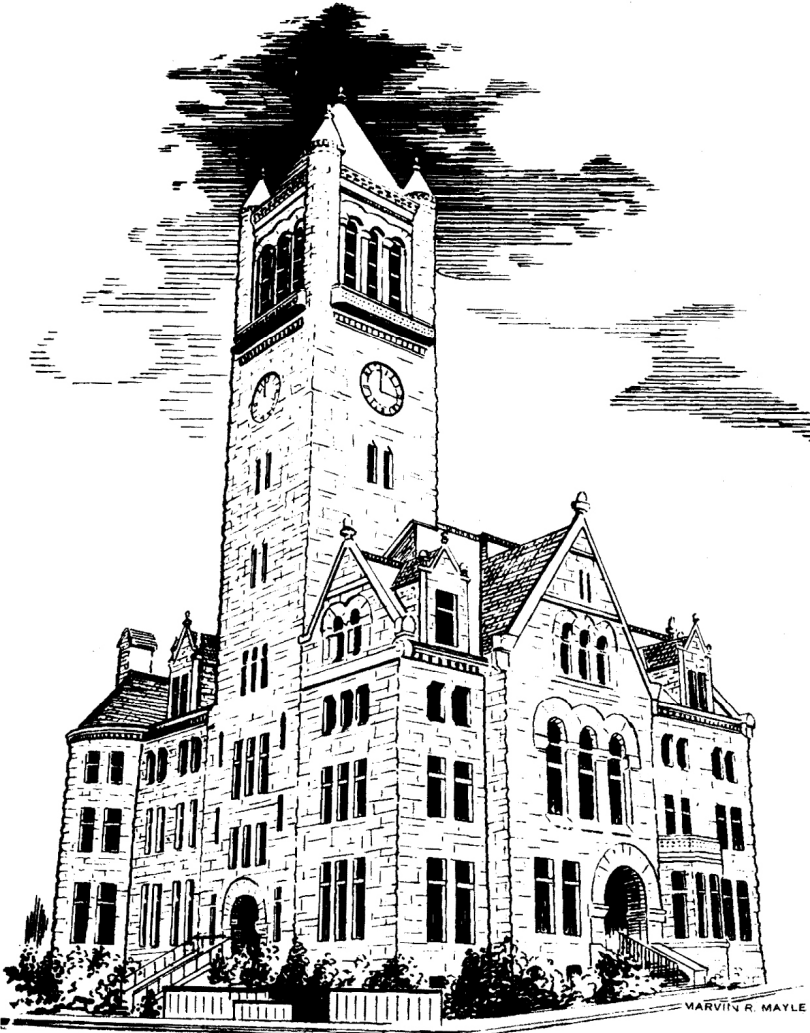


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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## ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

### Third Publication

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*Personal Representatives:* Gina L. Tesauro and Lisa M Lucas  
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92 East Main Street  
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*Attorney:* Joseph M. George

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**MARGARET R. WINGROVE**, a/k/a  
**MARGARET RUTH WINGROVE**, late of Bullskin Township, Fayette County, PA (3)

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224 South Church Street  
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Connellsville, PA 15425  
*Attorney:* John K. Greiner

## Second Publication

**HARRY ALBERT**, a/k/a **HARRY E. ALBERT, III**, late of Uniontown, Fayette County, PA (2)

*Personal Representative:* Brady P. Albert  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James E. Higinbotham, Jr.

