

# FAYETTE LEGAL JOURNAL

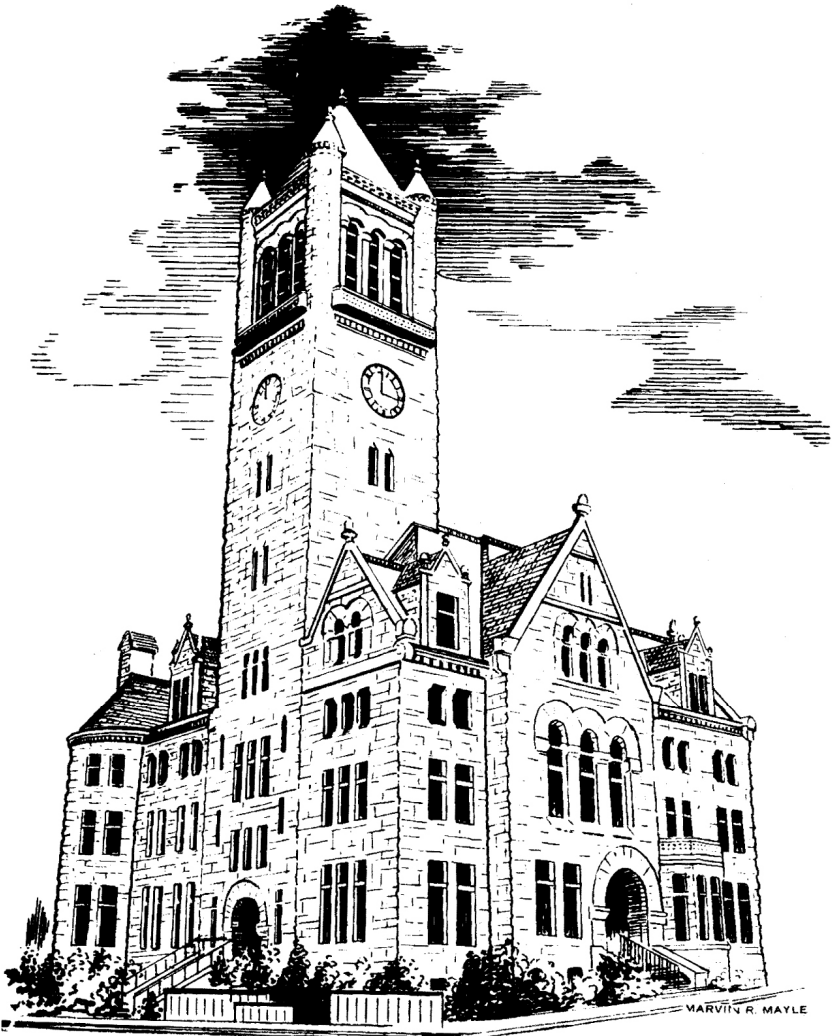
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## FAYETTE LEGAL JOURNAL

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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

**DIANE EDWARDS**, late of Menallen, Fayette County, PA (3)

*Administratrix:* Katherine Edwards  
6031 Albermarle Street  
San Diego, CA 92139  
*Attorney:* Shery Heid

**MARY A. TARKA**, late of Redstone, Fayette County, PA (3)

*Executrix:* Barbara T. Leonard  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**NANCY ARLENE WELTZ, a/k/a NANCY A. WELTZ**, late of Dunbar Township, Fayette County, PA (3)

*Executor:* Jeffrey Weltz  
c/o Casini and Geibig, LLC  
815B Memorial Boulevard  
Connellsville, PA 15425  
*Attorney:* Jennifer M. Casini

### Second Publication

**MARCIA SUE DILLOW**, late of Smithfield Borough, Fayette County, PA (2)

*Personal Representatives:*  
Darrin Wade Dillow and Aaron J. Dillow  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, Pa 15425  
*Attorney:* Charles W. Watson

