminar
Bayfront Convention Center
9:00 a.m. - 1:30 p.m.
$119 (member) $99 (admitted after 1/1/05)
$139 (nonmember)
4 hours substantive

TUESDAY, APRIL 14, 2009
Annual Disclosure Documents & SEC Update
PBI Video Seminar
Bayfront Convention Center
9:00 a.m. - 1:30 p.m.
$119 (member) $99 (admitted after 1/1/05)
$139 (nonmember)
4 hours substantive

TUESDAY, APRIL 14, 2009
Integrity: Good People, Bad Choices and Life Lessons Learned from the White House
PBI Groupcast Seminar
Bayfront Convention Center
12:30 p.m. - 3:45 p.m.
LUNCH INCLUDED
$294 (member) $274 (admitted after 1/1/05)
$314 (nonmember)
Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: $269 (member) $249 (admitted after 1/1/05) $289 (nonmember)
2 hours substantive / 1 hour ethics

WEDNESDAY, APRIL 15, 2009
Advising Troubled Companies
PBI Groupcast Seminar
Bayfront Convention Center
1:00 p.m. - 4:15 p.m.
LUNCH INCLUDED
$224 (member) $204 (admitted after 1/1/05)
$244 (nonmember)
Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: $199 (member) $179 (admitted after 1/1/05) $219 (nonmember)
3 hours substantive

FRIDAY, APRIL 17, 2009
Feldman on Long-Term Care Planning
PBI Groupcast Seminar
Bayfront Convention Center
9:00 a.m. - 12:15 p.m.
$214 (member) $194 (admitted after 1/1/05)
$234 (nonmember)
Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: $189 (member) $169 (admitted after 1/1/05) $209 (nonmember)
3 hours substantive

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Mar. 6, 13, 20

COMMONWEALTH OF PENNSYLVANIA

v.

TERI RHODES

CRIMINAL LAW / SENTENCING / TOTALITY OF CIRCUMSTANCES

A court rendering a sentence is not to focus only on a narrow window of time and on selective facts but to base the decision on all of the defendant's conduct. In the sentencing of a defendant who has entered a plea of guilty to voluntary manslaughter of her newborn daughter, the Court bases its decision upon the defendant's awareness of her pregnancy, the efforts of others to confront defendant about her pregnancy, defendant's lies to those inquiring about her condition, her course of deception to prevent people from knowing what she was doing, her choice not to utilize numerous available options to assist her and save the life of her child, her conscious choice to proceed with the birth and the killing, the calculated and cunning behavior demonstrating her ability to remain focused and manipulative, the intentional actions and presence of mind to divert others from her actions and to cover up her crime, which are reflective of her criminal intent and consciousness of guilt.

A sentencing judge is not bound to accept factual representations of a party, especially where those representations are selective, self-serving and inaccurate.

CRIMINAL LAW / SENTENCING / REASONABLENESS

Upon review of all factors, the Court finds that the sentence is not too harsh, excessive or unreasonable. The factors which distinguish this case from other manslaughter cases include the defenseless nature and age of the victim, the infant's inability to harm the defendant, the parental relationship of trust and responsibility, the time available to defendant to consider options other than killing the victim, the available resources to help the defendant, the evidence of premeditation, and the absence of any need for the defendant to take the actions leading to the death of the baby.

CRIMINAL LAW / SENTENCING / MITIGATING FACTORS

The Court declines the proposal of defendant that a neonaticide perpetrator should be given preferential treatment. It is a function of the legislature to determine whether neonaticide requires a different approach. To date, the Pennsylvania legislature has not chosen to adopt a different approach to neonaticide cases and has demonstrated concern about the protection of children by requiring lengthy minimum sentences for heinous crimes against children with mandatory minimum sentences applicable regardless of mitigating circumstances.

Defendant in the current case is not facing any mandatory sentence and is eligible for a pre-release program eighteen months prior to the expiration of her minimum sentence.

The defendant's case was mitigated by the permission granted her to enter a plea to voluntary manslaughter which avoided exposure to the

sentences for first degree or third degree murder. Cases with factual similarities in the form of attempts to conceal the pregnancy, killing taking place shortly after birth, suffocation, attempts to hide the victim, and fabricated stories, have lead to murder convictions and resulting sentences far longer than those imposed upon defendant.

The court considered all evidence of mitigation presented by the defendant, including the personal characteristics of the defendant, the situation in which she found herself, her remorsefulness, the reasons for compassion for the defendant, and the exemplary life which she led until the events of this crime. The court balanced all of the evidence of mitigation with the nature and extent of defendant's criminal conduct including her abandonment of her integrity and honesty, the course of intentionally deceptive behavior, and her choice to commit a heinous crime against an infant totally dependent upon defendant for survival. The result was a sentence less than that the defendant would have received if she had committed a crime such as the rape of a child, involuntary deviate sexual intercourse with a child or aggravated indecent assault and less than the statutory maximum for voluntary manslaughter.

CRIMINAL LAW / SENTENCING REPORTS

A presumption exists that where a pre-sentence report exists, the sentencing judge was aware of relevant information regarding the defendant's character and weighed those considerations with the mitigating statutory factors. In this case, the court read the pre-sentence report in its entirety and duly weighed the mitigating evidence submitted by the defendant.

CRIMINAL LAW / SENTENCING / "SHAM" PROCEEDING

The court rejects the defendant's assertion that the sentencing was a sham proceeding. All procedural safeguards required by Pa.R.Crim.P. 704(c) were met. The defendant had a full opportunity to present all information including testimony of the defendant and ten witnesses, a sentencing memorandum, reports of experts, and supporting correspondence. All materials submitted were read by the court prior to sentencing. Both defense counsel and the district attorney were given the opportunity to present all argument and the proceeding was recorded by a court stenographer.

CRIMINAL LAW / SENTENCING / WRITTEN STATEMENT

The court is required to provide a contemporaneous written statement of the reasons for deviation if a sentence is outside of the sentencing guidelines; 42 Pa.C.S.A. §9721(b). The court's preparation of a written sentencing rationale presented at the time of sentencing and filed that morning is not indicative of a bias or pre-determination of the sentence. It is instead reflective of the court's deliberative process in reviewing all the information, including that submitted on behalf of the defendant, prior to formulation of an appropriate sentence. Further, the sentencing rationale did not include the actual sentence to be imposed, as the court did not

make a final decision until all evidence was presented at the sentencing.

No authority requires defense counsel be given a copy of the written sentencing rationale prior to presentations of the parties' respective cases.

CRIMINAL LAW / SENTENCING / FACTUAL BASIS

A sentencing court may receive any relevant information enabling the exercise of discretion in determining the proper sentence and is not bound by the restrictive rules of evidence applicable to trial. Courts have wide latitude in considering facts, whether or not they are produced by witnesses seen or heard by the court, and the court may consider official reports and reports of probation officers, psychiatrists, and other individuals.

It is the responsibility of the sentencing judge to have sufficient information to determine the circumstances of the offense and the character of the defendant. To fulfill this responsibility, the judge must order a pre-sentence report or conduct sufficient pre-sentence inquiry as to the circumstances of the offense and the defendant's personal history and background. A more extensive investigation is called for in felony convictions, particularly where a long term of confinement is contemplated.

The court, being presented with little information in the pre-sentence report and the defendant's sentencing memorandum, reviewed the police reports and accompanying documents, which information the court found to be reliable. The defendant did not object to this procedure nor can the defendant claim surprise in light of the lengthy opportunity the defendant had to challenge any of the evidence in the police report, and the defendant acknowledged at her plea that she had sufficient information and time to enter an informed plea and consult with her attorney. The defendant also benefitted from the relaxed evidentiary rules for sentencing which allow consideration of double hearsay contained in expert reports submitted on behalf of the defendant.

The defendant proffered as a serious provocation for the killing the sudden and intense passion brought on by the unexpected delivery of a child. Thus, it was important to the court to know the circumstances surrounding the killing to determine whether a mitigated sentence was warranted on the grounds of serious provocation. As it was important to the court to know the circumstances to determine whether a mitigated sentence was warranted and therefore the court studied the police reports and the documents submitted on behalf of the defendant so that the court could consider all relevant information.

CRIMINAL LAW / SENTENCING / VOLUNTARY MANSLAUGHTER-PREMEDITATION

Premeditation is not an element of voluntary manslaughter but this does not mean that evidence of premeditation must be ignored for sentencing purposes.

The court did not sentence the defendant for a crime she did not commit

but instead considered evidence of the defendant's intent in determining the circumstances surrounding the crime. The defendant was sentenced within the confines of the voluntary manslaughter statute based upon all circumstances of the case, including defendant's admission that she intentionally killed her child. The defendant understood the court's discretion to disregard or reject the positions of the parties.

Premeditation does not require planning or prior thought or any particular length of time; all that is required is sufficient time that the defendant can and does fully form intent to kill and is conscious of that intention. The circumstances show that the defendant had fully formed an intent to kill and was conscious of that intention and it was for this conduct that she was sentenced closer to the maximum sentence for voluntary manslaughter than requested by the defendant.

CRIMINAL LAW / SENTENCING / MORALITY

The court rejects defendant's contention that the court substituted its view of morality for the law where the court's reference to a moral stand was based upon the specific facts of the case and the consideration of the protection of the public which, in this case, specifically includes youths against whom crimes are committed.

Sentencing guidelines have no binding effect and create no presumption. They are advisory guideposts which must be respected and considered and they recommend rather than require a particular sentence. The court's comments were a rejection of the sentencing position of a defense expert who claimed that neonatacide cases are seldom prosecuted and infrequently involve incarceration where the defense expert revealed a lack of familiarity with neonatacide cases in Pennsylvania.

CRIMINAL LAW / SENTENCING / REHABILITATIVE NEEDS

The court finds that the defendant in this case does not present with significant rehabilitative needs as there do not appear to be substance abuse issues and she has not been diagnosed with any mental illnesses, although there may be a need for counseling relating to honesty in light of the clear-minded pattern of deceptive behavior.

CRIMINAL LAW / SENTENCING

While empathetic to defendant's personal circumstances, the court will not turn a blind eye to what occurred and focus only on defendant's personal circumstances as it would diminish what happened to this victim. The circumstances of this case involving the intentional suffocation of a defenseless child who was thereby deprived of the pleasures of life at the hands of a parent with the responsibility of protecting the child warrants the sentence imposed. The sentence was mitigated by the personal circumstances over which defendant had control.

CRIMINAL LAW / RECUSAL

The court rejects the defense request for recusal where the court is not related to any of the parties, does not know the defendant and her family

and her witnesses, the court was not a witness or served as a lawyer in any matter affecting the parties and where the court has no financial or fiduciary interest in the case. It is insufficient basis for recusal that a court enters a sentence with which the defendant disagrees.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA CRIMINAL DIVISION NO. 110 of 2008

OPINION

Cunningham, William R., J.

