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In the United States District Court for the Western District of Pennsylvania
Morrow v. Marucci, Ginkel, Various John Does, The City of Erie, Pennsylvania

Erie County Legal Journal

Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania

Managing Editor: Megan E. Black

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Erie County Bar Association
Calendar of Events and Seminars

MONDAY, MAY 27, 2019
Memorial Day Holiday
ECBA Office Closed
Erie County and Federal Courthouses Closed

FRIDAY, JUNE 14, 2019
Flag Day Holiday
Erie County Courthouse Closed

FRIDAY, JUNE 14, 2019
AKT Kid Konnection Event
8:00 a.m. - 3:45 p.m.
Cleveland

FRIDAY, JUNE 14, 2019
Law Day Committee Meeting
Noon
ECBA Headquarters

TUESDAY, JUNE 18, 2019
Estates Leadership Committee Meeting
Noon
The Will J. Schaaf & Mary B. Schaaf Education Center

THURSDAY, JUNE 27, 2019
AKT Kid Konnection Event
5:30 p.m. - 7:00 p.m.
Get Air

THURSDAY, JUNE 27, 2019
Defense Bar Meeting
4:00 p.m.
ECBA Headquarters

FRIDAY, JUNE 28, 2019
ECBA Board of Directors Meeting
8:30 a.m.
ECBA Headquarters

THURSDAY, JULY 4, 2019
Fourth of July Holiday
ECBA Office Closed
Erie County and Federal Courthouses Closed

FRIDAY, JULY 5, 2019
ECBA Office Closed

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TYRONE MORROW, SR., Plaintiff

v.

WILLIAM MARUCCI, II, Individually, PATRICK GINKEL, Individually, VARIOUS JOHN DOES, Individually, THE CITY OF ERIE, PENNSYLVANIA, Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA
Case No. 1:16-cv-00197 (ERIE)

OPINION

I. Recommendation

It is respectfully recommended that the Defendants' Motion for Summary Judgment [ECF No. 58] be GRANTED.[1]

II. Report

A. Introduction

Tyrone Morrow, Sr. (Morrow) commenced this lawsuit pursuant to 42 U.S.C. § 1983, against the City of Erie (City) and two officers of the City's Police Department, William Marucci, II (Marucci) and Patrick Ginkel (Ginkel). Morrow's Complaint asserts nine claims against the Defendants, including Marucci and Ginkel unlawfully detained him without reasonable suspicion or probable cause in violation of his Fourth Amendments rights (Court I), discriminated against him based upon his race in violation of his right to equal protection under the Fourteenth Amendment (Court V), and conspired to violate his civil rights (Court VI). Morrow alleges that the City is liable for all constitutional violations committed against him based upon theories of "municipal liability." (Count VII). Defendants have moved for summary judgment on Counts I, V, VI and VII of Morrow's Complaint and on all claims against the City. The Court held oral argument on the Defendants' motion on April 24, 2019, at which counsel for the Plaintiff failed to appear. *See* ECF No. 74. For the reasons that follow, it is respectfully recommended that the motion for summary judgment be granted as to these claims.

B. Factual Background.[2]

On July 1, 2015, shortly after 11:00 AM, Lieutenant Michael Nolan of the Erie Police Department (EPD) received a tip from a confidential informant that two African American males inside Marty's Tavern were in possession of illegal firearms. ECF No. 57, ¶¶ 1-3. Marty's, located on the southeast corner of East 10th and Parade Streets, operates in a neighborhood well-known by the EPD for drug activity. *Id.* ¶ 5. The informant described one of these individuals as wearing an "all-black jogging suit or sweat suit." *Id.* ¶ 7. Lt. Nolan passed this information to the officer in charge of the EPD's SWAT Team, Officer John Nolan.[3]

[1] This Court has jurisdiction under 28 U.S.C. § 1331.

[2] The following factual background is taken primarily from the parties' Concise Statements of Undisputed Fact. ECF No. 57, ECF No. 66, ECF No. 70, ECF No. 75. The Court will note instances where the facts are disputed, and, in accordance the summary judgment standard, view those facts in the light most favorable to Morrow. *See Frank Pollara Grp., LLC v. Ocean View Inv. Holding, LLC*, 784 F.3d 177, 179 n. l (3d Cir. 2015); *Koutsogiannis v. Rogalski*, 2019 WL 669803, *2 (D.N.J. Feb. 19, 2019).

[3] EPD Officers Michael Nolan and John Nolan are brothers.

A team of ten to fifteen officers was assembled to investigate the informant's tip. *Id.* ¶ 9. This response team took up positions at various locations near the tavern. *Id.* ¶ 10. As the team was arriving on the scene, the confidential informant notified Lt. Michael Nolan that the two suspects may be preparing to depart the tavern. *Id.* ¶ 11.

Marucci was one of the officers assigned to the SWAT Team that responded to the situation at Marty's Tavern. *Id.* ¶ 16. Marucci was informed about the individuals in the tavern who were suspected of illegal firearm possession. *Id.* ¶ 17. He testified at his deposition that the suspects were "one or two black males in the tavern wearing dark clothing, one possibly wearing a dark sweatshirt." ECF No. 60-1 p. 8. (Marucci Deposition). Marucci, along with Defendant Ginkel and another patrolman took up a position a block away from the tavern where they waited for further instructions from the SWAT Team commander.

Marucci, Ginkel, and the patrolman received instructions to approach the tavern. *Id.* ¶ 20. Marucci testified that after receiving these orders, he drove towards the front door of the tavern, activated his vehicle's emergency lights, and then exited his vehicle. *Id.* Morrow disputes this testimony. ECF No. 68-5 p. 40.

Meanwhile, Morrow was walking north on the east side of Parade Street, towards Marty's Tavern. ECF No. 57, ¶ 21. He was wearing a black jacket, white hat, white t-shirt, blue jeans, and white sneakers. *Id.* ¶ 22. Upon exiting his vehicle, Marucci noticed Morrow and concluded that he matched the description provided to Lt. Nolan by the confidential informant. *Id.* ¶¶ 24, 28. Ginkel corroborated that they were looking for an African American male wearing dark clothing inside the tavern and that he observed Morrow walk off of the sidewalk and onto Parade Street near the tavern. *Id.* ¶¶ 29-30. Marucci then approached Morrow. *Id.* ¶ 33.

The parties' versions of events following this point differ materially. At his deposition, Marucci offered the following version of events:

- Marucci saw Morrow when Marucci exited his police vehicle;
- Morrow was standing in front of the bar;
- Morrow looked surprised when he saw the approaching police cars;
- Morrow crossed Parade Street and began walking in a westerly direction;
- Morrow was not running, but walking hurriedly to get out of the way;
- Marucci summoned Morrow toward him;
- Marucci expressed a desire to speak with Morrow, instructing Morrow to "stop, show me your hands";
- Morrow kept walking;
- Marucci notices Morrow reach into his waistband and pull out what he believed to be a rock of crack cocaine and ingest it;
- Morrow came to the front of the police vehicle; and
- Marucci ordered Morrow to turn around and was about to initiate a pat-down search when Morrow collapsed to the ground.

ECF No. 60-1, pp. 14-27

In contrast, Morrow related the following version of events: Earlier that day, Morrow had gone to a store to pay a utility bill. ECF No. 68-5 at 38-39. As he was returning from this task, he noticed the police setting up a perimeter around Marty's Tavern and entering the tavern. *Id.* at 39-40. He "wanted to get out of the way." *Id.* at 40. As he attempted to cross

Parade Street, a police SUV "jumped the curb" on East 10th Street, cutting Morrow off in the middle of the street. *Id.* Morrow testified that he was cut off by an "officer with a gun in his hand." *Id.* at 41. He denies that the officer told him to "stop" or "freeze." *Id.* at 64. Morrow recalls telling the officer, "Please, don't shoot me," and the officer instructing him to "put [his] hands behind your back." *Id.* at 42. Morrow denies possessing crack cocaine. *Id.* at 60. After complying with that officer's request, Morrow stated that the same officer "attacked" him, threw him to the ground, and began to choke him. *Id.* Morrow does not recall this officer speaking to him, but instead Morrow recalls telling that officer, "Sir, you can't twist my neck like this because I've had a fusion." *Id.* at 44. According to Morrow, the officer began to choke him harder while Morrow complained, "I can't breathe." *Id.* Morrow states that by this time, "dozens" of EPD officers were present and that several of them attempted to get him to stand up, threatening him with jail if he did not comply. *Id.* at 45-46. Prior to this, Morrow had told the officers that he had a compressed spinal cord and could not feel his arms and legs. *Id.* at 45. The parties agree that Morrow was taken by ambulance to a hospital where he was admitted. ECF No. 57 ¶ 40.

