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COMMONWEALTH OF PENNSYLVANIA V. AUSTIN LINE



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COMMONWEALTH OF PENNSYLVANIA V. AUSTIN LINE

1. In a suppression hearing, the Commonwealth has the burden to establish by a preponderance of the evidence the admissibility of those items the accused seeks to preclude.

2. The Fourth Amendment of the United States Constitution guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.

3. A search or seizure is reasonable only if it is conducted pursuant to a search warrant issued by a magistrate upon a showing of probable cause. When police obtain evidence in violation of an individual's Fourth Amendment rights, the Commonwealth is precluded from using that evidence at trial.

4. The administration of a blood test is a search within the meaning of the Fourth Amendment if it is performed by an agent of the government.

5. The United States Supreme Court has explicitly held the Fourth Amendment permits warrantless breath tests incident to arrest for drunk driving. Conversely, absent an exception to the warrant requirement, a blood test conducted without a warrant, incident to a lawful drunk-driving arrest, violates the Fourth Amendment.

6. Under the Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution, three levels of interaction between citizens and police are applicable - a mere encounter, an investigative detention, and a custodial detention (arrest).

7. The first category is a mere encounter (or request for information) which need not be supported by any level of suspicion because it carries no official compulsion to stop or respond. The second category is an investigative detention, which must be supported by reasonable suspicion. An investigative detention subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. The final category is a custodial detention or an arrest, which must be supported by probable cause.

8. The Supreme Court of Pennsylvania, when interpreting section 6308(b), held that traffic stops based on reasonable suspicion of either criminal activity or a violation of the Motor Vehicle Code must serve a stated investigatory purpose.

9. To establish reasonable suspicion, an officer must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him to reasonably conclude, in light of his experience that criminal activity was afoot and that the person he stopped was involved in that activity.

10. However, mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose. When a vehicle stop is based on offenses that are not investigable, an officer must have probable cause to make a constitutional vehicle stop for such offenses.

11. Probable cause exists where the facts and circumstances within the knowledge of the officer are based on reasonably trustworthy information and are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.

12. Because Officer Goodling stopped Defendant's vehicle in the parking lot of Sheetz, and not a public roadway, this Court must conduct an analysis of section 3101 of the Vehicle Code and the definitions of highway and trafficway under section 102 of the Vehicle Code. Highway is defined in section 102 of the Vehicle Code as the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

13. Trafficway is defined as the entire width between property lines or other

boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom. The Sheetz parking lot constitutes a trafficway and not a highway.

14. Careless driving is not designated as a serious traffic offense under section 3101(b) and its application is not extended to trafficways by any other provision of the Vehicle Code.

15. The exclusionary rule originated to deter unlawful police practices by depriving law enforcement officials of the benefits derived from using unlawfully obtained information.

16. Pennsylvania has explicitly held Leon's good faith exception to the exclusionary rule inapplicable because of the strong privacy rights guaranteed by the Pennsylvania Constitution...a blood draw implicates significant privacy concerns. Pennsylvania places a greater emphasis on an individual's privacy rights and less on police deterrence; thus, extending the good faith exception of the exclusionary rule in this instance fails to further the aims of Article I, Section 8 of the Pennsylvania Constitution.

17. The United States Supreme Court found the criminal penalties imposed by the implied consent laws vitiated a person's ability to consent to a blood draw, thus violating the Fourth Amendment...while the Court struck down the criminal penalties, the Court explained its opinion should not be read to cast doubt on the civil penalties and evidentiary consequences for declining the blood test...the Court has left state courts with the task of determining if the defendant's consent to the blood test was actually voluntary.

18. Pennsylvania does not have a separate refusal statute.

19. Post-Birchfield, the sentencing enhancements contained in 75 Pa.C.S.A. §380(c), and the reference to the criminal penalties in 75 Pa. C.S.A. §1547(b)(2)(ii) are facially unconstitutional. Now, when police officers arrest an individual for a DUI offense, they must procure a search warrant before a defendant's blood is drawn, unless the individual voluntarily consents or an exigent circumstance is present.

