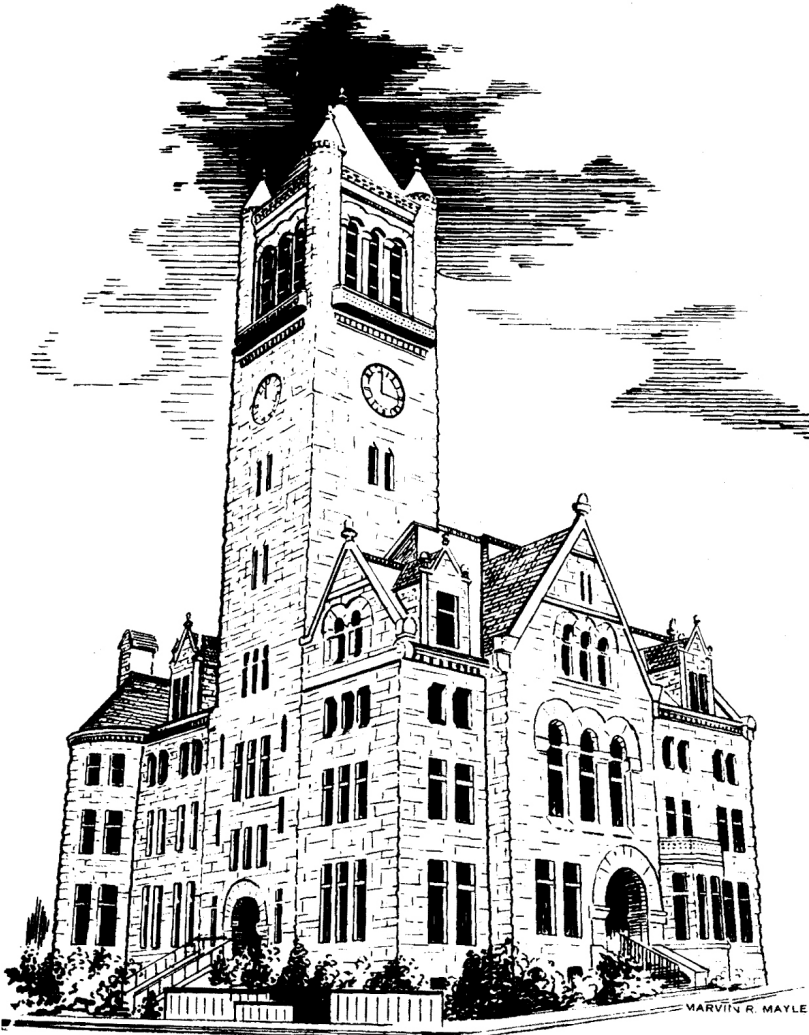


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ESTATE NOTICES

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

DENNIS JAMES CHIPPS, late of Smithfield, Fayette County, PA (3)

Administrator: James Lee Chipps
c/o 2944 National Pike Road
Box 245
Chalk Hill, PA 15421
Attorney: Charles C. Gentile

JOSEPH DUPPE, a/k/a JOSEPH F. DUPPE, late of Menallen Township, Fayette County, PA

Personal Representatives: (3)
Katherine M. Feaganes and Andrew P. Duppe
c/o Higinbotham Law Office
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

OTTO C. STRINER, a/k/a OTTO C. STRINER, JR., late of Upper Tyrone Township, Fayette County, PA (3)

Personal Representatives:
David Striner and Helen Gilpin
c/o Watson Mundorff Brooks & Sepic
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

Second Publication

KENNETH LEE BELL, a/k/a KENNETH L. BELL, late of Washington Township, Fayette County, PA (2)

Executrix: Jennifer Lee Metikosh
254 Chickee Lane
Belle Vernon, PA 15012
c/o Shire Law Firm
1711 Grand Boulevard
Park Centre
Monessen, PA 15062
Attorney: Bernard S. Shire

LORA A. HAUGER, a/k/a LORI A. HAUGER, late of South Union Township, Fayette County, PA (2)

Administrator: James Gregory Hauger
c/o Nakles and Nakles
1714 Lincoln Avenue
Latrobe, PA 15650
Attorney: Ned J. Nakles, Jr.