C. Claims and Procedural History

Morrow's Complaint named Marucci, Ginkel, the City and "various John Does" as defendants.[4] ECF No. 1, ¶¶ 7-10. Count I of the Complaint alleges that Marucci and Ginkel violated his Fourth (and Fourteenth) Amendment rights by stopping, seizing, and searching him "without lawful justification, reasonable suspicion, or probable cause." *Id.* ¶ 76 Count II alleges that these Defendants used excessive force against him in violation of his rights under the Fourth and Fourteenth Amendments. *Id.* at ¶ 83. Count III alleges that Marucci and Ginkel failed to intervene, prevent, or stop the ongoing violations of his constitutional rights. *Id.* at ¶¶ 93-97. Count IV alleges that Marucci and Ginkel failed to provide Morrow with medical care after they detained him in violation of his rights under the Fourteenth Amendment. Id. ¶¶ 102-105. Count V alleges that Marucci and Ginkel discriminated against him based upon his race in violation of his equal protection rights. *Id.* ¶¶ 110-114. Count VI asserts a civil conspiracy claim against these same Defendants. ¶¶ 122-127. At Count VII, Morrow alleges municipal liability against the City of Erie. *Id.* ¶¶ 133-150. Finally, Morrow alleges state law tort claims of assault and battery (Count VIII) and intentional infliction of emotional distress (Count IX) against Marucci and Ginkel. *Id.* ¶¶ 154-158; ¶¶ 160-163.

After the close of discovery, the Defendants moved for summary judgment on Counts I, V, VI, and VII of the Complaint. ECF No. 58. The matter has been fully briefed and is ripe for Report and Recommendation.

D. Standard of Review

i. Summary Judgment

Summary judgment is appropriate if, drawing all inferences in favor of the non-moving party, the record shows that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment may be granted against a party who fails to adduce facts sufficient to establish the existence

[4] Defendants argue, and Morrow agrees, that the claims against the unknown John Doe officer defendants should be dismissed because Morrow has failed to identify them. See *McCrudden v. United States*, 2019 WL 668950, at*2 (3d Cir. Feb. 19, 2019) (citing *Hindes v. FDIC*, 137 F.3d 148, 155 (3d Cir. 1998) ("The case law is clear that [f]ictitious parties must eventually be dismissed, if discovery yields no identities."); Fed. R. Civ. P. 21. Accordingly, the Court should dismiss all claims against the unknown "John Doe" Defendants.

of any element to that party's case and for which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The moving party, here the Defendants, bears the initial burden of identifying evidence or the lack thereof that shows the absence of a genuine issue of material fact. *National State Bank v. Federal Reserve Bank of New York*, 979 F.2d 1579, 1582 (3d Cir. 1992). Once that burden has been met, the non-moving party must set forth "specific facts showing that there is a genuine issue for trial" or the record will be taken as presented by the moving party and judgment will be entered as a matter of law. *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). An issue is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

Thus, the inquiry involves determining "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Brown v. Grabowski*, 922 F .2d 1097, 1111 (3d Cir. 1990) (quoting *Anderson*, 477 U.S. at 251-52). If a court, having reviewed the evidence with this standard in mind, concludes that "evidence is merely colorable ... or is not significantly probative," then summary judgment may be granted. *Id.* at 249-50.

ii. Qualified Immunity

Morrow brings this action pursuant to 42 U.S.C. § 1983, which authorizes individuals to commence a civil action to recover damages against any "person" who, while acting "under color of" state law, violates his or her federal rights. 42 U.S.C. § 1983; see *West v. Atkins*, 487 U.S. 42, 48 (1988). Defendants raised the affirmative defense of qualified immunity in their Answer. *See* ECF No. 15, p. 17, ¶ 7. They seek summary judgment based on that defense only as to Count I, Morrow's Fourth Amendment unlawful seizure claim. ECF No. 58, ¶ 9.

Qualified immunity shields a government official from suit under 1983 except where his or her conduct is shown to have violated the plaintiff's "clearly established" constitutional rights. *Berg v. Cty. of Allegheny*, 219 F.3d 261, 272 (3d Cir. 2000). "[Q]ualified immunity is important to society as a whole, and ... as immunity from suit, qualified immunity is effectively lost if a case is erroneously permitted to go to trial." *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (internal quotation marks and citations omitted). Whether an official is entitled to qualified immunity entails a two-part analysis: "First, "[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier v. Katz*, 533 U.S. 194, 201 (2001). Second, in light of the specific context of the case, was the right at issue "clearly established" at the time of the violation? *Davenport v. Borough of Homestead*, 870 F.3d 273, 280 (3d Cir. 2017) (internal citations omitted), *cert. denied* 138 S. Ct. 1263 (2018). "[T]he burden of persuasion at a summary judgment proceeding [is] on the party asserting the affirmative defense of qualified immunity." *Halsey v. Pfeiffer*, 750 F.3d 273, 288 (3d Cir. 2014); *see also Burns v. PA Dep't of Corr.*, 642 F.3d 163, 176 (3d Cir. 2011) ("The burden of establishing qualified immunity falls to the official claiming it as a defense.") (internal citation omitted)).

"[C]learly established law should not be defined at a high level of generality." *White*, 137 S. Ct. at 552 (internal citation and quotation marks omitted). Instead, it must be "particularized' to the facts of the case." *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). A right is clearly established if a reasonable official would have understood that his actions, at

the time of the incident, violated the law. *See Spiker v. Whittaker*, 553 Fed. Appx 275, 279 (3d Cir. 2014) ("A right is clearly established if 'it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). The test has been described as "protect[ing] all but the plainly incompetent of those who knowingly violate the law." *White*, 137 S. Ct. at 551 (internal citation and quotation marks omitted). Courts may address either prong of the test first. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

IV. Discussion

A. Fourth Amendment Illegal Seizure Claim (Count I)

Defendants Marucci and Ginkel move for summary judgment on Morrow's claim that their seizure of his person violated his rights under the Fourth Amendment.[5] Labeling the incident a Terry stop, they argue that reasonable suspicion existed to stop and briefly detain Morrow.[6] They also invoke the defense of qualified immunity, contending that Morrow's evidence is insufficient to show a constitutional violation. ECF No. 62, p. 13. They do not offer argument that, even if Morrow has presented evidence that his Fourth Amendment rights were violated, the right infringed was not clearly established at the time of the incident.

The analysis of this claim begins and ends with the Defendant's qualified immunity defense. *See Randolph-Ali v. Minium*, 2019 WL 1299195, *4 (M.D. Pa. March 21, 2019). As noted, a defense of qualified immunity turns on two distinct inquiries: whether, based on the record evidence, a constitutional right has been violated and, if so, whether that right was "clearly established" at the time of the alleged violation. *See Spady v. Bethlehem Area Sch. Dist.*, 800 F.3d 633, 637 (3d Cir. 2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). The qualified immunity analysis can begin with either prong. *Pearson*, 555 U.S. at 236. Marucci and Ginkel's motion rests on the argument that the record, considered in the light most favorable to Morrow, fails to establish a violation of his Fourth Amendment rights, thereby obviating any need to reach the "clearly established" prong of the qualified immunity test.

i. The Initial Stop and Violations of the Fourth Amendment

Under *Terry v. Ohio*, 392 U.S. 1 (1968), "a police officer may 'conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.'" *United States v. McCants*, 2019 WL 1497436, *2 (3d Cir. Apr. 5,2019) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123-24 (2000)). "Reasonable suspicion is an 'elusive concept,' but it unequivocally demands that 'the detaining officers must have a particularized and objective basis for suspecting that particular person stopped of criminal activity.'" *United States v. Brown*, 448 F.3d 239, 246 (3d Cir. 2006) (quoting *United States v. Cortez*, 449 U.S. 411 (1981)). "At the same time, we must allow 'officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.'" *Id.* (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). Courts "examine 'whether the officer's action ... was reasonably related in scope to the circumstances which justified the interference in the first

[5] The Fourth Amendment guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV; *see also United States v. Werdene*, 883 F.3d 204, 213 (3d Cir. 2018).

[6] *See Terry v. Ohio*, 392 U.S. 1 (1968).

place.'" *United States v. Johnson*, 592 F.3d 442, 452 (3d Cir. 2010) (quoting *Terry*, 392 U.S. at 20). This "is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." *United States v. Torres*, 341 F. Supp. 3d 454, 461 (M.D. Pa. Sept. 20, 2018) (quoting *Alabama v. White*, 496 U.S. 325, 330 (1990)). Like probable cause, reasonable suspicion "is dependent upon both the content of information possessed by police and its degree of reliability[,]" and "[b]oth factors — quantity and quality — are considered in the 'totality of the circumstances — the whole picture.'" *Id.* (quoting *Cortez*, 449 U.S. at 417).

The Defendants claim they had a reasonable suspicion to stop Morrow because of information relayed to the EPD from a reliable confidential informant that two African American individuals, one of whom was wearing dark clothing, were in possession of illegal firearms in Marty's Tavern. *See* ECF No. 62, p. 11. Further, they argue that Marty's Tavern is known to investigating officers as a location where illegal drug activity takes place. *Id.* Because Morrow was in the vicinity of illegal activity and was "observed just outside of Marty's Tavern walking away from the bar wearing dark clothing on a hot summer day," they contend Marucci had reasonable suspicion to stop him.[7] The Court agrees.