**VIOLET D. GERBER, a/k/a VIOLET GERBER**, late of Menallen Township, Fayette County, PA (2)

*Co-Executor:*

George A. Gerber and Terry L. Gerber  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

### First Publication

**KAYLA BURWELL**, late of Smithfield, Fayette County, PA (1)

*Administratrix:* Frances Burwell  
341 Puritan Village Road  
McClellandtown, PA 15458  
c/o Conti Law  
986 Brodhead Road  
Moon Township, PA 15108  
*Attorney:* Michele Conti

**ERIC XAVIER CULLETON**, late of German Township, Fayette County, PA (1)

*Administrator:* Mark Culleton  
c/o Monaghan & Monaghan, LLP  
57 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary D. Monaghan

**VIRGINIA LEE DAVIS**, late of Springhill Township, Fayette County, PA (1)

*Executor:* Mark Howard  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Jeffrey S. Proden

**WILLIAM LAMBERSON**, late of Saltlick Township, Fayette County, PA (1)

*Executrix:* Debra Lamberson  
10086 Mansion Drive  
Gibsonia, PA 15044

**BRUCE J. MATSON, SR.**, late of Belle Vernon, Fayette County, PA (1)

*Executor:* Bruce J. Matson, Jr.  
813 Speer Street  
Belle Vernon, PA 15012  
c/o 101 North Main Street, Suite 106  
Greensburg, PA 15601  
*Attorney:* Susan N. Williams

**LEGAL NOTICES****NOTICE**

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on May 10, 2019, for a Limited Liability Company, organized under the Limited Liability Company Law of 1994, as from time to time amended. The name of the Company is RISI Properties LLC, having an address of 176 Tobin School Road, Smithfield, Pennsylvania, 15478.

James E. Higinbotham, Jr., Esq.  
HIGINBOTHAM LAW OFFICES  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
Telephone: 724-437-2800

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**NOTICE**

Notice is hereby given that Articles of Incorporation were filed on January 9, 2019 with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation of a domestic for-profit corporation which was organized under the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania, (15 Pa. C. S. A. Section 5306, et. sec.) as from time to time amended. The name of the Corporation is Mindful Acquisitions Inc., having its registered office at 122 Belmont Circle, Uniontown, Pennsylvania 15401.

James E. Higinbotham, Jr., Esq.  
HIGINBOTHAM LAW OFFICES  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
Telephone: 724-437-2800

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**NOTICE OF INTENT TO FILE ARTICLES  
OF INCORPORATION**

NOTICE is hereby given pursuant to the requirements of the Second Class Township Code, 53 Pa.C.S.A. 66601(a) and 5603, that the Board of Supervisors of the Township of Menallen Township, Fayette, Pennsylvania, adopted an Ordinance of the Township of Menallen at a special meeting of the said board, held on the 11TH day of July 2019, 2019, being an ordinance signifying the intention of the township to organize an authority under 53 Pa.C.S.A. 5603 to be known as the "Menallen Township Public Safety Authority". The purpose of the Authority is for the (1) acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, real property to be used and devoted wholly and/or partially for public uses, including but not limited to facilities to house police, fire and medical personnel and/or other first responders, and for revenue-producing purposes related thereto, and providing financing for insurance reserves therefor; and (2) for the acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, equipment for public safety purposes, to be leased by the Authority to the municipality, and providing financing for insurance reserves therefor.

The Ordinance authorizes appointment of the first members of the board and sets forth their respective terms of office; sets forth the proposed articles of incorporation and authorizes the Township Supervisors to execute the said articles; directs notice of adoption of the ordinance to be published in accordance with the law; directs filing of the articles of incorporation according to law; repeals all inconsistent ordinances or parts thereof. On August 2, 2019 (or prior to that date as provided by law) the Articles of Incorporation for the Menallen Township Public Safety Authority shall be filed with the Secretary of the Commonwealth of Pennsylvania.

Copies of the Municipal Ordinance and Articles of Incorporation are available for public examination at the Menallen Township Municipal Building.