On August 12, 2007, the Defendant intentionally killed her newborn daughter by suffocating her in a plastic bag.

On August 8, 2008, the Defendant entered a negotiated plea. On a general charge of Criminal Homicide, the Defendant entered a plea of guilty to Voluntary Manslaughter. Four other charges were withdrawn by the Commonwealth, to-wit, Concealing Death of a Child, Endangering Welfare of a Child, Recklessly Endangering Another Person and Abuse of a Corpse.

On November 21, 2008, the Defendant was sentenced. On December 1, 2008, the Defendant filed a Post Sentence Motion seeking to vacate and/or modify the sentence. This Opinion is entered to explain the reasons for denial of the Defendant's Motion.[1]

I. THE DEFENDANT'S CRIMINAL CONDUCT

The primary focus of the Defendant's sentencing position was on the Defendant's personal characteristics. For the circumstances surrounding the crime, Defense Counsel presented a Potemkin Village in terms of a facade that the Defendant was a young college student who did not know she was pregnant and panicked irrationally when the childbirth process began. The Defendant wanted this Court to focus only on a narrow window of time around the childbirth and then only on selective facts.

However, the circumstances leading to the crime began in the preceding nine months. While the Defendant wants to airbrush out of the picture any incriminating conduct, the sentencing decision has to be based on all of the Defendant's conduct.

Five days prior to sentencing, Defense Counsel submitted a seven-page Sentencing Memorandum that discussed the facts of the crime in these two limited paragraphs:

> Teri returned to Mercyhurst College in August, 2007 for volleyball camp. On August 10, 2007, she underwent a pre-

[1] At the time of the Defendant's sentencing, this Court was required by law to provide a written statement of the reasons for the sentence which was done in a document titled Statement of Sentencing Rationale. This document is referenced in this Opinion as "Sentencing Rationale."

Any cites to the plea proceeding held on August 8, 2008 are noted as *"P.T."*. Any cites to the sentencing of November 21, 2008 are noted as *"S.T."*. Any cites to the police reports of the Erie Police Department shall be *"P.R."*.

> participation physical evaluation with Dr. Cherinor Sillah. Dr. Sillah noted that she had a protuberant abdomen and suspected that she might be pregnant. He, however, cleared her to play volleyball and ordered a sonogram for the subsequent week. Teri underwent physical testing on August 10 and went to two practices on August 11. Those practices involved diving, serving and passing and were very physical in nature. Teri finished practice at approximately 9:00 p.m. and had severe cramps. She took Advil and Midol tablets and attempted to sleep.
>
> On the following morning, August 12, she awoke and went to morning practice. She told the coaches that she was too ill to practice and returned to her apartment. She went through labor in her apartment bathroom alone and after hours of labor delivered the child in a breech delivery. She lost a great deal of blood and placed the baby into a plastic bag that she left in the bathroom. Her assistant coach came to her apartment and took her to St. Vincent Health Center for treatment in the emergency department.

Sentencing Memorandum, p. 2.

This recitation of facts was not elaborated on at sentencing. When these two paragraphs are dissected, it is obvious Defense Counsel overstates some facts, understates others and omits a host of significant facts. A breakdown of these two paragraphs is in order to explain why the Defendant's sentencing position was unsupportable.

Notably, Defense Counsel immediately fast-forwarded the picture to August 10, 2007. Because she was cleared to play volleyball after a physical on August 10th, Defense Counsel suggests the Defendant had little or no reason to believe she was pregnant and was thus surprised two days later to be giving birth.[2]

By starting the chronology of events on August 10th, Defense Counsel bypassed a number of important circumstances in the prior months that establish the Defendant was well aware of her pregnancy by the time of her physical.

The Defendant knew she was sexually active during the preceding winter. The Defendant knew she had consensual sex with her college boyfriend "a couple of times." *Defense Exhibit "C," Report of Dr. Sadoff p. 5 (hereafter "Sadoff Report").* The Defendant acknowledged she had consensual sex twice during the likely month of conception; she insisted her boyfriend used a condom each time. *Id. pp. 5, 7.* The Defendant

[2] A medical doctor may not have been the one to clear the Defendant to play volleyball as averred by Defense Counsel. According to the Commonwealth, it is unclear who conducted the physical examination of the Defendant on August 10, 2007. The examiner was not a medical doctor according to the District Attorney, but perhaps was a medical student or intern. *S.T. p. 46.* This may be a collateral point but it could also be Defense Counsel inflating the status of the person who allegedly cleared the Defendant to play volleyball.

said she never used birth control pills. *Id. p. 5.* She confirmed with Lt. Spizarny that she was sexually active with two partners, albeit during different time frames. *P.R. p. 21.*[3]

When the Defendant returned home from college in the spring of 2007, her parents noticed her weight gain. To their credit, during the summer months each parent separately asked the Defendant if she was pregnant. *Sadoff Report pp. 2, 3.* The Defendant's mother asked her on two different occasions if she was pregnant. In every response to her parents the Defendant said she was not pregnant. *Id.* The Defendant's mother also asked her about her menstrual cycle and the Defendant replied that she was having regular periods. *Id.* The fact her parents were asking these questions certainly raised the prospect of her pregnancy to the Defendant.

There are discrepancies in what the Defendant told people after the crime about her menstrual history while pregnant. The Defendant told the emergency room ("E.R.") nurse Kathy Pruchniewski that from January, 2007 on she was spotting monthly. *P.R. pp. 8, 10.* The next day, on videotape, the Defendant told Lt. Spizarny she missed her menstrual period in January, 2007, but thought it was a fluke. *P.R. p. 20.* She also said in the following months she had either a little or a short period. *Id.* By contrast, the Defendant told her mother and Dr. Sadoff her menstrual periods were regular during her pregnancy. *Sadoff Report pp. 3, 5, 7.*

There were other physiological changes occurring with the Defendant that put her on notice of her pregnancy. The Defendant gained 20-25 pounds since her physical for volleyball in the prior year. *P.R. p. 20.* Her weight gain was immediately apparent to her roommate, coaches and the trainer who saw her on August 10th. *Id. pp. 6, 12, 15, 23, 29.* The autopsy report stated the Defendant's baby weighed approximately 6 ¼ pounds. *P.R. p. 29.* This means the Defendant was carrying in her abdomen a child weighing around 6 pounds at the time of her physical on August 10th.[4]

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[3] The Defendant also told at least three different people about an incident at a party during the possible time of conception. She first mentioned this subject to the E.R. nurse, Kathy Pruchniewski, whom she told she was at a party over the winter, got drunk and had sex. *P.R. pp. 8, 10.* The next day, the Defendant told Lt. Spizarny (on videotape) a slightly different version. The Defendant said she was at party at a house on Pine Avenue in December, 2006 with some volleyball players, had one drink, got tired, fell asleep in a back room and woke in the morning. *P.R. p. 17.* She felt sick, but she was still dressed and did not suspect anything had happened. *Id.* She did not elaborate any further. *Id.* In the sole interview the Defendant had with Dr. Sadoff over five weeks later, on September 24, 2007, the Defendant said she had a drink, passed out and awoke to find her pants unbuttoned. She was nauseated and "didn't feel right in her vagina" although there was no bleeding or physical evidence of trauma. *Sadoff Report, p. 5.* There is no evidence the Defendant sought medical attention after this incident or reported it to anyone, e.g. her roommate, friends, family, coaches, counselor or the police.

[4] The Defendant told Lt. Spizarny on videotape that when she was questioned about the mass in her abdomen during the physical, she just thought she had "a tight ab." *P.R. p. 20.*

The assistant coach for the Defendant's volleyball team, Sarah King, noticed during exercises on August 10th, the Defendant's belly button was protruding consistent with a pregnant woman. *Id. p. 15.* The Defendant acknowledged that her breasts were getting bigger. *Sadoff Report p. 3.* All of these physical changes to her body were objective medical evidence the Defendant cannot dispute as reasons to know she was pregnant.

The most overt evidence of the Defendant's knowledge of her pregnancy comes from her computer. The Defendant's computer records show she expended a considerable amount of time doing extensive research on the Internet over the summer of 2007 about pregnancy and ways to kill a fetus. She researched topics such as "what can kill a fetus", "alternative methods of ending pregnancy", "dilate the cervix", "dilation and evacuation", "herbal abortion techniques", "pregnancy termination" and "terminating pregnancy." *See p. 3* of the Probable Cause Affidavit of the Defendant's arrest warrant.

When asked why she was doing this research, the Defendant told Lt. Spizarny on videotape that she was nervous because people were telling her stuff. P.*R. p. 21.* She wanted to know "what to expect." *Id.* She became concerned so she did research on what could harm her or the baby. *Id.* She looked up pregnancy and pregnancy tests. *Id. p. 22.* The Defendant thought about having an abortion and researched abortion on the Internet. *Id.* She also thought that she could not have a baby. *Id.* She ruled out abortion stating she was brought up better than that. *Id.* These thoughts and this research confirmed the Defendant's knowledge of her pregnancy. Moreover, the Defendant's Internet research is consistent with someone looking for ways to terminate a pregnancy.

Also, the Defendant altered her dressing habits. She told Dr. Sadoff "she wore loose fitting clothes to hide the fact that she was gaining weight." *Sadoff Report p. 3.* Julia Butler, her college roommate, noticed during the weekend of August 10th the Defendant was wearing extra large shirts and was more private in her dressing habits. *P.R. p. 12.* Unlike the prior year when the Defendant would take showers after practice with her teammates at the athletic center, the Defendant went back to her apartment after practice to shower in private. *Id.* Bryan Bentz, one of the trainers for the volleyball team, observed the Defendant was frequently pulling her shirt down over her stomach making sure her stomach did not show. *P.R. p. 6*.

During the Defendant's physical on August 10th, a mass was noted in her abdomen. The examiner directly asked the Defendant numerous times (fifteen times, according to Bryan Bentz), if she was pregnant. *P.R. p. 29.* In response to each of these inquiries, the Defendant said she was not pregnant. *Id.* The examiner also recommended the Defendant take a pregnancy test. *P.R. p. 20.* Concerned, the examiner ordered an

ultrasound test for the following week. *Id.*

The constellation of these circumstances established the Defendant's knowledge of her pregnancy. The Defendant was aware of her consensual sexual activities with her college boyfriend, the party incident and her recent menstrual history. She had been asked directly several times by her parents whether she was pregnant. She researched pregnancy, abortion and related issues on the Internet. She was concerned about what harm could occur to her or her baby and wanted to know "what to expect." She thought about an abortion and ruled it out. The physiological changes to the Defendant's body were undeniable. Her dressing habits were more private and she was making a concerted effort not to expose her stomach to others. She was asked repeatedly during a physical on August 10, 2007 whether she was pregnant because there was a mass in her abdomen. She was carrying a six pound baby. An ultrasound test was ordered.