The officers had reasonable suspicion to initially stop Morrow if they had "a particularized and objective basis for suspecting [Morrow] for criminal activity." *Cortez*, 449 U.S. at 417-18. As the Court of Appeals for the Third Circuit recently explained, "[t]he ultimate question is whether the record is sufficient to establish that police had a reasonable suspicion based on articulated facts that would justify the search or seizure of the individual in question." *See United States v. Bey*, 911 F.3d 139, 145 (3d Cir. 2018) (citing *Johnson v. Campbell*,332 F.3d 199, 206 (3d Cir. 2003)). In making this determination, the Court must credit reasonable deductions drawn by police in light of their experience and training. *Arvizu*, 534 U.S. at 273.

The undisputed facts of record here establish as a matter of law that Marucci and Ginkel had reasonable suspicion to initially stop Morrow. It is undisputed that Morrow was present in the immediate vicinity of the establishment where the confidential informant stated the police would find the two suspects in question. Morrow was walking in an area known to the police for drug activity. *See*, *e.g.*, *United States v. Mosley*, 2018 WL 1792222, at *3 n.4 (M.D. Pa. April 16, 2018); *United States v. Edmonds*, 2013 WL 6002234, at *10 (W.D. Pa. Nov. 12, 2013), *aff'd* 606 Fed. Appx 656 (3d Cir. 2015) ("the officers' awareness of prior crimes having occurred in the general vicinity is certainly one of the factors which must be considered in the evaluation of all of the evidence"); *United States v. Burk*, 2009 WL 86981, at *5 (E.D. Pa. Jan. 13, 2009) (officers are not required to ignore relevant characteristics of a location, such as its reputation as a high crime area) (citation omitted). Based on information forwarded to Marucci from Officer Nolan's confidential informant, officers were looking for one or two African American males in Marty's Tavern wearing black or dark clothing. ECF No. 60-1, at 8. Upon arriving on scene, Marucci noticed Morrow, who was African American, standing in front of the bar. *Id.* at 15. Morrow hurried across the street upon the approach of the police cars, making a "bee line across Parade Street ... not running but

[7] The summary judgment record does not contain evidence of the weather on the day in question.

walking in a hurry just to get out of the way." *Id.* Marucci stated Morrow's actions "piqued my attention because he's coming from the front of the bar, he's a black male, he's wearing dark clothing, and he sees us and starts going across the street, so I want to talk to him." *Id.* at 16. Marucci then summoned Morrow to come towards him. *Id.* Officer Ginkel also testified that he suspected Morrow of gun possession based on "the description we had, the location that this individual was to be at, and that he was moving away from the establishment." ECF No. 61-2, at 18.

Morrow maintains that he was doing nothing more than walking down the street, and then crossed the street to avoid getting in the way of the police activities in front of Marty's Tavern. ECF No. 68-5, p. 40. As the Supreme Court has recognized, however, "sometimes behavior giving rise to reasonable suspicion is entirely innocent, but [*Terry*] accepted the risk that officers may stop innocent people." *Illinois v. Wardlow*, 528 U.S. 119, 130 n.4 (2000) (citing *Terry*, 392 U.S. at 30). Given the totality of the circumstances here, Marucci and Ginkel's suspicion that Morrow may have been one of the suspects in possession of an illegal firearm was reasonable. *United States v. Brown*, 765 F.3d 278, 290 (3d Cir. 2014) (quoting *United States v. Mosley*, 454 F.3d 249, 252 (3d Cir. 2006) (counseling that courts should "give considerable deference to police officers' determinations of reasonable suspicion.")).

Accordingly, the record establishes that Morrow's Fourth Amendment rights were not violated by the Defendants' initial stop. But that is not the end of the inquiry. Morrow was first verbally and then physical restrained by the Defendants after being stopped. Thus, the Court must analyze whether the investigatory stop evolved into a *de facto* arrest. Here, the question is whether Defendants produced sufficient evidence to justify Morrow's continued detention.

ii. The Continued Detention and Potential *De Facto* Arrest

The Third Circuit has explained that "[a]n investigative stop may constitute (or ripen into) a *de facto* arrest where the "circumstances ... amount to a show of official authority such that 'a reasonable person would have believed he was not free to leave.'" *United States v. De Castro*, 905 F.3d 676, 678-80 (3d Cir. 2018) (quoting *Florida v. Royer*, 460 U.S. 491, 502 (1985)). A valid investigatory stop must be "limited in scope and duration." *Royer* 460 U.S. at 500. To be limited in scope, "the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time." *Id.* To be limited in duration, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purposes of the stop." *Id. See also Dunaway v. New York*, 442 U.S. 200, 212 (1979) (explaining that valid *Terry* stops permit officers to question individuals or ask them to explain suspicious circumstances, "but any further detention or search must be based on consent or probable cause" (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975)). There is no bright line rule for determining when an investigatory stop becomes a *de facto* arrest. *United States v. Sharpe*, 470 U.S. 675, 685 (1985). "[W]hen police officers make an investigative stop, they may take such steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop." *United States v. Edwards*, 53 F.3d 616, 619 (3d Cir. 1995) (citation omitted). "An officer may use intimidation and brief physical restraint without necessarily transforming the encounter into an arrest." *United States v. King*, 2019 WL 1467994, *3 (3d Cir. 2019); *see also Edwards*, 53 F.3d at 620 ("[W]e distinguish the

length of time a suspect may be detained before the detention becomes a full-scale arrest...."); *Baker v. Monroe Twp.*, 50 F.3d 1186, 1193 (3d Cir. 1995) ("There is no per se rule that pointing guns at people, or handcuffing them, constitutes an arrest"). Ultimately, the Court "must examine the reasonableness of the detention, particularly whether the police were diligent in accomplishing the purpose of the stop as rapidly as possible." *Id.* at 1192. The United States Court of Appeals for the Third Circuit has recognized that "the vast majority of courts have held that police actions in blocking a suspect's vehicle and approaching with weapons ready, and even drawn, does not constitute an arrest per se." *Edwards*, 53 F.3d at 619. Additionally, placing a suspect in handcuffs while securing a location or investigating does not automatically transform an otherwise-valid *Terry* stop into a full-blown arrest. *Baker*, 50 F.3d at 1193. In determining whether an encounter is a *Terry* stop or a *de facto* arrest, "[t]he 'reasonableness of the intrusion is the touchstone' of the inquiry, in that 'the need of law enforcement officials' must be balanced against 'the burden on the affected citizens.'" *Baker*, 50 F.3d at 1192. Indeed, "the Supreme Court recognized that 'it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties.'" *See Johnson*, 592 F.3d at 448 (quoting *Terry*, 392 U.S. at 24).

What followed Morrow's initial stop was explored at great length in the depositions of Marucci, Ginkel, and Morrow. The Court will summarize this testimony, beginning with Defendant Marucci. When Morrow began to cross the street, Marucci ordered him to "Stop. Show me your hands." ECF No. 60-1, p. 17. According to Marucci, Morrow ignored his command and kept walking. *Id.* Marucci again told Morrow to stop and instructed him to "come over here." *Id.* Marucci then noticed Morrow reach into the waistband of his pants, retrieve an object, and place it in his mouth. *Id.* at 19. Although Marucci did not believe Morrow had a firearm, he testified that seeing Morrow put what he thought to be a rock of crack cocaine in his mouth "led to my suspicion. I was more concerned about the gun." *Id.* at 20-21. Marucci then relates

> All I wanted to do was get him over to the car, summon him over towards my car and directed him towards the front. The way the vehicle was parked facing the opposite way, so we were facing southbound directly looking at oncoming traffic, blocking the entire roadway. Summoned him towards me. He came to the front of the vehicle, and what I do is, I don't put them over the hood, I use the car as a barricade, so I'm here, he would be in the center, and the car would be used as a barricade to get him between me and the vehicle. That's what I wanted him to do, had him turn around. When I said "turn around" I have put my hand on his shoulder and then was going to start a pat-down and that's when he collapsed to the ground.

Id. at 21. As Morrow was laying on the ground, Marucci ordered him to put his hands behind his back. *Id.* at 22. Marucci handcuffed Morrow and searched him for weapons. *Id.* None were found. *Id.* Marucci and Ginkel (who by this time was assisting Marucci) set Morrow against a pole. *Id.* at 28. Marucci believes he stayed with Morrow about fifteen minutes before removing the handcuffs and leaving the scene. *Id.* at 31.

Defendant Ginkel recalls the incident similarly. As they approached Marty's Tavern at the

intersection of East 10th and Parade Streets, he sees an individual "come off the sidewalk from directly in front of that structure, of Marty's structure, and into the street." ECF No. 61-2, at 13-14. Ginkel also saw Morrow reach into his waistband and put something into his mouth. *Id.* at 16. When his police vehicle came to a stop, Morrow was in front of it. *Id.* at 18. Ginkel recalls Marucci giving verbal commands to Morrow. *Id.* Although he could hear Marucci's commands, Ginkel could not remember their content at his deposition. *Id.* at 21. He next saw Marucci move toward Morrow and Morrow fall to the ground. *Id.* Ginkel then exited the vehicle, which took him longer than Marucci because Ginkel was in the back seat. *Id.*[8]

Upon approaching Marucci and Morrow, Ginkel noticed Marucci "pulling [Morrow's arms] behind his back in a normal handcuff position." *Id.* at 23. Morrow was not resisting. *Id.* Ginkel assumed a "control position" and assisted Marucci in handcuffing Morrow. *Id.* at 24. Ginkel described the position as "knee on top position ... not applying pressure ... just a knee over top of his hips to where if he wanted to raise his hips to get up, he couldn't, but I'm not pressing him into the ground, if that makes sense." *Id.* at 24.