20. For police officers to rely on the exigent circumstance exception they must show an urgent need for the evidence such that they cannot wait for a search warrant. The Commonwealth must show by clear and convincing evidence that the circumstances surrounding the opportunity to search were truly exigent.

21. When the situation is a warrantless blood draw, a case by case totality of the circumstances analysis is appropriate. However, the evanescent nature of alcohol is no longer sufficient by itself to provide police officers with an exigent circumstance.

22. In regards to the cases currently pending before this Court, the Commonwealth cannot retrospectively argue an exigency existed at the time of the blood draw. Under these cases, an exigency must have existed at the time the search occurred.

23. The stain of an unconditional search may be erased when an individual has validly consented to the search. Pennsylvania courts have employed an objective, totality of the circumstances approach in deciding whether an individual provided the necessary consent to search. In order for consent to be valid, it must be unequivocal, specific, and voluntary. The appellant must have intentionally relinquished or abandoned a known right or privilege.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CRIMINAL, CP-01-CR-488-2016,
COMMONWEALTH OF PENNSYLVANIA V. AUSTIN LINE.

Roy A. Keefer, Esq., Attorney for Commonwealth
Katherine E. McShane, Esq., Attorney for Defendant
Wagner, J., August 17, 2016

OPINION

Presently before the Court are Defendant Austin Line's Motions to Suppress Evidence filed on June 14, 2016 and July 11, 2016. A suppression hearing was held on August 15, 2016. The issues before the Court are whether Officer Goodling had proper probable cause to conduct a traffic stop on Defendant's vehicle and whether Defendant voluntarily consented to a blood draw following Defendant's arrest for DUI. Based upon the following Findings of Fact and Conclusions of Law, the Court will grant Defendant's Motion to Suppress.

FINDINGS OF FACT

1. On November 13, 2015, at approximately 2:00 a.m. Defendant, Austin Line, drove his pick-up truck in the parking lot of Sheetz in Mount Joy Township, Adams County, Pennsylvania.
2. Officer Joshua Goodling of the Cumberland Township Police Department was in full uniform in a marked police vehicle and entered the parking lot of Sheetz in Mount Joy Township using the entrance to the rear portion of Sheetz.
3. Officer Goodling is employed by Cumberland Township Police Department and was traveling to Sheetz to get coffee. Mount Joy Township is not within Officer Goodling's jurisdiction.
4. Officer Goodling was approximately fifty yards away from Defendant's pick-up truck within the parking lot of Sheetz and observed the pick-up truck kick sideways as if it was losing control.
5. Officer Goodling was of the opinion that the Defendant was spinning his tires causing the pick-up truck to "fishtail".
6. Officer Goodling did not observe any smoke or debris from the pick-up truck and did not hear any squealing of the tires.
7. Officer Goodling did not observe any other vehicles or people in the parking lot area where Defendant's vehicle was "fishtailing".
8. Officer Goodling did not inspect the parking lot of Sheetz to see if there were any tire marks on the parking lot.

9. Officer Goodling immediately activated his overhead lights after observing Defendant's vehicle "fishtail", blocked Defendant's path and stopped Defendant's vehicle. Defendant immediately parked his vehicle in the Sheetz parking lot.
10. Officer Goodling directed Adams County Control to notify the Pennsylvania State Police concerning this incident.
11. Trooper Joshua Yoder received a call from Adams County Control concerning this incident at 2:05 a.m. on November 13, 2015.
12. Trooper Yoder arrived at Sheetz at 2:21 a.m. on November 13, 2015.
13. Officer Goodling advised Trooper Yoder of Officer Goodling's observations of Defendant's driving, Officer Goodling's observations of Defendant and statements Defendant made to Officer Goodling.
14. Trooper Yoder observed the Defendant exhibit signs of intoxication and Defendant admitted to Trooper Yoder that he had been drinking.
15. Trooper Yoder placed the Defendant under arrest for driving under the influence.
16. Defendant was handcuffed and transported to Gettysburg Hospital for a blood draw.
17. Upon arriving at the hospital Trooper Yoder advised Defendant of his **O'Connell** warnings by reading a PennDot DL-26 form in its entirety to the Defendant.
18. Defendant signed the PennDot DL-26 form at 2:50 a.m. on November 13, 2015 and submitted to a blood draw.
19. Analysis of Defendant's blood by the Pennsylvania State Police lab revealed Defendant had a blood alcohol content of .193.

