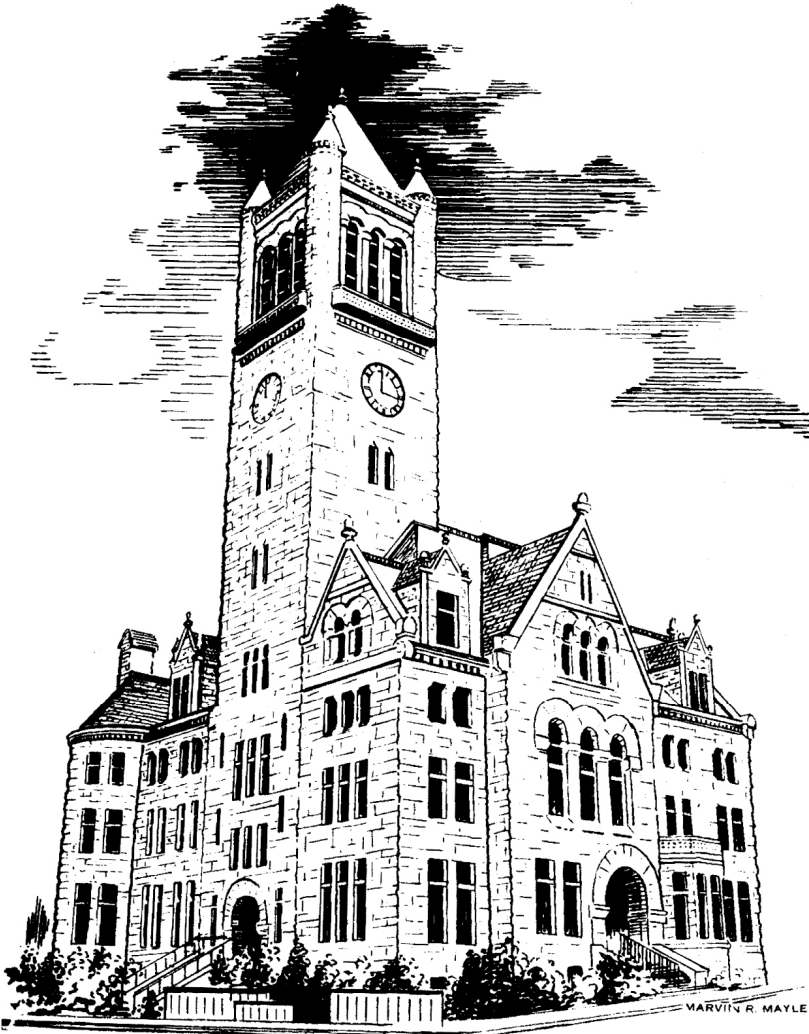


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ESTATE NOTICES

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

ALBERT H. CARUSO, late of Dunbar, Fayette County, PA ⁽³⁾

Personal Representatives: Rose Ann Farace and Maria Sue Pettit
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

CHARLOTTE A. CINDRIC, late of Hopwood, Fayette County, PA ⁽³⁾

Personal Representatives: Gregory J. Cindric and Donna K. Mathianas
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

SOPHIA T. KING, late of Masontown, Fayette County, PA ⁽³⁾

Personal Representative: James E. Kubina
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

LENA LAZZARO, late of Belle Vernon, Fayette County, PA ⁽³⁾

Personal Representative: Holle Lazzaro
218 Vernon Avenue
Belle Vernon, PA 15012
c/o 142 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Kris A. Vanderman

DOROTHY NICKLOW, late of North Union Township, Fayette County, PA ⁽³⁾

Co-Executors: Barbara Lowe and Mary Ellen Nicklow
c/o 99 East Main Street
Uniontown, PA 15401
Attorney: Robert A. Gordon

ROBERT J. SALUGA, late of North Union Township, Fayette County, PA ⁽³⁾

Executor: Norman Leo Howard, III
c/o PO Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

MICHAEL J. YOZIE, a/k/a MICHAEL YOZIE, late of Dunbar Township, Fayette County, PA ⁽³⁾

Executor: Kent Yozie
c/o Fitzsimmons and Barclay
55 East Church Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons

Second Publication

DORIS W. COLDREN, a/k/a DORIS WRIGHT COLDREN, late of Uniontown, Fayette County, PA ⁽²⁾

Executor: Scott W. Coy
2009 Ginoria Court
Export, PA 15632
c/o 1151 Old Freeport Road
Pittsburgh, PA 15238.
Attorney: Christopher M. Swart

ROBERT E. HAGEDORN, a/k/a ROBERT EMIL HAGEDORN, late of Saint Petersburg, FL ⁽²⁾

Executrix: Rita P. Hagedorn
12478 Capri Circle North
Treasure Island, FL 33706
c/o 140 South Main Street, Suite 301
Greensburg, PA 15601
Attorney: David Lucas