Ginkel then testified that, after seeing Morrow with handcuffs, they attempted to help him stand up. *Id.* at 26-27. After attempting to get Morrow to stand up on his own — "close to five times" — Ginkel moved him to a seated position where Morrow could rest his back against a street sign. *Id.* at 29. Once in that position, the Defendants removed his handcuffs. *Id.* at 32. He stated that all of this took place within a half hour time period. *Id.* at 32.

Morrow described the incident differently. Morrow testified that after noticing EPD officers setting up a perimeter around Marty's Tavern, "I wanted to get out of their way because they had started running into the bar." ECF No. 68-5, p. 40. Then, the police vehicle operated by Marucci "jumped the curb" on East 10th Street, cutting Morrow off as he was in the middle of Parade Street. *Id.* at 40-41. Morrow claims Marucci got out of a vehicle and, with a gun in his hand, ordered Morrow to put his hands behind his back. *Id.* at 42. Morrow said, "please don't shoot me." *Id.* After putting his hands behind his back, Morrow testified that Marucci attacked him. *Id.* He testified that Marucci "threw me to the ground and began to choke me." *Id.* Contradicting the Defendants, Morrow testified that Marucci was on top of him and had his knee in Morrow's back. *Id.* at 43.

Morrow also testified that during this incident, he told Marucci, "Sir, you can't twist my neck like that because I've had a fusion." *Id.* at 44. Marucci began to choke Morrow harder and Morrow informed him, "I can't breathe." *Id.* Morrow asserts that "dozens" of officers were present and assisted Marucci in trying to get Morrow to stand up after he had collapsed. *Id.* at 45.

Although the parties disagree on various points, it is undisputed that Marucci ordered Morrow to show his hands and get on the ground and Morrow did so immediately. Morrow was then physically restrained by police and handcuffed by Marucci and Ginkel. This conduct does not turn the encounter into an arrest, for "[c]ourts have held that blocking a suspect's path, approaching a suspect with weapons drawn, tackling a suspect, handcuffing a suspect[,] and placing a suspect in a police car do not necessarily convert a *Terry* stop into an arrest." *United States v. Colon*, 654 F. Supp. 2d 326, 333 (E.D. Pa. 2009) (citing *Sharpe*, 470 U.S. at

[8] The third EPD officer in the vehicle—Officer Pilarski—was sitting in the front seat and went into Marty's Tavern. *Id.* at 22.

678); *see also United States v. King*, 2019 WL 1467994, at *4 (3d Cir. Apr. 2, 2019) (pushing suspect against police car was "reasonably needed to effectuate th[e] purpose []" of the stop and frisk and thus did not convert the encounter into an arrest) (citation omitted). Moreover, the Court notes Ginkel's testimony that his paramount concern at the time was for officer safety and the safety of those around him in light of the information relayed to him about the suspect's potential possession of a firearm. ECF No. 61-2, p. 22. Such concerns have been deemed valid for purposes of concluding that an encounter did not extend beyond a *Terry* stop and amount to an arrest. *See, e.g., Colon*, 654 F. Supp. 2d at 333 (concluding that officers' use of a taser on a defendant did not "raise [the] confrontation to an arrest."). Thus, the Court should conclude that the stop under review in this case did not become a *de facto* arrest.[9]

In light of the foregoing, and under the circumstances of this case, Defendants Morrow and Ginkel had a reasonable suspicion to justify stopping and detaining Morrow. Their continued detention of him was reasonable and the seizure did not escalate into an arrest for which the officers needed probable cause. And because there was no constitutional violation, Defendants Morrow and Ginkel should be granted summary judgment based on qualified immunity. *See, e.g., Wright v. City of Philadelphia*, 409 F.3d 595, 604 (3d Cir. 2005) (reversing denial of qualified immunity where no constitutional violation found).

B. Count V - Racial Discrimination/Equal Protection Violation

At Count V, Morrow asserts a claim against Defendants Marucci and Ginkel for racial discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1981. ECF No. l, ¶¶ 109-119.[10] He contends that his race, *i.e.*, African American, was a motivating factor in the Defendants' decision to stop him and to use of excessive force against him. *Id.* at ¶ 114. The Defendants argue that they are entitled to summary judgment on this claim because there is no evidence that Morrow was treated differently because of his race, or that there was a connection between his treatment by the Defendants and his race. ECF No. 62, at 15. The Defendants argue that the record, viewed in the light most favorable to Morrow, would not permit a reasonable jury to find in his favor. *Id.* The Court agrees and recommends that summary judgment be granted to the Defendants on this claim.

The Fourteenth Amendment dictates that a state may not "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV. The purpose of this clause is "to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Thus, to state an equal protection claim for racial discrimination under Section 1983, Morrow must demonstrate that the actions of Defendants Marucci and Ginkel "(1)

[9] The Court is mindful that Morrow's testimony raises issues concerning the extent of force used to effectuate the stop. However, the circumstances justifying the stop and its relatively short duration establish its legality under *Terry*. Whether the degree of force used by the officers in detaining Morrow was reasonable is an issue that will be determined at trial pursuant to Count II of Morrow's Complaint, which is not a subject of Defendants' Motion for Summary Judgment.

[10] Title 42 of the United States Code, Section 1981 provides that "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

had a discriminatory effect, and (2) were motivated by a discriminatory purpose." *Bradley v. United States*, 299 F.3d 197, 205 (3d Cir. 2002) (citations omitted).

To establish a discriminatory effect, Morrow must "show that [he] is a member of a protected class and that [he] was treated differently from similarly situated individuals in an unprotected class." *Id.* at 206 (citations omitted). Morrow, as an African American, is a member of a protected class. All of the Defendants are white. But there is no evidence on this record that Morrow was treated differently from other similarly situated individuals who were outside of Marty's or detained under circumstances comparable to those at issue in this case. That is, there is no evidence that other suspects of a different race were treated differently from Morrow on July 15, 2015, the date at issue in this action. The description of the suspects that day included their race, which was the same as Morrow's. Furthermore, the record includes no evidence to support an inference that race was considered for any reason beyond the fact that Morrow was the same race as the suspects described by the confidential informant. *See, e.g., Estate of Baker by and through Baker v. Castro*, 2018 WL 4762984, *12 (S.D. Tex. Aug. 31, 2018) (granting qualified immunity where plaintiff was same race as the suspect).

In addition to the absence of evidence of discriminatory effect, the record also is devoid of evidence that the Defendants were motivated by a discriminatory purpose. Discriminatory intent can certainly be proved based on the totality of the circumstances, such as a combination of "disparate impact" and "some other indicia of purposeful discrimination." *Commonwealth of Pa. v. Flaherty*, 983 F.2d 1267, 1273 (3d Cir. 1983). Purposeful discrimination can be indicated by evidence that a decision was based explicitly on race. *See, e.g., Pryor v. National Collegiate Athletic Ass'n.*, 288 F.3d 548, 564 (3d Cir. 2002) (holding plaintiffs stated a claim when alleging NCAA "stat[ed] explicitly that it believed the adoption of this policy would increase the graduation rates of black athletes relative to white athletes."). Circumstantial evidence, such as the historical background of a decision, can also support a finding of discriminatory purpose. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977). "Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Id.* at 266.

As evidence of racial discrimination, Morrow alleges in the Complaint that Marucci (or an unknown officer) "was swearing at plaintiff and yelling racial slurs at him." ECF No. 1, ¶ 33. Such evidence would have been probative of a discriminatory purpose. *See Carrasca v. Pomeroy*, 313 F.3d 8289, 834 (3d Cir. 2002). But Morrow did not testify to any racial slurs or verbal abuse during his deposition and there is no evidence on the record that Marucci or Ginkel ever uttered such epithets. Morrow's bald and controverted allegation in the Complaint cannot be considered evidence of any discriminatory motivation by the Defendants. *See, e.g., Ildefonso v. City of Bethlehem*, 2012 WL 2864423, *13 (E.D. Pa. July 12, 2012) ("Plaintiff has not come forward with any competent record evidence that [Defendant's] comments were ... racial slurs. Plaintiff cannot rest on bald allegations [of racial slurs] to defeat summary judgment ... ").

Morrow also points to Marucci's deposition testimony that his plan "was to stop any black guys" as evidence of discriminatory purpose. ECF No. 68-8, at 37-38. On its own, that statement might well be evidence of a discriminatory motivation on Marucci's part.

But Morrow takes Marucci's statement out of its context. The entire exchange reveals that Morrow's counsel asked Marucci: "And so then the plan was to go in and basically stop any black guys that you saw with dark clothing on, right?" *Id.* at 37. Morrow responded: "Dark long-sleeve coats, yes." *Id.* at 38. Implicit in this exchange is that EPD officers were told by an informant that the men suspected of carrying illegal firearms were, among other things, African American and present inside or in the immediate area of Marty's Tavern. Thus, the fact that Marucci was looking for African American males evidenced his knowledge of the description of suspects, not purposeful racial discrimination.