Board of Supervisors of the  
Township of Menallen

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## August CLE Seminars / Ethics Galore

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Richard McMillan, Esq. / Anthony Fitzpatrick,  
Esq. / Fitzpatrick & LaCava, PC

**1 Substantive Credit/ 2 Ethics - \$85**

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#### **Family Law and Ethical Concerns**

William R. Friedman, Esq. / David J. Slesnick,  
Esq.

**2 Substantive Credits/1 Ethics - \$79**

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August 30, 2019 - 9 AM-12:15 PM

#### **Basics for the Attorney Debt Collector**

James P. Valecko, Esq. / Weltman, Weinberg &  
Reis Co., L.P.A..

**2 Substantive Credits/1 Ethics - \$79**

August 30, 2019 - 1 PM-4:15 PM

#### **Retirement Plans: A Primer on Plan Options, Hot Topics and Potential Pitfalls**

Elisa J. Cavalier, Esq. / Rachel Hawili, AIFA /  
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(1 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, August 5, 2019, at 9:30 A.M.**

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2617-0669	JAMES L. POPOCHOCK a/k/a JAMES LEO POPOCHOCK	Robert B. Ferguson, Administrator CTA
2617-0825	SHIRLEY GEARING	James R. Foutz, Executor
2617-0621	DONALD R. LAUGHERTY	Carmin V. Molinaro, Jr., Executor

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

**Monday, August 19, 2019, at 9:30 A.M.**

in Courtroom No. 1 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 (2 of 2)



## JUDICIAL OPINION

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

COMMONWEALTH OF  
PENNSYLVANIA,

vs.

KYLE WOODSON,  
Defendant.

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No. 2083 of 2018  
Honorable Linda R. Cordaro

### OPINION

CORARO, J.

April 17, 2019

### SUMMARY

Before the Court is Defendant's Omnibus Pretrial Motion. For the following reasons, Defendant's Motion is granted.

### BACKGROUND

According to the Affidavit of Probable Cause, in the early morning hours of July 26, 2018, Pennsylvania State Trooper Kezmarsky was in full uniform driving a marked patrol vehicle. Trooper Kezmarsky attempted to make a left-hand turn onto Booker Way in South Union Township when he observed a blue GMC traveling in reverse down Booker Way. Trooper Kezmarsky activated his lights and initiated a stop on the driver, who was later identified as Kyle Woodson.

As the result of the stop, Mr. Woodson was charged with DUI: General Impairment - Second Offense, Driving an Unregistered Vehicle, Driving while Operating Privilege Suspended or Revoked, Careless Driving, and Reckless Driving. Defendant filed an Omnibus Pretrial Motion on January 9, 2019, arguing that there was no probable cause or reasonable suspicion to stop his vehicle. A Hearing on the matter was held on March 13, 2019. During the Hearing, Trooper Kezmarsky testified as to why he pulled over Mr. Woodson. Trooper Kezmarsky cited careless driving as the Vehicle Code violation for which he pulled over the Defendant. The Commonwealth submitted the Motor Vehicle Recording as an exhibit for this Court to review.

After a review of the Motor Vehicle Recording, as well as relevant caselaw, this Court finds that there was no constitutional basis for the traffic stop on Mr. Woodson.

### DISCUSSION

In order to constitutionally stop a vehicle, the nature of a suspected violation determines whether an officer needs reasonable suspicion or probable cause. *Commonwealth v. Salter*, 121 A.3d 987, 993 (Pa. Super. Ct. 2015). The Pennsylvania Superior Court explained the difference:

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.



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.

The Salter Court illustrated this difference by comparing a traffic stop for speeding to one for a DUI. Id. In order to stop a vehicle for a speeding violation, an officer must have probable cause that a violation occurred. Id. This is because once the officer pulls the vehicle over, there is nothing further that can be determined about the speed the vehicle was traveling that led the officer to believe there was a speeding violation. Id. On the other hand, in order to stop a vehicle for a suspected DUI, an officer only needs to have reasonable suspicion that a violation occurred. Id. In that case, the officer needs an opportunity to further investigate whether the driver was operating under the influence of alcohol or a controlled substance. Id.

