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ERIE COUNTY LEGAL JOURNAL

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

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ANGEL PEREZ, JR., Plaintiff

v.

THE BOROUGH OF JOHNSONBURG, DAVID CUNEO, Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

No. 1:18-cv-180

Memorandum Opinion on Defendants' Motions for Summary Judgment
ECF No. 45

Defendants' motion for summary judgment (ECF No. 45) is pending before the Court. For the reasons discussed below, the motion will be granted in part and denied in part.

I. Introduction

The Fourth Amendment plays a major role in regulating how police officers interact with members of the public. It limits their authority to arrest individuals and evinces a general preference that such deprivations of liberty occur only upon the issuance of a warrant by an independent judicial official. The Fourth Amendment also limits the force officers may use in effectuating an arrest or other detention. While the law gives "a certain deference to police officers who employ reasonable means to effect the arrest of dangerous or resisting subjects," that deference does not extend to uses of force that are excessive or improperly motivated. *Kircher v. Pennsylvania State Police Department*, 2016 WL 4379143, at *1 (M.D. Pa. Aug. 8, 2016). In determining whether an officer's use of force was reasonable, "the after acquired benefits of hindsight must yield to an objective sense of reasonableness," the boundaries of which are set by "the officer's observations in that particular moment." *Id.* The facts of this case implicate these principles and competing considerations.

II. Material Facts

This action arises out of a November 21, 2017 encounter between Plaintiff Angel Perez (Perez) and Defendant David Cuneo (Cuneo), a police officer employed by Defendant Borough of Johnsonburg, Pennsylvania. That encounter involved Cuneo's initial seizure of Perez, followed by his escalating use of force, which ultimately culminated in Cuneo's use of his service weapon to shoot Perez. The following facts are taken from the Defendants' Concise Statement of Material Facts (ECF No. 47), Perez' Responsive Concise Statement (ECF No. 57), and the exhibits thereto. Citations to record are omitted except where the Court refers to specific deposition testimony. Material disputes of fact are noted.

Perez was known to local law enforcement authorities, including Cuneo, prior to November 21, 2017. Cuneo had known Perez since joining the Johnsonburg Borough Police Department in 2007. Perez had a history of illegal drug use and previously had been charged with various criminal offenses, including burglary and theft; he had served time in state and local prisons.

In November 2017, the St. Marys, Pennsylvania, Police Department was investigating a burglary that occurred within its jurisdiction. On November 5, 2017, Sergeant Pistner of the St. Marys P.D. called Cuneo and told him that Perez was a suspect in the investigation of that burglary and that the St. Marys P.D. would be seeking a search warrant to obtain a DNA sample from Perez. Cuneo received a call from another St. Marys police officer the following week regarding his department's attempts to obtain a search warrant for Perez' DNA. The

St. Marys P.D. ultimately secured the DNA search warrant at 12:50 p.m. on November 20, 2017. ECF No. 53-4. Although Cuneo had never been presented with a warrant for Cuneo's arrest, and no one had told Cuneo that the St. Marys Police had procured such a warrant, Cuneo erroneously assumed that both a warrant to arrest Perez and a search warrant for his DNA were outstanding. ECF No. 47-2 (Cuneo Deposition), p. 18 ("Well, I thought there was two warrants ... That there was a body warrant for the burglary and they wanted his DNA and had a search warrant for that."). At least as of November 20, 2017 through the date of his deposition, Cuneo did not distinguish between the two types of warrants as far as how he dealt with individuals such as Perez. *See id.*, p. 20. And, as of the date of his encounter with Perez, Cuneo also did not know that the search warrant that the St. Marys P.D. actually obtained for Perez' DNA expressly limited its execution to between the hours of 6:00 a.m. and 10:00 p.m.¹

On November 20, 2017, Cuneo started his shift at 11:00 p.m. and was scheduled to conclude his shift at 7:00 a.m. He was the only officer on duty that night. Cuneo testified that, upon his arrival at the police department, he reviewed the daily log entries from the preceding shift and noted that the St. Marys Police Department was "looking for Perez" pursuant to "a search warrant for his DNA." The log included no reference to an arrest warrant but, as noted, Cuneo nevertheless assumed that the St. Marys P.D. had also secured a warrant for Perez' arrest. Based upon this erroneous assumption and his ignorance of the time limitation upon which officers were authorized to execute the DNA search warrant, Cuneo intended to arrest Perez if, and whenever, he encountered him. *Id.*

Shortly after Cuneo began his shift, he parked his police vehicle near a local convenience store. Just after midnight, Cuneo observed Perez walking down the street. Cuneo drove from the convenience store past Perez. As Perez approached, Cuneo exited his vehicle and stated he needed to talk to him. Perez recognized Cuneo, responding "what's up Cuneo?" Cuneo then told Perez that the St. Marys P.D. had a warrant for his arrest, and a warrant to collect a DNA sample, and that he would be taking him to the St. Marys P.D. pursuant to those warrants. Perez declined to go with Cuneo, stated that he was going home, and began to run or jog away. Cuneo pursued Perez and discharged his taser weapon, the leads or conducting prongs of which struck Perez in the back of the head. Cuneo contends that prior to deploying his taser, he warned Perez that "you better stop or I'm going to tase you." Perez asserts that Cuneo provided no warning before firing his taser. The parties do agree, however, that the shock of the taser caused Perez to fall to the ground and that as Perez fell his face struck a large rock. The impact of his fall broke Perez' nose. Cuneo approached Perez and instructed him to "stay down." At this point in the encounter, Perez was lying face-down on the ground. Cuneo testified that Perez repeatedly attempted to stand up and that each time Perez did so, he engaged his taser to shock him. Cuneo's taser was equipped with a camera that began recording when Cuneo first activated the weapon. *See* ECF No. 49.

The camera recorded that Cuneo discharged his taser on Perez five times during the encounter. The first discharge lasted approximately 5 seconds; the second, approximately 14 seconds, the third, approximately 40 seconds, the fourth, approximately 20 seconds, and

¹ Pennsylvania Rule of Criminal Procedure 203 requires that search warrants conducted at night be authorized only after a finding of "reasonable cause." Pa. R. Crim. P. Rule 203 (E). No such authorization was obtained regarding the search warrant for Perez' DNA.

the fifth, approximately 20 seconds. The video also shows Perez lying face-down on the ground with his hands initially beneath his chest, and Cuneo is heard repeatedly instructing Perez to place his hands behind his back. Between the second and third tasing, Cuneo is recorded threatening Perez, "I will light the f**k up" if Perez does not comply. Perez is recorded repeatedly telling Cuneo he is unable to comply because he is injured. It is clear from the video that Perez' hands were no longer concealed beneath his chest after the third tasing. Cuneo is also recorded advising Perez that he needed medical assistance.

After the last discharge of Cuneo's taser, Perez attempted to stand up, which prompted Cuneo to attempt to discharge his taser again. This time, however, the taser did not administer a shock to Perez. Apparently, Cuneo's prior uses of the taser had exhausted its charge. Cuneo and Perez disagree as to what happened next, and because Cuneo's taser had fallen or been dropped to the ground, it no longer recorded video of the interaction between the two.² Perez asserts that he did not aggress towards Cuneo but instead attempted to get off the ground and flee as Cuneo repeatedly struck him with his retractable police baton. In contrast, Cuneo maintains that Perez stood up, lunged at him, and punched him in the face. Cuneo claims that he and Perez traded blows for "over eight minutes" during which time he sustained more than 20 punches from Perez to his head. ECF No. 53-2, p. 111. As the fight went on, Cuneo says he fell to his knees and Perez continued to hit him. *Id.*, p. 128. Perez denies lunging at Cuneo but admits to "rolling around on the ground" during the struggle. At some point during this struggle, a witness, Thomas Costanzo, arrived on the scene.

Costanzo told Perez to "just get on the ground" and to listen to Cuneo. At one point, Costanzo attempted to grab Perez' arm or coat to assist Cuneo, but he withdrew when he noticed significant amounts of blood on Perez, apparently from the injuries he had sustained during the encounter. Desiring to avoid possible contamination from Cuneo's blood, Costanzo returned to his car but remained in the area for the rest of the encounter. Cuneo asserts that Perez continued to strike him with his fists and wrestle with him while Perez contends that he was merely trying to escape Cuneo's blows. Both apparently agree that Cuneo struck Perez several times in the head with his collapsible baton in an effort to subdue him. Perez contends that he attempted to run away from Cuneo to escape his blows when Cuneo drew his firearm and shot him in the back. Perez asserts that he was approximately 12-20 feet away when Cuneo shot him. Costanzo, who remained at the scene, estimated that Perez was approximately 10-to-15 feet away when Cuneo shot him.

Cuneo's version of events leading to his shooting Perez differs materially from Perez' recounting. He testified that he told Perez, "Angel, if you hit me one more time, I'm going to shoot you." Cuneo asserts that Perez continued to attack him and, fearing he might lose consciousness or Perez might acquire his gun, he drew and discharged his weapon. Cuneo theorizes that his bullet struck Perez in the back because Perez must have been twisting or turning when he fired his weapon. Perez fell to the ground, landing in a face down position with both hands pinned underneath his body. Cuneo held Perez on the ground for approximately twenty to thirty seconds until police officers from neighboring jurisdictions arrived on scene.

The responding officers then proceeded to handcuff Perez and check his person for

² However, the taser continued to record audio.

weapons. Perez was unarmed but he was found to be in possession of hypodermic needles and drug paraphernalia. Once Perez had been secured, an ambulance was dispatched to the scene of the arrest. Responding paramedics found an “oddly shaped” bullet hole in Perez’ back. Perez was transported to a nearby hospital. During the ride to the hospital, Perez told an accompanying police officer that he had been using methamphetamines “all day.” Laboratory analysis later confirmed Perez’ statement.