Morrow also claims that race was a motivating factor in Marucci and Ginkel's use of excessive force against him. EFC No. 1, ¶ 114. He brings this claim under the Fourteenth Amendment, presumably arguing that the Defendants violated his right to bodily integrity. Summary judgment should be granted to the Defendants on this claim, however, because the Fourth Amendment governs these claims, not the Fourteenth. *See Anthony v. Seltzer*, 2016 WL 5661716, *5 (E.D. Pa. Sept. 30, 2016) (citing *Graham v. Connor*, 490 U.S. 386, 395 (1989) (holding that "all claims that law enforcement officers have used excessive force — deadly or not — in the course an arrest, investigatory stop, or other' seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach")). Moreover, this claim suffers from the same absence of supporting evidence as Morrow's claim that he was illegally stopped based upon his race.

Accordingly, summary judgment should be granted to Defendants Marucci and Ginkel on this claim.

C. Count VI - Conspiracy to Deprive Plaintiff's Constitutional Rights

Next, Morrow claims that Marucci and Ginkel were "engaged in a joint venture" to cover-up their illegal seizure by not obtaining medical care, fabricating claims about him, and not reporting their wrongdoing to other officials in the EPD. ECF No. 1, ¶ 121. He also claims that the Defendants "participated in a conspiracy to engage in an unlawful stop, seizure, and assault on plaintiff." *Id.* at ¶ 122. He bases his claim in 42 U.S.C. § 1983. Morrow does not allege that Marucci and Ginkel's actions violated 42 U.S.C. § 1985(3). A § 1985 claim may be brought when it is based on a conspiracy driven by an "intent to deprive [a member of a protected class] of equal protection, or equal privileges and immunities [based on] some racial, or perhaps otherwise class-based, invidiously discriminatory animus." *Farber v. City of Paterson*, 440 F.3d 131, 135 (3d Cir. 2006). Although Morrow asserts that Marucci's "plan was to stop 'any black guys' in dark clothing," he makes no allegation that the alleged conspiracy was driven by any racial or class-based animus. Thus, his claim should be analyzed as one brought pursuant to § 1983.

A conspiracy claim brought under § 1983 must include evidence demonstrating "the existence of a conspiracy involving state action and a deprivation of civil rights in furtherance of the conspiracy by a party to the conspiracy." *Smalls v. Elhyani*, 2019 WL 463017, *4 (E.D. Pa. Feb. 6, 2019) (citing *Piskanin v. Hammer*, 2005 WL 3071760, at *4 (E.D. Pa. Nov. 14, 2005) (citation omitted)). As the Third Circuit summarized, "[t]o prove a civil conspiracy under Section 1983, a plaintiff must show that state actors 'reached an understanding to deprive him of his constitutional rights.'" *Jutrowski v. Twp. of Riverdale*, 904 F.3d 280, 293-94 (3d Cir. 2018) (quoting *Adickes v. S.H Kress & Co.*, 398 U.S. 144, 150-52 (1970)).

A conspiracy is defined as "an agreement of two or more persons to 'do a criminal act, or to do an unlawful act by unlawful means or for an unlawful purpose.'" *Id.* (quoting *Pellegrino Food Products Co. v. City of Warren*, 136 F. Supp. 2d (W.D. Pa. 2000)). Thus, Morrow must point to evidence that shows a "combination, agreement, or understanding among all or between any of the defendants to plot, plan, or conspire to carry out the alleged chain of events," i.e., "to deprive him of a federally protected right." *Kagarise v. Christie*, 2013 WL 6191556, at *1 (M.D. Pa. Nov. 26, 2013) (quoting *Ridgewood Board of Education v. N.E. ex rel. M.E.*, 172 F.3d 238, 254 (3d Cir. 1999)). He has not done so.

Morrow has cited no evidence to support the existence of an agreement between Marucci and Ginkel to deprive him of his constitutional rights. As a basis for his civil conspiracy claim, Morrow points to the following: 1) Marucci's testimony that the plan was to stop "any black guys," 2) Morrow was not wearing clothing that matched the description of the suspect, and 3) Ginkel exited the patrol car and jumped on Morrow, placing his knee on Morrow's back. ECF No. 67, at 14-15. He claims that these actions are "circumstantial evidence of an agreement and cannot possibly be viewed as sheer coincidence in as much as they had been briefed about the information provided by the confidential informant and had commenced coordinated police operations." *Id.* at 15. Drawing all reasonable inferences in Morrow's favor, the Court disagrees. Although this evidence may show concerted action, it does not demonstrate an agreement to deprive Morrow of his constitutional rights. *See Jutrowski*, 904 F.3d at 295 ("the rule is clear that the plaintiff must provide some factual basis to support the existence of the elements of conspiracy: agreement and concerted action."). Circumstantial evidence may certainly be used to show an agreement, and may include evidence

> that the alleged conspirators did or said something to create an understanding, the approximate time when the agreement was made, the specific parties to the agreement, the period of the conspiracy, or the object of the conspiracy. And in the context of an alleged conspiracy among police officers, it may manifest as conversations between officers about the incident, allegedly distorted stories that emerged, an awareness of conflicting stories and irregularities in the series of official investigations into the incident.

Id. (citations and quotation marks omitted). Here, Morrow has offered no such evidence. There is no circumstantial evidence in the summary judgment record to indicate that Marucci and Ginkel spoke or conversed about the incident, no distorted stories have emerged, nor are there any irregularities in the official investigation that might lead to a conclusion that the two officers conspired to deprive Morrow of his rights. The evidence Morrow attempts to use to prove conspiracy is nothing more than the officers' actions in responding to the situation at Marty's Tavern. It is not evidence of any agreement between the two to deny Morrow his constitutional rights and therefore, summary judgment should be granted to Marucci and Ginkel on this claim.

D. Count VII - The City of Erie's Liability under 42 U.S.C. § 1983

Morrow brings a claim against the City, arguing that the City is liable for Marucci and Ginkel's actions. ECF No. 1, ¶¶ 133-152. A municipality may be held liable under §

1983 for injuries inflicted by its agents or employees only if the injuries were the result of a governmental policy or custom. *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell v. N.Y.C. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978)); *Santiago v. Warminster Twp.*, 629 F.3d 121, 135 (3d Cir. 2010). A governmental policy or custom can be established by showing either that the decisionmaker possessing final authority to establish a municipal policy did so by issuing an official statement of policy or that a governmental custom developed when the official acquiesced to a course of conduct such that it operated as law. *Jiminez v. All Am. Rathskeller, Inc.*, 503 F.3d 247, 250 (3d Cir. 2007). The plaintiff must also show a "conscious decision or deliberate indifference." *Simmons v. City of Phila.*, 947 F.2d 1042, 1063 (3d Cir. 1991). Further, a § 1983 claim against a municipality may not be predicated on respondent superior. *Monell*, 436 U.S. at 694. Although a municipality may be liable for failure to train its employees, such a failure results in liability only if it amounts to "deliberate indifference" to the rights of those with whom the employees come into contact. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989); *Thomas v. Cumberland Cty.*, 749 F.3d 217, 222 (3d Cir. 2014).

Morrow asserts that the City is liable because of its failure to train Marucci and Ginkel and because of the City's custom of promoting and/or tolerating unconstitutional actions by its police officers. *See Connick v. Thompson*, 563 U.S. 51, 61 (2011)(failure to train); *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996) (official policy, informal custom).

i. Liability for Failure to Train

Morrow's Complaint faults the City for an alleged failure to train its police officers. ECF No. 1, ¶ 139(a). The Third Circuit has instructed that "a municipality's failure to train police officers only gives rise to a constitutional violation when that failure amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Montgomery v. De Simone*, 159 F.3d 120, 126-27 (3d Cir. 1998). Also, the failure to train or discipline can only serve as a basis for municipal liability "if the plaintiff can show both contemporaneous knowledge of a prior pattern of similar incidents and circumstances under which the supervisor's action or inaction could be found to have communicated a message of approval to the offending subordinate." *Id.* at 127.

Here, Morrow points to no specific inadequacies in the EPD training program. *See, e.g., Postie v. Frederick*, 2015 WL 7428616, *5 (M.D. Pa. Nov. 23, 2015). And he appears to have abandoned his failure to train argument because he did not discuss it in his Brief in Opposition to Summary Judgment. *See* ECF No. 67, at 7. *See, e.g., Kim-Foraker v. Allstate Ins. Co.*, 834 F. Supp. 2d 267, 275 (E.D. Pa. 2011) (holding claim abandoned where party did not discuss it); *DeForte v. Borough of Worthington*, 2019 WL 1010939, *21 (W.D. Pa. March 4, 2019) (same). Therefore, to the extent he raises a failure-to-train claim, summary judgment should be granted to the City.

ii. Liability for Unconstitutional Custom or Policy

Instead, Morrow appears to base this claim on a perceived custom of the EPD to "initiate stops (pedestrian or motor vehicle) of African Americans routinely without reasonable suspicion or probable cause." ECF No. 69 at 7.[11] *See also Santiago v. Warminster Twp.*, 629 F.3d 121, 130 (3d Cir. 2010). As evidence, Morrow provided a study conducted by the

[11] Morrow does not allege that an official policy of the EPD pemits, encourages, or condones such action.