In order to pull over a vehicle for careless driving, an officer would need to have probable cause, rather than reasonable suspicion. This is because there is nothing further that can be determined about whether the driver has driven carelessly in violation of the statute once the vehicle has been stopped. See also, *Commonwealth v. Venable*, 200 A.3d 490, 499 (Pa. Super Ct. 2018) (explicitly stating that officers must have probable cause to justify a stop based on careless driving).

"Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." *Commonwealth v. Dommel*, 885 A.2d 998, 1002 (Pa. Super. Ct. 2005) (Internal citations omitted). To satisfy the probable cause standard, an officer must be able to articulate specific facts at the time of the stop that would provide probable cause that the vehicle or the driver was in some violation of the Vehicle Code. *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. Ct. 2010).

Here, Trooper Kezmarsky stated at the hearing that Mr. Woodson violated the Vehicle Code provision for careless driving. Trooper Kezmarsky's testimony was that as he was turning onto Booker Way, he saw Mr. Woodson's vehicle driving in reverse very slowly towards the Trooper. On cross-examination, Trooper Kezmarsky stated that he saw Mr. Woodson back up about a car length at a speed of 1 to 4 miles per hour. Trooper Kezmarsky also testified that Mr. Woodson's vehicle continued moving in reverse even after Trooper Kezmarsky had turned the corner, and that Mr. Woodson stopped a few feet away from the Trooper's vehicle.

This Court viewed the relevant portion of the Motor Vehicle Recording after the Hearing. The video depicts Trooper Kezmarsky driving his patrol vehicle in the darkness of night. No other vehicles appear to be on the road. Trooper Kezmarsky makes a few turns before he gets to Booker Way-the street on which Defendant's vehicle is pulled over. The video then shows Trooper Kezmarsky begin to turn left onto Booker Way, and just as he begins to make his turn-perhaps less than a quarter of a way into the turn- he activates his emergency lights. The camera in the Trooper's vehicle is aimed directly ahead of his vehicle. In the Motor Vehicle Recording, the viewer is not able to see the Defendant's vehicle at all when the Trooper activates his emergency lights, which he does while at the beginning of his left turn. The Trooper then drives forward

for several feet as he continues to complete his left turn onto Booker Way. Just as the turn is completed in the Recording, the Defendant's vehicle comes into view, and looks as though it has just applied the brakes and comes to a stop. The Defendant's vehicle then pulls forward and pulls over to the left of the road in compliance with the traffic stop.

Based on the testimony of Trooper Kezmarsky and a review of the Motor Vehicle Recording, this Court finds that there was no probable cause to stop Mr. Woodson's vehicle.

Trooper Kezmarsky cited careless driving as the violation of the Vehicle Code for which he pulled over Defendant 's vehicle. That section of the Vehicle Code states, "[a]ny person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving, a summary offense." 75 Pa.C.S.A. §3714(a).

Whether a defendant has committed careless driving in violation of the Vehicle Code is a fact-specific inquiry that depends on the circumstances of the case—namely whether the driver operates a vehicle in careless disregard for the safety of persons or property. See *Commonwealth v. Evelyn*, 136 A.2d 158, 159 (Pa. Super. Ct. 1957) ("What is reckless driving depends on the particular circumstances." {1}). Courts in Pennsylvania have found a number of instances where the operation of a vehicle constituted careless driving. Examples include falling asleep while driving (*Commonwealth v. Cathey*, 645 A.2d 250, 251 (Pa. Super. Ct. 1994)), traveling at a high rate of speed (*Commonwealth v. Ford*, 141A.3d 547,556 (Pa. Super. Ct. 2016)), beginning to drive away during a traffic stop when the officer is kneeling on the front passenger seat with the door ajar (*Id.*), backing into a car in a parking lot following a verbal altercation (*Commonwealth v. Genovese*, 675 A.2d 331,332 (Pa. Super. Ct. 1996)), and causing the rear end of a vehicle to fishtail into the opposite lane of traffic (*Commonwealth v. Venable*, 200 A.3d 490, 499 (Pa. Super. Ct. 2018)).