III. Procedural History

Perez initiated this lawsuit by filing a Complaint on June 18, 2018. ECF No. 1. He named the Borough of Johnsonburg and Officer Cuneo as defendants. Perez amended his Complaint on August 27, 2018 (ECF No. 9) and the Defendants answered on September 18, 2018 (ECF No. 11). All parties have consented to the jurisdiction of a United States Magistrate Judge. *See* ECF Nos. 8, 10, 14.

Following discovery, the Defendants filed the instant motion, a brief in support of the motion, and a Concise Statement of Material Facts. *See* ECF Nos. 45-47. Thereafter, Perez filed a brief in opposition to the Defendants’ motion, and a responsive Concise Statement of Material Facts. ECF No. 53. The Defendants have filed a Reply Brief (ECF No. 55). The matter is now ripe for disposition.

IV. Summary Judgment Standard

Federal Rule of Civil Procedure 56(a) requires the court to enter summary judgment “if the movant 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). Under this standard “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 247-48 (1986). A disputed fact is “material” if proof of its existence or nonexistence would affect the outcome of the case under applicable substantive law. *Anderson*, 477 U.S. at 248; *Gray v. York Newspapers Inc.*, 957 F.2d 1070, 1078 (3d Cir. 1992). An issue of material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 257; *Brenner v. Local 514 United Bhd. of Carpenters and Joiners of Am.*, 927 F.2d 1283, 1287-88 (3d Cir. 1991).

When determining whether a genuine issue of material fact remains for trial, the court must view the record and all reasonable inferences to be drawn therefrom in favor of the nonmoving party. *Moore v. Tartler*, 986 F.2d 682 (3d Cir. 1993); *Clement v. Consol. Rail Corp.*, 963 F.2d 599, 600 (3d Cir. 1992); *White v. Westinghouse Electric Co.*, 862 F.2d 56, 59 (3d Cir. 1988). To avoid summary judgment, however, the nonmoving party may not rest on the unsubstantiated allegations of his or her pleadings. Instead, once the movant satisfies its burden of identifying evidence that demonstrates the absence of a genuine issue of material fact, the nonmoving party must go beyond his pleadings with affidavits, depositions, answers to interrogatories or other record evidence to demonstrate specific material facts that give rise to a genuine issue. *Celotex Cop. v. Catrett*, 477 U.S. 317, 324 (1986).

Further, under Rule 56, a defendant may seek summary judgment by pointing to the absence of a genuine fact issue on one or more essential claim elements. The Rule mandates summary judgment if the plaintiff then fails to make a sufficient showing on each of those elements. When Rule 56 shifts the burden of production to the nonmoving party, “a complete failure

of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex*, 477 U.S. at 323. *See Harter v. G.A.F. Corp.*, 967 F.2d 846, 851 (3d Cir. 1992).

To state a claim for relief under § 1983, “a plaintiff must demonstrate the defendant, acting under color of state law, deprived him or her of a right secured by the Constitution or the laws of the United States.” Accordingly, to evaluate Perez’ claims in the context of a motion for summary judgment, the Court must determine whether there are disputed issues of material fact that, if found for Perez, would show he was deprived of a constitutional right. *Cost v. Borough Of Dickson City, et al.*, 2021 WL 2255505, at *4 (3d Cir. June 3, 2021) (quoting *Kaucher v. Cnty. of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006) (citation omitted)).

V. Discussion and Analysis

A. Clarification of the Fourth Amendment Claim

Before proceeding, the Court must clarify the nature of Perez’ claim. Perez’ Amended Complaint (ECF No. 9) includes three counts: a Fourteenth Amendment due process/bodily integrity claim (Count I), a Fourteenth Amendment due process/state created danger claim (Count II), and a Fourth Amendment excessive force claim (Count III). Count I also includes a claim that “Defendant Cuneo’s actions and inactions, as described [earlier in the Amended Complaint], constitute violations of Plaintiff’s rights under the Fourteenth Amendment to the United States Constitution[, including] ... the right to be free from unreasonable searches and seizures.” ECF No. 9, ¶ 32 (emphasis supplied). Earlier in his pleading, Perez refers specifically to Cuneo’s attempt to arrest him without an arrest warrant. *Id.*, ¶ 15. Accordingly, the Court interprets the Amended Complaint to include a claim challenging the constitutionality of Cuneo’s initial stop and arrest of Perez. Defendants also understood the Amended Complaint to raise this claim as the very first argument asserted in their brief in support of their motion for summary judgment is a full-throated defense of the legality of Cuneo’s stop of Perez. ECF No. 46, pp. 5-9. The parties also conducted significant discovery regarding this claim.

The Fourth Amendment right to be free from unreasonable search and seizure is applicable to the states through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643 (1961). Similarly, the warrant requirements of the Fourth Amendment have also been incorporated against the states through the Fourteenth Amendment. *See Aguilar v. Texas*, 378 U.S. 108 (1964); *Ker v. California*, 374 U.S. 23 (1963). However, Perez’ attempt to raise substantive due process and “state created danger” claims under the Fourteenth Amendment is untenable. As the Supreme Court has explained, “if a constitutional claim is covered by a specific constitutional provision, such as the Fourth ... Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process.” *United States v. Lanier*, 520 U.S. 259, 272 n.17 (1997); *see also Tingey v. Gardner*, 827 Fed. Appx. 195 (3d Cir. 2020) (quoting *Lanier*). Under the more-specific provision rule, Perez’ claims in Counts I and II of the Amended Complaint relating to Cuneo’s alleged unlawful stop and arrest and use of excessive force must be analyzed under the Fourth Amendment, the constitutional provision specifically addressing the rights Perez seeks to vindicate. This rule precludes Perez from recasting these claims as substantive due process or “state created danger” claims under the Fourteenth Amendment. *See Tingey*, 827 Fed. Appx. at 198 (holding that a substantive due process claim crashes into the more-specific-

provision rule); *Salyer v. Hollidaysburg Area Sch. Dist.*, 2016 WL 5376218, at *5 (W.D. Pa. Sept. 26, 2016) (citing *Wheeler v. City of Philadelphia*, 367 F. Supp. 2d 737, 747 (E.D. Pa. 2005) (“pure” Fourth Amendment claims cannot also be brought under the Fourteenth Amendment using the state-created danger doctrine)).

B. Cuneo Is Not Entitled to Summary Judgment on Perez’ Unlawful Seizure Claim.

1. Defendants’ Argument that Cuneo’s Detention of Perez was a “Terry Stop” is Contrary to the Record.

“[T]he ‘seizure’ of a ‘person’ ... can take the form of ‘physical force’ or a ‘show of authority’ that ‘in some way restrain[s] the liberty’ of the person.” *Torres v. Madrid*, 592 U. S. ___, 141 S. Ct. 989, 995 (2021) (internal punctuation omitted) (quoting *Terry v. Ohio*, 392 U. S. 1, 19, n. 16 (1968)). Whether Cuneo’s seizure of Perez occurred when he deployed his taser to stop Perez from leaving or when Perez submitted after being shot in the back, there is no question that Cuneo seized Perez within the meaning of the Fourth Amendment. *See Brendlin v. California*, 551 U.S. 249, 250 (2007) (holding that “[a] seizure occurs when a reasonable person (1) would not feel ‘free to leave’ or (2) would not feel ‘free to decline the officers’ requests or otherwise terminate the encounter’”); *Alvin v. Calabrese*, 455 Fed. Appx. 171, 175 (3d Cir. 2011) (when a person’s “liberty is restrained by an officer’s ‘show of authority,’ a seizure does not occur unless the person yields to that show of authority.” (citing *California v. Hodari D.*, 499 U.S. 621, 626 (1991))).

Defendants argue that Cuneo’s encounter with Perez started as a simple “investigatory stop” pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). The record, including Cuneo’s own deposition testimony, belies this characterization. Cuneo testified that when he encountered Perez on November 20, 2017, he believed that both a search warrant and an arrest warrant, which he describes as a “body warrant,” had been issued for Perez. ECF No. 47-2, p. 18 (“Well, I thought there was two warrants ... That there was a body warrant for the burglary and they wanted his DNA and had a search warrant for that.”). In Cuneo’s mind, the distinction between the two types of warrants made no difference in how he approached and dealt with subjects such as Perez. Cuneo testified:

Q. Does the difference in the type of warrant change your approach to how you approach an individual in attempting to either arrest them under a body warrant or get an item from them under a search warrant?

A. No.

Q. Your approach is the same?

A. Yes.

Q. What---what is your approach?

A. I would look for them, see them, tell them they have a warrant, place them under arrest for the warrant, and then whatever the instructions would be from that.

Id., p. 20.

This was precisely the approach Cuneo intended to take, and ultimately did take, when he encountered Perez on November 20, 2017. Cuneo testified unambiguously that if he encountered Perez, he intended to place him under arrest:

Q. So if it was *only a search warrant like for DNA, would you place that person under arrest* before you would attempt to collect DNA?

A. It would still be a warrant, yes.

Q. Okay. Tell me what---you, if everything had gone smoothly with Angel Perez, what would the procedure have been as far as executing the search warrant for his DNA?

A. If it would have went smoothly, I would have met him. As I said, I have nothing in this. *I’d take him into custody, put him into cuffs under the warrant. He’d be under arrest.* I would then notify the department that wanted him and we would do a transfer halfway.

Q. So even if it was just a search warrant for his DNA, *you would actually place him under arrest?*

A. Yes. It’s still a warrant.

Id. (emphasis supplied).

Cuneo’s intentions and actions on November 20, 2017 were wholly inconsistent with a “Terry stop”—i.e., “a ‘brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.’” *United States v. Hester*, 910 F.3d 78, 84 (3d Cir. 2018) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). *See also United States v. Hensley*, 469 U.S. 221, 229 (1985) (“[I]f police have a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then a *Terry* stop may be made to investigate that suspicion.”). Cuneo was not involved in the St. Marys Police Department’s investigation of the burglary that occurred within its jurisdiction. He independently observed no conduct or circumstances to support a reasonable suspicion that Perez was engaged in criminal activity when he encountered him. While Defendants’ principal brief devotes significant attention to Perez’ history of drug use, criminal record, and prior incarceration, these facts alone did not support a *Terry* stop, and certainly not an arrest. Defendants do not argue, and the record does not support, that Cuneo observed any conduct or circumstances on November 17, 2017 that created a reasonable suspicion that Perez was engaged in criminal activity. More importantly, Cuneo unambiguously testified that he formed the intent to arrest Perez on sight before he encountered him. The fact that drug paraphernalia was discovered on Perez’

person after the stop and that he later admitted to drug use in no way justifies the initial stop because Cuneo knew none of this information when he initiated his arrest of Perez.