Mercyhurst University Civic Institute which, he claims, provides empirical data to support the existence of this custom. *See* ECF No. 68-6.

a. The Mercyhurst University Study

In 2001, the City of Erie commissioned Mercyhurst University's Civic Institute[12] to "examine statistics related to police stops and searches of citizens." *Id.* at 5. The parameters of this study were "police officer reports of officer-initiated vehicle and pedestrian stops in the City of Erie during the period of September 1, 2001 to February 28, 2002." *Id.* Morrow points to many of this study's findings as evidence of racial bias within the EPD. *See, e.g.*, ECF No. 69 at 7-8. For example, the Mercyhurst Report found "significant disparity" between vehicular stops of minority and non-minority populations in the City. ECF No. 68-6 at 34. Minority pedestrians were "significantly more likely" to be stopped in situations where the EPD officers had high levels of discretion. *Id.* at 35. And although the study found that minorities were significantly more likely to be searched than non-minority citizens, there was no significant statistical difference between minority and non-minority citizens as to whether any official action was taken as a result of a police stop. *Id.*

The Mercyhurst Report made several recommendations to the City for ways to deal with the racial disparities it noted in the data. These included a review of policies and procedures regarding the appropriate bases for stop and search activity; an examination of the City's procedures to ensure that a "citizen-friendly" process is in place to receive and review complaints of racial and/or ethnic bias by police officers; the maintenance of efforts to institute community-oriented policing; and the continuation of the City's efforts to hire minority police officers. *Id.* at 36.

As further evidence of a custom of racial bias in the EPD, Morrow argues that the City ignored the results and recommendations of this study and has no policies regarding biased policing. He points to the deposition testimony of EPD Inspector Mark Sanders, who stated that "no changes" were made by the City in response to the Mercyhurst Report. ECF No. 68-7, at 19. The entire exchange was as follows:

> Q: And it's my understanding, and perhaps you're aware from being in your role as the special operations and training supervisor, that back in 2002 there was a study conducted by Mercyhurst College regarding stops of minorities, both of pedestrians and operators of motor vehicles in the Erie Police Department. Are you aware of that?
>
> A: Vaguely. It's nothing I was involved in. I honestly never saw the results of it or - honestly, I was working the street probably during that time. There was no changes made.
>
> Q: There was no changes made based on that study by Mercyhurst?
>
> A: Yea, it was a study.
>
> ***

[12] At the time the study was conducted, Mercyhurst University was known as Mercyhurst College. The College was granted university status in 2012 and will referred to as such in this Report and Recommendation. *See* https://www.mercyhurst.edu/about/history (last consulted April 23, 2019).

Q: And your position is that no changes were made.

A: From the street level, I was not aware of any.

Id. at 19-20. Morrow claims that all of this is sufficient evidence that the City knew of the racial disparity in police stops and did nothing. ECF No. 67, p. 9.

In the context of municipal liability, the Court of Appeals for the Third Circuit has defined a "custom" as occurring "when, though not authorized by law, 'such practices of state officials [are] so permanent and well-settled' as to virtually constitute law." *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996) (quoting *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1480 (3d Cir. 1990)). A "custom ... may also be established by evidence of knowledge and acquiescence." *Id.* "[A] policy or custom may also exist where 'the policymaker has failed to act affirmatively at all, though the need to take some action to control the agents of the government is so obvious, and the inadequacy of existing practice so likely to result in the violation of constitutional rights, that the policymaker can reasonably be said to have been deliberately indifferent to the need.'" *Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 584 (3d Cir. 2003) (internal quotations omitted) (citing *Bd. of Cty. Comm'rs of Bryan Cty., Oklahoma v. Brown*, 520 U.S. 397, 417-18 (1997)).

At the outset, the applicability of the Mercyhurst Report to this case is questionable. The self-defined parameters of that study were "officer-initiated vehicle and pedestrian stops." ECF No. 68-6, p. 5. The data set is over fifteen-years old and was limited to officer-initiated stops — stops conducted by police on their own accord. The Mercyhurst Report only analyzed data from these types of stops and searches "because deployment of officers by police headquarters does not involve officer discretion." *Id.* Notably, the study explained that "externally generated police contacts are not informative as to whether officers exercise discretion in a manner that may lead to racial or ethnic disparity." *Id*. The Report's self-defined limitation cuts squarely against Morrow's argument of a custom of bias because his stop fell outside of the parameters of the study. Morrow was stopped and seized as part of an ordered response to information given the EPD by a confidential informant. Defendants Marucci and Ginkel were ordered by police headquarters to respond to this tip. They had no discretion not to respond. Thus, this was not an "officer-initiated" stop, but one ordered as a response to a criminal investigation and the results of the Mercyhurst Report are not informative and its conclusions are largely inapplicable to this case.

And even if the Mercyhurst Report was relevant, the Court should not conclude that the City has a "custom" of tolerating the racially-biased police stops because it ignored the Report's recommendations. To the contrary, the City has provided documentary evidence which demonstrates that it adopted many of the recommendations made by the study. For example, a copy of the EPD's Community Relations Policy and Procedure Manual addresses the Report's recommendation that the police department "review policies and procedures concerning the appropriate basis for stops and searched." ECF No. 72 at 6. This policy, revised after the issuance of the Mercyhurst Report, relates the EPD's commitment "to correcting actions, practices, and attitudes, which may contributive [sic] to community tensions and grievances." *Id.* at 8. The EPD prohibits biased policing, specifically stating that "officers may not use race, ethnic background, gender, gender identify, sexual orientation, religion,

economic status, age, or cultural group as the sole criteria for determining when or how to take enforcement action and to provide police services." *Id*. Further, it requires EPD officers to "articulate specific facts and inferences drawn from those facts that establish reasonable suspicion or probable cause to take any enforcement action." *Id*. And any action that is taken must be done with equivalence "to all persons in the same or similar circumstances." *Id*. Moreover, the EPD has set up a procedure for taking complaints from citizens regarding alleged racial bias, and instituted various mandatory training opportunities for its officers — including use of force and diversity training. *Id*. at 14-19, 23-56.

Morrow's reliance on the testimony of Officer Sanders is also misplaced. Morrow claims that Sanders' deposition testimony establishes that the City ignored the recommendations made by the Mercyhurst Report. Morrow points to Sanders' statement that "no changes were made" in light of the Report because "it was just a study" as evidence that the City knew its officers were stopping citizens based on their race and did nothing about it. ECF No. 67, p. 8; ECF No. 68-7, pp. 19-20 (Sanders' Testimony). But Sanders also testified that the Mercyhurst Report was "nothing that I was involved in." ECF No. 68-7, p. 20. And, more importantly, there is no evidence that Sanders was a decisionmaker. *See Natale*, 318 F.3d at 584 (internal quotations omitted) ("[A] policy or custom may also exist where 'the policymaker has failed to act affirmatively at all, though the need to take some action to control the agents of the government is so obvious, and the inadequacy of existing practice so likely to result in the violation of constitutional rights, that the policymaker can reasonably be said to have been deliberately indifferent to the need.'"). Sanders testified that, at the time of the issuance of the Mercyhurst Report, he was a supervisor with the canine unit. ECF No. 68-7 at 20-21. His testimony, therefore, should be viewed as isolated or stray remarks unrelated to any of the City's decisional processes. *See Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.2d 509, 545 (3d Cir. 1992) ("Stray remarks by non-decisionmakers or by decisionmakers unrelated to the decision process are rarely given great weight, particularly if they were made temporally remote from the date of decision.").

Finally, Morrow has offered no evidence of any instances of discriminatory stops or searches by any EPD officer during the period of time between the issuance of the Mercyhurst Study and the stop at issue in this case. He has similarly offered no evidence that Marucci or Ginkel engaged in discriminatory practice prior to the stop at issue in this case. Given this lack of evidence, Morrow cannot reasonably contend that the City was on notice of any pattern of discriminatory stops or other illegal conduct during any period of time relevant to this case.

Based upon the record, Morrow has not established that the City has a custom of allowing its police officers to stop and detain citizens based on their race that is so "well-settled" as to virtually constitute law. To the contrary, the record includes no evidence to support such a de facto policy but rather reflects that the EPD has taken affirmative steps to educate its officers on racial bias and the appropriate methods in which to stop and detain citizens. Further, the evidence shows that the EPD has a policy regarding racial bias in place pursuant to which its officers received additional training. *See* ECF No. 72 at 6. In addition, the record includes uncontradicted evidence that EPD investigates claims of racial bias via its established procedures. *Id*. at 14-19, 23-56. If it is determined that inappropriate conduct occurred during the course of an investigation, an EPD officer may be recommended for

discipline. *Id*. at 20-22. The City, therefore, is entitled to summary judgment on Morrow's municipal liability claim and summary judgment should be granted on that claim.

V. Conclusion

For the reasons discussed above, it is respectfully recommended that the Court grant summary judgment to the Defendants on Counts I, V, VI, and VII of the Complaint and on all claims against the City. The Defendants have not moved for summary judgment on Counts II, III, IV, VIII and IX and those claims should proceed to trial.