JAMES M. HODDO, late of Redstone Township, Fayette County, PA (2)

Executor: Anthony Dominick
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

ROBERT MARKUTSA, a/k/a ROBERT EUGENE MARKUTSA, late of Fairchance, Fayette County, PA (2)

Executor: Francis Markutsa
4 Jeffrey Lane
Fairchance, PA 15436
c/o Bootay, Bevington & Nichols, LLC
6 Clairton Boulevard
Pittsburgh, PA 15236
Attorney: Travis J. Dunn

KATHRYN A. MENNI, late of Uniontown, Fayette County, PA (2)

Personal Representative: Barbara M. Juriga
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

**MARY CATHERINE CAMPBELL
SPEGAR, a/k/a MARY C. CAMPBELL
SPEGAR**, late of Chalk Hill, Fayette County,
PA (2)

Administrator: Michael J. Spegar, III
465 Mountain Road
Uniontown, PA 15401
c/o Bassi, Vreeland & Associates, P.C.
62 East Wheeling Street
Washington, PA 15301-4804
Attorney: Thomas O. Vreeland

First Publication

**PAUL RICHARD CHESS, A/K/A PAUL R.
CHESS**, late of Georges Township, Fayette
County, PA (1)

Administrator: Craig S. Chess
c/o PO Box 622
Smithfield, PA 15478
Attorney: Charity Grimm Krupa

JOHN J. HRUTKAY, late of Brownsville,
Fayette County, PA (1)

Personal Representative: Carol L. Baniak
220 Raymond Avenue
Brownsville, PA 15417
c/o P.O. Box 488
California, PA 15419
Attorney: Lisa J. Buday

STEPHEN RAYMOND, late of North Union
Township, Fayette County, PA (1)

Executrix: Deborah Raymond
c/o Adams & Adams
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason F. Adams

EMILY JEAN LINCOLN, late of South Union
Township, Fayette County, PA (1)

Co-Executors: Sara Dell Metz and
Ronald Mark Metz
c/o P.O. Box 622
Smithfield, PA 15478
Attorney: Charity Grimm Krupa

MILLIE (NMI) ROBINSON, late of
Connellsville, Fayette County, PA (1)
Personal Representative: Henry Robinson
c/o 815A Memorial Boulevard
Connellsville, Pa 15425
Attorney: Margaret Zylka House

BARBARA H. SHOEMAKER, late of
Brookville, Jefferson County, PA (1)
Executrix: Mary Ann Brown
c/o Fitzsimmons & Barclay
55 East Church Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons, Jr.

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO.: 2201 of 2017 GD

**FIRST NATIONAL BANK OF
PENNSYLVANIA,**

Plaintiff,
vs.

**UNKNOWN EXECUTOR AND HEIRS OF
THE ESTATE OF THOMAS TULLY,**
Defendants.

Notice of Sheriff's Sale of Real Estate on
May 3, 2018, at 2:00 P.M. in the Fayette County
Courthouse, 61 East Main Street, Uniontown,
PA 15401.

ALL THE RIGHT, TITLE, INTEREST
AND CLAIM OF UNKNOWN EXECUTOR
AND HEIRS OF THE ESTATE OF THOMAS
TULLY, OF, IN AND TO THE FOLLOWING
DESCRIBED PROPERTY:

ALL THAT CERTAIN REAL ESTATE
SITUATED IN THE TOWNSHIP OF
SALTICK, FAYETTE COUNTY,
PENNSYLVANIA. HAVING ERECTED
THEREON A DWELLING KNOWN AS 162
DRIVE HOWDER ROAD, CHAMPION, PA
15622. DEED BOOK VOLUME 223, PAGE
119 AND PARCEL NUMBER 31-12-0056.

First National Bank of Pennsylvania vs.
Unknown Executor and Heirs of the Estate of
Thomas Tully, at Execution No. 2201 of 2017
GD in the amount of \$73,528.54.

Schedule of Distribution will be filed by
the Sheriff on the date specified by the Sheriff
no later than thirty (30) days from sale date.
Distributions will be made in accordance with
the schedule unless exceptions are filed within
ten (10) days of the filing of the Schedule.