**GOLDIE M. ECHARD**, late of Connellsville, Fayette County, PA (2)

*Administratrix:* Geraldine Geary  
423 Clinton Road  
Normalville, PA 15469  
c/o 120 South Third Street  
Connellsville, PA 15425  
*Attorney:* Marguerite Goglia

**LILLIE FRANCES MARGIE**, a/k/a **LILLIE FRANCIS MARGIE**, late of Fayette City, Fayette County, PA (2)

*Executor:* Richie R. Margie  
109 Knox Street  
Perryopolis, Pa 15473  
c/o Bassi, Vreeland & Associates, P.C.  
P.O. Box 144  
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Charleroi, PA 15022  
*Attorney:* Todd M. Pappasergi

**BILLIE SUE SANDUSKY**, late of Connellsville, Fayette County, PA (2)

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Connellsville, PA 15425  
*Attorney:* Charles W. Watson

**CHRISTIAN D. STEWART**, late of Jefferson Township, Fayette County, PA (2)

*Administratrix:* Gale G. Stewart  
146 Washington Drive  
Fayette City, PA 15438  
c/o 1747 Rostraver Road  
Belle Vernon, PA 15012  
*Attorney:* Megan A. Kerns

## First Publication

**BRADLY BREAKWELL, a/k/a BRADLY VANCE BREAKWELL**, late of Georges Township, Fayette County, PA (1)

*Executor:* Roy Hess  
707 Hancock Street  
Perryopolis, PA 15473  
c/o 4 North Beeson Boulevard  
Uniontown, PA 15401  
*Attorney:* Ewing D. Newcomer

**JOSEPHINE CHOMIAK, a/k/a JOSEPHINE L. CHOMIAK**, late of Redstone Township, Fayette County, PA (1)

*Administratrix:* Milissa A. Chomiak  
c/o Higinbotham Law Offices  
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Uniontown, PA 15401  
*Attorney:* James E. Higinbotham, Jr.

**HELEN GODLA**, late of Perryopolis, Fayette County, PA (1)

*Personal Representative:* Gary Paul Godla  
c/o 107 East Main Street  
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**VIVIAN M. KOVACH**, late of Fairchance, Fayette County, PA (1)

*Executor:* John J. Robba, III  
c/o P.O. Box 622  
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Uniontown, PA 15401  
*Attorney:* Webster & Webster

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*Personal Representatives:* Wayne Edward Shumar and Angela Gay Shumar  
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107 East Main Street  
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*Attorney:* James T. Davis

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Grindstone, PA 15442

**HENRY L. WILSON, a/k/a HENRY LEE WILSON**, late of Jefferson Township, Fayette County, PA (1)

*Executrix:* Carline H. Jackson  
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223 South Maple Avenue  
Greensburg, PA 15601  
*Attorney:* George Allen Butler

**MELINDA WOOD**, late of Franklin Township, Fayette County, PA (1)

*Personal Representative:* Brandi Wood  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

## LEGAL NOTICES

### NOTICE OF ACTION IN MORTGAGE FORECLOSURE

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW  
NO.: 2018-01343

**THE HUNTINGTON NATIONAL BANK,**  
**Plaintiff,**

**vs.**

**Unknown Heirs and/or Administrators of the  
Estate of John R. Muller,**  
**Defendant**

TO: Unknown Heirs and/or  
Administrators of the Estate of John R. Muller

You are hereby notified that Plaintiff, The Huntington National Bank, filed an Action in Mortgage Foreclosure endorsed with a Notice to Defend, in the Court of Common Pleas of Fayette County, Pennsylvania, docketed to No. 2018-01343, seeking to foreclose the mortgage secured by the real estate located at 315 Perry Avenue, Belle Vernon, PA 15012.

A copy of the Action in Mortgage Foreclosure will be sent to you upon request to the Attorney for the Plaintiff, Manley Deas Kochalski LLC, P. O. Box 165028, Columbus, OH 43216-5028. Phone 614-220-5611.

You have been sued in court. If you wish to defend against the claims in this notice, you must take action within twenty (20) days after this publication, 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 NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA  
CIVIL NO. 2:17-CV-01376-DSC

**IN RE:**

**UNITED STATES OF AMERICA,**  
**Plaintiff**

**vs.**

**DOUGLAS S. KATONA and  
KIMBERLY A. MILLER,**  
**Defendants**

**MARSHAL'S SALE:** By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at and being more fully described at Fayette County Deed Book 813 Page 292.