CONCLUSIONS OF LAW

1. The parking lot of Sheetz constitutes a "trafficway" not a "highway" based on **75 Pa. C.S. § 102.**
2. The Sheetz parking lot is not a "highway" and Officer Goodling did not have authority to stop Defendant for **75 Pa. C.S. § 3714**, careless driving.

3. The initial vehicle stop by Officer Goodling was unlawful because the vehicle stop occurred on a “trafficway” and Officer Goodling did not have probable cause or reasonable suspicion to believe the Defendant committed “a serious traffic offense.”
4. Trooper Yoder placed the Defendant under arrest for driving under the influence, prior to transporting the Defendant to Gettysburg Hospital.
5. Defendant’s consent to provide a blood sample was not knowing and voluntary.

LEGAL STANDARD

In a suppression hearing, the Commonwealth has the burden to establish by a preponderance of the evidence the admissibility of those items the accused seeks to preclude. **Commonwealth v. Ruey**, 892 A.2d 802, 807 (Pa. 2006).

The Fourth Amendment of the United States Constitution guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”¹ The Fourth Amendment is applicable to the states through the Fourteenth Amendment of the U.S. Constitution. **Commonwealth v. Kohl**, 615 A.2d 308, 311 (Pa. 1992). Pennsylvania’s Constitution specifically guarantees citizens the right to be “secure in their persons . . . from unreasonable searches and seizures.”² A search or seizure is reasonable only if “it is conducted pursuant to a search warrant issued by a magistrate upon a showing of probable cause.” **Kohl**, 615 A.2d at 313. When police obtain evidence in violation of an individual’s Fourth Amendment rights, the Commonwealth is precluded from using that evidence at trial. **Commonwealth v. Pratt**, 930 A.2d 561, 563 (Pa. Super. 2007).

“The taking of a blood sample or the administration of a breath test is a search.” **Birchfield v. North Dakota**, 136 S. Ct. 2160, 2173 (2016). **See also Commonwealth v. Ellis**, 608 A.2d 1090, 1092 (Pa. Super. 1992) (citing **Commonwealth v. Hipp**, 551 A.2d 1086 (Pa. 1988)) (“The administration of a blood test is a search within the meaning of the Fourth Amendment if it is performed by an agent of

¹ U.S. Const. amend. IV.

² Pa. Const. art. I, § 8

the government.”). In the current case, the police officer requested Defendant provide a blood sample after arresting him for a DUI offense. Since Defendant’s blood was taken at the request of law enforcement, the blood draw was a search and must comply with both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution to be admissible at trial.

The United States Supreme Court has explicitly held “the Fourth Amendment permits warrantless breath tests incident to arrest for drunk driving.”³ **Birchfield**, 136 S. Ct. at 2184. Conversely, absent an exception to the warrant requirement, a blood test conducted without a warrant, “incident to a lawful drunk-driving arrest[,]” violates the Fourth Amendment.⁴ **Id.** at 2185 n. 8.

DISCUSSION: PROBABLE CAUSE TO STOP VEHICLE

Under the Fourth Amendment and Article I, Section 8 of the Pennsylvania Constitution, three levels of interaction between citizens and police are applicable – a mere encounter, an investigative detention, and a custodial detention (arrest). **Commonwealth v. Chase**, 960 A.2d 108, 117 (Pa. 2008). The first category is a mere encounter (or request for information) which need not be supported by any level of suspicion because it carries no official compulsion to stop or respond. **Id.** The second category is an investigative detention, which must be supported by reasonable suspicion. **Id.** An investigative detention subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. **Id.** The final category is a custodial detention or an arrest, which must be supported by probable cause. **Id.**

Section 6308(b) of the Motor Vehicle Code provides:

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

³ The Court found breath tests did not offend the Fourth Amendment since “breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests . . .” **Id.** at 2185.

