

# Adams County Legal Journal

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## COMMONWEALTH OF PENNSYLVANIA V. MARK AMOS ALLEN

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FICTITIOUS NAME NOTICE

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on February 28, 2018, pursuant to the Fictitious Name Act, setting forth that Axe Mechanical Services, LLC, of 1935 East Berlin Road, New Oxford, PA 17350, is the only entity owning or interested in a business, the character of which is geothermal heating and cooling and that the name, style, and designation under which said business is and will be conducted is RICK GILBERT GEOTHERMAL SPECIALISTS, and the location where said business is and will be conducted is 1935 East Berlin Road, New Oxford, PA 17350.

Guthrie, Nonemaker,  
Yingst & Hart, LLP  
Solicitor

4/13

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COMMONWEALTH OF PENNSYLVANIA V.  
MARK AMOS ALLEN

1. Constable Metcalf did not possess authority to arrest and detain Defendant for violations of the Motor Vehicle Code, including driving under the influence of alcohol and/or controlled substances.

2. Constable Metcalf did have the authority, as would any private citizen, to detain and arrest Defendant for a breach of the peace which occurred in his view. Defendant's actions in this case would provide proper probable cause for Constable Metcalf, acting as a private citizen, to detain and arrest Defendant for a breach of peace which occurred in his view.

3. The peace officer has all the privileges of arrest which...are conferred upon one not a peace officer. In such a case, his privilege to arrest is not dependent upon his being a peace officer; and it is immaterial whether he purports to act in his capacity as peace officer or as a private person or whether he is or is not acting within the territorial and other limits of his designation.

4. Any and all statements which Defendant made to Constable Metcalf as a result of direct questioning from Constable Metcalf following the detention and arrest of Defendant by Constable Metcalf are subject to suppression.

5. If a motorist detained pursuant to a traffic violation is thereafter subjected to treatment that renders him in custody for practical purposes, that person is entitled to the full panoply of protections prescribed by Miranda.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CRIMINAL CP-01-CR-1260-2017,  
COMMONWEALTH OF PENNSYLVANIA V. MARK AMOS  
ALLEN.

Miranda L. Blazek, Esq., Attorney for Commonwealth

Sean A. Mott, Esq., Attorney for Defendant

Wagner, J., March 13, 2018

OPINION ON DEFENDANT'S MOTION FOR  
SUPPRESSION

Presently before the Court is Defendant Mark Amos Allen's Omnibus Pre-Trial Motion. A suppression hearing was held before this Court on February 15, 2018. The issues before the Court are whether (1) Constable J. Ryan Metcalf had the authority to detain and arrest Defendant and (2) whether Defendant was subjected to a custodial interrogation, so as to necessitate **Miranda** warnings after Defendant was detained and arrested by Constable Metcalf.

Based upon the following Findings of Fact and Conclusions of Law, this Court will deny Defendant's Omnibus Pre-Trial Motion in part and grant Defendant's Omnibus Pre-Trial Motion in part.

## FINDINGS OF FACT

1. Constable J. Ryan Metcalf is a full-time state constable elected in the Borough of New Oxford and has been a state constable for 8 years.
2. Constable Metcalf's responsibilities include the service of judicial process in the form of civil process for landlord/tenant actions, the service of subpoenas and the arrest of individuals by warrant. Constable Metcalf is permitted to serve arrest warrants anywhere within the Commonwealth of Pennsylvania.
3. On April 24, 2017 at approximately 8:00 p.m. Constable Metcalf and Constable Gates were present at 2682 York Road, Straban Township, Adams County, Pennsylvania for the execution of arrest warrants for two individuals.
4. Constable Metcalf and Constable Gates were in the living room of the residence at 2682 York Road speaking with the occupant of the residence, Lorraine Witmer, concerning the arrest warrants. Constable Metcalf observed through a living room window a vehicle exit Route 30 at a high rate of speed, proceed airborne over the embankment and enter the yard of the residence at 2682 York Road. The vehicle travelled to the rear of the residence through the yard and stopped between the residence and a trailer located in the rear of the residence.
5. Constable Metcalf and Constable Gates went to the rear of the residence and observed Defendant in the driver's seat. There were no other passengers in the vehicle.
6. As Constable Metcalf approached the vehicle, Defendant exited the vehicle and Constable Metcalf smelled a strong odor of alcohol and an odor of marijuana. Constable Metcalf observed Defendant to be confused, Defendant's speech was slurred, Defendant had balance issues and in the Constable's opinion Defendant was manifestly under the influence of alcohol.
7. At 8:04 p.m. Constable Metcalf contacted the Pennsylvania State Police and was advised a PSP Trooper would have an extended estimated time of arrival because of other incidents.
8. Constable Metcalf contacted the on-call Adams County Assistant District Attorney, Attorney Yannetti, who advised Constable

Metcalf to detain Defendant for further investigation for suspicion of DUI by the Pennsylvania State Police.