VI. Notice

In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, the parties may seek review of this Report and Recommendation by filing Objections to the Report and Recommendation with the District Court within fourteen (14) days of the filing of this Report and Recommendation. Any party opposing the objections shall have fourteen (14) days from the date of service of Objections to respond thereto. *See* Fed. R. Civ. P. 72(b)(2). No extensions of time will be granted. Failure to file timely objections may constitute a waiver of appellate rights. *See Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011); *Nara v. Frank*, 488 F.3d 187 (3d Cir. 2007).

/s/ **Richard A. Lanzillo, United States Magistrate Judge**

Submitted and filed this 1st day of May, 2019

BANKRUPTCY NOTICE
IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
BANKRUPTCY NO. 17-11161-TPA
CHAPTER NO. 13
ADV. PRO. NO. 19-01014-TPA
IN RE:
THOMAS F. HOPPE, Debtor
THOMAS F. HOPPE, Plaintiff
v.
NADINE D. HOPPE, BRENDA M. TADDEO, and ERIE COUNTY TAX CLAIM BUREAU, Defendants

NOTICE OF NONEVIDENTIARY HEARING ON COMPLAINT TO SELL PROPERTY

Thomas F. Hoppe, the debtor and plaintiff in this bankruptcy matter, seeks an order to sell the plaintiff's 3.882 acres of vacant land located on Prindle Road, Harborcreek Township, Erie County, Pennsylvania for $18,000.00. The hearing shall take place on June 12, 2019, at 11:30 a.m. before Judge Agresti in the Bankruptcy Court Room, U.S. Courthouse, 17 South Park Row, Erie, PA 16501. The Court will entertain higher offers at the hearing. The gross sale price must be paid promptly at the closing for this sale. Examination of the property or further information can be obtained by contacting debtor's attorney.
Gary V. Skiba, Esq.
300 State St., Suite 300
Erie, PA 16507
814/456-5301
Attorney for Debtor

May 24

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 11352-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Patricia Marie Graham to Patricia G. Infantino.

The Court has fixed the 25th day of June, 2019 at 11:30 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

May 24

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 11353-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of William T. Skelly to Wilma Todd-Skelly.

The Court has fixed the 26th day of June, 2019 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

May 24

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 or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

An application for registration of the fictitious name Bilt Systems, 1903 W. 8th St., PMB #141, Erie, PA 16505 has been filed in the Department of State at Harrisburg, PA, File Date 04/03/2019 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the person who is a party to the registration is Nicholas Skinner, 1903 West 8th St., PMB #141, Erie, PA 16505.

May 24

WITHDRAWAL NOTICE

DUKE'S SALES & SERVICE, INC. with a commercial registered office provider in care of Corporate Creations Network Inc. in Erie County does hereby give notice of its intention to withdraw from doing business in this Commonwealth. The address to which any proceeding may be sent is 1020 Hiawatha Blvd. West, Syracuse, NY 13204. This shall serve as official notice to creditors and taxing authorities.

May 24

LEGAL NOTICE

NOTICE OF ACTION IN MORTGAGE FORECLOSURE
IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
No. 11053-2019

HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO HOME EQUITY ASSET-BACKED SECURITIES 2005-2 TRUST, HOME EQUITY ASSET-BACKED CERTIFICATES, SERIES 2005-2, Plaintiff

vs.

TODD A. COYLE, in his capacity as Administrator and Heir of the Estate of JAMES A. COYLE A/K/A JAMES ARTHUR COYLE and in his capacity as Heir of MARY L. COYLE, Deceased, KATHLEEN L. COYLE, in her capacity as Heir of the Estate of JAMES A. COYLE A/K/A JAMES ARTHUR COYLE and in her capacity as Heir of MARY L. COYLE, Deceased, RYAN JAMES COYLE, in his capacity as Heir of the Estate of JAMES A. COYLE A/K/A JAMES ARTHUR COYLE and in his capacity as Heir of MARY L. COYLE, Deceased, UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JAMES A. COYLE, DECEASED, UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER MARY L. COYLE, DECEASED, Defendants

NOTICE

To UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JAMES A. COYLE, DECEASED and UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER MARY L. COYLE, DECEASED

You are hereby notified that on April 11, 2019, Plaintiff, HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO HOME EQUITY ASSET-BACKED SECURITIES 2005-2 TRUST, HOME EQUITY ASSET-BACKED CERTIFICATES, SERIES 2005-2, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of ERIE County Pennsylvania, docketed to No. 11053-2019. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 13891 WEST RIDGE ROAD, A/K/A 13891 RIDGE ROAD, WEST SPRINGFIELD, PA 16443 whereupon your property would be sold by the Sheriff of ERIE County. You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to

do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE 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.

Notice to Defend:
Lawyer Referral &
Information Service
P.O. Box 1792
Erie, PA 16507
Telephone (814) 459-4411

May 24

AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE
Clerk of Records
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division, of the Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, May 8, 2019** and confirmed Nisi.

June 19, 2019 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

2019	ESTATE	ACCOUNTANT	ATTORNEY
144.	Linda A. Prescott a/k/a Linda Ann Prescott a/k/a Linda D. Prescott	Pamela R. Holzer, Executrix	Colleen R. Stumpf, Esq.

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

May 17, 24

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

BLACK, DONNA L.,
deceased
Late of Summit Township, Erie County
Administratrices: Lisa M. Will and Wendy Antalek
Attorney: John F. Mizner, 311 West Sixth Street, Erie, PA 16507

COLONNA, MARK A., a/k/a MARK COLONNA,
deceased
Late of the City of Erie, Commonwealth of Pennsylvania
Administrator: Silvio Satelli, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

DiMATTIO, CAROLYN C.,
deceased
Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Michael J. DiMattio, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

FITZGERALD, PATRICK M., a/k/a PATRICK FITZGERALD,
deceased
Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Administrator C.T.A.: Ronald McVoy, 2501 West Center Street, Ashtabula, OH 44004
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

FORSMAN, RONALD L., a/k/a RONALD LEO FORSMAN,
deceased
Late of Fairview Township, Erie County, Commonwealth of PA
Executor: David R. Forsman, c/o Frances A. McCormick, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

GRANAHAN, JOHN H.,
deceased
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Co-Executors: Kathleen Hamilton Sleeper and Mark E. Granahan, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

HEASLEY, TIMOTHY, a/k/a TIMOTHY J. HEASLEY,
deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Francis B. Heasley, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

IANNELLO, ANGELINE MARIE, a/k/a ANGELINE M. IANNELLO, a/k/a ANGELINE M. IANELLO,
deceased
Late of Erie, Erie County, Pennsylvania
Executor: Joseph J. Colao, c/o Peter J. Sala, Esquire, 731 French Street, Erie, PA 16501
Attorney: Peter J. Sala, Esquire, 731 French Street, Erie, PA 16501

KINEM, WILLIAM PAUL, a/k/a WILLIAM P. KINEM,
deceased
Late of the Township of Harborcreek, Commonwealth of Pennsylvania
Administratrix: Barbara Leone, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

LANGHURST, ROBERT, a/k/a ROBERT FRANCIS LANGHURST,
deceased
Late of 10745 Rt. 18, Albion, PA
Executrix: Janet Felsing, 289 Bear Creek Rd., Sarver, PA 16055
Attorney: Laurel Hartshorn, Esq., 254 West Main Street, PO Box 553, Saxonburg, PA 16056

NEW, LAWRENCE L., a/k/a LARRY L. NEW,
deceased
Late of Township of Fairview, Erie County, Commonwealth of Pennsylvania
Executor: Gloria A. New, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

ROBERTSON, LEE H.,
deceased
Late of City of Erie, Erie County, Pennsylvania
Executor: Scott M. Robertson, c/o Jeffrey J. Cole, Esq., 2014 West 8th Street, Erie, PA 16505
Attorney: Jeffrey J. Cole, Esq., 2014 West 8th Street, Erie, PA 16505

ROEHM, SHIRLEY,
deceased
Late of City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Fred Roehm, c/o W. Atchley Holmes, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: W. Atchley Holmes, Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

ROSE, SALLY A.,
deceased
Late of Fairview, County of Erie and Commonwealth of Pennsylvania
Executor: Michelle A. Tarr, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

SAUERS, NORMAN L., a/k/a NORMAN LEON SAUERS,
deceased
Late of the Township of Washington, County of Erie and State of Pennsylvania
Co-Executrices: Nicole Marie Varee and Heather Lee Blore, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

SCHWAB, ELAINE M., a/k/a ELAINE MARIE SCHWAB,
deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Kathryn Bush Acri, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

SCOTT, NANCY J., a/k/a NANCY JEAN SCOTT,
deceased
Late of the Township of Summit
Executor: Lawrence G. Scott
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

SENETA, MARY, a/k/a MARY ELIZABETH SENETA, a/k/a MARY E. SENETA,
deceased
Late of the Borough of Edinboro, County of Erie, Commonwealth of Pennsylvania
Executrix: Jane Frawley, 10570 Milgrove Road, Springboro, Pennsylvania 16435
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

STASZAK, JOHN J., SR., a/k/a JOHN J. STASZAK,
deceased
Late of Township of Fairview, Erie County, Commonwealth of Pennsylvania
Attorney: Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

TATE, PATRICIA ANN, a/k/a PATRICIA A. TATE,
deceased
Late of Township of Millcreek, Erie County, Commonwealth of Pennsylvania
Administratrix: Barbara Dennison, c/o Knox Law Firm, 120 W. 10th St., Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