Thus, Cuneo based his decision to take Perez into custody on none of the factors recognized in *Terry* and its progeny. Instead, Cuneo's intent was clear — he was going to place Perez under arrest pursuant to the warrant. Cuneo's intent to place Perez under arrest and transport him to St. Marys Police Department personnel is fundamentally inconsistent with a *Terry* stop. In effectuating a *Terry* stop, police cannot “seek to verify their suspicions by means that approach the conditions of arrest.” *Florida v. Royer*, 460 U.S. 491, 499 (1983). In other words, “an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, 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.* at 500. “The brief investigative stop allowed under *Terry*, is just that; a brief stop to allow police to investigate. *The initial stop does not justify an arrest*, prolonged detention, or a stop that lasts any longer than is reasonably necessary to investigate.” *United States v. Bey*, 911 F.3d 139, 146-47 (3d Cir. 2018) (emphasis supplied).

Because the record supports a finding that Cuneo arrested Perez on November 20, 2017 — and was not conducting a brief investigatory “*Terry* stop” — Defendants' motion next requires that the Court determine whether the record establishes the legality of that arrest as a matter of law.

2. Cuneo's Arrest of Perez was Beyond the Authority Granted by the DNA Warrant and, Therefore, a Violation of the Fourth Amendment.

The warrant obtained by the St. Marys Police Department authorized the collection of DNA samples from Perez. The application of a cheek swab to “obtain DNA samples is a search” subject to the Fourth Amendment's prohibition against “unreasonable searches and seizures.” *Maryland v. King*, 569 U.S. 435, 446, 133 S. Ct. 1958, 1968-69, 186 L. Ed. 2d 1 (2013). Indeed, “[v]irtually any ‘intrusion into the human body ... will work an invasion of ‘cherished personal security’ that is subject to constitutional scrutiny.” *Id.* (internal citation and quotation omitted) (citing *Cupp v. Murphy*, 412 U.S. 291, 295, 93 S. Ct. 2000, 36 L. Ed. 2d 900 (1973) (quoting *Terry v. Ohio*, 392 U.S. 1, 24-25, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968))).

Here, Perez does not argue that the police lacked probable cause to obtain the search warrant for his DNA. Rather, he challenges the legality of the timing of Cuneo's attempted execution of the warrant. The warrant expressly limited the authority of officers to execute the warrant to between the hours of 6:00 a.m. and 10:00 p.m. Pennsylvania law, much like the Federal Rules of Criminal Procedure, draws a distinction between arrest/bench warrants and search warrants. Pennsylvania Rule of Criminal Procedure 150 governs the issuance and execution of bench warrants and does not place any limitation on the time when officers can take a suspect into custody. Pennsylvania Rule of Criminal Procedure 515 similarly governs the issuance and execution of arrest warrants, and like Rule 150, does not prohibit the execution of a warrant at night. In fact, Pennsylvania Rule of Criminal Procedure 431 institutes specific procedures for bench and arrest warrants served outside of the hours of 6:00 a.m. and 10:00 p.m. *See* Pa. R. Crim. P. 431 (A) (1) and (2). In contrast, Pennsylvania Rule of Criminal Procedure 203 requires that search warrants conducted at night be authorized only after a finding of “reasonable cause.” Pa. R. Crim. P. Rule 203.

Defendants acknowledge that no arrest warrant was outstanding for Perez when Cuneo

arrested him on November 20, 2017. They also do not argue that the St. Marys police made the “reasonable cause” showing necessary to authorize execution of the search warrant at night. Indeed, it is undisputed that the warrant to collect Perez' DNA expressly restricted the hours of its execution to between 6:00 a.m. and 10:00 p.m. and that Cuneo's arrest of Perez occurred well-outside of this authorized timeframe.

Absent ambiguity in the warrant, “the issue whether the search was in fact authorized by the warrant is determinable by a reading of the warrant's simple and unambiguous language.” *U. S. ex rel. Boyance v. Myers*, 398 F.2d 896, 898 (3d Cir. 1968). This includes language restricting when a warrant may be served. *Id.* at 898-99 (“To find that a warrant which is explicitly limited to daytime searches legalizes search at any hour of the day or night would be to disregard the magistrate's actual determination and thus to nullify the requirement of a prior impartial determination that a particular search will be reasonable.”). “When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman, or Government enforcement agent.” *Id.* at 899. (quoting *Johnson v. United States*, 333 U.S. 10, 14 1948). Thus, at the time Cuneo encountered Perez, the DNA search warrant's simple and unambiguous terms provided Cuneo with no authority to arrest Perez or to otherwise take him into custody for delivery to the St. Marys P.D.

3. The Record Belies that Cuneo had a Reasonable Belief that He Was Authorized to Arrest Perez on the DNA Warrant.

Prior to November 20, 2017, Cuneo learned that the St. Marys police would be obtaining “a search warrant in order to obtain a sample of DNA from Perez” in connection with their investigation of a burglary. ECF No. 47 (Defendants' Concise Statement of Material Facts), ¶ 21. Although Cuneo admits that he was never told that an arrest warrant had been issued for Perez, he assumed that an arrest warrant for Perez was outstanding on November 20, 2017. ECF 47-2, p. 19. The existing record includes nothing to support that Cuneo ever attempted to verify his erroneous assumption or that he requested a copy of the warrant, or even asked about its nature, contents, or limitations. In addition, given his years of experience as a law enforcement officer, he should have known that Pennsylvania law did not permit the execution of a search warrant at night unless specifically authorized following a showing of “reasonable cause.” Thus, the record does not support a finding as a matter of law that Cuneo had a reasonable (albeit mistaken) belief that a warrant authorizing the arrest of Perez was outstanding. Indeed, the illegality of the execution of a search warrant outside of its specified limitations had been clearly established for decades before Cuneo's encounter with Perez. *See Sgro v. United States*, 287 U.S. 206, 212 (1932) (holding that a warrant is “dead,” and a search undertaken pursuant to that warrant invalid, after the expiration date on the warrant); *Johnson v. United States*, 333 U.S. at 14 (holding that the parameters of a search are “to be decided by a judicial officer, not by a policeman, or Government enforcement agent”). In 1968, the Court of Appeals for the Third Circuit specifically applied this rule to a search warrant executed outside of its specified time limitations. *See U. S. ex rel. Boyance v. Myers*, *supra*.

C. Perez' Excessive Force Claim

1. The Illegality of Cuneo's Arrest Does Not Bear on Perez' Separate and Independent Excessive Force Claim.

Perez' illegal stop/arrest claim and his excessive force claim are distinct claims under the Fourth Amendment. *See, e.g., Klein v. Madison*, 374 F. Supp. 3d 389 (E.D. Pa. Apr. 10, 2019)

(noting separate claims under the Fourth Amendment for a warrantless search and the use of excessive force); *Waugh v. Dow*, 2014 WL 2807574 *3 (W.D. Okl. June 20, 2014) (granting summary judgment on Fourth Amendment warrantless arrest claim but denying summary judgment on Fourth Amendment excessive force claim). *Bello v. Lebanon City Police Dep't*, 2013 WL 53981, at *7 (M.D. Pa. Jan. 3, 2013) (recognizing separate claims under the Fourth Amendment where the fact of a warrantless arrest was offered “in support of” plaintiff’s excessive force claim) (emphasis in original). Indeed, the Court of Appeals for the Third Circuit has cautioned against conflating the two claims. In *Snell v. City of York, Pa.*, for example, the plaintiff argued that the force applied during arrest was unreasonable (*i.e.*, excessive) because his initial arrest was illegal. 564 F.3d 659, 672 (3d Cir. 2009). The Court of Appeals rejected this argument and held that a plaintiff’s illegal arrest does not turn his arrest into an excessive force case. *Id.* If that were so, “every unlawful arrest claim would bring with it a tagalong excessive force claim. That is not the law.” *Daniels v. City of Philadelphia*, 2017 WL 25382, at *4 (E.D. Pa. Jan. 3, 2017) (citing *Snell*, 564 F.3d at 672) (“We have rejected similar efforts to bootstrap excessive force claims and probable cause challenges.”) (citations omitted). *See also Bodine v. Warwick*, 72 F.3d 393, 400 & n.10 (3d Cir. 1993) (rejecting conflation of claims for false arrest and excessive force, noting that “merely because a person has been falsely arrested does not mean that excessive force has been used”); *Brackbill v. Ruff*, 2018 WL 2322014, *5 (M.D. Pa. May 22, 2018). As the Court of Appeals for the Seventh Circuit noted, “the doctrine of Fourth Amendment reasonableness has distinct, component parts. A seizure without probable cause is conceptually different from a seizure that employs excessive force; both are unreasonable but for different reasons.” *Carlson v. Bukovic*, 621 F.3d 610, 622 n. 19 (7th Cir. 2010).

Thus, Cuneo’s arrest of Perez on an inactive search warrant does not mean that the force Cuneo used to effectuate the arrest was excessive. *See Boardman v. City of Philadelphia*, 661 Fed. Appx. 183, 190 (3d Cir. 2016) (citing *Romero v. Story*, 672 F.3d 880, 890 (10th Cir. 2012) (“[i]f the district court concludes that the arrest was unlawful, the court may not automatically find any force used in effecting the unlawful arrest to be excessive.”) “Instead, the district court must analyze the excessive force [claim] under the assumption that arrest was lawful.” *Id.* *See also Idris v. Conway*, 2014 WL 4244222, *7 (N.D. Ill. Aug. 27, 2014) (holding that an unlawful arrest has no bearing on an excessive force claim).