The Defendant's lack of candor about her pregnancy on August 10 during her physical was not consistent with all of the circumstances known by her. Despite the fact the Defendant was cleared to play volleyball after the physical, this circumstance alone did not mean the Defendant was unaware of or had little reason to suspect her pregnancy.

Next, Defense Counsel avers in the Sentencing Memorandum the Defendant underwent physical testing on August 10, 2007 and two volleyball practices on August 11, 2007 that "involved diving, surveying, passing and were very physical in nature." *Sentencing Memorandum p. 2.* The Defendant wanted this Court to believe because she underwent physical testing and could participate in "very physical" activities, including diving for a volleyball, she must not have realized that she was pregnant. Unfortunately, Defense Counsel has underreported what occurred.

The Defendant's performance in volleyball practices was limited and unimpressive. She finished last in every physical test on Friday, August 10, 2007, according to her head coach, Ryan Patton. *P.R. p. 23.* To the observation of Sarah King during the last practice on August 11, the Defendant was not diving on her stomach during drills that called for her to do so. *Id. p. 15.* While there may be several reasons for her reluctance to dive on her stomach, among them would include the Defendant's knowledge she was pregnant.

Likewise, there may be several reasons the Defendant finished last in all of the physical tests on Friday. However, it is hard to reconcile the Defendant's poor performance with the fact she had the physical skills to play college volleyball as a freshman on a partial scholarship. *Sadoff Report p. 2.* In any event, the inference sought by Defense Counsel, that the Defendant's participation in physical tests and drills meant she was not aware of her pregnancy is unsustainable under these circumstances.

Also, there were a number of significant events on Saturday, August

11th which establish the Defendant was confronted with the fact of her pregnancy. There were several people who were suspicious the Defendant was pregnant and tried to help her.

Defense Counsel did not mention Coach Patton was so concerned about the Defendant's physical condition and possible pregnancy that after Saturday morning's practice he tactfully asked her "if there was anything he should know." *P.R. p. 24.* The Defendant's consistent response was to say she had not worked out enough over the summer. *Id.*

Glaringly absent from the Defendant's recitation is a discussion she had with Sarah King in the privacy of King's office after practice on Saturday afternoon. During their Saturday discussion, Sarah King directly asked the Defendant if she was pregnant and she denied it. *P.R. p. 15.* King was not swayed and pleaded with the Defendant to consider the risk to her and the baby associated with her participation in volleyball. *Id.* The Defendant continued her denial. *Id.*

Sarah King begged the Defendant to take a pregnancy test. *Id.* King was so concerned she offered to reimburse the Defendant the cost of a pregnancy test. Eventually the Defendant agreed to go to a nearby CVS pharmacy, buy a pregnancy test and tell King the results. *Id.* Within forty-five minutes of agreeing to do so, the Defendant electronically sent King an instant message saying the pregnancy test was negative. *Id.*

The Defendant directly lied to Sarah King and to Lt. Spizarny several times about the pregnancy test she purportedly took on that Saturday.

When the Defendant was interviewed by Lt. Spizarny on videotape beginning at 7:20 p.m. on August 13, 2007, the Defendant acknowledged that Sarah King met with her after Saturday's practice and that King asked her to take a pregnancy test. *P.R. p. 20.* The Defendant told Lt. Spizarny she went to the CVS pharmacy store at 38th and Pine Avenue after practice on Saturday afternoon and bought a pregnancy test. *Id.* She described the test kit as "First Response" in a purple box. *Id.* She took the pregnancy test at her apartment and it was negative. *Id.* She threw the tester away in the garbage in the kitchen. *Id.* She then sent an instant message to Sarah King saying the pregnancy test results were negative. *Id. p. 27.*

Subsequently, she was confronted by Lt. Spizarny with the fact a pregnancy test kit was not found in the trash in her apartment. *P.R. p. 21.* The Defendant's response was that Julia Butler had taken out the trash after she had placed the test kit in it. *Id.*

Later during this discussion, Lt. Spizarny asked the Defendant what she was wearing when she went to the pharmacy to buy the pregnancy test, but she could not remember. *Id. p. 22.* She said she did not purchase anything other than the pregnancy test. *Id*. This demonstrates that twice during this conversation with Lt. Spizarny the Defendant confirmed she bought a pregnancy test on Saturday at the CVS store.

If the Defendant had gone to CVS, it would have been around 4:00 p.m. The store records from CVS reflect that no pregnancy tests kits were sold on Saturday, August 11 between 3:00 p.m. and the store's closing that evening. Hence, the Defendant lied to Sarah King on Saturday and twice two days later to Lt. Spizarny about buying a pregnancy test kit at CVS. It appears the Defendant told another lie to cover up these lies to Spizarny. Her explanation to Lt. Spizarny why no pregnancy test kit was found in her apartment was because her roommate took out the garbage after she put the test kit in it. This story is not corroborated. According to Julia Butler, she took out the garbage on the way to breakfast on Saturday morning. *P.R. p. 24.* This would mean that Butler took out the garbage before the Defendant purportedly purchased the pregnancy test late in the afternoon. However, given the fact that no pregnancy tests were purchased at the time and place the Defendant claimed, it is immaterial when the garbage was taken out other than it reflects on the Defendant's willingness to tell one lie to cover up a prior lie. Thus, the Defendant's intent to deceive continued through the day after the crime.

Separately, the discussion about pregnancy in Sarah King's office on Saturday on the heels of the Defendant's questioning by the medical examiner on Friday, the pending ultrasound test, the inquiry by her head coach on Saturday, her admitted weight gain, her protruding belly button, her swelling breasts, the weight of the baby and her last place finishes in physical tests all establish the Defendant was repeatedly confronted with the prospect of her pregnancy well before the childbirth process started and in time to avoid suffocating her child.

In the Sentencing Memorandum, Defense Counsel described the remaining events of Saturday evening as follows, "Teri finished practice at approximately 9:00 p.m. and had severe cramps. She took Advil and Midol tablets and attempted to sleep." *Id.* p. 2. These statements are accurate but only give a glimpse of what occurred.

After practice, the Defendant spent the remainder of Saturday evening at her apartment with her roommate, Julia Butler. The two were alone in the apartment. Julia Butler was someone the Defendant trusted and requested to room with her. *P.R. p. 21.* At any time, the Defendant could have confided in her roommate and asked for help without anyone else knowing. She consciously chose to ignore this opportunity for help for herself and her baby.

Next, Defense Counsel attempted to minimize the events of Sunday, August 12, 2007 by omitting several important circumstances. According to Defense Counsel, all that happened was Teri Rhodes "awoke and went to morning practice. She told the coaches that she was too unwell to practice and returned to her apartment. She went through labor in her apartment bathroom alone and after hours of labor delivered the child in a breeched delivery. She lost a great deal of blood and placed the baby

into a plastic bag which she left in the bathroom. Her assistant coach came to her apartment and took her to St. Vincent's Health Center for treatment in the emergency room." *Sentencing Memorandum p. 2.*

Defense Counsel sidestepped the Defendant's discussions with people who were trying to help her that day as well as the Defendant's course of deception that prevented people from knowing what she was actually doing.

The Defendant had a conversation about her condition with Julia Butler on Sunday morning at their apartment and on the way to volleyball practice. She told Butler she was having menstrual cramps. *P.R. p. 12.* She never went beyond this point to ask for help from or confide in Butler. *Id.*

When the Defendant arrived at the athletic center, she had another discussion with Sarah King in the privacy of King's office. She was asked pointblank by Sarah King whether she was in labor. *Id. p. 16.* This was a confidential setting in which the Defendant could have easily confided in her concerned coach who was a female. Yet she stuck to her story that she was just having menstrual cramps. *Id.* The Defendant was excused from practice by Coach King, who, despite the Defendant's denial, still thought she was in labor and mentioned it to the trainer. *Id.*

It was the Defendant's decision to return to her apartment late in the morning knowing that her roommate would still be at volleyball practice and then possibly at lunch. The Defendant put herself in a position of being alone without medical assistance. It was another conscious choice by the Defendant to forfeit an opportunity for help. She could have gone straight to the campus health center. She could have accessed an abundance of national, state and local organizations. She could have gone to one of several local hospitals. She could have called her parents or a sibling. Possibly, she could have called the biological father of the child. The Defendant could have contacted a Catholic priest or nun. She could have utilized the services of the Campus Ministry available at her Catholic college. The Defendant chose none of these accessible and confidential options.

Next, Defense Counsel represented the Defendant went through "hours" of labor "alone" in the apartment before the actual birthing. *Sentencing Memorandum p. 2.* This point was emphasized at sentencing in the these words of Defense Counsel: "I ask the Court to consider who she is and what happened here, all the factors of a young woman alone in an apartment delivering a breach baby with no family, no medical support, nothing." *S.T. p. 8.*

There were two points Defense Counsel was trying to make in these written and oral representations. First, Defense Counsel wanted this Court to believe the Defendant was alone in her apartment when she gave birth. Secondly, that the Defendant was alone for hours during labor

in her apartment. Both representations are clearly false as reflected in the following chronology.

On two occasions, the Defendant told Lt. Spizarny she returned to her apartment between 11:30 a.m. and noon on August 12, 2007. *P.R. pp. 11, 18.* At first, the Defendant said the child delivery began about 12:30 p.m. but later changed that to closer to 1:00 p.m. *Id. pp. 11, 19.*

Prior to the actual delivery of the Defendant's child, Julia Butler returned to the apartment. Defense Counsel had the benefit of the videotaped statement of Julia Butler as well as his client's two statements to Lt. Spizarny. Within the statements of the Defendant and Julia Butler, it is very clear that Julia Butler returned to the apartment before the onset of the delivery. The Defendant places herself in the bathroom when Butler arrived home. *P.R. pp. 11, 19.* The Defendant said she had not yet begun delivery of the child when Butler arrived. *Id. pp. 11, 13.* Butler inquired how she was doing and the Defendant replied she was okay, that she was constipated. *Id.*

To the Defendant's knowledge, Julia Butler was present and in a position to help. Instead of asking for and receiving the help of Julia Butler, whose help could have saved the life of this child, the Defendant consciously chose to remain hidden behind the bathroom door and proceed with the birth and the killing.

What is revealing is the Defendant's calculating behavior during this crucial time when Defense Counsel wants to portray her as panicked and in a dissociative state. This contention by Defense Counsel was undermined when the Defendant decided to get Julia Butler out of the apartment by asking her to go to the CVS store to get Midol. At that point in time, by the Defendant's own admission, she was giving birth to the victim. *P.R. pp. 11, 19.* She made the request for Midol while hidden behind the bathroom door. *Id.*

The Defendant did not come out from the bathroom to talk to Julia Butler. She did not ask Butler to come into the bathroom. The Defendant told Butler to get the money for the Midol from her bedroom. *Id. p. 13.*

All of this conduct was consistent with someone who knew what was occurring and did not want to expose herself or her child to Butler. Alternatively, the Defendant could have communicated to Butler the truth of what was occurring in the bathroom or said nothing at all.