MAXINE M. MLINARCIK, late of Uniontown, Fayette County, PA (2)
Executor: William J. Mlinarcik
 c/o John & John
 96 East Main Street
 Uniontown, PA 15401
Attorney: Simon B. John

KEITH A. QUEER, late of Dunbar, Fayette County, PA (2)
Executor: Paula R. Keedy
 601 Jason Court
 Mt. Pleasant, PA 15666
 c/o 749 North Church Street
 Mt. Pleasant, PA 15666
Attorney: Paul E. Toohey

EUGENE P. TASSONE, late of Redstone Township, Fayette County, PA (2)
Personal Representative: Gary J. Frankouser
 107 East Main Street
 Uniontown, PA 15401
 c/o 107 East Main Street
 Uniontown, PA 15401
Attorney: Gary J. Frankouser

EDITH ANN ZAVAGE, a/k/a EDITH ZAVAGE, late of South Union Township, Fayette County, PA (2)
Administratrix: Carol Ann McKean
 c/o Zebley Mehalov & White, P.C.
 18 Mill Street Square
 P.O. Box 2123
 Uniontown, PA 15401
Attorney: Daniel R. White

First Publication

EDWARD A. FORSYTHE, late of Washington Township, Fayette County, PA (1)
Executrix: Debbie S. Deluca
 109 Trestle Lane
 Scottdale, PA 15683
 c/o 231 South Main Street, Suite 402
 Greensburg, PA 15601
Attorney: Marilyn M. Gaut

MARTHA L. HOOVER, a/k/a MARTHA LOUISE HOOVER, late of Dunbar Township, Fayette County, PA (1)
Personal Representative: John E. Meyers, Jr.
 c/o Watson Mundorff Brooks & Sepic
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Charles W. Watson

RICHARD W. JENEY, late of Bullskin Township, Fayette County, PA (1)
Executrix: Margaret Zylka House
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SYLVESTER M. MUNCZENSKI, late of Luzerne Township, Fayette County, PA (1)
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 107 East Main Street
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Attorney: Gary J. Frankouser

**PHILLIP A. THOMAS, a/k/a PHILLIP
ABRAHAM THOMAS**, late of Redstone
Township, Fayette County, PA (1)

Personal Representative: Phillip G. Thomas
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

**CAROLYN STEINBAUGH, a/k/a
CAROLYN SUE STEINBAUGH**, late of
North Union Township, Fayette County, PA (1)

Executor: Clifford Charles Nance, III
436 Airway Inn Road
Uniontown, PA 15401
c/o Newcomer Law Office
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing D. Newcomer

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA

No. 2591 of 2017

IN RE: In the Matter of Petition for Change
of Name of Michael O'Connor Vail

No. 2592 of 2017

IN RE: In the Matter of Petition for Change
of Name of Krystal Dawn Vail

To: All interested parties; Notice is hereby given that an Order of said Court authorized the filing of said Petition and fixed the 27th day of August, 2018 at 9:30 A.M., as the time before Presiding Judge Steve P. Leskinen of the Fayette County Courthouse, Courtroom Number 1, Uniontown, Pennsylvania as the place, when and where, all persons may show cause, if any they have, why said names should not be changed as prayed for. One hearing date for both parties.

Michelle L. Kelley, Esquire
92 East Main Street, Suite 24
Uniontown, PA, 15401
724-439-2553

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about June 11, 2018 to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Mount Pleasant Counseling & Psychological Services, with the principal place of business at 416 South Pittsburgh Street, Connellsville, Fayette County, Pennsylvania, 15425. The name or names and addresses of persons owning and interested are Connellsville Counseling & Psychological Services, LLC, 416 South Pittsburgh Street, Connellsville, Fayette County, Pennsylvania, 15425.

PUBLIC HEARING NOTICE
INTERMUNICIPAL LIQUOR LICENSE
TRANSFER

The City of Connellsville will hold a public hearing to receive comments and recommendations from interested individuals residing within the City and to consider the request for approval of an intermunicipal transfer of a liquor license owned by Bud Murphy Enterprises, Inc., seeking approval of the transfer of Pennsylvania Restaurant Liquor License No. R-12713 from Dunbar Borough into the City of Connellsville, pursuant to Section 461(b.3) of the Liquor Code, 47 P.S. Section 4-461(b.3). The location in the City of Connellsville to which the license is intended to be transferred is the location of 701 North Pittsburgh Street, Connellsville, Fayette County, Pennsylvania, 15425. The hearing will be held at the City of Connellsville Municipal Building, 110 North Arch Street, Connellsville, Pennsylvania, 15425, on July 5, 2018, at 5:00 p.m. All those who wish to be heard in regard to this application for approval of an intermunicipal transfer of a liquor license should be present at the time and date specified. A copy of the request for approval and related information is available for public inspection at the City of Connellsville Municipal Building Monday through Friday from 7:00 a.m. until 3:30 p.m. The City of Connellsville Council may render a decision on this request at its hearing on July 5, 2018, or at a subsequent public hearing of the Council.