⁴ As compared to a breath test, blood tests entail a significant bodily intrusion, as well as implicate serious concerns regarding an individual’s privacy rights. **Id.** at 2178.

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.

The Supreme Court of Pennsylvania, when interpreting section 6308(b), held that traffic stops based on reasonable suspicion of either criminal activity or a violation of the Motor Vehicle Code must serve a stated investigatory purpose. **Chase**, 960 A.2d at 116. To establish reasonable suspicion, an officer must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him to reasonably conclude, in light of his experience that criminal activity was afoot and that the person he stopped was involved in that activity. **Commonwealth v. Anthony**, 1 A.3d 914, 919 (Pa. Super. 2010). The determination of whether an officer had reasonable suspicion is an objective determination, which must be considered in light of the totality of the circumstances. **Commonwealth v. Holmes**, 14 A.3d 89, 96 (Pa. 2011).

However, mere reasonable suspicion will not justify a vehicle stop when the driver's detention cannot serve an investigatory purpose. **Commonwealth v. Feczko**, 10 A.3d 1285, 1291 (Pa. Super. 2010). When a vehicle stop is based on offenses that are not "investigable," an officer must have probable cause to make a constitutional vehicle stop for such offenses. **Chase** 960 A.2d at 116. Stated differently, when a non-investigable vehicle offense has occurred, an officer must articulate specific facts possessed by him at the time of the questioned stop, which would provide probable cause to believe that the vehicle or driver was in violation of some provision of the Vehicle Code. **Feczko** 10 A.3d at 1291. Probable cause exists where the facts and circumstances within the knowledge of the officer are based on reasonably trustworthy information and are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime. **Commonwealth v. Joseph**, 34 A.3d 855, 863 (Pa. Super. 2011). Probable cause is evaluated based on the totality of the circumstances. **Id.**

Because Officer Goodling stopped Defendant's vehicle in the parking lot of Sheetz, and not on a public roadway, this Court must conduct an analysis of section 3101 of the Vehicle Code and the definitions of "highway" and "trafficway" under section 102 of the Vehicle Code. Highway is defined in section 102 of the Vehicle Code as "The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. The term includes a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historical park." **75 Pa. C.S.A. § 102.** Trafficway is defined as "The entire width between property lines or other boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom." **75 Pa. C.S.A. § 102.**

The Sheetz parking lot constitutes a "trafficway" and not a "highway". See **Marsico v. Dibileo**, 796 A.2d 997 (Pa. Super. 2002) and **Commonwealth v. Cozzone**, 593 A.2d 860 (Pa. Super. 1991). Therefore, section 3101 of the Pennsylvania Vehicle Code is relevant. Section 3101 states

- (a) **General Rule.** – Except as provided in Subsection (b), the provisions of this part relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except where a different place is specifically referred to in a particular provision.
- (b) **Serious Traffic Offenses.** – The provisions of section 3345 (relating to meeting or overtaking school bus), Subchapter B of Chapter 37 (relating to serious traffic offenses) and Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs) shall apply upon highways and trafficways throughout the Commonwealth.

75 Pa. C.S. § 3101.

The Commonwealth argued that Officer Goodling had probable cause to stop the Defendant's vehicle in the Sheetz parking lot for the Vehicle Code violation of careless driving, **75 Pa. C.S. § 3714**, or reckless driving, **75 Pa. C.S. § 3736**. Careless driving is not designated as a "serious traffic offense" under section 3101(b) and its application is not extended to trafficways by any other provision of

the Vehicle Code. **See 75 Pa. C.S.A § 3101(a)**. Therefore, Officer Goodling did not have proper authority to conduct a traffic stop for careless driving in Sheetz parking lot.