Driving a vehicle in reverse down a street could be considered careless driving in certain scenarios. However, driving in reverse down a street is neither a per se violation of the Vehicle Code, nor is it a per se act of careless driving.

Under the Vehicle Code, there is a section titled Limitations on Backing, which states, "[n]o driver shall back a vehicle unless the movement can be made with safety and without interfering with other traffic and then only after yielding the right-of-way to moving traffic and pedestrians." 75 Pa.C.S.A. §3702(a). Read positively, that section permits a driver to drive a vehicle in reverse if the movement can be made safely, if it is done without interfering with other traffic, and if the driver yields the right-of-way to moving traffic and pedestrians.

Likewise, it is not a per se act of careless driving to drive a vehicle in reverse down a street, because careless driving requires that the driver operate a vehicle in careless disregard of persons or property. It is certainly possible to drive in reverse while regarding other persons or property. In certain scenarios it may even be necessary to drive a vehicle in reverse, such as when backing into a parallel parking spot, backing out of a driveway onto a road, or if there is an obstruction ahead on a road and a vehicle must back out the same way it came. It is imperative in those scenarios that the driver act

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{1} The offense known as reckless driving at the time when *Evelyn* was decided is now careless driving as defined by 75 Pa.C.S.A. §3714. *Commonwealth v. Bullick*, 830 A.2d 998, 1001 (Pa. Super. Ct. 2003).

cautiously and in regard to the safety of other persons and property, but driving in reverse on a road is not in and of itself a violation of the Vehicle Code or an act of careless driving.

Here, the Motor Vehicle Recording does not support the conclusion that Mr. Woodson was driving carelessly. The Trooper activates his emergency lights midway through the turn onto the street that Mr. Woodson is driving on. At the point of the turn where the Trooper activates his lights, Mr. Woodson's vehicle is not even in view in the Motor Vehicle Recording. The Trooper then continues to drive several feet forward with the emergency lights activated as he completes his left turn. If Mr. Woodson's driving in reverse posed such a threat to the Trooper's vehicle, the Trooper would have stopped his vehicle before completing his turn. Once the Trooper makes the turn, Mr. Woodson abruptly stops his vehicle and does not hit the Trooper's Vehicle.

Further, based on Trooper Kezmarsky's own testimony, Mr. Woodson was driving in reverse at a speed of 1 to 4 miles per hour. This speed in reverse seems to suggest that Mr. Woodson was acting with regard to the safety of other persons and property. This is a very slow rate of speed; albeit a reasonable speed for backing up a vehicle. Mr. Woodson stops his vehicle as soon as Trooper Kezmarsky's vehicle turned the corner, which indicates both that he was looking in one of his mirrors while driving in reverse and that he was driving with regard to the safety of other vehicles on the road.

The rate of speed of Mr. Woodson, the fact that he stopped his vehicle as soon as the Trooper turned the corner, and the fact that the Trooper activated his lights but continued to drive forward to complete his turn indicate that Mr. Woodson was not driving carelessly. Therefore, there was no probable cause to initiate a stop on Defendant's vehicle.

### CONCLUSION

As a result of the foregoing analysis, Defendant's Omnibus Pretrial Motion is granted. All evidence or statements collected as a result of the stop on Mr. Woodson shall be suppressed.

### ORDER

AND NOW, this 17th day of April, 2019, in consideration of Defendant's Omnibus Pretrial Motion to Suppress Evidence/ Motion to Dismiss, it is ORDERED and DIRECTED that the Motion is GRANTED. Having found that this traffic stop was unconstitutional, the charges filed at the above caption are hereby DISMISSED.

BY THE COURT:  
Linda R. Cordaro, Judge

ATTEST:  
Clerk of Courts

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