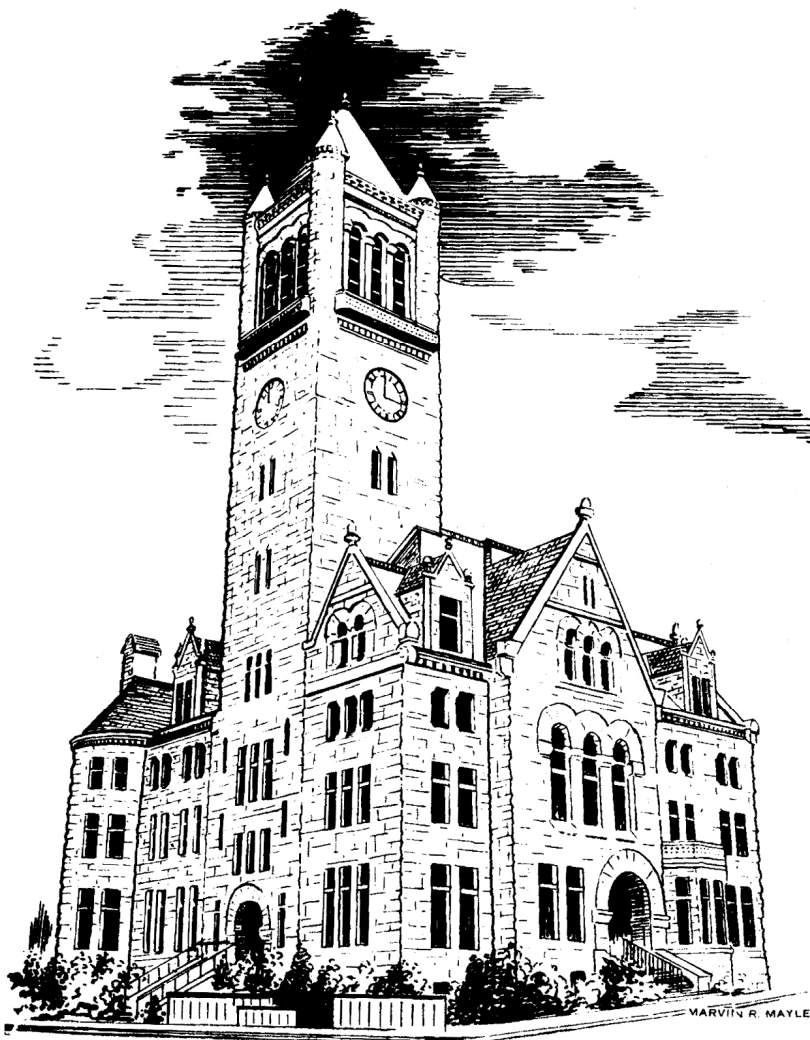


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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**Co-Editors:** Garnet L. Crossland and Melinda Deal Dellarose

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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

**THELMA A. ANGELINE**, late of Redstone Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:*

Thomas Ray Angeline  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401

*Attorney:* James T. Davis

**MARTHA D. BROWNFIELD**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:*

Todd A. Brownfield  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425

*Attorney:* Charles W. Watson

**SAMMY LEW BURNWORTH, a/k/a SAMMY L. BURNWORTH**, late of Luzerne Township, Fayette County, PA <sup>(3)</sup>

*Co-Executor:* Davey Lee Burnworth  
116 Gwynn Road  
Jefferson, PA 15344

*Co-Executor:* Candy Ann Rogers  
358 Buckingham Road  
Fredericktown, PA 15333  
c/o 189 West High Street  
P.O. Box 792

Waynesburg, PA 15370  
*Attorney:* Gregory C. Hook

**ROBERT M. BYBEL**, late of Connellsville, Fayette County, PA <sup>(3)</sup>

*Executor:* Cheryl E. Anderson  
c/o 17 North Diamond Street  
Mt. Pleasant, PA 15666

*Attorney:* Marvin D. Snyder

**MILDRED L. CLARK, a/k/a MILDRED LOUISE CLARK**, late of Masontown, Fayette County, PA <sup>(3)</sup>

*Executor:* Emory E. Clark  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401

*Attorney:* Webster & Webster

**JOSEPHINE E. GERBA**, late of North Union Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Charlene G. Swenglish  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401

*Attorney:* Webster & Webster

**ELIZABETH GUZY**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Cortney Kezmarsky  
c/o Adams & Adams  
55 East Church Street  
Uniontown, PA 15401