Kristine M. Anthon, Esquire
Grenen & Birsic, P.C.
One Gateway Center, 9th Fl
Pittsburgh, PA 15222
(412) 281-7650

NOTICE OF SHERIFF'S SALE
IN THE COURT OF COMMON PLEAS
OF FAYETTE COUNTY, PENNSYLVANIA
NO. 1538-OF-2017-GD

**DEUTSCHE BANK TRUST COMPANY
AMERICAS AS INDENTURE TRUSTEE
FOR THE REGISTERED HOLDERS OF
SAXON ASSET SECURITIES TRUST 2004-
1 MORTGAGE LOAN ASSET BACKED
NOTES AND CERTIFICATES, SERIES
2004-1**

Vs.

**REBECCA E. RUGG and TIMOTHY R.
RUGG**

NOTICE TO: TIMOTHY R. RUGG and
REBECCA E. RUGG

NOTICE OF SHERIFF'S SALE OF REAL
PROPERTY

Being Premises: 190 CANEY VALLEY
ROAD, MARKLEYSBURG, PA 15459-1020

Being in HENRY CLAY TOWNSHIP,
County of FAYETTE, Commonwealth of
Pennsylvania, 16-16-0063

Improvements consist of residential
property.

Sold as the property of REBECCA E.
RUGG and TIMOTHY R. RUGG

Your house (real estate) at 190 CANEY
VALLEY ROAD, MARKLEYSBURG, PA
15459-1020 is scheduled to be sold at the
Sheriff's Sale on 05/03/2018 at 02:00 PM, at the
FAYETTE County Courthouse, 61 E. Main
Street, Uniontown, PA 15401, to enforce the
Court Judgment of \$68,677.01 obtained by,
DEUTSCHE BANK TRUST COMPANY
AMERICAS AS INDENTURE TRUSTEE FOR
THE REGISTERED HOLDERS OF SAXON
ASSET SECURITIES TRUST 2004-1
MORTGAGE LOAN ASSET BACKED
NOTES AND CERTIFICATES, SERIES 2004-
1 (the mortgagee), against the above premises.

PHELAN HALLINAN DIAMOND & JONES, LLP
Attorney for Plaintiff

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 January 16, 2018, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of JWAF Trackless Railroad, with the principal place of business at 158 Bukovitz Farm Road, McClelland town, PA 15458. The name and address of the person owning and interested is Gerald W. Bukovitz, 158 Bukovitz Farm Road, McClelland town, Pennsylvania 15458.

Joseph M. George, Esquire
GEORGE & GEORGE, LLP
92 East Main Street
Uniontown, PA 15401

JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. :
 :
 ERICK SUTTON, :
 Defendant. : No. 482 of 2017

OPINION IN SUPPORT OF ORDER

Leskinen, J.

AND NOW, this 29th day of January, 2018, upon review of Defendant's Omnibus Pre-Trial Motion to Suppress Blood Test Results, and upon consideration of all testimony presented, the Court HEREBY DENIES the Motion in its entirety.

BACKGROUND

Defendant-Petitioner, Erick Sutton [hereinafter Petitioner] was charged with various offenses including driving under the influence of alcohol or controlled substances, second offense. Petitioner's BAC was .099 with oxycodone and oxymorphone also found in his blood stream.

On August 13, 2016, at 0136 hours, Troopers observed a vehicle with its headlamps on, a motorcycle and two people in the parking lot of a Dollar General. The Dollar General is not a 24 hour establishment and this was not during its hours of operation. While traveling down the road, the Troopers noticed an individual jumping up and down, waving their arms and appearing to be in distress. As the Troopers approached the parking lot, they could see the two individuals engaging in some type of argument. The Petitioner mounted his motorcycle, started to leave the parking lot, and pulled onto the road; however, the Troopers activated their emergency lights and siren, at which point Petitioner pulled his motorcycle over to the side of the road.

One of the Troopers approached the female individual; she identified herself and asserted that Petitioner had just beaten her up. When talking to Petitioner, the officer observed Petitioner to have glassy, blood-shot eyes. Petitioner was placed in the back of the patrol unit as the fight was being investigated. Once the Troopers returned to the patrol unit to talk to Petitioner they noticed a strong odor of an alcoholic beverage emanating from the inside of the patrol unit. The Troopers asked if he had been drinking and Petitioner answered in the affirmative. Petitioner was then asked to perform a standardized field sobriety test, to which he consented, Petitioner showed signs of intoxication and was arrested for DUI.