**SAID SALE** to be held at the Fayette County Courthouse in the hallway outside of the Sheriff's Office, 61 East Main Street, Uniontown, PA 15401 at **10:00 a.m.** prevailing standard time, on **November 2, 2018.**

**ALL** that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel No. 33-07-002901 recorded in Fayette County, Pennsylvania, commonly known as: **204 Mentzer Street, South Connellsville, Pennsylvania 15425.**

IDENTIFIED as Tax/Parcel #: 33-07-002901 in the Deed Registry Office of Fayette County, Pennsylvania. HAVING erected a dwelling thereon known as 204 MENTZER STREET, SOUTH CONNELLSVILLE, PA 15425. BEING the same premises conveyed to

Douglas S. Katona and Kimberly A. Miller, dated April 17, 1991, and recorded on April 18, 1991 in the office of the Recorder of Deeds in and for Fayette County, Pennsylvania. Seized and taken in execution as the property of Douglas S. Katona and Kimberly A. Miller at the suit of the United States of America, acting through the Under Secretary of Rural Development on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 2:17-cv-01376.

**TERMS OF SALE:** Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds.

Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth (30th) day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Michael Baughman, Acting United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at [www.resales.usda.gov](http://www.resales.usda.gov).

(4 of 4)

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## Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and  
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

**Monday, November 5, 2018, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0834	MARY C. RIZER	Paul E. Rizer, Executor

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

**Monday, November 19, 2018, at 9:30 A.M.**

in Courtroom No. 1 of the **Honorable STEVE P. LESKINEN**, or his chambers, 2nd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

Notice is also hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

**Monday, November 5, 2018, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2618-0127	LORA A. HAUGER a/k/a LORI A. HAUGER	James Gregory Hauger, Administrator

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

**Monday, November 19, 2018, at 9:30 A.M.**

in Courtroom No. 5 of the **Honorable JOSEPH M. GEORGE, JR.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN  
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (1 of 2)

**JUDICIAL OPINION**

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
vs.	:	
	:	
CARL JOSEPH DESHIELDS,	:	No. 998 of 2018, G.D.
Defendant.	:	Honorable Steve P. Leskinen

**OPINION AND ORDER**

LESKINEN, J. October 10, 2018

AND NOW, this 4th day of October 2018, upon review of the Motion for Writ of Habeas Corpus presented on behalf of Carl Joseph Deshields, the Court HEREBY GRANTS the Motion in part and DENIES the Motion in part.

**BACKGROUND**

Defendant, Carl Joseph Deshields [hereinafter Defendant] was charged with Counts 1 & 2 Recklessly Endangering Another Person, Count 3 Resisting Arrest/Other Law Enforcement, Count 4 Disorderly Conduct Hazardous/Physically Offensive Condition, Count 5 DUI: General Impairment/Incapable of Driving Safely, Count 6 No Rear Lights, Count 7 Driving While Operating Privilege is Suspended or Revoked, and Count 8 Driving Without a License. The Defendant brings a Motion for Writ of Habeas Corpus as to Counts 1, 2, 3, and 5. The Defendant does not contest Counts 4, 6, 7, and 8.

On January 5, 2018, around 2300 hours, the Defendant was driving and was stopped by Officer Gregory Garlock of the German Township Police Department. Prelim. Hr'g. Tr., 5:4-8. The Officer was traveling behind the Defendant's vehicle for a period of time and observed that the Defendant's "center-mounted brake lamp" was not working. Prelim. Hr'g. Tr., 6:4-6. The Officer initiated the traffic stop after the Defendant had pulled in to the Sweet Pea's gas station located at the intersection of Route 21, McClellandtown Road, and Leckrone-Highhouse Road in Fayette County, Pennsylvania. Prelim. Hr'g. Tr., 5:20-24.