*Attorney:* Jason Adams

**NORMAN W. HELLER**, late of Bullskin Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Donna Heller  
c/o Casini & Geibig, LLC  
815B Memorial Boulevard  
Connellsville, PA 15425

*Attorney:* Jennifer M. Casini

**RUTH E. HOLLIS**, late of Dunbar, Fayette County, PA <sup>(3)</sup>

*Executor:* Milton Hollis, Jr.  
c/o Casini & Geibig, LLC  
815B Memorial Boulevard  
Connellsville, PA 15425

*Attorney:* Jennifer M. Casini

**HOMER L. MCCABE**, late of South Union Township, Fayette County, PA (3)

*Personal Representative:*

Jeffrey W. McCabe  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15401

*Attorney:* Charles W. Watson

**CECILIA A. NEIGHBORS, a/k/a CECILIA ANN NEIGHBORS**, late of Dunbar, Fayette County, PA (3)

*Personal Representative:*

Carl L. Neighbors  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425

*Attorney:* Charles W. Watson

**SANDRA L. PAPKE**, late of North Union Township, Fayette County, PA (3)

*Executrix:* Tammy L. Papke-Wilson

c/o Webster & Webster  
51 East South Street  
Uniontown, Pa 15401

*Attorney:* Webster & Webster

**ERNEST A. RISHA, JR., a/k/a ERNIE RISHA**, late of Uniontown, Fayette County, PA

*Executrix:* Elizabeth A. Brownfield (3)

c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
P.O. Box 2123

Uniontown, PA 15401

*Attorney:* Daniel R. White

**AUDREY ROBERTSON**, late of Perry Township, Fayette County, PA (3)

*Executor:* Dana Baccino

866 Layton Road  
Dawson, PA 15428  
c/o 4 North Beeson Boulevard  
Uniontown, PA 15401

*Attorney:* Sheryl Heid

**EDWARD SUCHEVITS, a/k/a EDWARD E. SUCHEVITS**, late of South Union Township, Fayette County, PA (3)

*Administratrix:* Carol Ferencak

2285 Menoher Boulevard  
Johnstown, PA 15905  
c/o Goodwin Como, P.C.  
108 North Beeson Boulevard, Suite 400  
Uniontown, PA 15401

*Attorney:* Benjamin Goodwin

## Second Publication

**ROY D. DAYTON, a/k/a ROY FRANKLIN DAYTON**, late of South Union Township, Fayette County, PA (2)

*Executor:* Bryan H. Dayton

c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401

*Attorney:* Webster & Webster

**HELEN J. DUDGEON**, late of 927 McClintock Avenue, Fayette County, PA (2)

*Executor:* Cary E. Dudgeon

1107 Fayette Avenue  
Belle Vernon, PA 15012  
c/o France, Lint & Associates, P.C.  
308 Fallowfield Avenue  
Charleroi, PA 15022

*Attorney:* David N. Lint

**PATRICIA LAYMON**, late of Upper Tyrone Township, Fayette County, PA (2)

*Administrator:* Willard Laymon, Sr.

121 Woods Road  
Scottdale, PA 15683  
c/o Ainsman Levine, LLC  
310 Grant Street, 15th. Floor  
Pittsburgh, PA 15219

*Attorney:* Charles P. Sapienza, III

**MARY KATHRYN PETKO, a/k/a MARY K. PETKO**, late of German Township, Fayette County, PA (2)

*Executor:* Mary Ann Luick

c/o P.O. Box 622  
Smithfield, PA 15478

*Attorney:* Charity Grimm Krupa

---

**GLORIA ANN SUTTON**, late of Georges Township, Fayette County, PA (2)  
*Administrator:* Glenn Sutton  
 c/o P.O. Box 622  
 Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

---

**ORVILLE UMBEL, a/k/a ORVILLE FRANKLIN UMBEL**, late of North Union Township, Fayette County, PA (2)  
*Executor:* Sharon Joann Lawson  
 c/o Higinbotham Law Offices  
 45 East Main Street, Suite 500  
 Uniontown, PA 15401  
*Attorney:* James Higinbotham, Jr.