JUDICIAL OPINION

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

COMMONWEALTH OF	:
PENNSYLVANIA	:
	:
VS.	:
	:
MARY JO RIGGEN,	:
	:
Defendant.	: No. 1637 of 2017
	: Judge Steve P. Leskinen

OPINION AND ORDER

LESKINEN, J. June 11, 2018

AND NOW, this 11th day of June, 2018, upon review of the Omnibus Pre-Trial Motion to Suppress all evidence that was obtained as a result of an alleged illegal traffic stop and arrest, prepared by Mary Jo Rigger [hereinafter “Defendant”], and upon consideration of the testimony presented, the Court HEREBY GRANTS the Motion.

BACKGROUND

On June 13, 2017, at approximately 0151 hours, Trooper Roberts was in a marked State police vehicle, positioned behind Defendant’s vehicle, and witnessed Defendant “make an abrupt and sudden swerve out of its lane of travel, crossing over the fog line on the right shoulder of the roadway”. Trooper Roberts testified that Defendant only crossed the fog line once but it was a significant deviation from the lane of travel as the passenger side tires were on the shoulder of the roadway and the driver side tires were near the fog line. Trooper Roberts testified that the passenger side tires stayed on the pavement and did not touch the grass on the side of the road. Trooper Roberts further testified that the incident occurred near an auto body garage but there was no danger to any property as a result of Defendant’s actions.

Defendant then re-entered the correct lane of travel and continued to drive within the bounds of the roadway; however, Trooper Roberts observed Defendant weaving within her lane of travel two or three times, then began to drive straight and “safely”. Defendant made no further deviations from her lane; however, Trooper Roberts initiated a traffic stop.

There is a recording of the traffic stop; Trooper Roberts testified that the dash cam video begins recording roughly thirty (30) seconds before the lights and siren are activated. The recording does not show Defendant swerving in any manner nor does it show Defendant crossing over the center lines or fog line.

After the traffic stop was initiated, Trooper Roberts made contact with Defendant, and based on his observations of Defendant, he requested she perform Field Sobriety

Tests. Defendant failed the various tests, was taken into custody and consented to a blood draw. The blood draw confirmed that Defendant was under the influence and she was charged with violations of the following: 75 Pa.C.S.A § 3802(D)(1)(i) Driving Under the Influence (Controlled Substance); 75 Pa.C.S.A § 3802(D)(1)(iii) Driving Under the Influence (Metabolite); 75 Pa.C.S.A § 3802 (D)(2) Driving Under the Influence (Impaired Ability); 75 Pa.C.S.A § 3309(1) (Disregard Traffic Lane); 75 Pa.C.S.A § 3714(a) Careless Driving; and 75 Pa.C.S.A § 4581 (A)(2)(iii) (Safety Belt).

DISCUSSION

The authority of a police officer to stop a vehicle is governed by 75 Pa.C.S.A § 6308(b), and provides the following:

Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

75 Pa.C.S. § 6308(b).

A police officer must have probable cause to support a vehicle stop where the officer's investigation subsequent to the stop serves no "investigatory purpose relevant to the suspected [Vehicle Code] violation". *Commonwealth v. Feczko*, 10 A.3d 1285 (Pa. Super. 2010).

In *Feczko*, the police officer observed the defendant's vehicle cross over the double yellow median line two times, sway within the lane and cross the fog line two or three times. *Id.* at 1286. During the ensuing vehicle stop, the officer noticed the scent of alcohol on the defendant's breath. *Id.* The defendant was convicted of DUI and a motor vehicle code violation, and argued on appeal that the vehicle stop was illegal. *Id.* at 1287. The Superior Court stated that traffic stops based on a reasonable suspicion, either of criminal activity or a violation of the Motor Vehicle Code, under the authority of Section 6308(b), must serve a stated investigatory purpose. *Id.* at 1291. Mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose relevant to the suspected violation. *Id.* The Superior Court ultimately held that the police officer's observation of the defendant swerving over the double yellow median line and the fog line created probable cause to suspect a violation of § 3309. *Id.*

When considering whether reasonable suspicion or probable cause is constitutionally required to make a vehicle stop, the nature of the violation has to be considered. *Commonwealth v. Salter*, 121 A.3d 987, 992–93 (Pa. Super. 2015). If it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle. *Id.* Where a violation is suspected, but a stop is necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop. *Id.*

If probable cause can be established, then all of the observations by the police officer upon stopping a motorist, as well as the evidence regarding motorist's performance in the field sobriety tests, would be admissible to establish their guilt. *Commonwealth v. Garcia*, 859 A.2d 820,822 (Pa. Super. 2004). Conversely, if probable cause cannot be established, then all of the fruits of the unlawful stop should be suppressed. *Id.*

In this case, the traffic stop was initiated due to Defendant's alleged violation of 75 Pa.C.S.A § 3309(1) which provides the following:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others not inconsistent therewith shall apply: (1) Driving within single lane.--A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.