The register receipt from the CVS store indicates the time of purchase for the Midol by Julia Butler was 12:38 p.m. on August 12, 2007. *Id. p. 23.* The time on this receipt means Butler had returned to their apartment from lunch roughly some time before or around 12:30 p.m. This also means the Defendant was not alone for hours in her apartment while in labor as represented by Defense Counsel.

The Defendant had a second reason for getting Julia Butler out of the apartment. The Defendant needed to get scissors from her bedroom so

she could cut the umbilical cord. By her admission, while Butler was on the Midol errand, the Defendant left the bathroom and retrieved the scissors from the desk in her room so that she could cut the umbilical cord. *P.R. p. 11.* The Defendant could have asked Butler before she left for the store to hand in scissors from her desk. However, to do so may have exposed a baby attached to the Defendant.

When Julia Butler returned from CVS in about ten minutes, the Defendant was back secreted behind the bathroom door. *P.R. pp. 11, 19.* Julia Butler offered to hand in the Midol that she had just bought for the Defendant. *Id. p. 13.* The Defendant had the presence of mind to not allow Julia Butler into the bathroom, instead directing her to put the Midol in her bedroom. *Id.* The Defendant's behavior was not consistent with someone in a state of panic or dissociated from reality as Defense Counsel avers. Moreover, it is not consistent with someone whose purported menstrual cramps were so severe she sent her roommate on an urgent errand to the store for Midol. Rather, it is consistent with someone cunning enough to hide from her roommate what she was actually doing in the bathroom.

Next, Defense Counsel downplays the circumstances of the Defendant's trip to the hospital. Defense Counsel simply said, "Her assistant coach came to her apartment and took her to St. Vincent Health Center for treatment in the emergency department." *Sentencing Memorandum p. 2.* Defense Counsel omitted a host of conduct that further demonstrated the Defendant's ability to be focused and manipulative during a time when she was allegedly in a dissociated state of mind.

Sarah King came to the apartment at the distressed request of Butler, who was upset by the Defendant's behavior. *P.R. pp. 13, 16.* King then talked to the Defendant. King immediately noticed the Defendant's stomach looked thinner. *P.R. p. 16.* King asked the Defendant what was the problem and the Defendant replied that she was having a heavy bleed. *Id.* She did not disclose she had just given birth and the baby was in the bathroom.

This was another crucial time when the Defendant could have made a different decision that may have saved the life of her child. At this point in time, the Defendant was in the privacy of her apartment with two women with whom she enjoyed a comfortable relationship. Through that time Butler and King had gone out of their way to help the Defendant. The autopsy report shows the Defendant had given birth to a live, breathing baby that lived for an undetermined period of time. Rather than be forthright with her roommate and coach, the Defendant chose a continued path of deception that possibly snuffed out the last chance this newborn had to live.

Like what she did with Julia Butler, the Defendant had the presence of mind to find a reason to get Sarah King to do something for her. The

Defendant asked King to get her some clothes and towels from her bedroom. *Id.* King retrieved these items from the bedroom and handed them into the Defendant in the bathroom. *Id.*

According to Julia Butler, it took the Defendant "forever to finish" in the bathroom before leaving with King for the hospital. *Id. p. 13.* The Defendant was alone in the bathroom during this time. *Id. pp. 13, 16.*

When she did emerge, the Defendant did not bring out the baby she had just birthed. She did not tell Butler or King there was a newborn baby in the bathroom. Instead, she intentionally hid the victim in a plastic bag. She placed the dead child on the floor of the bathtub. The shower curtain was pulled closed in such a fashion that the victim was not openly or easily visible to a person in the bathroom.

Before leaving with the Defendant, Sarah King stepped into the bathroom to look around. *Id. p. 16.* She checked in the trash can and saw some bloody paper. *Id.* She did not see the victim hidden behind the shower curtain. *Id.*

Julia Butler was also suspicious about what happened in the bathroom. After the Defendant left with King, Butler went in the bathroom. She saw some bloody toilet paper in the trash can. *Id. p. 13.* The shower curtain was half closed. Butler did not look behind the shower curtain. Upset by the sight of the blood, Butler left the apartment. *Id.*

In their quick inspections of the bathroom, Butler and King were not able to see the victim hidden behind the shower curtain. As far as the Defendant knew when she left the apartment for the hospital, no one was aware of the crime that occurred in the bathroom or the hidden baby.

The Defendant's presence of mind to conceal the baby in this way reflected her criminal intent and consciousness of guilt. The Defendant had sufficient time and several opportunities to disclose to her accommodating roommate and coach the truth of what just occurred in the bathroom. She consciously chose to create a ruse. This was the genesis of the Defendant's cover-up. It further demonstrates the Defendant's ability to coolly manipulate her circumstances during a time when she was alleged to have been in a dissociative state.

En route to the hospital with King, the Defendant never admitted to King she had just given birth to a child. *Id. p. 16.* While in King's car on the way to the hospital, the Defendant had a cell phone conversation with her father. It sounded to King as though the Defendant's father was repeatedly asking her what was occurring and whether she was okay. *Id.* King was upset the Defendant was not forthcoming in responding to her father's multiple inquiries. *Id.*

Upon arrival at the hospital, the Defendant told admissions personnel her presenting symptom was heavy menstrual cramps. *Id. pp. 7, 8, 10, 20.* This blatant lie was contrary to what the Defendant knew occurred within the preceding hour.

This lie at the hospital demonstrated not only the Defendant's consciousness of guilt but also her intent to complete the cover up of her crime. The Defendant's criminal intent was further manifested while she was waiting for medical attention at the hospital. The Defendant left a message for Julia Butler at 3:07 p.m. on August 12, 2007, instructing Butler to not go into the bathroom because it was a mess. *P.R. p. 14.* This message made no mention of the childbirth or the victim in a plastic bag behind the shower curtain in the bathtub.

At this point in time, the Defendant still had not told anyone about killing her child. To her knowledge, the victim remained undiscovered in her hiding place. There was still a chance the Defendant could return to the apartment and dispose of the body before anyone could find out. This explains why the Defendant continued to lie to people at the hospital.

When the Defendant was subsequently treated in the Emergency Room, she maintained her ruse when she told the emergency room nurse and doctor her presenting symptom was menstrual cramps. When asked directly if she had recently given birth, the Defendant flatly denied it. *P.R pp. 8, 10.* It was only when confronted by the objective medical evidence of a tear found by the E.R. doctor that the Defendant eventually relented and separately disclosed the childbirth to a nurse. *Id. p. 10.*

The Defendant's reluctant confession to the E.R. nurse did not mean her criminal intent had ended. Instead, she persisted with several lies designed to allow her to dispose of the baby before authorities could find the evidence of the crime.

Thus, the Defendant baldly lied to the E.R. nurse by telling her the baby was in a dumpster on Briggs Avenue. *P.R. p. 10.* The Defendant knew this information was false. The Defendant told the same lie a short time later at the hospital to Lt. Spizarny. *Id. p. 10.* This lie was despite the advice by Spizarny at the outset of the conversation emphasizing the need for the Defendant to be truthful and that he was aware she had already made statements to hospital personnel that were false. *Id.* There was no purpose to be served by these lies by the Defendant other than furthering her criminal design.

Toward the end of their second conversation at the hospital, the Defendant told Spizarny the baby was in her apartment on Briggs Avenue. On this point a correction needs to be made to the reasons for the sentence stated by this Court at sentencing. This Court's original impression was the Defendant did not disclose to Spizarny near the end of their conversations at the hospital the location of the baby in her apartment. However, the probable cause affidavit for the arrest warrant indicates that after she first said the baby was in a dumpster, the Defendant later admitted the baby was in her apartment.

In fairness to the Defendant, what this means is that she was eventually forthright with Spizarny on this point. It also means there is one less

reason to question her motive in hiring a cab and leaving the hospital bound for Tinseltown. She may not have been trying to quickly get back to her apartment to dispose of the baby if she knew the police were now aware of the baby's location.

Nonetheless, Sarah King was still at the hospital when the Defendant was released. It remains questionable why the Defendant did not get a ride home from the hospital with Sarah King. It was King who cared enough for the Defendant that she immediately came to the Defendant's apartment to help, drove the Defendant to the hospital and waited for hours on a Sunday afternoon in August for the Defendant to receive medical treatment. *P.R. p. 16.* Rather than locate King upon her release from the hospital, the Defendant made the necessary arrangements to leave in a cab. It is hard to reconcile this conduct with the Defendant being in a state of panic or detached from reality.

In review, the Defendant's deceptive behavior with Butler, King, the hospital personnel and Lt. Spizarny all demonstrate the Defendant was acutely aware of what had occurred and what she had done. The Defendant had a fully formed intent to commit the crime and then cover it up. The killing of the baby and the lies the Defendant told to cover up what she was doing were the product of a cool, calculating mind. These lies were not produced by someone in a state of panic or a dissociated mental state.

When all of the circumstances are considered, the Defendant was not a naïve college student who panicked on August 12th when she first discovered she was pregnant as she began to give birth. The Defendant knew of her circumstances for a significant time and consciously chose to forego many opportunities to resolve her situation other than by suffocation of the child.

The Defendant was not disconnected from reality; to the contrary, the Defendant was devious and deliberate in the months, days and hours leading up to the killing. As part of her deliberation, the Defendant did extensive research on the Internet about pregnancy and ways to kill a fetus.

The Defendant consciously created a set of circumstances designed to keep her pregnancy a secret and continue her lifestyle. In so doing, the Defendant deceived or attempted to deceive her family, friends, coaches, medical personnel and the police.

Importantly, the Defendant was not alone nor did she need to be alone at the time she killed this child. This killing was unnecessary and easily avoidable.

A sentencing judge is not bound to accept the factual representations of a party. This is especially true in this case because the factual presentation by the Defendant was selective, self-serving and inaccurately portrayed what occurred. In the end, the Defendant's sentencing position was unsupportable.

II. WHETHER THE SENTENCE WAS TOO HARSH, EXCESSIVE AND UNREASONABLE

The Defendant seeks a sentence reduction by arguing her sentence is too harsh, excessive and unreasonable. Further, the Defendant contends there were insufficient reasons stated for the sentence. These allegations are without merit.

There are a host of circumstances distinguishing this case from other manslaughter cases. These factors are summarized hereafter.