9. Constable Metcalf detained Defendant and placed Defendant in the rear of his vehicle. Constable Metcalf testified that Defendant was not free to leave.
10. Constable Metcalf did not advise Defendant of his Miranda warnings after Constable Metcalf detained Defendant while awaiting the arrival of the Pennsylvania State Police.
11. On April 24, 2017 at 9:26 p.m., Trooper Haun with the Pennsylvania State Police arrived at 2682 York Road and handled the criminal investigation on behalf of the Pennsylvania State Police.
12. Ultimately, Trooper Haun charged Defendant with several counts of driving under the influence of alcohol or controlled substances and summary traffic violations.
13. There is a stipulation that Constable Metcalf did not receive the same level of training in regards to drug and alcohol training as the Pennsylvania State Police.

### CONCLUSIONS OF LAW

1. Constable Metcalf did not possess authority to arrest and detain Defendant for violations of the Motor Vehicle Code, including driving under the influence of alcohol and/or controlled substances. See **Commonwealth v. Roose**, 710 A.2d 1129 (Pa. 1998).
2. Constable Metcalf did have the authority, as would any private citizen, to detain and arrest Defendant for a breach of the peace which occurred in his view. Defendant's actions in this case would provide proper probable cause for Constable Metcalf, acting as a private citizen, to detain and arrest Defendant for a breach of peace which occurred in his view. See **Commonwealth v. Corley**, 462 A.2d 1374, 1379 (Pa. Super. 1983) aff'd on other grounds, 491 A.2d 829 (Pa. 1985). See also **Kopko v. Miller**, 892 A.2d 766, 774-775 (Pa. 2006). See also **Commonwealth v. Giles**, 14 Adams L.J. 34, (1972). See also **Commonwealth v. Tayler**, 677 A.2d 846 (Pa. Super. 1996) at footnote 14, as follows:

We note the existence of substantial authority indicating that an arrest by a peace officer acting without jurisdiction is nonetheless valid where a private citizen could have made the arrest. For instance, Restatement, Second, Torts § 121, Comment on clause (a) provides as follows:

The peace officer has all the privileges of arrest which...are conferred upon one not a peace officer. In such a case, his privilege to arrest is not dependent upon his being a peace officer; and it is immaterial whether he purports to act in his capacity as peace officer or as a private person or whether he is or is not acting within the territorial and other limits of his designation.

*Id.*; see also **Gaither v. United States**, 134 App. D.C. 154, 413 F.2d 1061 (1969) (arrest held valid where conducted by special police officer who, although exceeding jurisdiction, retained the power of a private citizen to arrest for felony committed in his presence); **Nash v. State**, 207 So.2d 104 (Miss. 1968) (appellant's arrest for manslaughter held valid despite arresting sheriff's lack of territorial jurisdiction, on the basis that sheriff retained the right of a private citizen to arrest for felonies committed in his presence); **People v. Alvarado**, 208 Cal. App.2d 629, 25 Cal.Rptr. 437 (1962) ("an arrest by a city policeman outside his territorial jurisdiction is unquestionably valid if made upon grounds which would authorize a lawful arrest by a private citizen."); **accord, People v. Burgess**, 170 Cal.App.2d 36, 338 P.2d 524; **People v. McCarty**, 164 Cal.App.2d 322, 330 P.2d 484 (1958); **People v. Ball**, 162 Cal.App.2d 465, 328 P.2d 276 ("it would appear anomalous to hold unlawful an arrest by a peace officer when the same arrest by a private citizen clearly would have been lawful.") **State v. Hart**, 149 Vt. 104, 539 A.2d 551 (1987) (misdemeanor arrest by constable acting without jurisdiction held invalid on the basis that constable, even as a private citizen, lacked power to conduct *misdemeanor arrest*).