2. Disputed Issues of Material Fact Remain for Trial Regarding the Reasonableness of Cuneo’s Escalating Use of Force.

Even if Cuneo’s arrest of Perez was unconstitutional or otherwise illegal, Perez had no right to resist that arrest. *United States v. Ferrone*, 438 F.2d 381, 389-90 (3d Cir.), cert. denied, 402 U.S. 1008 (1971) (no right to resist search pursuant to invalid search warrant). A civil rights action or other appropriate court action — not self-help resistance — was Perez’ permissible means to address and remedy this deprivation. Perez’ refusal to comply with Cuneo’s directions triggered Cuneo’s authority to use reasonable force to effectuate the arrest. At the same time, the Fourth Amendment protects a citizen against an unreasonable use of force in connection with an arrest, investigatory stop, or other seizure. *Graham v. Connor*, 490 U.S. 386 (1989). The analysis used to review excessive force claims is well known; its touchstone is reasonableness. *Id.*, at 397. *See also Ohio v. Robinette*, 519 U.S. 33, 39 (1996); *Santini v. Fuentes*, 795 F.3d 410, 417 (3d Cir. 2015) (“In an excessive force case, we determine whether a constitutional violation has occurred using the Fourth Amendment’s objective reasonableness test.”); *Harrison-El v.*

Gaffney, 2021 WL 1721593 (E.D. Pa. Apr. 30, 2021).

The “reasonableness” of particular uses of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* Further, the “calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.” *Id.* at 396-97. Whether the use of force was reasonable is normally a question for the jury. *Rivas*, 365 F.3d at 198.

Cuneo and Perez agree that during their initial interaction, Cuneo informed Perez that he was arresting him pursuant to the DNA search warrant. When Perez attempted to leave the scene, Cuneo deployed his taser to stop him. While Cuneo and Perez’ versions of the subsequent events differ materially, they agree that Cuneo’s further use of force included his repeated engagement of his taser to shock Perez, his striking of Perez with his retractable baton, and ultimately the use of his gun to shoot Perez. As to each use of force, “the Court asks whether the officer’s conduct was ‘objectively reasonable’ in light of the totality of the facts and circumstances.” *Lynn v. Schertzberg*, 169 Fed. Appx. 666, 669 (3d Cir. 2006) (citing *Kopec v. Tate*, 361 F.3d 772, 776 (3d Cir. 2004). Factors that the court should consider include (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers and others, (3) whether the action takes place in context of effecting an arrest and suspect is actively resisting arrest or attempting to evade arrest by flight, (4) the duration of the action, (5) the possibility that the suspect may be armed, and (6) the number of persons with whom the police officers must contend at one time (“the *Graham* and *Sharrar* factors”). *See Graham*, 490 U.S. at 396; and *Sharrar v. Felsing*, 128 F.3d 810, 822 (3d Cir. 1997). *See also Rivas v. City of Passaic*, 365 F.3d 181, 198 (3d Cir. 2004).

It is undisputed that Perez resisted arrest by attempting to leave the scene after Cuneo advised him that he was taking him into custody. Perez’ resistance triggered Cuneo’s right and authority to use force to effectuate the arrest. But, as detailed below, disputed issues of fact remain regarding the reasonableness of the force Cuneo chose to use against Perez.

a. Cuneo’s initial use of his taser.

The disputed issues of fact in this case include whether Cuneo gave any verbal warnings to Perez before Cuneo first used his taser on him. Perez says that after he questioned Cuneo’s authority to arrest him on the DNA search warrant and refused to go with Cuneo, he proceeded to “jog” across the street. He further asserts that Cuneo then fired his taser at him without warning. ECF 57-2, p. 20. In contrast, Cuneo contends that he specifically told Perez that he would “tase” him if he did not stop and fired his taser only after Perez failed to comply. This dispute is material. *See Bryan v. MacPherson*, 630 F.3d 805, 831 (9th Cir. 2010) (noting that an officer’s use of force was unreasonable when he did not provide a warning before deploying the taser). As one district court within this Circuit observed, “[w]hether warnings were given prior to tasing is important to showing whether this use of force was appropriate.” *Geist v. Ammary*, 40 F. Supp. 3d 467, 480-81 (E.D. Pa. 2014) (citing *Brown v. Cwynar*, 484 Fed. Appx. 676 (3d Cir. 2012) (use of a taser on plaintiff during arrest not excessive force after officer was called to store to deal with a “disruptive customer” and plaintiff/customer was non-complaint after several requests by officer to stop); *Ickes v. Borough of Bedford*, 807 F. Supp. 2d 306, 313, 324 (W.D. Pa. 2011) (finding that arresting officer’s tasing of

a handicapped individual was appropriate after the plaintiff was warned that he might be tasered and the plaintiff responded, “Go ahead and taser me.”) (footnote omitted)).

Certain of the *Graham* and *Sharrar* factors also weigh against this Court finding Cuneo’s initial use of his taser reasonable as a matter of law. When Cuneo initially approached Perez, he had observed nothing to support a belief that Perez was then involved in any serious crime. The only conduct Cuneo observed was Perez walking down the street. While Perez was a suspect in a burglary investigation, apparently no finding of “probable cause” for his arrest had been made as no warrant for his arrest had been issued. The current record also does not support that Cuneo had reason to believe that Perez represented an immediate threat to his safety or the safety of others when he declined to accompany Cuneo and attempted to leave the scene. Similarly, Defendants have not offered any evidence to support that Cuneo had reason to believe that Perez was armed. On the other hand, Cuneo’s action did take place in context of effecting an arrest, and Perez did actively resist arrest and attempt to evade arrest by flight. Given these competing and conflicting considerations, the reasonableness of Cuneo’s initial use of his taser is an issue that must remain for the jury.

b. Cuneo’s subsequent uses of his taser

Cuneo’s subsequent uses of his taser presents a closer call. The video evidence clearly shows that after Perez fell to the ground, his hands were initially concealed beneath his chest despite Cuneo’s repeated instructions to place them behind his back. Although Cuneo may have had no reason to believe Perez was armed, he did not know with any certainty he was not, and demanding that a resisting arrestee’s hands be made visible is a facially reasonable measure to protect the safety of the officer. Perez contends that his injuries and the initial shock of the taser prevented him from complying, but Cuneo would not necessarily have known this to be the case. Because a given use of force must be evaluated from the perspective of the officer, Cuneo’s repeated use of his taser may be viewed as reasonable under these circumstances. On the other hand, Perez asserts that Cuneo should have recognized that he was attempting to comply and surrender when Cuneo repeatedly shocked him with his taser. He also emphasizes the prolonged duration of the shocks administered by Cuneo which literally exhausted the battery of his taser.

Given the conflicts in the testimony of Cuneo and Perez and the inconclusive nature of the video evidence, the Court also finds that the reasonableness of Cuneo’s subsequent uses of his taser also constitutes a matter for the jury.

c. Cuneo’s use of his retractable baton

This same analysis and conclusion apply to Cuneo’s use of his retractable baton. By the time Cuneo used his baton, his interaction with Cuneo was completely out of view of his taser camera. Thus, there is no video evidence regarding what precipitated Cuneo’s use of his baton or how he used it. Cuneo asserts that he used his baton in an attempt to fend off Perez’ attacks against him and gain control of him. In contrast, Perez asserts that he did not attack or strike Cuneo and that it was Cuneo who repeatedly struck him in the head with his baton without justification. Once again, the Court is unable to resolve these factual disputes on summary judgment.

d. Cuneo’s discharge of his firearm

The facts and circumstances surrounding Cuneo’s use of his gun to shoot Perez are even more shapely in dispute. Cuneo asserts that he resorted to deadly force only after Cuneo

assaulted him to the point that he feared he might lose consciousness or Perez might gain complete control over him and possibly even obtain his gun. In contrast, Perez asserts that he was fleeing Cuneo’s unwarranted assault upon him and was approximately 12-20 feet away when Cuneo shot him in the back. The third-party witness, Thomas Costanzo, places Perez approximately 10-15 feet away from Cuneo when Cuneo shot him. These material discrepancies plainly preclude this Court from finding as a matter of law that Cuneo’s use of his gun to shoot Perez was reasonable.

D. Cuneo is Entitled to Qualified Immunity Only as to His Use of His Taser and Baton.

Qualified immunity is “an entitlement not to stand trial or face the burdens of litigation.” *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). Under this doctrine, a government official is immune from claims for damages unless the record, viewed in the light most favorable to plaintiff, shows (1) that the official violated the plaintiff’s constitutional rights, and (2) that the constitutional right that was violated was clearly established. *Id.* at 201; *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (“[G]overnment officials performing discretionary functions ... are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known.”). A right is considered clearly established if it is “sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Reichle v. Howards*, 566 U.S. 658 (2012) (alterations omitted); see also *Mullenix v. Luna*, 577 U.S. 7, 11-12 (2015).

In the context of a case alleging a police officer’s illegal arrest or use of excessive force, the court must “identify the right at issue and determine if that right was clearly established at the time of the officer’s action.” *Estep v. Mackry*, 639 Fed. Appx. 870, 873 (3d Cir. 2016). “With respect to the first task, courts ‘must define the right allegedly violated at the appropriate level of specificity.’” *Id.* (quoting *Sharp v. Johnson*, 669 F.3d 144, 159 (3d Cir. 2012)). Courts must resist the temptation to define “clearly established law at a high level of generality.” *Id.* (remanding case where district court defined right too generally as right to be free from excessive force) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741-42 (2011)). “Rather, the right at issue must be framed ‘in a more particularized, and hence more relevant, sense, in light of the case’s specific context, not as a broad general proposition.’” *Estep*, 639 Fed. Appx. at 873 (quoting *Spady v. Bethlehem Area Sch. Dist.*, 800 F.3d 633, 638 (3d Cir. 2015) (quotation marks and citations omitted)). With these principles in mind, the Court turns to Perez’ claims in this case.