A. The Nature and Age of the Victim

The Defendant killed her newborn daughter. This infant was completely defenseless. Her survival primarily depended on the care provided by her mother. This child could not talk. She could not feed or clothe herself. It is uncontroverted the victim was a living, breathing human being. Absent other maladies or misfortunes, she would be nearly eighteen months old now with the prospect of a fulfilling life. That prospect was eliminated when she was intentionally suffocated by her own mother.

The first distinction in this case is the nature of the victim. Her age alone is a salient fact. In *Commonwealth v. Walls,* the age of the victim, a seven-year old girl who was sexually molested by her grandfather, was deemed an aggravating factor by the Pennsylvania Supreme Court. *Commonwealth v. Walls,* 926 A.2d. 957, 967 (Pa. 2007). On remand, the Pennsylvania Superior Court affirmed the sentence for Walls of twenty-one to fifty years, which included consecutive sentences of ten to twenty years each for rape and involuntary deviate sexual intercourse. *Walls,* 938 Ad.1122 (Pa. Super. 2007)(Table). Notably, Walls had sexual intercourse with and fondled his seven-year old granddaughter, but he did not kill her.

Unlike most manslaughter cases, this infant presented no ability to harm her killer. This victim was no threat to her mother's physical health or well-being. This was not a case where the Defendant had to choose between her own death or her newborn's death. The Defendant's survival was not affected by the birth of this child. Also, since the Defendant had no other children, this was not a situation where the continued life of this victim would have adversely affected the health and well-being of other children.

The Defendant could have lived a comfortable and full life had this victim been allowed to live. Indeed, her pregnancy was a life-altering event for the Defendant, but it was not a life-threatening matter for her or her child. To permit the Defendant to kill her child under these circumstances and then return to her comfortable lifestyle as suggested by Defense Counsel is unacceptable.

B. Parental Relationship of Trust and Responsibility

Another salient factor is the unique relationship of the Defendant to

the victim, who had only one birth mother to protect her. As the victim's mother, the Defendant was obligated to ensure the health and safety of her daughter. Unlike most manslaughter cases, the Defendant was in a position of trust and responsibility regarding the victim.

In many areas of our law, parents are charged with a myriad of legal duties intended to ensure the well-being and development of offspring. The parental relationship is so important that our civil laws provide for the highest burden of evidentiary proof to terminate a parental relationship. This most important position of trust and responsibility was severed permanently when the Defendant intentionally suffocated her defenseless daughter.

C. Ample Time to Consider Options Other Than Killing the Victim

Another distinguishing factor is the length of time the Defendant had to ponder her options. This case differs from other manslaughter cases where the circumstances suddenly arise or erupt as a result of cumulative events. The Defendant had possibly eight to nine months to decide what to do. She had hours, days and months before the killing to contemplate her options. This was ample time for the Defendant to address her situation other than by suffocating her baby.

D. Available Resources to Help the Defendant Resolve Her Dilemma Without Killing Her Child

Unlike almost every other form of manslaughter, the Defendant had a plethora of resources to assist her and avoid killing another human being. In the months leading up to August 12, 2007, the Defendant had access to national, state and local organizations whose raison d'etre is to help women in the Defendant's situation. This help was available in the Defendant's home state of Michigan and her collegiate state of Pennsylvania. Confidential assistance was available on her college campus. All of these options could have preserved the secrecy of her pregnancy, her lifestyle and saved the life of this child.

In her Sentencing Memorandum and at sentencing, the Defendant presented with a close-knit family consisting of two loving parents and three sisters. The Defendant had many opportunities to confide in them right up until the time of the killing. With their assistance, this killing need not have occurred.

If the Defendant was not comfortable discussing this matter with her immediate family, she was blessed with a deep pool of relatives, neighbors and friends with whom she could have sought refuge. She also had available her trusted roommate, Julia Butler, who was with her right through the time of the killing. The Defendant was fortunate to have a very caring assistant coach, Sarah King, who bent over backwards to help her in the days before the killing.

The Defendant's head coach, Ryan Patton, expressed concern for

her in plenty of time to avert this killing. The Defendant's volleyball teammates were in proximity and could have helped her, as was a team trainer, Bryan Bentz. She could have sought advice from the medical examiner during her physical on August 10, 2007. It is possible the biological father could have helped her. The Defendant could have gone to her Catholic priest back in Michigan or consulted with a priest or nun in Pennsylvania. She could have sought refuge through the Campus Ministry at the Catholic college she was attending. She could have called a Hotline advisory service.

The Defendant had more resources readily available to her for months than many women in her situation. She consciously spurned all of these options.

E. Evidence of Premeditation

Another prominent factor that distinguishes this case from other manslaughter cases is the Defendant's premeditation. This was not a spontaneous killing done in a state of panic by a person who did not know she was pregnant until she began to give birth. The Defendant had plenty of time and reasons to know she was pregnant. While she may have been in denial and wished away her pregnancy, she was not detached from reality. To the contrary, she was deliberate and devious in her behavior.

Perhaps the most damaging evidence of premeditation is the Defendant's extensive research on the Internet about pregnancy and ways to kill a fetus. There would be little reason to do this type of research if you were not aware of your pregnancy and were not plotting ways to kill your fetus/child.

There were many forks in the road for the Defendant during the course of her pregnancy. There were many pivotal points when she had to make a decision what to do about her pregnancy. There were many chances the Defendant had to make decisions that would not have sent her down the road to suffocation of her child.

These decisions included the Defendant's responses to the inquiries from her parents about the appearance of her pregnancy. At that point the Defendant had choices. She was aware of her sexual and menstrual history in the preceding months. She could have taken a pregnancy test to answer the questions posed to her.

During the summer of 2007, the Defendant was experiencing physical changes to her body that would have required some thought and response on her part. She had to decide whether to seek a medical opinion about what was occurring to her. She chose to forego a medical opinion.

The Defendant was obviously contemplating her options when she went on the Internet. Her research may have answered some questions for her. However, the nature of the topics she was researching reflect the Defendant's thoughts that helped form her remaining decisions.

When she was confronted about her pregnancy during her volleyball physical on August 10th, the Defendant had a decision to make. She could have confided in the medical examiner, a person with some expertise she needed. The Defendant could have accepted the examiner's suggestion she take a pregnancy test. She decided against any of these options. Her decision was to repeatedly deny her pregnancy to the examiner despite all of the information known to her at that time.

She had a decision to make whether to confide in her trusted roommate, Julia Butler. Despite many opportunities to do so over the summer and during the week-end of August 10th, 2007, the Defendant went to great lengths to keep her secret from Butler. Perhaps the most egregious decisions the Defendant made were the calculated deceptions she used to prevent Butler from helping her during the week-end of August 10th. The decisions the Defendant made on Sunday, August 12th intentionally prevented Julia Butler from becoming aware of the Defendant's pregnancy and from helping her. Had the Defendant made a different decision at any point over the week-end, this baby would not have been suffocated.

The Defendant had many decisions to make whether to confide in Sarah King and to accept King's direct offers of help. The Defendant could have talked about her situation with King at any time over the August 10th week-end. The Defendant had two golden opportunities to confide in King in the confidential setting of King's office. On Saturday afternoon, the Defendant was alone with King in the privacy of King's office. The Defendant was pointedly asked by King whether she was pregnant. King pleaded with the Defendant to consider the risks to her and her baby. During this discussion, the Defendant had a series of decisions to make about confiding in King, buying a pregnancy test and taking a pregnancy test. We know the dishonest decisions the Defendant made with King on that Saturday.

Likewise on Sunday morning, the Defendant was alone with King. The Defendant was asked if she was in labor. The Defendant decided not to confide in King or accept the opportunity for help for her or her baby. We also know the Defendant's decision to lie to King later that day when King first arrived at the Defendant's apartment.

During the same week-end, the Defendant had decisions to make about her interactions with Coach Patton. After practice on Saturday morning, the Defendant had a direct opportunity to talk to Coach Patton about her situation. She decided not to confide in him or accept that opportunity for help.

The Defendant had decisions to make with all of the other people who were available to help her over the August 10th week-end. Bryan Bentz, the trainer, was trying to help the Defendant at various times throughout the week-end. The Defendant's teammates were accessible for help. The

Defendant could have sought refuge with her family, friends and many other people and organizations. Instead, she chose a criminal course.

At all of these pivotal moments of decision, the Defendant chose secrecy and not to access the resources that could have helped her and her baby. Almost all were conscious decisions the Defendant made at a time when she was not undergoing the stress of the childbirth process.

During the child delivery process, the Defendant displayed a remarkable ability to stay focused despite all of the physical and emotional trauma she was enduring. While in the bathroom in the early afternoon of August 12th, the Defendant coolly made calculated decisions that enabled her to prevent others from knowing what she was doing.

The thread that runs through all of the decisions the Defendant made to deceive others forms the fabric of her premeditation. The Defendant intentionally told a series of lies to her roommate, coaches, medical personnel and the police to conceal her intent and her crime. She made choices that ultimately lead her to kill her child. These choices by the Defendant constitute her premeditation.

F. No Need for Killing

This was a killing that was unnecessary and avoidable. Unlike most manslaughter cases, the victim was not involved in a bar fight or a domestic dispute with the killer. The victim was not armed. The victim did not engage in a series of abusive behaviors over time toward her killer. The victim did nothing to provoke her death.

G. Summary

The totality of the Defendant's conduct was different from most manslaughter cases. The Defendant's sentence holds her accountable for what she did. The sentence was individualized and dictated by the conscious decisions the Defendant made over an extended period of time that enabled her to intentionally suffocate her helpless daughter.

III. CONSIDERATION OF MITIGATING FACTORS

The Defendant contends the sentence did not include any consideration of her mitigating evidence. This contention is belied by the record as a whole.

From the beginning, Defense Counsel has taken the position that neonaticide should be treated differently from any other form of killing. Also, in part because the Defendant purportedly fits an FBI profile of neonaticide perpetrators, she should be given preferential treatment. Neither of these positions is supportable under the facts of this case.

Our state legislature is free to hold public hearings and receive evidence from the finest minds in the medical, psychiatric and psychological fields about the state of mind of a woman who commits neonaticide. The legislature can consider the plight of women situated similarly to

the Defendant. The legislature can then decide whether the people of this Commonwealth want to take a different approach to neonaticide cases. To date, our legislature has chosen not to do so.

To the contrary, our state legislature has created serious sanctions for crimes committed against children. As noted at the Defendant's sentencing, the people of Pennsylvania have expressed genuine concern about the protection of children by enacting laws mandating lengthy minimum sentences for defendants who commit heinous crimes against children.