Officer Garlock testified that he was in full uniform and in a marked police car. Prelim. Hr'g. Tr., 6:9-12. He pulled behind the Defendant's car in the parking lot of Sweet Pea's but did not activate the emergency lights. Id. The Defendant exited his vehicle and the Officer motioned to him that the Defendant needed to stop because the Officer wanted to speak with him and the Defendant complied. Prelim. Hr'g. Tr., 6:13-15.



Officer Garlock informed the Defendant that he had stopped him for an "equipment violation". The Defendant came closer to Officer Garlock and he could smell the "strong odor of marijuana emitting from his person." Prelim. Hr'g. Tr., 7:10-18. The Officer later clarified that it was the scent of burnt marijuana. Prelim. Hr'g. Tr., 16:10-22. The Officer testified that the Defendant did not exhibit any other physical signs of impairment at the time of the stop but noted that Sweet Pea's was not well lit. Prelim. Hr'g. Tr., 7:20-25. The Officer further testified that while following the Defendant, there was nothing out of the ordinary about the Defendant's driving. Prelim. Hr'g. Tr., 15:18:23.

The Defendant notified the Officer that he was in possession of a licensed firearm. Prelim. Hr'g. Tr., 8:3-14. The Officer then took possession of said firearm and secured it. *Id.* Right after the Officer took possession of the firearm, the Defendant attempted to run from the scene. Prelim. Hr'g. Tr., 8:15-19. The Defendant ran through the empty parking lot to the other side of the store building. Prelim. Hr'g. Tr., 15:13-16. Officer Garlock testified that it was raining on the night in question and although the parking lot itself was not icy, the untreated area around the parking lot was icy. Prelim. Hr'g. Tr., 18:5-12.

As the Defendant ran, Officer Garlock gave chase and deployed his Taser but the distance between he and the Defendant was too far and the Taser probes did not reach the Defendant. Prelim. Hr'g. Tr., 8:20-25. Constable Bobby Smith was also present at the scene. Prelim. Hr'g. Tr., 9:1-5. He exited his vehicle and began pursuit of the Defendant. *Id.* As the three men approached the end of the parking lot, Constable Smith was able to successfully deploy his Taser on the Defendant. Prelim. Hr'g. Tr., 9:6-9. There was approximately a steep "30 yard drop off", containing multiple trees, located at the end of the parking lot where the Defendant was apprehended. Prelim. Hr'g. Tr., 11-15.

Officer Garlock testified that he believed that the Defendant fell when he was "Tased" and could not say if the Defendant was "Tased" before or after going down the embankment. Prelim. Hr'g. Tr., 19:2-9. The Defendant ended up traveling down the embankment. Prelim. Hr'g. Tr., 9:14-17. Then, Officer Garlock, in pursuit of the Defendant, tripped and began to roll down the ice-covered embankment. *Id.* The Defendant sustained a head injury as he fell, causing bleeding from a laceration above his eye. Prelim. Hr'g. Tr., 10:1-3. The Defendant was taken to Uniontown Hospital and treated for his injuries. Prelim. Hr'g. Tr., 11:12-13.

While the Officer was looking at the Defendant's injury above his eye, he noted that his eyes were "very red and glassy". Prelim. Hr'g. Tr., 11:14-15. Officer Garlock administered an "abbreviated" field sobriety test to the Defendant at the hospital. Prelim. Hr'g. Tr., 11:20-21. The abbreviated test was done because Officer Garlock was concerned about the Defendant's injuries and "didn't want to do anything as far as like a walk and turn test or anything too extreme". Prelim. Hr'g. Tr., 12: 15-17.

Officer Garlock asked the Defendant to perform the horizontal gaze and the one-leg-stand test. Prelim. Hr'g. Tr., 12:8-20. The Defendant did not show any signs of impairment from the horizontal gaze test. Prelim89. Hr'g. Tr., 12:8-25. However, during the one-leg-stand test, the Defendant did place his foot on the ground once during the thirty (30) second test. Id. Officer Garlock also testified that the Defendant had "lack of (convergence) and he was not able to cross his eyes naturally" which the Officer concluded, based on his training and experience, is a symptom of marijuana usage. Prelim. Hr'g. Tr., 13:2-5.