1. Cuneo Is Not Entitled to Qualified Immunity on Perez’ Unlawful Arrest Claim.

As to Perez’ illegal arrest claim, the right at issue is Perez’ right not to be seized by the police without a warrant authorizing the seizure or the officer’s observation of facts supporting probable cause to believe the person has committed a crime or at least reasonable suspicion to believe he or she is engaged in criminal activity. This right is embodied in the text of the Fourth Amendment itself, which was adopted by Congress as part of the Bill of Rights on December 15, 1791. This right has been recognized as applicable to the states since 1961 when the Supreme Court decided *Mapp v. Ohio*, *supra*. Even if the right is defined more specifically as Perez’ right to be free from seizure pursuant to a search warrant executed outside of its specified limitations, that right has been clearly established since 1932 when the Supreme Court decided *Sgro v. United States*, *supra*. Thus, Cuneo violated Perez’ clearly

established rights on November 20, 2017, when he arrested him without probable cause or actual authority conferred by a warrant.

2. Cuneo is Entitled to Summary Judgment Based on Qualified Immunity With Respect to the Use of His Taser.

As to Cuneo's initial and subsequent uses of his taser, Perez has failed to show that Cuneo violated a clearly established right. A right is clearly established if a reasonable official would understand that what he is doing violates that right. *al-Kidd*, 563 U.S. at 741-42. The circumstances under which Cuneo used his taser are sufficiently clear from the video evidence that the Court can determine qualified immunity on the existing record. *See Scott v. Harris*, 550 U.S. 372, 378 (2007) (holding that "the existence in the record of a videotape capturing the events in question" is properly credited by the court in assessing whether a genuine issue of material fact remains in a police excessive force case). The video in this case shows Perez fleeing after Cuneo placed him under arrest and Cuneo's initial use of his taser to stop him. The video later shows Perez face down on the ground with his hands initially concealed beneath his chest. Cuneo is heard demanding that Perez place his hands behind his back and warning Perez that he will tase him if he does not comply. The video then shows Perez failing to comply and Cuneo engaging his taser.

"The 'clearly established' standard ... requires that the legal principle clearly prohibit the officer's conduct in the particular circumstances before him." *D.C. v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 590 (2018). Perez has not cited any controlling authority holding that the use of a taser to intercept and subdue a fleeing arrestee constitutes excessive force, and the Court has identified no such authority. Perez disputes Cuneo's assertion that he warned him before tasing him and, if a jury were to believe Perez, the jury could find that Cuneo's initial use of the taser was unreasonable. But this does not defeat qualified immunity because no controlling authority established the illegality of using a taser without warning as of November 20, 2017. *See Saucier*, 533 U.S. at 204 ("The inquiries for qualified immunity and excessive force remain distinct."). It has been said that qualified immunity provides police officers "ample room for mistaken judgments" by protecting "all but the plainly incompetent or those who knowingly violate the law." *Messerschmidt v. Millender*, 565 U.S. 535, 545-46 (2012) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). *See also Bello*, 2013 WL 53981, at *6. That protection extends to Cuneo's initial use of his taser. It also extends to his subsequent uses of his taser. As of November 20, 2017, no controlling authority established that repeated or extended discharge of a taser to compel compliance with police instructions violated the Fourth Amendment's proscription against excessive force. The Court has identified no Supreme Court precedent to support such a proposition, and the Court of Appeals for the Third Circuit has expressly declined to speak in a precedential opinion about taser use. *Estep*, 639 Fed. Appx. 870, 874 n.4. *Cf Brown*, 484 Fed. Appx. 676 (3d Cir. 2012) (recognizing that "multiple courts of appeals had approved the use of taser guns to subdue individuals who resist arrest or refuse to comply with police orders") (citing *Draper v. Reynolds*, 369 F.2d 1270, 1278 (11th Cir. 2004); (*Hinton v. City of Elwood*, 997 F.2d 774, 781 (10th Cir. 1993) (approving use of a stun gun to overcome a suspect's resistance to arrest). Because no controlling authority clearly demonstrated the illegality of Cuneo's use of his taser under the circumstances presented, he is entitled to qualified immunity on this aspect of Perez' excessive force claim.

3. Cuneo is Entitled to Summary Judgment Based on Qualified Immunity With Respect to His Repeated Striking of Perez With His Baton.

An officer's use of a baton to strike a person resisting arrest has been recognized as a reasonable means to obtain his or her compliance. *See e.g., Santini v. Fuentes*, 739 Fed. Appx. 718, 721 (3d Cir. 2018) (affirming summary judgment based on qualified immunity in a 2009 arrest of a non-suspect witness who was pepper-sprayed and struck with nightsticks prior to being handcuffed when he appeared to be resisting). The Court recognizes that Cuneo and Perez' versions of the facts surrounding Cuneo's use of his baton differ in certain respects and that a determination of the reasonableness of that force may turn on resolution of these differences. But it is undisputed that Perez was either engaged in a physical struggle with Cuneo or was actively evading arrest. Again, Perez has not cited, and the Court has not identified, any controlling authority to support that Cuneo's use of his baton to repeatedly strike Perez under either circumstance was unconstitutional as of November 20, 2017. Accordingly, while issues of fact remain concerning the reasonableness of Cuneo's use of his baton, they are not material for purposes of the qualified immunity analysis. Cuneo is entitled to qualified immunity with respect to this aspect of his excessive force claim.

4. Genuine Issues of Material Fact Remain as to Whether Cuneo's Use of His Gun Violated Clearly Established Law.

Supreme Court case law applicable to an assessment of the reasonableness of Cuneo's shooting of Perez was clearly established long before November 20, 2017: "[I]t is unreasonable for an officer to 'seize an unarmed, nondangerous suspect by shooting him ... [b]ut '[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.'" *Brosseau v. Haugen*, 543 U.S. 194, 197-98 (2004) (internal citation omitted) (citing *Tennessee v. Garner*, 471 U.S. 1 (1985), and *Graham v. Connor*, 490 U.S. 386 (1989)). The problem the Court faces in this case is it cannot determine which of these two clearly established propositions of law applies because the facts are sharply in dispute. According to Perez, he was an unarmed, nondangerous individual fleeing from an unlawful arrest when Cuneo shot him in the back. In contrast, Cuneo asserts that Perez was not just resisting arrest but aggressively attacking him with such ferocity that he feared for his life, prompting him to resort to deadly force. These disputes of fact are genuine and clearly material. Accordingly, Cuneo's request for summary judgment based on qualified immunity must be denied as to his shooting of Perez.

E. The Borough of Johnsonburg is Entitled to Summary Judgment on Perez' Monell Claim.

Although not identified as a specific count, the allegations of Perez' Amended Complaint raise a municipal liability claim against the Borough of Johnsonburg (Borough). *See* ECF No. 9, ¶¶ 63-67. A municipal entity such as the Borough cannot be held liable for its employee's alleged constitutional violations based on a theory of respondeat superior. *Monell v. Dep't Soc. Servs. of City of New York*, 436 U.S. 658, 691-95 (1978); *Panas v. City of Phila.*, 871 F. Supp. 2d 370, 377-78 (E.D. Pa. May 14, 2012). Rather, the "government itself, through its policies or practices, must be sufficiently culpable before" it can be held liable under § 1983. *Panas*, 871 F. Supp. 2d at 377-78. Such culpability exists only "when the alleged constitutional transgression implements or executes a policy, regulation, or decision officially adopted by the governing body or informally adopted by custom." *McTernan v.*

City of York, 564 F.3d 636, 657 (3d Cir. 2009) (quoting *Beck v. City of Pittsburgh*, 89 F.3d 966, 971 (3d Cir. 1996)). Merely alleging the existence of a policy, practice, or custom is not enough. *Rizzo v. Goode*, 423 U.S. 362, 371 (1976). A plaintiff in a § 1983 action must show an “affirmative link” between the occurrence of alleged misconduct and the municipality’s policy, custom, or practice. *Id.* Accordingly, “[o]nce a plaintiff has identified a policy or custom, [he or] she ‘must show that the municipal action was taken with the requisite degree of culpability, and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.’” *Abran v. City of Phila.*, 2020 WL 6781938, at *12 (E.D. Pa. Nov. 17, 2020) (quoting *Vulcan Pioneers of New Jersey v. City of Newark*, 374 Fed. Appx. 313, 317 (3d Cir. 2010)). If the policy does not facially violate federal law, “causation can be established only by ‘demonstrat[ing] that the municipal action was taken with ‘deliberate indifference’ as to its known or obvious consequences.’” *Id.* (quoting *Berg v. Cty. of Allegheny*, 219 F.3d 261, 276 (3d Cir. 2000)). Thus, in order to impose liability on a local governmental entity for failing to act to preserve constitutional rights, a § 1983 plaintiff must establish not only that he or she was deprived of a constitutional right, but that: (1) the municipality had a policy; (2) the policy “amounts to deliberate indifference” to the plaintiff’s constitutional right; and (3) the policy was the “moving force behind the constitutional violation.” *Weber v. Erie Cty.*, 2020 WL 5983275, at *5 (W.D. Pa. Oct. 8, 2020) (quoting *City of Canton, Ohio v. Harris*, 489 U.S. 378, 389-91 (1989)).

Perez contends that the Borough failed to “implement training policies and procedures to keep officers from using excessive force” and that it “knew its officers would frequently fail to follow the already inadequate procedures prior to the use of force against” Perez. ECF No. 9, ¶ 64. The Supreme Court has also recognized that a local government’s “culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011). “If the alleged policy or custom at issue is a failure to train or supervise (as it is here), the plaintiff must show that this failure ‘amounts to ‘deliberate indifference’ to the rights of persons with whom [the municipality’s] employees will come into contact.’” *Johnson v. City of Phila.*, 975 F.3d 394, 403 (3d Cir. 2020) (quoting *Carter v. City of Phila.*, 181 F.3d 339, 357 (3d Cir. 1999)). “[D]eliberate indifference” is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Connick*, 563 U.S. at 61 (quoting *Board of County Com’rs of Bryan Cty. v. Brown*, 520 U.S. 397, 410 (1997)).