There is insufficient evidence to show Officer Goodling possessed probable cause to suspect that the Defendant was engaged in a “serious traffic offense”, such as reckless driving, as set forth in section 3101(b) of the Pennsylvania Vehicle Code, when he stopped Defendant’s vehicle. For these reasons, it is clear Officer Goodling’s stop of the Defendant’s vehicle in the Sheetz parking lot was not supported by probable cause and therefore all subsequent evidence obtained by the Commonwealth in the investigation of the Defendant must all be suppressed and will not be admissible at trial.

This Court’s holding in this case is based on the specific facts of this case and the Commonwealth’s contention that the officer had probable cause to stop defendant’s vehicle in Sheetz parking lot.

Continued to next issue (9/16/2016)

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF JILL L. BECKER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: Bobby E. Wolfe Jr., 330 Lincoln Way East, New Oxford, PA 17350

ESTATE OF PAULINE VIRGINIA BOLANDER a/k/a PAULINE V. BOLANDER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: William C. Brown, P.O. Box 2421, Pine, AZ 85544

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF WAYNE A. CARR, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administratrix: Billie C. Carr, 20305 Downes Road, Parkton, MD 21120

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF DONALD E. CHRISTY, SR. a/k/a DONALD E. CHRISTY, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Jacqueline M. Christy, 985 Johnson Drive, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KAJSA C. COOK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Attorney: Jeffery M. Cook, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ANNA E. GILBERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Jamie L. Weaver, 901 Osborne Parkway, Forest Hill, MD 21050

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF MARY E. GROFT, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Gerald R. Groft, 136 Conewago Drive, Hanover, PA 17331; Jeanne M. Fradiska, 200 Country By-Way, York, PA 17402

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

ESTATE OF EILEEN R. HARVEY, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Co-Executors: Ruth Elizabeth Harvey, 6831 Woodcrest Road, New Market, MD 21774; Matthew Robert Harvey, 280 Calvary Field Road, Gettysburg, PA 17325

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ESTATE OF WILLIE C. JONES, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Mary B. Livingston, c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

ESTATE OF JAMES WILLIAM KERSHNER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

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Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF MILDRED G. CLEVELAND, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Jeffrey C. Rohrbaugh, Box 352, Biglerville, PA 17307; James A. Rohrbaugh, 12426 Greenspring Ave., Owings Mills, MD 21117

ESTATE OF LINDA J. MILLER, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

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Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF LOIS R. MYERS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executrix: Cynthia K. Deardorff, 220 Pete's Lane, P.O. Box 472, Fairfield, PA 17320; Kimberly A. Larsen, 7771 Kidwell Drive, Hanover, MD 21076

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ESTATE OF RUTH IRENE MYERS a/k/a R. IRENE MYERS, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

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ESTATE OF JOSEPH C. SHANEFELTER, DEC'D

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ESTATE OF JANET M. UPTON, DEC'D

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THIRD PUBLICATION

ESTATE OF DORIS J. CHAPMAN,
DEC'D

Late of Franklin Township, Adams
County, Pennsylvania

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ESTATE OF GERARDO CALDERON
CORTES, DEC'D

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Rice & Quinn, LLC, 47 West High
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ESTATE OF HELEN N. HELDIBRIDGE,
DEC'D

Late of Oxford Township, Adams County,
Pennsylvania

Executrix: Darlene Krepps, 34 Peace
Circle, New Oxford, PA 17350

ESTATE OF WENDELL L. LEHMAN,
DEC'D

Late of Latimore Township, Adams
County, Pennsylvania

Executor: Sheldon C. Lehman, 304
Elmwood Blvd., York, PA 17403

ESTATE OF LOUISE M. ORNDORFF,
DEC'D

Late of the Borough of Bonneauville,
Adams County, Pennsylvania

Executrix: Benita M. Lehto, 21 East
Hanover Street, Gettysburg, PA
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North Stratton Street, Gettysburg, PA
17325

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