Specifically, a law in our Sentencing Code titled "Sentences for Offenses Against Infant Persons" provides a mandatory minimum sentence of ten to twenty years in jail for the rape of a child.[5]

Likewise, having involuntary deviate sexual intercourse (meaning sexual acts orally or anally) with a child less than thirteen years old results in a mandatory minimum sentence of ten to twenty years in jail.[6]

Similarly, a mandatory minimum sentence of ten to twenty years is required for Aggravated Indecent Assault against a child under age thirteen.[7]

Meanwhile, certain forms of Aggravated Assault against a child under thirteen require a mandatory minimum sentence of five to ten years in jail.[8] Likewise, a different form of Aggravated Indecent Assault against a child under thirteen warrants a mandatory minimum sentence of five to ten years.[9]

For all of these mandatory sentences, parole shall not be granted until the minimum term of imprisonment has been served.[10]

Enactment of these mandatory laws means there are severe consequences for a defendant who commits a serious crime against a child. By contrast to most other crimes, where advisory, non-binding sentences are suggested by way of the sentencing guidelines, these mandatory laws foreclose judicial discretion and require a minimum period of lengthy incarceration.

In other words, the citizens of Pennsylvania have not suggested a sentence by way of the sentencing guidelines; instead a minimum period of incarceration is mandated. These mandatory sentences reflect the collective judgment of the citizens of Pennsylvania about how criminals should be treated for certain crimes against children.

Notably, these mandatory minimum sentences are applicable regardless

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[5] See 42 Pa.C.S.A. §9718 (1),(3). It should be noted that at page 31 of the Sentencing Rationale, this section of the statute was incorrectly cited as §9721.

[6] 42 Pa. C.S.A. §9718 (1). These provisions were applicable in the *Walls, supra* case.

[7] *Id.* §9718 (3).

[8] *Id.* §9718 (2)

[9] *Id.* §9718 (3)

[10] *Id*. §9718 (b)

of the mitigating circumstances in the defendant's life. Accordingly, a person who is situated similarly to the Defendant, to-wit, no prior criminal record, age 18 at the time of the crime, middle to upper class economically, stable nuclear family, an established religious base, high school graduate, two years of college with success at every academic level, athletic achievements, volunteer work in the community and favorable references from relatives and friends in her hometown, would still be going to jail for at least ten to twenty years if she were convicted of Rape, Involuntary Deviate Sexual Intercourse or Aggravated Indecent Assault of a child. The perpetrator would be going to jail for at least five to ten years for Aggravated Assault or other forms of Aggravated Indecent Assault. The offender also would not be eligible for parole until the mandatory minimum has been served. These sentences are mandated by the people of Pennsylvania regardless of the defendant's mitigating circumstances.

In this case, the Defendant is not facing any of the described mandatory sentences. Nor is the Defendant facing the possibility she is not eligible for parole prior to the expiration of her minimum sentence. By contrast, the Defendant is eligible for release from a state prison into a pre-release program eighteen months prior to the expiration of her minimum sentence, with participation in a pre-release program beginning twelve months before the expiration of her minimum sentence.

Contrary to the Defendant's Post Sentence Motion, the Defendant's case was mitigated. She was permitted to enter a plea to Voluntary Manslaughter thereby avoiding exposure to a life sentence for first degree murder or a possible maximum sentence of forty years for third degree murder. The Defendant overlooks the fact there are a host of women who committed neonaticide in Pennsylvania under similar circumstances as this case and who are serving more severe sentences than the Defendant, including life in prison for first degree murder.

On March 11, 2008, a jury in Washington County convicted Jessica Rizor of first degree murder and other charges for giving birth to a newborn baby in the bathroom of the home she shared with her husband and mother, killing the newborn child and then placing the baby in a trash bag.[11] Rizor told her husband the trash bag contained Thanksgiving leftovers. At trial, Rizor contended she suffered from a "depersonalization disorder" in which she did not appreciate what she was doing. The jury did not agree. Rizor was sentenced on June 5, 2008 to life in prison.

A jury in Northumberland County convicted Tracy Dupre of first degree murder and related charges for giving birth in her bathtub, drowning the baby and then placing the child in a garbage bag.[12] The victim was subsequently found in a dumpster. Dupre was sentenced on December 10,

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[11] *See Commonwealth v. Rizor, Washington County Docket Number 2637 of 2004.*

[12] *Commonwealth v. Dupre, Northumberland County Docket Number 01-914.*

2002 to life imprisonment without parole and an aggregate consecutive sentence of 6 months to 19 years for the related charges. The Superior Court affirmed by Opinion and Order dated January 11, 2005.[13]

The Defendant holds out her age as a mitigating factor. Yet two women who were younger than the Defendant at the time of killing a newborn child are doing life sentences without parole for first degree murder.

Melisa McManus was sixteen years old on April 1, 1993 when her newborn child was suffocated in a trash bag. Like the Defendant, McManus concealed her pregnancy, tried to hide the victim's body and lied to authorities afterwards about the crime. She was tried as an adult in Lancaster County and convicted of first degree murder on May 6, 1994.[14]

Melisa McManus was sentenced to life in prison without parole. This result was affirmed by the Superior Court on May 1, 1995.[15] The Pennsylvania Supreme Court denied allocatur on November 14, 1995.[16]

A similar case occurred in Dauphin County. Tina Marie Brosius was almost five months younger than Teri Rhodes when she drowned her newborn infant in a portable toilet in a public park on May 8, 1994.[17] Tina Brosius was convicted of first degree murder and is serving a sentence of life in prison without parole.

A separate case of neonaticide in Dauphin County resulted in a conviction for Third Degree Murder and Endangering the Welfare of a Child. Lori Pinkerton suffocated her son within an hour of giving birth and then gave bogus stories to authorities about the circumstances surrounding the birth and the whereabouts of the dead body.[18] She was sentenced to the maximum sentence existing then for Third Degree Murder of ten to twenty years of incarceration.[19] The Pinkerton case was affirmed by the Superior Court by Opinion and Order dated April 8, 1997.[20]

There are many factual similarities between these cases and the Defendant's case. There was an attempt to conceal the pregnancy. The killing took place shortly after giving birth. There are instances of suffocation in a plastic bag. There are attempts to hide the victim afterwards. Fabricated

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[13] *Commonwealth v. Dupre*, 866 A.2d 1089 (Pa. Super. 2005)

[14] *Commonwealth v. McManus, Lancaster County Docket Number 2039 of 1993.*

[15] *Commonwealth v. McManus, 445 Pa. Super. 628, 664 A.2d 1057 (1995) (Table, No. 1930 PHL 94).*

[16] 543 Pa. 692, 670 A.2d 141 (1995) (Table, No. 376 M.D. Alloc. 1995).

[17] *Commonwealth v. Tina Brosius, Dauphin County Docket Number 1540 of 1994.*

[18] *Commonwealth v. Pinkerton, Dauphin County Docket No. 1736 CD 1995.*

[19] The maximum sentence for Third Degree Murder was increased to forty years effective April, 1998. *See* 18 Pa.C.S.A. §1102(d). The forty year maximum for Third Degree Murder was in effect on August 12, 2007 when the Defendant's crime occurred.

[20] *Superior Court Docket Number 0100 Harrisburg 1996, April 8, 1999.*

stories about what happened or where the body was located are told by the defendant to medical and legal authorities afterward.

All of these defendants are serving sentences longer than the Defendant. In fact, all but Pinkerton serving life sentences without parole.

By comparison, the Defendant had the benefit of a plea bargain accepted in which her homicide charge was reduced to Voluntary Manslaughter. The Defendant's exposure to a life sentence for First Degree Murder or a forty year maximum sentence for Third Degree Murder was eliminated.

Four additional charges against the Defendant were withdrawn. Two of the withdrawn charges, Concealing the Death of a Child and Endangering Welfare of a Child, were first degree misdemeanors each carrying a five year maximum sentence. The charges of Recklessly Endangering Another Person and Abuse of a Corpse were second degree misdemeanors each carrying a maximum sentence of two years in jail.

Added together, the dismissal of these four charges eliminated a possible fourteen years of additional sentencing exposure for the Defendant. Remember, Tracy Dupre received six months to nineteen years of incarceration for the crimes committed in addition to the life in prison for murder.

The Defendant received a fair resolution of her case by a plea to one reduced charge and the dismissal of four related charges.

Her sentence was also mitigated by the circumstances over which she had control. All of the mitigating circumstances as cited in Paragraphs 22 A and B of the Defendant's Post Sentence Motion were reviewed in the first two pages of the Sentencing Rationale. This Court accepted as true all of the representations about the personal characteristics of the Defendant as reflected in these comments:

> I want to begin with what has been proffered as the mitigation in this case. And I certainly empathize deeply with the family of Teri Rhodes, with Teri Rhodes herself. I know it has to be devastating. I respect the fact that all the folks that have come here today to speak on her behalf and to be here in support of her, that took time and came here from Michigan and set aside what they were doing in their lives to speak on her behalf.
>
> I have no reason to dispute or not believe what they say, and I accept what they say as accurate. I accept their characterizations. I think Teri is a very kind-hearted and loving person. And you've lived your life, for the most part, to earn what has been said here today.
>
> I take into account all your circumstances that have been described here, all your character traits, and it's pretty obvious what they are.
>
> I do note I may have made one mathematical mistake, which is my mistake. I had it written as you were 19, you may have

been 18 at the time you were pregnant.

I do accept the representations that you're remorseful for what occurred in this case and I note you've accepted responsibility by way of your plea to voluntary manslaughter, and I take that into account.

S.T. pp. 36-37.

The Defendant was also informed: "This Court is empathetic to the situation Teri Rhodes found herself in January, 2007. This Court fully appreciates the reasons for compassion for Teri Rhodes and her family." *Sentencing Rationale pp. 28-29.* Further, "The parties are correct that Teri Rhodes has lived an exemplary life until the events leading up to the killing of this child." *Id. p. 29.*

The sentence imposed by this Court took into consideration all of the evidence of mitigation presented by the Defendant. These circumstances were then balanced with the nature and extent of her criminal conduct. As the Defendant was informed, the mitigation in the form of her good character existed at the time she got pregnant and throughout her pregnancy. The Defendant's character should have deterred her from committing this crime.

The Defendant abandoned her integrity and honesty and engaged in a course of intentionally deceptive behavior that enabled her to lie to her family, peers, coaches, medical personnel and the police. She chose not to use her intelligence, talents and resources to resolve the challenge she faced with her pregnancy. Ultimately, the Defendant chose the worse possible option.

None of the Defendant's character witnesses were there in the days leading up to the Defendant's crime and may not be aware of all of her conduct or the circumstances she created. While their opinions of the Defendant's character are solidly based on years of contact with her, the undeniable fact remains the Defendant has proven capable of committing a heinous crime against an infant who was totally dependent upon her for survival.