Officer Garlock is not specially trained in an "abbreviated" field sobriety test. Prelim. Hr'g. Tr., 19:23-25. Officer Garlock is not a "drug recognition expert". Prelim. Hr'g. Tr., 20:10-11. Officer Garlock also admitted that the horizontal gaze test does not detect signs of marijuana impairment. Prelim. Hr'g. Tr., 20:1-5.

After the field sobriety testing, Officer Garlock testified that based on his experience and training, he believed that the Defendant was under the influence of marijuana and asked the Defendant to submit to a blood draw. Prelim. Hr'g. Tr., 13:6-8. Officer Garlock testified that he read the "DL-26 chemical testing form" to the Defendant. Prelim. Hr'g. Tr., 13:8-11. The Defendant indicated to the Officer that he was not consenting to a blood draw. Prelim. Hr'g. Tr., 13:12-13.

## DISCUSSION

An individual is guilty of Recklessly Endangering Another Person if he recklessly engages in conduct which places another at risk of death or serious bodily injury. 18 Pa.C.S. §2705. "Serious Bodily Injury" is defined as bodily injury that creates a substantial risk of death or which cause serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ. 18 Pa.C.S. §2301.

To sustain a conviction for Recklessly Endangering Another Person, "the Commonwealth must prove that the defendant had an actual present ability to inflict harm and not merely the apparent ability to do so. Danger, not merely the apprehension of danger, must be created." *Commonwealth v. Cianci*, 130 A.3d 780, 782 (Pa. Super. 2015). The mens rea for recklessly endangering another person is "a conscious disregard of a known risk of death or great bodily harm to another person." *Commonwealth v. Hopkins*, 747 A.2d 910, 915 (Pa. Super. 2000). "Brandishing a loaded firearm during the commission of a crime provides a sufficient basis on which a factfinder may conclude that a defendant proceeded with conscious disregard for the safety of others, and that he had the present ability to inflict great bodily harm or death." Id.

In this case, there is no evidence to show that the Defendant was conscious of a risk to the law enforcement officers nor did he possess the present ability to harm them. The Defendant did possess a firearm but informed the Officer of its presence and surrendered possession of said firearm to Officer Garlock without incident.

The Defendant attempted to flee through a parking lot and law enforcement personnel gave chase. Even though Officer Garlock testified that the embankment was dangerous, there was no indication that the Defendant purposefully caused anyone to travel down it. It is reasonable to find that he, himself, fell down the embankment.

Simply running through an empty, non-ice covered, parking lot does not rise to the level of reckless endangerment. Further, the Commonwealth has not shown that the Defendant exhibited a conscious disregard of a known risk of death or great bodily harm to law enforcement officers. The Defendant's only dangerous conduct was traveling down the embankment but that may have been done involuntarily. Therefore, the Commonwealth cannot sustain its burden as to Counts 1 & 2 and the charges of Recklessly Endangering Another Person must be dismissed.

Count 3 is Resisting Arrest. A person is guilty of resisting arrest if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else or employs means justifying or requiring substantial force to overcome the resistance. 18 Pa. C.S. §5104.