Typically, a plaintiff meets this burden by identifying, “a pattern of similar constitutional violations by untrained employees” that “puts municipal decisionmakers on notice that a new program is necessary” *Johnson*, 975 F.3d at 403 (quoting *Thomas*, 749 F.3d at 223). “Otherwise, the plaintiff needs to show that failure to provide the identified training would ‘likely ... result in the violation of constitutional rights’ — *i.e.*, to show that ‘the need for more or different training [was] so obvious.’” *Id.* (quoting *City of Canton*, 489 U.S. at 390). The Third Circuit applies a three-part test to determine whether “a municipality’s failure to train or supervise amount[s] to deliberate indifference.” *Carter*, 181 F.3d at 357. A plaintiff must plead: (1) municipal policymakers know that employees will confront a particular situation; (2) the situation involves a difficult choice or a history of employees mishandling; and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights.” *Id.*; *see also Thomas v. Cumberland Cty.*, 749 F.3d 217 at 224-25 (3d Cir. 2014)

(quoting *Board of County Com’rs of Bryan Cty.*, 520 U.S. at 409). (“Liability in single-incident cases depends on ‘[t]he likelihood that the situation will recur and the predictability that an officer lacking specific tools to handle that situation will violate citizens’ rights”).

In the present case, Perez has not identified facts to support any of the elements of municipal liability under *Monell* and its progeny. He has not alleged facts to show a history or pattern of police misconduct comparable to that alleged against Cuneo. Nor has he identified a policymaker who was allegedly on notice of such a history or pattern and displayed deliberate indifference to it. The record does not support a finding that the Borough maintained a policy or custom of deliberate indifference to police misconduct or a deliberately indifferent failure to train officers in the face of a clear need to do so. Thus, Perez has failed to establish a genuine dispute of material fact concerning his *Monell* claim and, therefore, the Borough is entitled to judgment as a matter of law.

VI. Conclusion

Based on the record and applicable law, Defendants’ motion for summary judgment must be denied as to Perez’ Fourth Amendment illegal seizure/arrest claim. Disputed issues of fact also remain as to the reasonableness of Cuneo’s use of his taser and baton during his encounter with Perez, but Cuneo is nevertheless entitled to summary judgment on these aspects of Perez’ excessive force claim based on qualified immunity. As to Cuneo’s use of his firearm to shoot Perez in the back, genuine issues of material fact preclude summary judgment for Cuneo on the issue of reasonableness as well as qualified immunity. Finally, no genuine issue of material fact remains concerning Perez’ municipal liability claim against the Borough of Johnsonburg, and that Defendant is entitled to judgment as a matter of law. An appropriate Order will follow.

BY THE COURT

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

Dated: July 23, 2021

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CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that a Foreign Registration Statement has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on July 26, 2021, for a foreign corporation with a registered address in the Commonwealth of Pennsylvania as follows: Limbic Studio Inc., 5783 Forest Crossing, Erie, PA 16506. This corporation is incorporated under the laws of New York. The address of its principal office is 5783 Forest Crossing, Erie, PA 16506. The corporation has been qualified in Pennsylvania under the provisions of the Business Corporation Law of 1988, as amended.

Aug. 6

DISSOLUTION NOTICE
NOTICE OF WINDING UP
PROCEEDINGS OF JAM PHD,
INC., A PENNSYLVANIA
CORPORATION
TO ALL CREDITORS OF JAM
PHD, INC.

This is to notify you that JAM PHD, INC., a Pennsylvania corporation with its registered office located at 3823 West 12th Street, Erie, Pennsylvania 16505, is dissolving and winding up its business.

Aug. 6

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
Notice is hereby given pursuant to the provisions of the Fictitious Name Act of Pennsylvania that an application for registration of a fictitious name was filed with the Department of State of the Commonwealth of Pennsylvania for the conduct of business under the fictitious name of Rebel Repair and Restoration

with its principal place of business at 2285 1/2 Rice Ave., Lake City, PA 16423 The name and address of the person who is a party to the registration is:
Donald Shaner
5432 Westgate Drive
Girard, PA 16417

Aug. 6

INCORPORATION NOTICE
Notice is hereby given that Articles of Incorporation were filed in the Department of State of The Commonwealth of Pennsylvania on June 29, 2021 for Randhawa Global Logistics USA, Inc. under provisions of the Pennsylvania Business Corporation Law of 1988, as amended.

Aug. 6

INCORPORATION NOTICE
NOTICE is hereby given that TURTLES TOYBOX INC. has been incorporated under the provisions of the PA Nonprofit Corporation Law of 1988.
Steptoe & Johnson PLLC
201 Chestnut St., Suite 200
Meadville, PA 16335

Aug. 6

LEGAL NOTICE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA
ORPHANS' COURT DIVISION
No. 74 In Adoption 2021
IN THE MATTER OF THE
ADOPTION OF N.N.C.

TO: JOHN DOE, AKA "SHI"
At the instance of ADOPTION BY CHOICE, the petitioner in the above case, you, **JOHN DOE, AKA "SHI"**, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphans' Court of Erie County, Pennsylvania, at the Erie County Court House, Court Room No. D, the Honorable Erin Connelly Marucci, City of Erie, Pennsylvania, on **August 17, 2021 at 3:00 p.m.**, and then and there show cause, if any you have, why your parental rights to N.N.C. born October 26, 2020 at Magee-Women's, UPMC Hamot, Erie, Pennsylvania, should not be

terminated, in accordance with the Petition For Involuntary Termination Of Parental Rights filed on June 28, 2021 at the above term and number. The Petition alleges you, by conduct continuing for a period of at least six (6) months immediately preceding the filing of the petition, either have evidenced a settled purpose of relinquishing parental claim to the child or have failed or refused to perform parental duties. You hereby are notified that the Confirmation of Consent of the Natural Mother of N.N.C. will take place on August 17, 2021 at 3:30 p.m. before the Honorable Erin Connelly Marucci.

Your presence is required at the hearing. You are warned that if you fail to appear at the hearing to object to the termination of your rights or fail to file a written objection to such termination with the court prior to the hearing, the hearing will go on without you and your rights may be terminated without you being present.

If it is your intention to contest these proceedings you, or your attorney, are further directed to immediately notify the Family/Orphans' Court Administrator, Room 205, Erie County Court House, Erie, PA 16501 or at (814) 451-6251.

You have the right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Lawyers' Referral Service, PO Box 1792, Erie, Pennsylvania 16507, (814) 459-4411

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa.C.S. Sections 2731-2742. This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and

approved by the court to be legally binding. You have the right to consult an attorney concerning your post adoption contact agreement rights. If you do not have an attorney, you can ask for assistance through the Lawyers' Referral Service or Family/Orphans' Court Administrator, as set forth above.

M. Kathryn Karn, Esquire
4402 Peach Street, Suite 3,
Erie, PA 16509

Telephone: (814) 882-2974
Attorney for Petitioner,
Adoption By Choice

Aug. 6

LEGAL NOTICE

File No. 205316
CIVIL ACTION

COURT OF COMMON PLEAS
ERIE COUNTY, PA
CIVIL ACTION-LAW
NO. 12134-19

UBIX, INC., Plaintiff
v.

ERIECYCLE, LLC, Defendant
To: MICHAEL BILOTTI,
President/Managing Member/
Owner of Eriecycle, LLC

You are hereby notified that Plaintiff, UBIX, INC., has filed a Complaint against Defendant, ERIECYCLE, LLC, in the Court of Common Pleas of Erie County, PA, Docket No. 12134-19, for nonpayment of certain invoices for the goods and/or services sold and delivered by Plaintiff to Defendant, in the total amount of \$58,700.80, plus reasonable attorneys' fees and costs of suit.

NOTICE TO DEFEND
YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in this notice you must take action within twenty (20) days after the Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the

plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS 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 THE INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral &
Information Service
PO Box 1792
Erie, PA 16507
814-459-4411

Robertson, Anschutz, Schneid, Crane
& Partners, PLLC
BURTON NEIL & ASSOCIATES,
P.C.

ATTORNEYS FOR PLAINTIFF
Lloyd S. Markind, Esq. ID No. 52507
1060 Andrew Drive, Suite 170
West Chester, PA 19380
(610) 696-21210 x286/-4111 (Fax)
Lloyd.Markind@Burt-Law.com

Aug. 6

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814/734-3787

Joseph P. Maloney, CPA, CFE

Rick L. Clayton, CPA • Christopher A. Elwell, CPA • Ryan Garofalo, CPA

Confidential inquiries by phone or email to mrsinfo@mrs-co.com.