Petitioner was then transported to Uniontown Hospital for a legal blood draw to which Petitioner verbally consented. Then Petitioner was read the DL-26B form, he again consented to the blood draw and signed the form. The results of the test showed Petitioner to

have a BAC of .099 and it revealed the presence of oxycodone and oxymorphone in his system.

DISCUSSION

The Petitioner argues that his rights pursuant to Article One, Section Eight of the Pennsylvania Constitution were violated when he was stopped by Troopers and again when he was arrested in the early morning hours of August 13, 2016. As a result of the illegal stop and/or arrest, Petitioner argues that all evidence collected would constitute fruits of said constitutional violation.

The first issue that needs to be addressed is whether or not the Petitioner was seized by the actions of the police officers. The law recognizes three distinct levels of interaction between police officers and citizens: a mere encounter, an investigative detention, and a custodial detention. *Commonwealth v. Jones*, 874 A.2d 108, 116 (Pa.Super. 2005).

"A mere encounter can be any formal or informal interaction between an officer and a citizen, but will normally be an inquiry by the officer of a citizen. The hallmark of this interaction is that it carries no official compulsion to stop or respond," *Commonwealth v. DeHart*, 745 A.2d 633, 636 (Pa.Super. 2000).

An investigative detention is a seizure of a person and triggers the protections of the Fourth Amendment. *Commonwealth v. Smith* 172 A.3d 26, 32 (Pa Super. 2017). When determining if a seizure has occurred, a court will employ "an objective test entailing a determination of whether, in view of all surrounding circumstances, a reasonable person would have believed that he was free to leave." *Commonwealth v. Strickler*, 563 Pa. 47, 757 A.2d 884, 889 (2000).

Turning to the facts of the instant case, Petitioner was seized because the actions of the Troopers rose to the level of an investigative detention. Petitioner attempted to leave the parking lot, began traveling on the roadway and Troopers, in an attempt for Petitioner to stop, activated their emergency lights. Furthermore, Petitioner was later placed in the back of a patrol unit for a brief period while an investigation to the woman's claims of an altercation were being investigated. Based on a totality of the circumstances, a reasonable person in the same position as the Petitioner would have believed that they were not free to leave during this interaction with police.

After determining that an investigative detention took place and the person was seized, it needs to be determined if the detention was proper. In order to initiate an investigative detention, an officer needs reasonable suspicion that criminal activity is afoot. *Commonwealth v. Stevenson*, 832 A.2d 1123, 1127 (Pa. Super. 2003). When an officer claims they had reasonable suspicion, they need to point to specific and articulable facts and reasonable inferences drawn from those facts based on their experiences to support their suspicion. *Commonwealth v. Holmes*, 609 Pa. 1, 14 A.3d 89, 98 (2011).

In the case at hand, in the early hours of the morning, Troopers noticed two individuals located in the parking lot of an establishment that was closed. They observed one of the individuals jumping up and down, waving their arms, and appearing to be in distress; as the Troopers approached the parking lot, they witnessed the individuals in some type of argument. These actions gave the Troopers reasonable suspicion to inquire into the situation and Petitioners attempt to leave necessitated the Troopers action to stop him. Upon making contact with the female individual, she asserted that the Petitioner had just beaten her up.

Following this allegation, Troopers told Petitioner to briefly sit in the patrol unit while they investigated the allegation.

Petitioner also asserts that his consent to the blood draw was coerced or otherwise not knowingly or intelligently provided because Pennsylvania's DUI laws then in effect, at 75 Pa. C.S.A. § 1547 (b)(2)(ii), require a police officer to inform every person being requested to submit to a blood test for impairment purposes that:

(ii) if a person refuses to submit to chemical testing, upon conviction or plea for violating §3802 (a) (1), the person will be subject to the penalties provided in §3804 (c) (relating to penalties).

Petitioner notes that 75 Pa. C.S.A. § 3803 increases the grading for a DUI offense when a refusal of a blood test occurs.

The Supreme Court has ruled that increasing criminal penalties for a defendant's refusal of a blood test is unconstitutional as a violation of their rights under the Fourth Amendment to the United States Constitution. *Birchfield v. North Dakota*, __U.S. __, 132 S. Ct. 2160, (2016).