By contrast, none of the people who were with the Defendant in the days leading up to her crime attested to her character. Julia Butler, Sarah King, Ryan Patton and Bryan Bentz did not submit letters or speak on the Defendant's behalf at sentencing. Nor did any members of the Defendant's college volleyball team. In the broader view, there were no letters or appearances at sentencing by any of the Defendant's friends, classmates, teachers or administrators from Mercyhurst College.[21]

[21] Interestingly, the parents of the Defendant's roommate her freshman year wrote but their daughter did not. Specifically, Edward and Jean Ross, who live a short distance from the Defendant's parents in Michigan, wrote letters on behalf of the Defendant, but their daughter, Amanda Ross, the Defendant's roommate freshman year, did not write on the Defendant's behalf for sentencing purposes.

In the end, the Defendant received a lesser sentence than if she raped a child, had involuntary deviate sexual intercourse with a child or committed an aggravated indecent assault of a child. It was also less than the statutory maximum of ten to twenty years for Voluntary Manslaughter. To say evidence of mitigation for the Defendant was not considered is inaccurate.

In Commonwealth v. Devers, 546 A.2d 12 (Pa. 1988), the Pennsylvania Supreme Court held:

> "(w)here pre-sentence reports exist, we shall continue to presume that the sentencing judge was aware of the relevant information regarding the defendant's character and weighed those considerations along with mitigating statutory factors."

Devers, 546 A.2d at 18.

In this case, the Pre-Sentence Report was read in its entirety. There were no objections to it by either party. This Court also had the benefit of the mitigating evidence submitted by the Defendant prior to and at sentencing that was duly weighed. The fact the Defendant does not like the sentence does not mean that her evidence of mitigation was not utilized.

This opinion will continue in next week's issue of
the Erie County Legal Journal
Vol. 92 No. 13 - March 27, 2009

CHANGE OF NAME NOTICE
In the Court of Common Pleas of Erie County, Pennsylvania
No. 11090-09
In Re: Christie Anne Tevis
Notice is hereby given that on March 9, 2009, the Petition of Christie Anne Tevis was filed in the above named Court requesting to change her name to Christie Anne Paolello. The Court has fixed May 12, 2009, at 10:00 A.M. in Courtroom No. B on the 2nd Floor at the Erie County Court House, 140 W. 6th St., Erie, PA 16501 as the time and place for hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the petitioner should not be granted.

Mar. 20

CHANGE OF NAME NOTICE
In the Court of Common Pleas of Erie County, Pennsylvania
No. 11104-2009
In Re: James Michael Ross
Notice is hereby given that on March 10, 2009, the Petition of James Michael Ross was filed in the above named Court requesting to change his name to Jimmy Michael Ross. The Court has fixed May 12, 2009, at 10:30 A.M. in Courtroom No. B on the 2nd floor at the Erie County Court House, 140 W. 6th St., Erie, PA 16501 as the time and place for hearing on said Petition, when and where all interested parties may appear and show cause if any, why the request of the petitioner should not be granted.

Mar. 20

FICTITIOUS NAME NOTICE
Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business Under an Assumed of Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE
1. The fictitious name is: AAA Landscaping
2. The address of the principal place of business is: 5739 West Ridge Road, Erie, PA 16506-1013
3. The name and address of the entity filing the registration is: Cardinal One, LLC, 5739 West Ridge Road, Erie, PA 16506-1013
4. An Application for Registration of Fictitious Name was filed with the Pennsylvania Department of State under the Fictitious Name Act on March 12, 2009.
MacDonald, Illig, Jones
& Britton LLP
100 State Street, Suite 700
Erie, PA 16507-1459

Mar. 20

FICTITIOUS NAME NOTICE
1. Fictitious Name: FH Group
2. Principal business office: 2320 West 8th Street, Erie, PA 16505
3. Names and address of the persons party to the registration: Fritts and Hanna, LLP, 2320 West 8th Street, Erie, PA 16505
An application for registration of the fictitious name was filed in the office of the Department of State of the Commonwealth of Pennsylvania on January 30, 2009.
Scott E. Miller, Esq.
246 West Tenth Street
Erie, PA 16501

Mar. 20

INCORPORATION NOTICE
American Parts & Labor Corp. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.
Knox McLaughlin Gornall
& Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501

Mar. 20

INCORPORATION NOTICE
Notice is hereby given that Articles of Incorporation for Bee Pole, Inc. were filed with the Pennsylvania Department of State on January 28, 2009; this corporation was formed under the provisions of the Business Corporation Law of 1988, as amended.
Joseph T. Messina, Esq.
Elderkin, Martin, Kelly & Messina
150 E. 8th St.
Erie, PA 16501

Mar. 20

INCORPORATION NOTICE
Notice is hereby given that Articles of Incorporation for Buehler & Associates, Inc. were filed with the Pennsylvania Department of State on December 18, 2008; this corporation was formed under the provisions of the Business Corporation Law of 1988, as amended.
Joseph T. Messina, Esq.
Elderkin, Martin, Kelly & Messina
150 E. 8th St.
Erie, PA 16501

Mar. 20

INCORPORATION NOTICE
Notice is hereby given that RGS Products, Inc. has been incorporated under the Business Corporation Law of 1988.
Gery T. Nietupski, Esquire
Law Offices of Gery T. Nietupski,
Esquire, LLC
818 State Street, Suite A
Erie, Pennsylvania 16501

Mar. 20

LEGAL NOTICE
In the Court of Common Pleas of Erie County, Pennsylvania
Civil Action - Law
No.: 14533 - 2008
LOC, INC., Plaintiff
v.
VLADMIR SOLOP, d/b/a SOLOP CONSTRUCTION, Defendant
TO: Vladmir Solop, d/b/a Solop Construction
DATE OF NOTICE: March 13, 2009
IMPORTANT NOTICE
You are in default because you have failed to enter a written appearance personally or by attorney and file in writing with the Court your defenses or objections to the claims set forth against you. Unless you act within ten (10) days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights.

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 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.

Lawyers Referral Service
P.O. Box 1792
Erie, PA 16507
(814) 459-4411
Mon. - Fri. 8:30 am - 3:00 pm

Brian M. McGowan, Esquire
425 West 10th Street, Suite 201
Erie, PA 16502
Phone: (814) 453-4141
Attorney for Plaintiff, LOC, Inc.

Mar. 20

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the property known as 541 W. Washington Street, Corry, PA 16407 being more fully described in Erie Deed Book 220, Page 547.

SAID SALE to be held at the ERIE COUNTY COURTHOUSE, ROOM 209, ERIE, PA at 9:30 a.m. prevailing, standard time, on MARCH 23, 2009.

All those certain tracts of land, together with the buildings, and improvements erected thereon described as Tax Parcel 07025066001200 in Erie County Assessment Office, Pennsylvania. Seized and taken in execution as the property of Charles C. Brink and Sylvia L. Brink, at the suit of the United States of America, acting through the Under Secretary of Rural Development, on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action Number 1:07-CV-210.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by certified check or money order and the remainder of the bid within thirty (30) days from the date of the sale and in the event bidder cannot pay the remainder, the property will be resold and all monies paid at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, Room 241, U.S. Post Office & Courthouse, Pittsburgh, PA 15219. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Purchaser shall furnish Marshal with Grantee information at the sale. Marshal's costs, fees and commissions are to be borne by seller. Thomas M. Fitzgerald, United States Marshal. For additional information visit www.resales.usda.gov or contact Raquel Henderson-Crowell at 800-349-5094 ext. 4500.

Feb. 27 and Mar. 6, 13, 20

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 their attorneys named below.

FIRST PUBLICATION

GONZALES, ESTERBINO N., a/k/a ESTERBINO NAVARRO GONZALES, a/k/a GEORGE GONZALES, a/k/a ESTERBINO GEORGE GONZALES,
deceased

Late of the Township of North East, County of Erie, State of Pennsylvania
Administratrix: Silvia J. Broadhuhn, c/o 78 East Main Street, North East, PA 16428
Attorney: Brydon Law Office, Attorney John C. Brydon, 78 East Main Street, North East, PA 16428

GOODMAN, RICHARD C., a/k/a RICHARD CARL GOODMAN,
deceased

Late of the City of Erie, County of Erie, State of Pennsylvania
Executrix: Vickie Donahue, 100 Afton Dr., Erie, PA 16509
Attorney: None

KUHN, CHARLES J., a/k/a CHARLES KUHN,
deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Colleen Fromknecht, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

POLD, PAULA E., a/k/a PAULA POLD a/k/a PAULA TOROK,
deceased

Late of Millcreek Township, County of Erie and State of Pennsylvania
Executrix: Patti Torok, 402 Mahoning Street, North Versailles, PA 15137
Attorney: Ronald J. Susmarski, Esq., 4030-36 West Lake Road, Erie, PA 16505

SHEELEY, RICHARD W.,
deceased

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executor: Theresa Piechocki, 1848 Fairmont Parkway, Erie, PA 16510
Attorney: Thomas S. Kubinski, Esquire, The Gideon Ball House, 135 East 6th Street, Erie, PA 16501

SECOND PUBLICATION

BACHMAIER, ALPHONSE,
deceased

Late of Millcreek Township, County of Erie, Pennsylvania
Executrix: Louise Bachmaier, c/o Robert C. Brabender, Esquire, 2741 West 8th Street, Suite No. 16, Erie, PA 16505
Attorney: Robert C. Brabender, Esquire 2741 West 8th Street, Suite No. 16, Erie, PA 16505

BEHR, HELEN M.,
deceased

Late of the Edinboro Borough, County of Erie, and Commonwealth of Pennsylvania
Executor: Francis F. McCann, c/o The McDonald Group, L.L.P., James D. McDonald, Jr., P.O. Box 1757, Erie, PA 16507-1757
Attorney: James D. McDonald, Jr., The McDonald Group, L.L.P., P.O. Box 1757, Erie, PA 16507-1757

BULL, DONALD,
deceased

Late of the Township of Venango, Erie County, PA
Executor: Darrell J. Bull, 12915 Macedonia Road, Wattsburg, PA 16442
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

COLELLI, DOMINICK J.,
deceased

Late of Erie County, PA
Executrix: Elizabeth Brew Walbridge, 900 State Street, Suite 310, Erie, PA 16501
Attorney: Elizabeth Brew Walbridge, Esq., 900 State Street, Suite 310, Erie, PA 16501

DAUGHERTY, BERNARD L.,
deceased

Late of the City of Erie, County of Erie
Executor: Pamela Ann Hawryliw, 12241 Cole Road, North East, PA 16428
Attorney: Gene P. Placidi, Esquire, Melaragno & Placidi, 502 West Seventh Street, Erie, Pennsylvania 16502

EVANS, MARY S., a/k/a MARY EVANS,
deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Kathleen Mary Mattocks, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

GORCZYCKI, DOROTHY, a/k/a DOROTHY M. GORCZYCKI, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Co-Executors: Mark S. Gorczycki and Kathleen A. Arkwright, c/o William J. Schaaf, Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorney: William J. Schaaf, Esq., Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