75 Pa.C.S.A § 3309(1).

When a vehicle is driven outside the lane of traffic for just a momentary period of time and in a minor manner, a traffic stop is unwarranted. *Garcia*, 859 A.2d at 823. In *Garcia*, the Superior Court found that a traffic stop was not warranted because the officer observed the defendant driving over the berm line "just two times" within a two block distance. *Id.* The court considered the relatively minor nature of the infraction and its brief duration as reasons to determine the stop was unwarranted. *Id.*

Our Supreme Court concluded that police lacked probable cause to stop a motorist when the only behavior observed was the motorist's crossing of the berm line, in the early morning hours, on a deserted road on two or three occasions over the course of one-quarter of a mile. *Commonwealth v. Gleason*, 785 A.2d 983 (Pa. 2001). The Court held that a violation of 75 Pa.C.S.A § 3309(1) was not proven because there was no evidence that the driver created a safety hazard by momentarily crossing onto the berm of a deserted road. *Id.* Due to the deserted nature of the road, the early morning time, and the momentary crossing of the fog line, the Court found that the police lacked justification for the stop of the vehicle. *Id.*

Under the "momentary and minor" standard, a traffic stop was valid when an officer followed the defendant for a minimum distance of 1.6 miles and observed the defendant weaving side to side four times, each time crossing the double yellow and fog lines, and once interfering with oncoming traffic. *Commonwealth v. Klopp*, 863 A.2d 1211, 1214 (Pa. Super. 2004).

Probable cause existed to stop the defendant's vehicle, for careless driving, where the defendant crossed the center double yellow lines four or five times, straddled the double yellow lines, and crossed the berm line four or five times. *Commonwealth v. Lindblom*, 854 A.2d 604 (Pa. Super. 2004). The court made this conclusion even though opposing traffic was not present during the entire time the defendant was driving, noting that "a motorist may be stopped for reckless driving even if the only concern is for the motorist's own safety". *Id.* at 608.

In the instant case, Defendant was observed by Trooper Roberts in the early morning hours, on a deserted road, when she made a sudden and abrupt swerve over the fog line. Trooper Roberts testified that the passenger side tires of Defendant's vehicle were still on the pavement of the shoulder, close to the grass on the side of the road and the driver side tires were near the fog line. Trooper Roberts testified that there was an auto body garage near the location of the incident but there is no evidence that Defendant posed any threat to the building or the parking lot. There was no testimony on the record to indicate that Defendant was at risk to strike any other persons or property as a result of the deviation from her lane of travel.

Defendant did weave within her lane of travel two or three times but the record reflects that Defendant never crossed the center line or became a threat to oncoming traffic as there were no other motorists on the roadway at the time of the incident. Trooper Roberts testified that Defendant stopped weaving and began to drive straight and "safely" before he initiated the traffic stop.

Defendant was charged with a violation of 75 Pa.C.S.A § 3309(1) as well as various charges relating to DUI which resulted from Trooper Roberts' observations after he initiated the traffic stop on Defendant. According to Feczko, Trooper Roberts would have needed probable cause to stop the Defendant for a violation of § 3309. Based on the precedent set forth in Garcia, when a vehicle is driven outside of the lane of travel for a momentary period of time and in a relatively minor manner, probable cause does not exist to initiate a traffic stop.

This Court finds that Defendant's deviation from her lane of travel was only momentary and minor because Defendant only crossed the fog line once and it did not place any persons or property in danger; therefore, probable cause did not exist for the traffic stop because a violation of 75 Pa.C.S.A. §3309 did not occur. In addition, the charge of "careless Driving" fails because there is no evidence any person or property was endangered. Defendant's citation for failure to wear a safety belt and her charge of DUI were a result of the unlawful traffic stop and therefore must be dismissed.

ORDER

And NOW, this 11th day of June, 2018, it is hereby ORDERED and DECREED that the Omnibus Pre-Trial Motion prepared by Defendant Mary Jo Rikken is GRANTED and all charges filed at the within docket number are hereby DISMISSED.

BY THE COURT:
STEVE P. LESKINEN, JUDGE

ATTEST:
Clerk of Courts

D'Andrea Collision Investigation and Reconstruction LLC**D'Andrea Collision Investigation and
Reconstruction LLC**

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Contacts:

Phone (724) 438-2161

Cell (724) 984-3908

Email dandreajp@yahoo.com

Joseph D'Andrea
144 Regency Drive
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