Pennsylvania's response to the ruling was to amend their DL-26 form and create the DL-268 form. The DL-268 form removes the warnings of increased criminal penalties if an individual were to refuse a blood test but the form still warns of a potential license suspension, and such penalty is allowed under *Birchfield*. Petitioner argues that absent the warning of increased criminal penalties, the information or warnings provided to Petitioner were incomplete, inaccurate, misleading and confusing so as to negate any informed consent.

For the following reasons, this Court disagrees with Petitioner's arguments and must DENY the Motion to Suppress the Blood Test.

Blood tests do constitute searches under the Fourth Amendment. *Birchfield*, 136 S.Ct. at 2173. A search conducted without a warrant is unreasonable and constitutionally impermissible, unless an exception applies. *Commonwealth v. Strickler*, 563 Pa. 47, 56, 757 A.2d 884, 888 (2000). An exception to this principle is voluntary consent. *Id.* In Petitioner's case, he does not deny that he consented to the blood test.

In *Birchfield* the Supreme Court held that a State may not impose criminal penalties upon the refusal to submit to a blood test. 136 S.Ct. at 2185. The Supreme Court also held that a person "cannot be deemed to have consented to a blood test upon pain of committing a criminal offense." *Id.* at 2186. The *Birchfield* Court made it clear that its holding did not apply to the imposition of civil penalties and evidentiary consequences when a DUI suspect refuses a blood test upon their arrest:

It is well established that a search is reasonable when the subject consents, and that sometimes consent to a search need not be express but may be fairly inferred from context. Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply. Petitioners do not question the constitutionality of those laws, and nothing we say here should be read to cast doubt on them.

Birchfield, 136 S.Ct. at 2185.

Birchfield is inapplicable when a DUI suspect was never advised that they would be subject to enhanced criminal penalties upon refusal of blood testing. *Commonwealth v. Smith*, No. 877 WDA 2017, 2017 WL 6615821 (Pa. Super. Ct. Dec. 28, 2017). In this case, the Court found that the Trooper only informed the suspect that her license would be suspended if she refused a test; the suspect signed a DL-26B form acknowledging that she was advised of that consequence and she agreed to blood testing. *Id.* Since the suspect was never advised of impermissible enhanced criminal penalties if she would have refused the blood test, Birchfield did not apply and her consent to the test was valid. *Id.*

In the instant case, Petitioner acknowledges that consent to the blood test was given after the Trooper gave an oral request and/or the reading of a DL-268 form and that Petitioner was never informed of any enhanced criminal penalties should he refuse the blood test. Based on the holding in *Smith*, Petitioner's consent to the blood test should be deemed as valid and the blood test results should not be suppressed.

Conclusion

Petitioner contends his Pennsylvania Constitutional rights were violated when he was stopped in the early morning hours of August 13, 2016 and again when he was arrested that morning. He further contends that the blood test he consented to needs to be suppressed because in light of *Birchfield* his consent could not be deemed knowing or intelligently given because he was not given adequate and complete information regarding the consequences of a refusal of a blood test by either the arresting officer or the DL-268 form. However, Troopers acted with reasonable suspicion when they stopped Petitioner, they had probable cause when he was arrested and Petitioner admitted that he was never advised of enhanced criminal penalties if he were to refuse the blood test. The *Smith* Court found that when a suspect is not warned of enhanced criminal penalties for a blood test refusal and signs a DL-268 form to consent to a blood test, that consent is valid and the blood test should not be suppressed. For the foregoing reasons, this Court DENIES Petitioner's Motion in its entirety and ENTERS the following:

ORDER

And NOW, this 29TH day of January, 2018, it is hereby ORDERED and DECREED that the Omnibus Pretrial Motion of Defendant, Erick Sutton is DENIED.

BY THE COURT,
STEVE P. LESKINEN, JUDGE

ATTEST:
Clerk of Courts

CLE**The Importance of the ALTA/NSPS Land Title Survey**

Tuesday, March 20, 2018

9:00 AM - 12:00 PM

Penn State Fayette, The Eberly Campus

Room: CTC Eberly 116

This workshop was designed to provide insight into why these surveys are needed and would be beneficial to the legal community, bankers, surveyors, engineers, and developers.

Presenter:

Gary Kent, PS

Cost:

Attendance only - Free

3.0 Substantive CLE credits - \$40.00

Registration:

Due by March 14th

Terry McMillen Jr.

btmcmillen@mcmilleng.com

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