As a general rule, it is not criminal merely to "flee arrest". *Commonwealth v. Miller*, 475 A.2d 145, 146 (Pa.Super. 1984). The Defendant cites *Commonwealth v. Eberhardt* in support of his position. The Superior Court found that the evidence was insufficient for a charge of Resisting Arrest when a defendant broke free from the grasp of officers and fled through a window. *Commonwealth v. Eberhardt*, 450 A.2d 651 (Pa.Super. 1982). In that case, the defendant successfully fled the area and was not arrested until three days later. *Id.*

However, a defendant's conviction for resisting arrest was upheld by the Superior Court when the Court found that the defendant's actions required the police to use substantial force to overcome the resistance. *Commonwealth v. McDonald*, 17 A.3d 1282 (Pa.Super. 2011). The Superior Court found a defendant's refusal to place his hands behind his back, forcing the arresting officer to use a Taser to effectuate the arrest, provided "sufficient evidence to show that police were required to use substantial force to arrest appellant". *Id.*

In this case, the officers chased the Defendant through a parking lot and were unable to catch him or get him to stop running. Unlike *Eberhardt*, the Defendant was not able to successfully flee the area. Law enforcement officers needed to use substantial force in order to get the Defendant to comply with the arrest. Constable Smith was forced to use a Taser to effectuate the arrest of Defendant and therefore, there is a prima facie case of Resisting Arrest and Count 3 must proceed.

Count 5 is DUI: General Impairment/Incapable of Safe Driving, 75 Pa.C.S. § 3802 (a)(1). An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the

individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle. 75 Pa.C.S. § 3802(a)(1).

The Court can allow an information to be amended. Pa.R.Crim.P. Rule 564. The amendment is proper provided that it does not charge new offenses arising from a different set of events and that the charges are not materially different from the original charge so that the defendant would be unfairly prejudiced. *Id.* A defendant will be afforded relief when the trial court exercises its discretionary power to allow amendment of the information only if the defendant was prejudiced by the amendment. *Commonwealth v. Veon*, 109 A.3d 754, 768 (Pa.Super. 2015). Factors for a court to consider in determining the existence of prejudice include:

(1) whether the amendment changes the factual scenario supporting the charges; (2) whether the amendment adds new facts previously unknown to the defendant; (3) whether the entire factual scenario was developed during a preliminary hearing; (4) whether the description of the charges changed with the amendment; (5) whether a change in defense strategy was necessitated by the amendment; and (6) whether the timing of the Commonwealth's request for amendment allowed for ample notice and preparation.

*Id.*

An expert is required to render an opinion as to marijuana impairment unless the circumstances are so telling of recent marijuana use as to form a clear connection between marijuana use and impairment. *Commonwealth v. Gause*, 164 A.3d 532, 537 (Pa.Super. 2017). In *Gause*, the arresting officer tried to use the defendant's eyelid tremors as a sign of marijuana use. *Id.* The Superior Court stated that the "observation of 'eyelid tremors' is not the typical and obvious indicia of marijuana use, such as the distinct odor of burnt marijuana emanating from the person or the vehicle". *Id.*

Reasonable grounds exist to request that a person submit to a chemical blood test based solely on the police officer's smelling the strong odor of burnt marijuana emanating from the Defendant's vehicle, when he was the sole occupant. *Commonwealth v. Jones*, 121 A.3d 524, 527 (Pa.Super. 2015). The Vehicle Code prohibits an individual from operating a vehicle after consuming any amount of marijuana. *Id.* As a result, evidence of a vehicle operator's consumption of any marijuana is enough to allow police to request a section 1547 blood test for suspected controlled substance-based DUI. *Id.* Such evidence includes the distinct odor of burnt marijuana emanating from a vehicle in which the operator is the sole occupant. *Id.*

75 Pa.C.S. § 3802(d)(2) "requires only proof that the driver was under the influence of a drug or combination of drugs to a degree that the ability to drive is impaired." *Commonwealth v. Tarrach*, 42 A.3d 342, 345 (Pa.Super. 2012). It "does not require that a drug be measured in the defendant's blood, nor does it specify any particular manner by which the Commonwealth is required to prove that the defendant was under the

influence of a drug." *Commonwealth v. Griffith*, 32 A.3d 1231, 1239 (Pa. 2011).