---

### First Publication

**HARRY DURBIN, a/k/a HARRY LOUIS DURBIN, a/k/a HARRY L. DURBIN**, late of Dunbar Township, Fayette County, PA (1)  
*Executor:* Brian L. Durbin  
 102 Carriage Drive  
 Cranberry Township, Pa  
 c/o Thomson, Rhodes & Cowie, P.C.  
 1010 Two Chatham Center  
 Pittsburgh, PA 15219  
*Attorney:* Glenn Gillette

---

**DONALD ROCK**, late of Masontown, Fayette County, PA (1)  
*Personal Representative:* Belita D. Rock  
 c/o Davis & Davis  
 107 East Main Street  
 Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

---

**ROBERT E. ROWE**, late of Lower Tyrone Township, Fayette County, PA (1)  
*Co-Executors:* Amy Swantek and Aaron Rowe  
 c/o 4 North Beeson Boulevard  
 Uniontown, PA 15401  
*Attorney:* Sheryl Heid

---

**JULES ALAN SCANGO, SR.**, late of Masontown, Fayette County, PA (1)  
*Administrator:* Jules Alan Scango, Jr.  
 c/o Proden & O'Brien  
 99 East Main Street  
 Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

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## LEGAL NOTICES

To all Fayette County Attorneys - If you prepared a will for **Janet A. Petlevich** of South Union Township, please contact William M. Radcliffe of Radcliffe Law at (724) 439-3939.

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### NOTICE LEGAL ADVERTISEMENT

Notice is hereby given that a hearing is scheduled for **Thursday, May 23, 2019, at 1:30 p.m., before The Honorable Nancy D. Vernon, in Courtroom No. 4, of the Fayette County Courthouse**, for the sale of the Clifford N. Pritts Elementary School by the Connellsville Area Board of School Directors.

Interested persons may appear at the aforementioned hearing to offer testimony in favor of or in opposition to the proposed sale.

Connellsville Area Board of School Directors  
 (2 of 2)

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### NOTICE

Upon consideration of the Petition for Change of Name of Tucker Allen Shondelmyer, a hearing on the petition for a change of name is hereby scheduled for 17th, day of June 2019 at the Fayette County Courthouse, 61 East Main Street, Uniontown, PA in Courtroom #4 at 2:30 pm.

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**NOTICE**

Notice is hereby given pursuant to the Provisions of Act of Assembly No. 295, approved December 16, 1982, known as the Fictitious Names Act, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on April 29, 2019, a Certificate to conduct business in Fayette County, Pennsylvania, under the assumed or fictitious name, style or designation of Ashley's Nail Salon, with its principal place of business at 29 S. Mt. Vernon Avenue, Uniontown, Fayette County, PA 15401. The name and address of the entity interested in the said business is Ashley Dupey, 6 Liberty Circle, Fairchance, PA 15436.

Gary J. Frankhouser, Esquire  
DAVIS & DAVIS  
107 East Main Street  
Uniontown, PA 15401

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**NOTICE**

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on April 18, 2019, for a limited liability company known as Sophia Tea Room LLC.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: restaurant and related sales and any other lawful purpose related thereto for which the corporation may be organized under the Business Corporation Law.

Gary J. Frankhouser, Esquire  
DAVIS & DAVIS  
107 East Main Street  
Uniontown, PA 15401

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**NOTICE**

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on April 23, 2019, for a limited liability company known as Pecsco Construction LLC, 170 Seatontown Road, New Salem, Fayette County, PA 15468.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: construction and related sales and any other lawful purpose related thereto for which the corporation may be organized under the Business Corporation Law.

Further, Notice is hereby given that Pecsco Construction LLC has filed the Registration for Fictitious Name with the Department of State of the Commonwealth of Pennsylvania on April 23, 2019, to do business as C & M Builders with the same principal address of 170 Seatontown Road, New Salem, Fayette County, Pennsylvania, 15468. Same being filed pursuant to Section 54 Pa.C.S. §311.

Gary J. Frankhouser, Esquire  
DAVIS & DAVIS  
107 East Main Street  
Uniontown, PA 15401

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**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 April 15, 2019, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Szak's Place with the principal place of business at: 1305 Axton Avenue Belle Vernon, PA 15012.

The name or names and addresses of persons owning and interested are: Barbara J. Szakal, 518 McCrea Avenue Donora, PA 15033.