SHERIFF SALES

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**AUGUST 20, 2021
AT 10 A.M.**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

John T. Loomis
Sheriff of Erie County

July 30 and Aug. 6, 13

SALE NO. 2

**Ex. #11931 of 2020
PENNSYLVANIA EQUITY
RESOURCES, INC., Plaintiff
v.**

**ROBERT G. BATES, Defendant
DESCRIPTION**
By virtue of a Writ of Execution No. 11931-20, PENNSYLVANIA EQUITY RESOURCES, INC. v. ROBERT G. BATES, owner(s) of property situate in the BOROUGH OF WATTSBURG, ERIE County, Pennsylvania, being 14370 MAIN ST., WATTSBURG, PA 16442
Tax ID No.: 48-001-001.0-004.00
Improvements thereon:
RESIDENTIAL DWELLING
Judgment Amount: \$121,723.73
Attorneys for Plaintiff

Brock & Scott, PLLC
Lauren R. Tabas, Esquire
302 Fellowship Rd., Suite 130
Mount Laurel, NJ 08054
844-856-6646

July 30 and Aug. 6, 13

SALE NO. 3

**Ex. #12281 of 2020
Federal Home Loan Mortgage
Corporation, as Trustee for
the benefit of the Freddie Mac
Seasoned Loans Structured
Transaction Trust, Series 2019-2,
Plaintiff
v.
Paula E. Barthelmes, Defendant
DESCRIPTION**

By Virtue of Writ of Execution filed to No. 2020-12281, Federal Home Loan Mortgage Corporation, as Trustee for the benefit of the Freddie Mac Seasoned Loans Structured Transaction Trust, Series 2019-2 vs. Paula E. Barthelmes
Paula A. Barthelmes, owner(s) of property situated in the Township of Green, Erie County, Pennsylvania being 10910 Lake Pleasant Road, Waterford, PA 16441
1.0 Acres
Assessment Map number: 25019054000100
Assessed figure: \$116,810.00
Improvement thereon:
Single Family Residential Dwelling
Hladik, Onorato & Federman, LLP
289 Wissahickon Avenue
North Wales, PA 19454
(215) 855-9521

July 30 and Aug. 6, 13

SALE NO. 4

**Ex. #12913 of 2019
BANK OF AMERICA. N.A.,
SUCCESSOR BY MERGER
TO BAC HOME LOANS
SERVICING, LP FKA
COUNTRYWIDE HOME
LOANS SERVICING LP,
Plaintiff
v.
THOMAS E. HOLLAND,
Defendant
DESCRIPTION**

By virtue of a Writ of Execution filed to No. 12913-19, BANK OF AMERICA. N.A., SUCCESSOR BY MERGER TO BAC HOME

LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP vs. THOMAS E. HOLLAND, owner(s) of the property situated in Erie County, Pennsylvania being 842 MECHANIC STREET, GIRARD, PA 16417
Assessment Map Number: 23-004.018.0-001.00
Assessed Value Figure: \$80,140.00
Improvement Thereon:
A Residential Dwelling
KML LAW GROUP, P.C.
ATTORNEY FOR PLAINTIFF
701 MARKET STREET, SUITE 5000
PHILADELPHIA, PA 19106
(215) 627-1322

July 30 and Aug. 6, 13

SALE NO. 5

**Ex. #10471 of 2021
U.S. BANK NATIONAL
ASSOCIATION, AS
INDENTURE TRUSTEE, FOR
THE HOLDERS OF THE CIM
TRUST 2017-3, MORTGAGE-
BACKED NOTES,
SERIES 2017-3, Plaintiff
v.
CHARLES I. TROUTMAN SR.
and CHARLOTTE TROUTMAN
AKA CHARLOTTE M.
TROUTMAN, Defendants
DESCRIPTION**

By virtue of a Writ of Execution filed to No. 10471-21, U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE, FOR THE HOLDERS OF THE CIM TRUST 2017-3, MORTGAGE-BACKED NOTES, SERIES 2017-3 vs. CHARLES I. TROUTMAN SR. and CHARLOTTE TROUTMAN AKA CHARLOTTE M. TROUTMAN, owner(s) of the property situated in Erie County, Pennsylvania being 90 NORTH STREET, ALBION, PA 16401
Assessment Map Number: (1)2-2-9
Assessed Value Figure: \$72,030.00
Improvement Thereon:
A Residential Dwelling
KML LAW GROUP, P.C.
ATTORNEY FOR PLAINTIFF
701 MARKET STREET,

SUITE 5000
PHILADELPHIA, PA 19106
(215) 627-1322
July 30 and Aug. 6, 13

**SALE NO. 6
Ex. #10434 of 2021
PENNSYLVANIA HOUSING
FINANCE AGENCY, Plaintiff
v.
RICHARD J. QUINN, Defendant
DESCRIPTION**

By virtue of a Writ of Execution No. 2021-10434, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. RICHARD J. QUINN, Defendant
Real Estate: 144 EAST 29TH STREET, ERIE, PA 16504
Municipality: City of Erie
Erie County, Pennsylvania
Dimensions: 40 x 159.83
Deed Book/Inst#: Deed Book 0555, page 1994
Tax I.D.: (18) 5085-222
Assessment: \$17,900 (Land)
\$47,620 (Bldg)
Improvement thereon: a residential dwelling house as identified above
Leon P. Haller, Esquire
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17104
(717) 234-4178

July 30 and Aug. 6, 13

**SALE NO. 7
Ex. #12028 of 2020
PHH Mortgage Corporation,
Plaintiff
v.**

**Jeanne M. Moore, Defendant
DESCRIPTION**
By virtue of a Writ of Execution filed to No. 2020-12028, PHH Mortgage Corporation v. Jeanne M. Moore, owners of property situated in the Township of Millcreek, Erie County, Pennsylvania being 3520 Pacific Avenue, Erie, Pennsylvania 16506.
Tax I.D. No.: 33074323001900
Assessment: \$127,222.23
Improvements:
Residential Dwelling
McCabe, Weisberg & Conway, LLC
123 South Broad Street, Suite 1400

Philadelphia, PA 19109
215-790-1010
July 30 and Aug. 6, 13

**SALE NO. 8
Ex. #10851 of 2020
WELLS FARGO BANK,
NATIONAL ASSOCIATION,
AS TRUSTEE UNDER
POOLING AND SERVICING
AGREEMENT DATED AS
OF SEPTEMBER 1, 2006
SECURITIZED ASSET
BACKED RECEIVABLES
LLC TRUST 2006-HE2
MORTGAGE PASS-THROUGH
CERTIFICATES,
SERIES 2006-HE2, Plaintiff
v.
CAROL R. KOMOROWSKI,
Defendant(s)
DESCRIPTION**

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN THE FIFTH WARD IN THE CITY OF ERIE, ERIE COUNTY, PENNSYLVANIA:
BEING KNOWN AS: 448 EAST 28TH STREET A/K/A 448 EAST 28 STREET, ERIE, PA 16504
BEING PARCEL NUMBER: 18050077012300 and 18050077012200
IMPROVEMENTS:
RESIDENTIAL PROPERTY
Robertson, Anschutz, Schneid, Crane & Partners, PLLC
A Florida Limited Liability Company
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
(855) 225-6906
Attorneys for Plaintiff
chjans@raslg.com
Robert Flacco, Esquire
Id. No. 325024
July 30 and Aug. 6, 13

**SALE NO. 9
Ex. #13057 of 2019
U.S. Bank National Association
as Legal Title Trustee for Truman
2016 SC6 Title Trust, Plaintiff
v.
David F. Wheeler aka
David F. Wheeler, Jr.,
Stacey M. Wheeler aka
Stacey M. Simos, Defendants
DESCRIPTION**
By virtue of a Writ of Execution

filed to No. 2019-13057, U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust v. David F. Wheeler aka David F. Wheeler Jr. and Stacey M. Wheeler aka Stacey M. Simos
Stacey M. Wheeler aka Stacey M. Simos, owner(s) of the property situated in the City of Erie, Erie County, Pennsylvania being 4142 West 10th Street, Erie, PA 16505
0.2570 Acreage
Assessment Map Number: 33-019-101.0-005.00
Assessed Value Figure: \$94,400.00
Improvement thereon:
Single Family Dwelling
Emmanuel J. Argentieri, Esquire
Attorney for Plaintiff
ROMANO GARUBO
& ARGENTIERI
52 Newton Avenue, P.O. Box 456
Woodbury, NJ 08096
(856) 384-1515

July 30 and Aug. 6, 13



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M-F, 8:30 a.m. - 5:00 p.m.



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

BERKHOUS, SUZANNE K., deceased

Late of the Township of Union, County of Erie, Pennsylvania
Executrix: Amy S. Hasbrouck, 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

BUTLER, WILLIAM, deceased

Late of the City of Corry, County of Erie, Pennsylvania
Executor: Lawrence M. Hyer, c/o Thomas J. Ruth, Esq., Carney and Ruth Law Office, 224 Maple Avenue, Corry, PA 16407
Attorney: Thomas J. Ruth, Esq., 224 Maple Avenue, Corry, PA 16407

CLAXTON, CHRISTINA L., deceased

Late of Girard Twp., Erie County, PA
Administrator: Daniel K. Claxton, c/o Kristen L. Behrens, Esq., 457 Haddonfield Rd., Ste. 700, Cherry Hill, NJ 08002
Attorney: Kristen L. Behrens, Esq., Dilworth Paxson LLP, 457 Haddonfield Rd., Ste. 700, Cherry Hill, NJ 08002

DUNBAR, MARYANN A., a/k/a MARY A. DUNBAR, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administrator: Michael G. Dunbar, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

FOX, HAROLD R., deceased

Late of the City of Corry, County of Erie, Pennsylvania
Executrix: Lisa M. Fox, 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

GALVIN, DANIEL P., deceased

Late of the City of Erie County, Pennsylvania
Administrator: David Galvin
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

GERSIMS, YVONNE M., a/k/a YVONNE GERSIMS, deceased

Late of the Township of Washington, County of Erie, Commonwealth of Pennsylvania
Executor: John R. Gersims, c/o 337 West 10th Street, Erie, PA 16502
Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

KOECH, JOSEPH M., a/k/a JOSEPH MICHAEL KOECH, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Theresa Koech-Rash, 10647 South Edgewood Drive, Lake City, PA 16426
Attorney: James R. Steadman, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

LINDENBERGER, CLIFFORD W., deceased

Late of the City of Corry, County of Erie, Pennsylvania
Executor: James E. Huff, 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

MAGDIK, PATRICIA, a/k/a PATRICIA ECKARD MAGDIK, a/k/a PATRICIAMARIE MAGDIK, deceased

Late of the Borough of Edinboro, County of Erie and State of Pennsylvania
Executrix: Karen Tempalski, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

MARTIN, T. C., deceased

Late of the City of Erie, Erie County, Pennsylvania
Administratrix: Sandra Martin, 3897 Alstead Manor Way, Suwanee, GA 30024
Attorney: Gary J. Shapira, Esquire, 118 West 42nd Street, Erie, PA 16508

NICK, LESLIE ANN, a/k/a LESLIE A. NICK, a/k/a LESLIE NICK, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administrator: Paul Nick, 1421 W. 34th St., Erie, PA 16508
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