In this case, the affidavit of probable cause includes statements that Officer Garlock smelled a very strong odor of marijuana. The testimony from the preliminary hearing developed all the facts from the Defendant's arrest. At the preliminary hearing, the Defendant's counsel specifically asked Officer Garlock about his training in determining whether or not someone was under the influence of marijuana. In the Defendant's Omnibus Pretrial Motion, he challenges Count 5 as if it was listed on the information as a DUI under subsection d relating to controlled substances.

Therefore, the Commonwealth will be granted leave amend Count 5 of the information to reflect a charge under 75 Pa.C.S. § 3802(d). The Defendant will not suffer any undue prejudice because of this amendment. The Defendant was aware of this potential charge as he has already mounted a defense for it during the preliminary hearing and within his current Motion.

Officer Garlock testified at the preliminary hearing that he believed the Defendant was under the influence of marijuana. The Defendant was the only one present in the vehicle and Officer Garlock smelled the strong odor of burnt marijuana emanating from the Defendant's person.

Based on *Commonwealth v. Jones*, the Officer had reasonable grounds to ask the Defendant to submit to a 75 Pa.C.S. §1547 chemical test based solely on his smelling a strong odor of burnt marijuana. The field sobriety test conducted at the hospital and the Officer's observations at the hospital are also some evidence of impairment, as is his refusal of chemical testing. In addition, the Defendant's irrational flight reflects diminished mentation, and is arguably consciousness of guilt. There is arguably no rational basis for fleeing from the scene of a taillight violation even when a defendant is driving while his operator's privilege is suspended. The Commonwealth has presented a prima facie case for DUI: Controlled Substances.

#### ORDER

AND NOW, this 10th day of October 2018, upon review of the Motion of Habeas Corpus prepared by Carl Joseph Deshields, the Court HEREBY GRANTS the Motion in part and DENIES the Motion in part.

The Motion is granted in regard to Counts 1 & 2, Recklessly Endangering Another Person as the Commonwealth has failed to present a prima facie case and said charges are dismissed.

The Motion is denied in regard to Counts 3, Resisting Arrest, the Commonwealth has presented a prima facie case for the charge.

The Commonwealth is granted leave to amend Count 5, within ten (10) days, to reflect a violation of 75 Pa.C.S. § 3802(d). Once amended, the Motion will be denied as to Count 5. The Commonwealth has presented a prima facie case for the charge.

Counts 4, 6, 7 & 8 will proceed as they were unchallenged by the Defendant.

BY THE COURT:  
LESKINEN, J.

ATTEST:  
Janice Snyder  
Clerk of Courts

## REAL ESTATE PRACTICE CLE

### A Primer on Real Estate Practice in Fayette County

The Fayette County Bar Association will present A Primer on Real Estate Practice in Fayette County:

Topics: How to Perform a Title Search In Fayette County, Oil and Gas, Coal and other Minerals Searches, Municipal Liens, Closings, Mortgages, Title Letters and Settlement sheets. The seminar will also include an on-site demonstration in the Recorder of Deeds Office and other county offices. All attendees will receive digital copies of more than 100 Real Estate Practice forms.

Date: **Wednesday, October 31, 2018**

Time: 9:00 a.m. to 1:00 p.m.

Location: Commissioners Meeting Room,  
Public Service Building  
22 East Main Street

Panelists: Vincent J. Roskovensky, II, Esquire  
Anthony S. Dedola, Esquire  
Tracie L. Vargo, Recorder of Deeds

CLE Credit: 4.0 hour of Substantive CLE credits.

Cost:

- No charge - Attorneys admitted to practice in Pennsylvania after January 1, 2012
- \$40 - Members of the FCBA admitted to practice in PA before January 1, 2012
- \$60 fee - Non-members admitted to practice in PA before January 1, 2012

**Register:** Cindy at the Bar office on or before Friday, October 26th  
724-437-7994 or [cindy@fcbar.org](mailto:cindy@fcbar.org)

Breakfast will be provided.

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