TREJCHEL, PATRICIA L.,
deceased
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Julie A. O'Hara, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

SECOND PUBLICATION

BECK, LOUIS L.,
deceased
Late of Borough of Edinboro
Executor: Robert Alan Beck, 599 Maple Street, East Earl, PA 16506
Attorney: Joseph F. Weis, Esquire, Cafardi Ferguson Wyrick Weis + Stotler, LLC, 2605 Nicholson Road, Suite 2201, Sewickley, PA 15143

BOMENGEN, DOUGLAS,
deceased
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: John W. Walker, 32801 Titus Hill Lane, Avon Lake, OH 44012-2369
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

BOMENGEN, SUSAN B.,
deceased
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: John W. Walker, 32801 Titus Hill Lane, Avon Lake, OH 44012-2369
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

D'AURORA, JAMES J., a/k/a JAMES J. DAURORA,
deceased
Late of the City of Erie, Commonwealth of Pennsylvania
Executrix: Debra Mercer, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

HOFMANN, RICHARD L., SR., a/k/a RICHARD LAWRENCE HOFMANN, SR.,
deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Jacqueline A. Hofmann, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

KANYAR, JAMES H.,
deceased
Late of Township of Millcreek, Erie County, Commonwealth of Pennsylvania
Executor: Donna J. Twichel, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

LARSEN, NANCY JANE, a/k/a NANCY JANE LARSON, a/k/a NANCY J. LARSEN, a/k/a NANCY JANE (WEAVER) LARSEN, a/k/a NANCY JANE WEAVER LARSON,
deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Susan Kranz, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

LETHABY, MARCIA G., a/k/a MARCIA LETHABY, a/k/a MARCIA J. LETHABY, a/k/a MARCIA JANE GIEGEL LETHABY,
deceased
Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Brian C. Lethaby, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

MARCHINI, WILLIAM J.,
deceased
Late of the Township of North East, County of Erie, Commonwealth of Pennsylvania
Executrix: Wendy L. Marchini, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq.. Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

MARUCA, BETTY JEAN, a/k/a BETTY JEAN MONCO MARUCA,
deceased
Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Kathy Maruca, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

MAYES, RICHARD J.,
deceased
Late of the Township of Harborcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Ashley A. Mayes, c/o 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, QUINN, BUSECK, LEEMHUIS, TOOHEY & KROTO, INC., 2222 West Grandview Blvd., Erie, PA 16506

PAAVOLA, THOMAS A.,
deceased
Late of the Township of Millcreek, Commonwealth of Pennsylvania
Executrix: Debra Kelly Pattison, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

TACCONE, DOLORES T.,
deceased
Late of the City of Erie, County of Erie, Pennsylvania
Executor: Gary R. Taccone, c/o 3939 West Ridge Road, Suite B-27, Erie, PA 16506
Attorney: James L. Moran, Esquire, 3939 West Ridge Road, Suite B-27, Erie, PA 16506

VORBERGER, MICHAEL C., SR., a/k/a MICHAEL C. VORBERGER, a/k/a MICHAEL VORBERGER,
deceased
Late of the City of Erie, Erie County, Pennsylvania
Executor: John W. Vorberger, c/o Adam E. Barnett, Esq., 234 West Sixth Street, Erie, PA 16507
Attorney: Adam E. Barnett, Esq., Bernard Stuczynski Barnett & Lager, PLLC, 234 West Sixth Street, Erie, PA 16507

WINSCHEL, MARIE A.,
deceased
Late of City of Erie, Erie County, Erie, PA
Co-Executors: Richard E. Winschel and Janice M. Winschel, c/o 33 East Main Steet, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

THIRD PUBLICATION

BOVA, SAMUEL J.,
deceased
Late of Greene Township, Erie County, Commonwealth of Pennsylvania
Administrator: Laura J. Bova, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

DALEY, FATHER ERNEST J., a/k/a MSGR. ERNEST J. DALEY, a/k/a ERNEST J. DALEY, a/k/a ERNEST DALEY,
deceased
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Father Thomas Brooks, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

GALLAGHER, KAREN A.,
deceased
Late of City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Kathleen A. Gallagher, c/o Leigh Ann Orton, Esquire, Orton & Orton, 68 E. Main St., North East, PA 16428
Attorney: Leigh Ann Orton, Esquire, Orton & Orton, 68 E. Main St., North East, PA 16428

HARTLEY, HARLEY E., a/k/a HARLEY EADES HARTLEY, a/k/a HARLEY HARTLEY,
deceased
Late of North East Township, Erie County, Commonwealth of Pennsylvania
Executor: Kevin Hartley, c/o Frances A. McCormick, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

MAJEWSKI, TERRY R.,
deceased
Late of McKean Township, Erie County, Pennsylvania
Administrator: Tyler Majewski, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

PAPROCKI, SHIRLEY M.,
deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Charlotte A. Radziszewski, c/o 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, QUINN, BUSECK, LEEMHUIS, TOOHEY & KROTO, INC., 2222 West Grandview Blvd., Erie, PA 16506

PRIHODA, MICHAEL J., a/k/a MICHAEL JOHN PRIHODA,
deceased
Late of Washington Township, Erie County, Commonwealth of Pennsylvania
Executor: Daniel J. Prihoda
Attorney: Schellart H. Los, Esquire, Los Scales Elder Law, 110 West Spring Street, Suite 302, P.O.B 346, Titusville, PA 16354

WILSON, JERRY,
deceased
Late of Harborcreek Township, Erie County, Erie, PA
Executrix: Judy Jackson, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

TRUST NOTICES

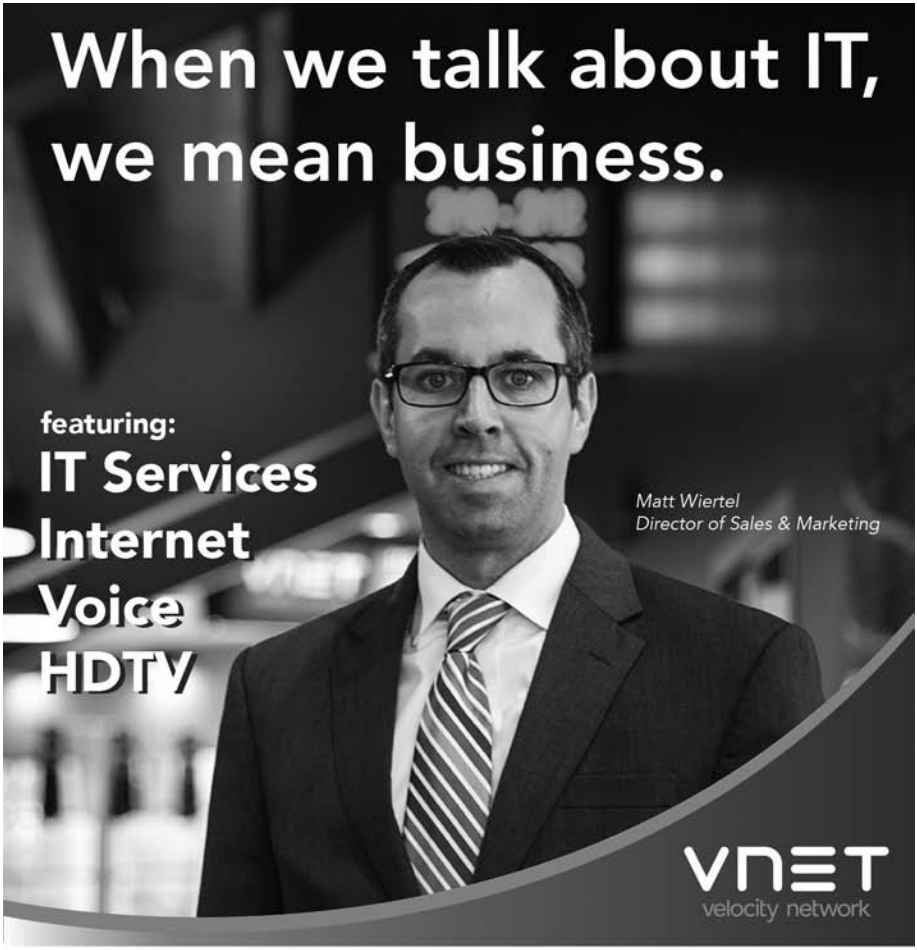
Notice is hereby given of the administration of the Trust set forth below. All persons having claims or demands against the decedent are requested to make known the same and all persons indebted to said decedent are required to make payment without delay to the trustees or attorneys named below:

SMITH, JAMES F., a/k/a JAMES FREDERICK SMITH,
deceased
Late of the Township of Summit, County of Erie and Commonwealth of Pennsylvania
Successor Trustee: Darlene K. Kinnear, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

New email address

LORI L. THIERFELDT .....*lorithierfeldt@gmail.com*



With our vast fiber optic network, we deliver scalable internet, voice services, and HDTV to empower businesses to compete in a global market.

And with our team's broad range of expertise and cutting-edge solutions, we offer IT assurance to business owners across the region allowing them to focus on one thing – running their business.

Contact us at (814) 833-9111 or sales@velocitynetwork.net