Thomas Kostolansky, Esquire  
617 McKean Avenue  
Donora, PA 15033

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**FICTITIOUS NAME ADVERTISEMENT**

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act of December 16, 1982, P.L. 1309, No. 295, as amended, 54 Pa.C.S.A. 311, that on May 3, 2019, an application for the conduct of a business in Fayette County, Pennsylvania, under an assumed or fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the conduct of a business in Fayette County, Pennsylvania, under the assumed or fictitious name, style or designation of 2 G Brothers Pizza Express Takeout-Delivery, with its principal place of business at 123 MATTHEW DRIVE, Uniontown, Fayette County, Pennsylvania 15401. The name and address of the only entity interested in said business is SCHIANO BROTHERS PIZZA LLC, 123 Matthew Drive, Uniontown, Pennsylvania 15401.

G.T. George, Esq.  
 George & George LLP  
 92 East Main Street  
 Suite One  
 Uniontown, PA 15401

**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 159 Half King Colony Road, Chalk Hill, PA 15421, with a mailing address of 159 Half King Colony Road, Farmington, PA 15437, more particularly described at Fayette County Deed Book Volume 2889, Page 511.

**SAID SALE** to be held in the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401 at 10:00 a.m. prevailing, standard time, on May 28, 2019. All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel No.42-05-0024 recorded in Fayette County, Pennsylvania. Seized and taken in execution as the property of Patrick R. McCracken, at the suit of the United States of America, acting through the Farmers Home Administration, on behalf of United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 2:18-CV-01344.

**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 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)

**NOTICE OF ACTION IN MORTGAGE FORECLOSURE**

IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 CIVIL ACTION – LAW  
 NO.: 2018-02785

PNC BANK, NATIONAL ASSOCIATION,  
 Plaintiff,  
 vs.

Unknown Heirs and/or Administrators of the Estate of James L. Stephenson; James Carl Stephenson, as believed Heir and/or Administrator to the Estate of James L. Stephenson,  
 Defendants

TO: Unknown Heirs and/or Administrators of the Estate of James L. Stephenson

You are hereby notified that Plaintiff, PNC



Bank, National Association, 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. 2018-02785, seeking to foreclose the mortgage secured by the real estate located at 1015 Water Street, Brownsville, PA 15417.

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 OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

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IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 CIVIL ACTION - LAW  
**ACTION TO QUIET TITLE**  
 No. 323 of 2019 G.D.  
 JUDGE LINDA R. CORDARO

JOSEPH A. CHOLOCK,  
 Plaintiff,  
 v.

JOHN V. DECARLO and RUTH L.  
 DECARLO, his wife, their successors, heirs,  
 personal representatives, and assigns, generally,  
 Defendants.

**TO: JOHN V. DECARLO and RUTH L.  
 DECARLO, their heirs, successors and  
 assigns, generally,**

You are hereby notified that Joseph A. Cholock, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that he is the owner in possession of that certain lot of land situate in the City of Uniontown, Fayette County, Pennsylvania having a mailing address of 181 Downer Avenue, Uniontown, Pennsylvania, 15401.

Title to the above described property was conveyed to John V. Decarlo and Ruth L. Decarlo, his wife, by a deed from Josephine Kikta, dated August 13, 1941, being recorded at the Recorder of Deeds Office at Deed Book 575, Page 230.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed



without you and a judgment may entered against you by the court without further notice or 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 A LAWYER OR CANNOT  
AFFORD ONE, GOT TO OR TELEPHONE  
THE OFFICE SET FORTH BELOW TO  
FIND OUT WHERE YOU CAN GET  
LEGAL HELP.**

**PENNSYLVANIA BAR ASSOCIATION  
PENNSYLVANIA LAWYER REFERRAL  
100 SOUTH STREET  
P.O. BOX 186  
HARRISBURG, PA 17108  
1-800-932-0311**

Jason F. Adams, Esq.  
Adams & Adams  
55 E. Church Street  
Uniontown, PA 15401  
(724) 437-2711

---

# 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, June 3, 2019, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0110	HELEN M. GRESH a/k/a HELEN GRESH	Gary F. Gresh, Administrator
2618-0478	BRENT ALEX BLAKE	Nancy L. Blake, Administrator
2617-0885	CHARLOTTE SANTORE a/k/a CHARLOTTE E. SANTORE a/k/a CHARLOTTE ELIZABETH SANTORE	Nancy Jean Morris, Executrix

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

**Monday, June 17, 2019, 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.

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  
CIVIL ACTION

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF TRANSPORTATION	:	
BUREAU OF DRIVER LICENSING,	:	
Appellee,	:	
	:	
vs.	:	
	:	
STEVEN T. GILLEN,	:	No. 550 of 2018, G.D.
Appellant.	:	Honorable Joseph M. George, Jr.