PURDY, JENNIFER, deceased

Late of Harborcreek Township
Administrator: Stephan Tucker
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

RAIMONDI, LINDA LOUISE, a/k/a LINDA L. RAIMONDI, deceased

Late of the City of Erie, Erie County, Pennsylvania
Co-executors: Denise Zeurcher and Ronald Raimondi, 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

RANKIN, KATIE, a/k/a KATIE MAE RANKIN, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administrator: Gerald Rankin, 2005 Sand Lake Dr., Atlanta, GA 30331
Attorney: None

SINNOTT, EDWARD JOSEPH, a/k/a EDWARD J. SINNOTT, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Joseph E. Sinnott, Esq., c/o Marnen, Mioduszewski, Bordonaro, Wagner & Sinnott, LLC, 516 West Tenth Street, Erie, PA 16502
Attorney: Joseph E. Sinnott, Esq., Marnen, Mioduszewski, Bordonaro, Wagner & Sinnott, LLC, 516 West Tenth Street, Erie, PA 16502

SMITH, EARL LEROY, a/k/a EARL L. SMITH, a/k/a EARL SMITH, deceased

Late of Summit Township, Erie County, Commonwealth of Pennsylvania
Executrix: Pamela L. Smith, 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

STODDARD, EUGENE M., deceased

Late of the City of Corry, County of Erie, Pennsylvania
Executor: Howard V. Kitelinger, 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

TEBALDI, JEFFREY G., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Administrator: Anthony J. Tebaldi, 503 Waugh Ave., New Wilmington, PA 16142
Attorney: None

TRAYER, EUGENE L., deceased

Late of the Township of Greenfield, County of Erie, Commonwealth of Pennsylvania
Executrix: Shirley L. Trayer, 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

VITRON, MARY E., deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: William J. Vitron, Jr., 4119 McKee Road, Erie, PA 16506-3701
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

ZIMMER, IONA E., a/k/a IONA ELIZABETH ZIMMER, a/k/a IONA ZIMMER, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Co-executors: Frank Zimmer and Sherrie Zimmer, c/o Leigh Ann Orton, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428
Attorney: Leigh Ann Orton, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428

SECOND PUBLICATION**ALEXANDER, DAVID A., a/k/a DAVID ALEXANDER, deceased**

Late of the Township of Millcreek, Erie County, Commonwealth of Pennsylvania
Executrix: PNC Bank, N.A., Lisa L. Masi, Estate Settlement Officer, 901 State Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

CASERTA, MARIE L., deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administrator: David Caserta, c/o James E. Marsh Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh Jr., Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

DIAS, DOUGLAS E., deceased

Late of the City of Erie
Executrix: Patricia Leone, c/o Attorney Terrence P. Cavanaugh, P.O. Box 3243, Erie, PA 16508
Attorney: Terrence P. Cavanaugh, Esquire, P.O. Box 3243, Erie, PA 16508

ETTISON, WILLIAM, deceased

Late of the City of Erie
Administrator: Justin Debias
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

KUHN, CLAYTON L., a/k/a CLAYTON KUHN, deceased

Late of Columbus Township, County of Warren and Commonwealth of Pennsylvania
Executrix: Tammy Kuhn, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

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:

SCHROEDER, ALINE A., deceased

Trust dated September 12, 2006
 Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Trustees: Philip C. Kaminski and Mary Ellen Kaminski, 170 La Salle Avenue, Erie, PA 16511-1240
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

SCHROEDER, RAYMOND J., deceased

Trust dated September 12, 2006
 Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Trustees: Philip C. Kaminski and Mary Ellen Kaminski, 170 La Salle Avenue, Erie, PA 16511-1240
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

THIRD PUBLICATION**ANDERSON, EVELYN, a/k/a EVELYN K. ANDERSON, deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Susan Murawski
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

BERARDUCCI, JULIO CAESAR, a/k/a JULIO C. BERARDUCCI, a/k/a JULIO BERARDUCCI, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administrator: Janet Agresti-Norman, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

JOHANNES, RUTH M., deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administrator: Robert R. Johannes, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan J. Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

KRAMER, JOHN RICHARD, a/k/a JOHN R. KRAMER, a/k/a JOHN KRAMER, deceased

Late of the City of Erie, County of Erie and State of Pennsylvania
Executrix: Jennifer Sibilila, 7110 Harvest Moon Drive, Erie, PA 16509
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

LACHOWSKI, ROBERT J., a/k/a ROBERT LACHOWSKI, deceased

Late of the City of Erie, County of Erie and State of Pennsylvania
Administratrix: Lily Ohmer, 7501 Bargain Road, Erie, PA 16509
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

LANDI, OLLIE T., a/k/a OLLIE LANDI, deceased

Late of the City of Erie
Co-executrices: Lorrie Henderson, 607 Lawler Street, Philadelphia, PA 19116 and Cindy Oleck, 32 Sunset Drive, Paoli, PA 19301
Attorney: David J. Mack, Esquire, 510 Parade Street, Erie, PA 16507

LEE, GREGG G., deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Susan D. Margosian Lee
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

LOCKET, MONIQUE, a/k/a MONIQUE MARIE LOCKETT, deceased

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executrix: Sylvia Lockett Cooley, 3614 Roma Drive, Erie, PA 16510
Attorney: Gregory P. Sesler, Esquire, Sesler and Sesler, 107 East Tenth Street, Erie, PA 16501

SCHAUERMAN, HENRY J., deceased

Late of the City of Erie, County of Erie and State of Pennsylvania
Executrix: Reva Revak, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

**STELMACK, ROSE IRENE,
a/k/a ROSE I. STELMACK, a/k/a
ROSE STELMACK,
deceased**

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

Executor: Christopher Szymanski,
4202 Stein Drive, Cranberry, PA
16066

Attorney: Ronald J. Susmarski,
Esq., 4030 West Lake Road, Erie,
PA 16505

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:

JOSEPHINE S. JASINSKI TRUST

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

Trustee: Cherly L. Mills,
c/o Quinn, Buseck, Leemhuis,
Toohey & Kroto, Inc., 2222 West
Grandview Blvd., Erie, PA 16506

Attorney: Colleen R. Stumpf,
Esq., Quinn, Buseck, Leemhuis,
Toohey & Kroto, Inc., 2222 West
Grandview Blvd., Erie, PA 16506

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

COURTNEY M. HELBLING814-333-7455
Crawford County District Attorney's Office
359 East Center Street
Meadville, PA 16335 chelbling@co.crawford.pa.us

JOHN M. BARTLETT814-774-2628
Steadman Law Office, P.C.(f) 814-774-3278
24 Main Street East
Girard, PA 16417 John@steadmanlaw.com



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WEEKLY
WRAP-UP

August 6, 2021



Wednesday, August 11

**Live ECBA Lunch-n-Learn Seminar:
Ethical Considerations in Helping a Low-
Income Ex-Offender Apply for a Pardon**

Register at:
<https://www.eriebar.com/events/member-registration/1730>



Thursday, August 12

Live ECBA Summer CLE & Social:
Ethics Do's and Don'ts for Lawyer
Marketing/Advertising; Paint Your Profit
by the Numbers; Ethical Considerations &
Best Practices for Billing & Collections;
Happy Hour

Register at:
<https://www.eriebar.com/events/member-registration/1731>



Friday, August 13

Lefties Luncheon
(at Molly Brannigan's)

Register at:
<https://www.eriebar.com/events/ecba-events/1732-lefties-luncheon>



Friday, August 20

Picnic in the Park
(ECBA's membership picnic
at Presque Isle State Park)

Register at:
<https://www.eriebar.com/events/member-registration/1729>

Pa. Supreme Court green-lights 'enterprise theory' of piercing the corporate veil - In a case of first impression, the Supreme Court of Pennsylvania has handed down a ruling which may ease plaintiffs' recovery of damages against the owners of related corporations, and simultaneously, make it more difficult for those same businesses to protect their assets in future litigation. Read more ... <https://pennrecord.com/stories/606205644-pa-supreme-court-green-lights-enterprise-theory-of-piercing-the-corporate-veil>

Lawyer, sick of neighbors, sues their landlord - An attorney who owns property in Pittsburgh is alleging his neighbor is an "absentee landlord" who neglects her property and has nuisance tenants. John Renda filed a complaint in the Court of Common Pleas of Allegheny County against Jun Minhee. Renda owns a residence on Maple Heights Court in Pittsburgh, according to his complaint. Read more ... <https://pennrecord.com/stories/606246383-lawyer-sick-of-neighbors-sues-their-landlord>

Law of Fair Share Act left unsettled by recent decision - The Pennsylvania Superior Court recently issued a notable decision earlier this year in March 2021 with respect to the Fair Share Act in the case of Spencer v. Johnson. That case was recently settled before any further appellate review could be had on the important issue of the scope and ambit of the Fair Share Act.

Zoom agrees to \$85M settlement in litigation over privacy and 'Zoombombings' - Zoom Video Communications has agreed to pay \$85 million to settle nationwide litigation alleging misrepresentations and broken promises regarding customers' security and privacy. The litigation alleges that Zoom shared users' information through third-party integration with social media companies such as Facebook. It also claims that Zoom violated security promises related to "Zoombombings" by hackers who disrupted meetings. Read more ... <https://www.abajournal.com/news/article/zoom-agrees-to-85m-settlement-in-litigation-over-privacy-and-zoombombings>

First UK, now Australia? - A group of Uber drivers in Australia has filed a suit against the ride-hailing company in a bid to get a federal court to rule that Uber drivers are employees rather than contractors, and therefore entitled to certain benefits, including sick pay, holiday pay and pensions. The group alleges that Uber is violating the Australian Fair Work Act by failing to keep records of drivers' employment and not handing out pay slips. A ruling on the matter will likely have to consider how to classify those workers. The suit comes less than six months after the U.K. Supreme Court ruled that Uber drivers within its borders are "workers" entitled to minimum wage, paid holidays and other legal protections. The ruling was a setback for Uber, which has successfully resisted such changes in the past, most notably in California.

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