3. Any and all statements which Defendant made to Constable Metcalf as a result of direct questioning from Constable Metcalf following the detention and arrest of Defendant by Constable Metcalf are subject to suppression. A person is not in custody during an ordinary traffic stop during which a police officer asks the driver a modest number of questions or requests him to perform simple field sobriety tests. **Commonwealth v. Turner**, 772 A.2d 970, 975 (Pa. Super. 2001). However, if a motorist detained pursuant to a traffic violation is thereafter subjected to treatment that renders him in custody for practical purposes, that person is entitled to the full panoply of protections prescribed by **Miranda. Berkemer v. McCarthy**, 468 US 420, 440, 104 S.Ct. 3138, 82 L.Ed. 2d 317 (1984).

#### ORDER OF COURT

AND NOW, this 13th day March, 2018, Defendant's Omnibus Pre-Trial Motion is granted in part and denied in part. The Motion is granted to the extent that statements made to Constable Metcalf after Defendant was detained and arrested and as a result of interrogation by Constable Metcalf are suppressed and may not be used in the Commonwealth case in chief at trial. Defendant's Omnibus Pre-Trial Motion challenging the legality of the detention and arrest of Defendant is denied.





**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

**FIRST PUBLICATION****ESTATE OF MARY E. SANTANA, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Andrew D. Mitchell, c/o Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

Attorney: Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

**SECOND PUBLICATION****ESTATE OF THOMAS J. CARTER, DEC'D**

Late of Huntington Township, Adams County, Pennsylvania

Administratrix: Michele Carter, 810 Chestnut Street, Berwick, PA 18603

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

**ESTATE OF NORMA J. ENDERS a/k/a NORMA JANE ENDERS., DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Joni M. Knudson, c/o Jennifer A. Galloway, Esq., Kearney Galloway, LLC, 940 South Queen Street, York, PA 17403

Attorney: Jennifer A. Galloway, Esq., Kearney Galloway, LLC, 940 South Queen Street, York, PA 17403

**ESTATE OF RUTH M. GROFT, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Co-Executrices: Mrs. Judy Zinn, 10 Elm Lane, New Oxford, PA 17350; Mrs. Jane M. Hoover, 79 Woods Road, Abbottstown, PA 17301

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**ESTATE OF PERRY A. HILDEBRAND, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Beth Reindollar, c/o William B. Anstine, Jr., Esq., Anstine & Sparler, 117 E. Market St., York, PA 17401

Attorney: William B. Anstine, Jr., Esq., Anstine & Sparler, 117 E. Market St., York, PA 17401

**EMORY R. LENTZ, JR. a/k/a EMORY RUSSELL LENTZ, JR. DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Sandra St. Ledger, 214 Berwick Road, Abbottstown, PA 17301

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

**ESTATE OF HAZEL MADALINE LEPPU, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Henry Ross Miller, 13 Old Forge Court, Sparks, Maryland 21152

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

**ESTATE OF BARBARA J. RUHLMAN, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Executor: Gary Lee Thomas, P.O. Box 418, East Berlin, PA 17316

**ESTATE OF ROBERT W. THOMAS, DEC'D**

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

Executor: Jessica E. Deppen, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316

**JOYCE E. TROSTEL, a/k/a JOYCE R. TROSTEL, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Co-Executors: Monya T. Guise, 1445 Brysonia-Wenksville, Road, Biglerville, PA 17307; Michael D. Trostel, 128 North Main Street, Biglerville, PA 17307

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

**THIRD PUBLICATION****ESTATE OF RONALD E. ECKER, DEC'D**

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executrix: Lucinda Ecker, 316 East York Street, P.O. Box 665, Biglerville, PA 17307

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

**ESTATE OF ROBERT D. OVERLY, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Steven D. Overly, 4670 Carlton Dunes Dr., Unit 13, Fernandina Beach, FL 32034

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

**ESTATE OF ROBERT F. SEGESSENMAN a/k/a ROBERT FREDERICK SEGESSENMAN, SR., DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Executor: Robert F. Segessenman, Jr., c/o Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, P.O. Box 606, East Berlin, PA 17316

**ESTATE OF THOMAS W. WEAVER, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Francis X. Weaver, 413 Linden Avenue, Red Lion, PA 17356

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