ATTORNEYS AND LAW FIRMS  
 Ms. Tamara J. Mahady, Esquire, Assistant Counsel, For the Commonwealth  
 Mr. Michael Steven Sherman, Esquire, For the Appellant

**OPINION AND ORDER**

GEORGE, J. April 23, 2019

Mr. Steven T. Gillen, (hereinafter Appellant), appealed the suspension of his license by the Commonwealth of Pennsylvania, Department of Transportation, (hereinafter "DOT"), to this Court. This Court affirmed the action of DOT and dismissed the appeal. Appellant then filed the instant appeal.

**FACTUAL BACKGROUND**

On January 7, 2018, Trooper Matthew Costea of the Pennsylvania State Police was dispatched to the scene of a single vehicle accident at approximately 12:18 a.m. (H. T. pg. 4). Upon arrival at the scene on Northgate Road in Saltlick Township, Fayette County, Pennsylvania, Trooper Costea observed a 2015 Jeep Grand Cherokee bearing Pennsylvania Registration DA68V0 facing north with the front end impacting a guard-rail along the northbound shoulder of the road. No operator was present. Trooper Costea checked the registration of the accident vehicle and discovered that it was registered to Appellant. (H. T. pg. 4-5).

At approximately 1:00 a.m. on January 7, 2018, Shawn Gribbin arrived at the scene. (H.T. pg. 8). Mr. Gribbin indicated to Trooper Costea that he had driven by earlier and observed the accident vehicle in its final rest position with his friend, Appellant, in the driver's seat. Mr. Gribbin further indicated that he had contacted the police regarding the accident after Appellant had returned to a condo belonging to Mr. Gribbin where

Appellant was believed to be asleep. Mr. Gribbin further indicated that Appellant had been at his condo prior to the accident and had been watching football and consuming alcoholic beverages. Based upon this information, Trooper Costea went to the condo and with the permission of Mr. Gribbin, entered the premises at approximately 1:30 a.m. on January 7, 2018. (H. T. pg. 8). Upon entry, Trooper Costea located Appellant and found him laying on a couch appearing to be asleep. Trooper Costea attempted to wake Appellant by repeatedly calling his name and shaking his arm until he was finally awakened and able to sit up on the couch. Trooper Costea detected a strong odor of alcohol emanating from Appellant. He also observed his eyes to be bloodshot and glassy and his speech appeared to be slurred and confused. (H. T. pg. 9). Trooper Costea also observed a lump on the forehead of Appellant which Trooper Costea inquired about. Appellant indicated through slurred and confused speech that the bump had come from the accident. (H. T. pg. 9-10).

### ISSUES PRESENTED

Appellant's Concise Statement of Errors Complained of on Appeal presents the following five (5) issues:

1. That this Court erred by improperly finding that reasonable grounds existed to request a chemical test when DOT failed to establish reasonable grounds to believe that Appellee was operating or in physical control of a motor vehicle while in an intoxicated state at the time it was abandoned warranting a request for a chemical test.
2. That this Court improperly admitted hearsay evidence proffered by DOT as to the out-of-court testimonial of an individual named Shawn Gribben when Mr. Gribben did not appear in court.
3. That this Court erred by admitting into evidence the results of the pre-arrest breath testing device (PET).
4. That this Court erred by admitting into evidence testimony about the horizontal gaze nystagmus test without a proper foundational showing that this test is scientifically reliable.
5. That this Court erred by reinstating the license suspension because the same is allegedly illegal because it is a civil penalty imposed upon an individual's exercise of the Fourth Amendment right to refuse consent to a warrantless search.

### DISCUSSION

In order to sustain Appellant's license suspension under Section 1547 of the Vehicle Code, DOT has the burden to prove the following elements: (1) the arresting officer had reasonable grounds to believe that Appellant was in operation or actual physical control of the movement of the motor vehicle while under the influence of alcohol or a controlled substance; (2) Appellant was asked to submit to a chemical test; (3) Appellant refused the chemical test; and (4) Appellant was informed of the consequences of refusing a chemical test. *Duffy v. Com., Dept. of Transp., Bureau of Driver Licensing*, 694 A.2d 6 (Pa. Cmwlth. 1997).