HANNAH, ROBERT G., deceased

Late of the City of Erie, County of Erie

Executrix: Rebecca Kitelinger, 10341 Bennett Road, Erie, Pennsylvania 16510

Attorney: W. Richard Cowell, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

HETHERINGTON, ROBERT F., SR., a/k/a ROBERT F. HETHERINGTON deceased

Late of the Township of Millcreek

Executor: Robert F. Hetherington, Jr., 9689 East Lake Road, Ripley, NY 14775

Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

HOVIS, WILLIAM GERALD, deceased

Late of LeBoeuf Township

Executrix: Lorie S. Watson, 2323 Station Road, Erie, PA 16510

Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

KAMINSKY, JAMES F., deceased

Late of the Township of Millcreek, County of Erie, State of Pennsylvania

Executrix: Marjorie A. Kaminsky, 532 Montmarc Blvd., Erie, PA 16504

Attorney: Robert G. Dwyer, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

KENNEDY, THOMAS W., deceased

Late of the Township of Harborcreek, Erie County, PA

Executor: Michael D. Kennedy, 8733 Slade Road, Harborcreek, PA 16421

Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

KIMMY, MARY THERESA, deceased

Late of the Township of Greene, County of Erie, and Commonwealth of Pennsylvania

Administratrix: Andrea A. Stewart, 7390 Hollydale Drive, Erie, PA 16509

Attorney: Robert E. McBride, Esquire, 32 West Eighth Street, Suite 600, Erie, Pennsylvania 16501

LINDQUIST, EVELYN M., deceased

Late of the City of Erie, County of Erie

Executor: Paul S. Lindquist, 2538 Parker Avenue, Erie, Pennsylvania 16510

Attorney: W. Richard Cowell, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

METZ-MIOZZI, MARGARET R., a/k/a MARGARET R. MIOZZI, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executor: Rachel A. Metz, c/o 504 State Street, 3rd Floor, Erie, PA 16501

Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

MITCHELL, FRANCIS J., deceased

Late of the Township of Millcreek, Erie County, PA

Executrix: Meda M. Lee, 18808 Sparkling Water Rd., Apt. 303, Germantown, MD 20874

Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

NATH, IRENE, deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

Executor: Stephen Jacob Nath, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

NATHER, PAUL R., deceased

Late of the City of Erie, County of Erie

Co-Administrators: Tamara J. Engle, 2435 Roosevelt Highway, Hamlin, NY 14464 and Kevin L. Nather, Sr., 1016 Washington Place, Erie, PA 16507

Attorney: John C. Meleragno, Esquire, Melaragno & Placidi, 502 West Seventh Street, Erie, Pennsylvania 16502

OWENS, JEAN K., deceased

Late of the City of Erie

Executor: Michael J. Owens, 3816 Stellar Drive, Erie, PA 16506

Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

PETERSON, JEFFREY M., deceased

Late of the Township of Summit, County of Erie and Commonwealth of Pennsylvania

Co-Administrators: Ronald F. Peterson, and Virginia J. Peterson, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

QUINN, JOHN J., a/k/a JOHN J. QUINN, JR., deceased
Late of Millcreek Township, County of Erie, Pennsylvania
Executrix: Colleen Breen, c/o Robert G. Dwyer, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Robert G. Dwyer, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

RAWA, KAZIMIERA, a/k/a MYRA RAWA, deceased
Late of the City of Erie, County of Erie, Pennsylvania
Administratrix: Mary Alfieri Richmond, Esq., 900 State Street, Suite 215, Erie, PA 16501
Attorney: Mary Alfieri Richmond, Esq., 900 State Street, Suite 215, Erie, PA 16501

RISTOVSKI, LENKA, deceased
Late of the Township of Springfield, County of Erie, State of Pennsylvania
Executrix: Violeta Brickner, 4306 Scott Road, East Springfield, Pennsylvania 16411
Attorney: James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

ROGALA, MARLENE ANN, deceased
Late of the City of Erie
Executrix: Lynn Marie Zastawney, 3510 Bon View Drive, Erie, PA 16506
Attorney: Thomas C. Hoffman, II, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

SNYDER, THOMAS D., a/k/a THOMAS DAVID SNYDER, deceased
Late of the Township of Washington, County of Erie and State of Pennsylvania
Executrix: Shelly S. Jamieson, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

STEFANOWICZ, PAUL T., deceased
Late of the City of Erie
Administrator: Daniel C. Stefanowicz
Attorneys: Marsh, Spaeder Baur Spaeder & Schaaf, LLP, Will J. Schaaf, Esquire, Attorneys at Law, Suite 300, 300 State Street, Erie, PA 16507

STRANEVA, KATHERINE A., a/k/a KATHERINE STRANEVA, deceased
Late of the City of Erie
Executor: Gary G. Straneva, c/o 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: James J. Bruno, 3820 Liberty Street, Erie, PA 16509

SWENCKI, CAROLINE E., a/k/a CAROL E. SWENCKI, deceased
Late of the City of Erie
Executrix: Cynthia A. Pelkowski, 1020 East 34th Street, Erie, PA 16504
Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

THIRD PUBLICATION

BARRETT, JOANNE E., a/k/a JOANNE BARRETT, deceased
Late of Edinboro Borough
Executor: John S. Warwick, 1 Trimont Ln., Suite 830, Pittsburgh, PA 15211
Attorney: Thomas P. Ravis, 1003 Perry Hwy, Pittsburgh, PA 15237

BREIDING, GUYLA M., deceased
Late of the Township of McKean, County of Erie, State of Pennsylvania
Executor: Richard W. Breiding, 8150 Millfair Road, McKean, Pennsylvania 16426
Attorney: James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

CROUCH, JANET C., a/k/a JANET CATHERINE CROUCH, a/k/a JANET CROUCH, deceased
Late of the Township of Venango, County of Erie, and State of Pennsylvania
Administrator: Jared F. Crouch, 8939 Knoyle Road, Wattsburg, PA 16442
Attorney: Stephen A. Tetuan, Esquire, 558 West Sixth Street, Erie, PA 16507

FLAK, ALOIS, a/k/a AL FLAK, deceased
Late of the City of Erie, County of Erie, State of Pennsylvania
Administrators: Diane M. Lauer and David A. Flak, 1122 Wildwood Way, Erie, PA 16511
Attorney: None

GAVRILOFF, SUSAN W., a/k/a SUSAN WEST GAVRILOFF a/k/a SUSAN L. GAVRILOFF, deceased
Late of Millcreek Township, County of Erie, Pennsylvania
Co-Administrators: Daniel P. Gavriloff and Katrina G. Lewis, c/o 150 West Fifth St., Erie, PA 16507
Attorney: Colleen C. McCarthy, Esq., McCarthy, Martone & Peasley, 150 West Fifth St., Erie, PA 16507

LOPEZ, ROSE MARIE, deceased
Late of the City of Erie, County of Erie
Executor: Daniel J. Brabender, Jr., Esquire, 254 West Sixth Street, Erie, PA 16507
Attorney: Daniel J. Brabender, Jr., Esquire, 254 West Sixth Street, Erie, PA 16507

O'BRION, BARBARA J., deceased
Late of the City of Erie, Commonwealth of Pennsylvania
Executor: Jamie O'Brion, c/o Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506
Attorney: Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

QUINLAN, JOHN M.,
deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Co-Executors: Jeffrey M. Quinlan and Deborah Schafer, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

RUTKOWSKI, MATTHEW S., a/k/a MATTHEW SIMON RUTKOWSKI,
deceased
Late of Venango Township, Erie County, Pennsylvania
Executrix: Peggy M. Poniatowski, 9197 East Lake Rd., North East, PA 16428
Attorney: None

RUTKOWSKI, SAMANTHA A.,
deceased
Late of the Township of Girard, Erie County, Pennsylvania
Administratrix: Otylia L. Schenker, 266 Palacade Ct., Girard, PA 16417
Attorney: None

WADE, EVELYN J.,
deceased
Late of Concord Township, County of Erie, Commonwealth of Pennsylvania
Executor: Charles A. Wade, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

WOLFF, ANTHONY C.,
deceased
Late of the Township of Girard
Executrix: Eleanore K. Beer, 2500 Nursery Road, Lot 311N3, Lake City, PA 16423
Attorney: Michael A. Fetzner, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

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Erie, PA 16502 ---------- *mattparini@gmail.com*

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New Email Address
John F. Mizner ---------- *jfm@miznerfirm.com*

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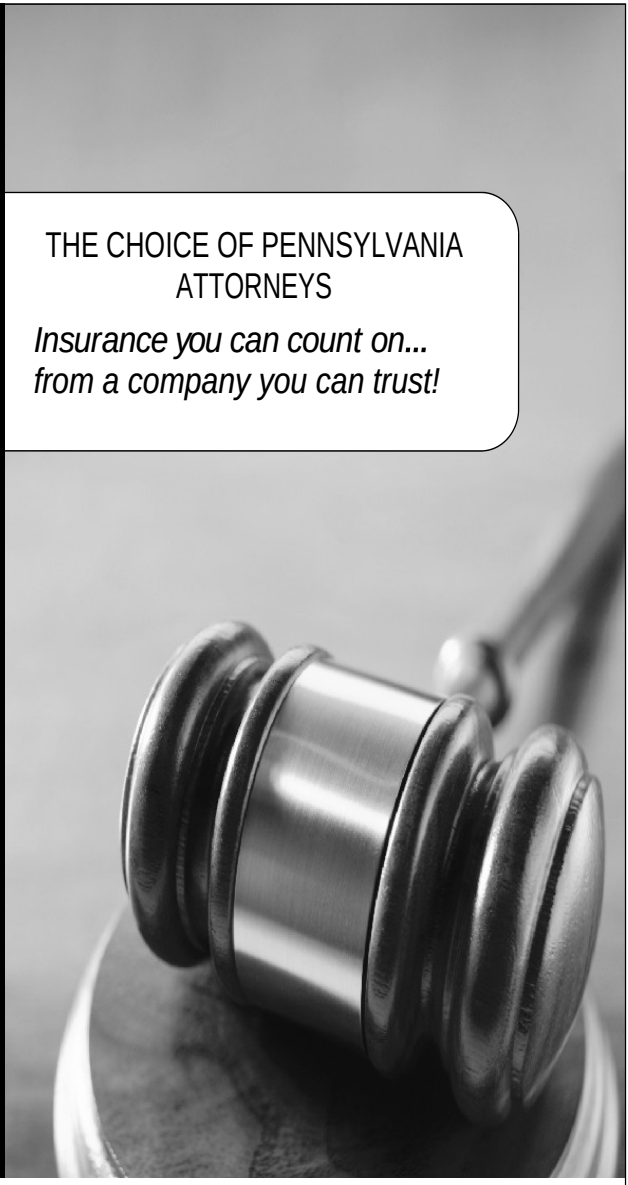

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