Appellant first raises the issue that DOT failed to establish reasonable grounds which would lead one to believe that Appellant was in actual physical control of a vehicle while in an intoxicated state at the time the vehicle was abandoned warranting a request for sub mission to a chemical test. Appellant alleges that Trooper Costea did not see Appellant operating the vehicle and that DOT failed to establish a time frame between the accident and the arrest. We disagree. It is not necessary for an officer to physically observe a driver behind the wheel of the subject vehicle where the circumstances are such that "a reasonable person, viewing the facts as they appeared to the police officer, could conclude that the individual operated a vehicle while under the influence of alcohol." *Walkden v. Com., Dept. of Transp., Bureau of Driver Licensing*, 103 A.3d 432, 437 (Pa. Cmwlth. 2014). Thus, we must examine the totality of the circumstances to make a determination as to whether the officer had reasonable grounds to believe Appellant was operating the vehicle while intoxicated.

The United States Supreme Court has provided guidance for situations where the arresting officer did not observe the individual driving. In such circumstances, it is required that DOT must establish a time line when the licensee was driving and the time when the officer first encountered the licensee in an apparently intoxicated state. *Navarette v. California*, 134 S. Ct. 1683, (2014). Under the facts recited above, Trooper Costea provided a rather detailed account of the time line from the initial call, his arrival at the scene, and his encounter with Appellant in a visibly intoxicated state. The entirety of this transpired from approximately 12:08 a.m. to approximately 1:30 a.m. This is a time period of less than one and one-half hour. The Court is of the opinion that this time line provided by Trooper Costea is sufficient to establish reasonable grounds to believe that Appellant was operating the accident vehicle while intoxicated.

The second issue presented by Appellant is that this Court improperly admitted hearsay evidence proffered by DOT as to the out-of-court testimonial of an individual named Shawn Gribben when Mr. Gribben did not appear in court. In cases of license suspension appeals, hearsay evidence is sometimes admissible. *Menosky v. Commonwealth*, 550 A.2d 1372 (Pa. Cmwlth. Ct. 1988). In *Menosky*, licensee's van was found at the scene of an accident by police officers after they received two (2) radio calls. After ascertaining that licensee owned the van that had crashed into a telephone pole, the officers went to his home to question him. While at his home, the officers noted that the licensee had a very strong odor of alcohol, eyes were bloods hot, and he was swaying back and forth. At the hearing, the individual who made one of the radio calls and stated the licensee appeared to be intoxicated did not testify. The Trial Judge ruled that the statement was not hearsay and was admissible for purposes of proving the state of mind of the officer hearing the statement or explaining the reason for the conduct of the officer in response to hearing this statement. The Commonwealth Court affirmed finding that the caller's statements would be admissible to establish the police officer's state of mind. Similarly, we permitted the out of court statements to establish that reasonable grounds existed for the trooper to believe that Appellant was in operation of the motor vehicle while under the influence of alcohol or a controlled substance.

The third issue raised by Appellant is that the trial court erred in admitting into evidence the results of the prearrest breath testing device (PBT). However, the purpose for this testimony relates back to reasonable grounds and was not admitted as evidence of the blood alcohol content of Appellant, but, rather, was offered to show reasonable grounds upon which Trooper Costea acted in forming his belief that Appellant had operated the vehicle while intoxicated. Appellant cites to *Commonwealth v. Brigidi*, 6 A. 3d 995 (Pa. 2010) which is distinguishable as it is a criminal case in which the Defendant was charged with underage drinking and the PBT results were being offered to support the conviction. Here, the testimony was admitted in a civil matter to show the reasonable grounds for Trooper Costea to believe that Appellant operated the vehicle while intoxicated.

The fourth issue appellant raises is identical to the third except it challenges the admissibility of the horizontal gaze nystagmus test. The argument is the same. The evidence was admitted specifically for the purpose of establishing that Trooper Costea had reasonable grounds to believe that Appellant was driving in an intoxicated state and not to show any culpability for Driving Under the Influence.

The final issue raised by Appellant is that this Court erred by reinstating the license suspension appeal because said suspension is illegal as an unconstitutional civil penalty imposed on an individual's exercise of the Fourth Amendment right to refuse consent to a warrantless search. However, we are bound by precedent to reject this argument. *Boseman v. DOT*, 157 A. 3d 10 (Pa. Cmwlth. 2017).

Therefore, we find Appellant's appeal to be without merit.

BY THE COURT:  
JOSEPH M. GEORGE, JR., JUDGE

ATTEST:  
Nina Capuzzi Frankhouser  
PROTHONOTARY





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