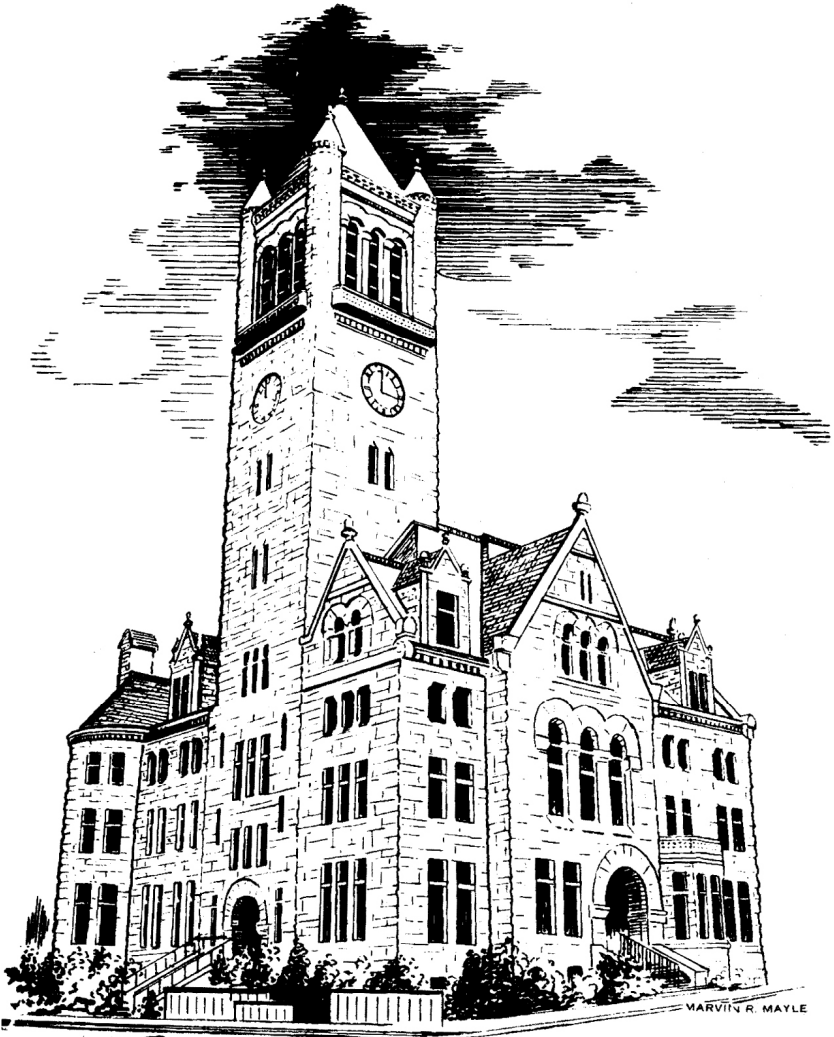


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ESTATE NOTICES

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

MINERVA ALBERT, late of Newell Borough, Fayette County, PA ⁽³⁾

Personal Representative: Walter A. Albert
c/o 902 First Street
P.O. Box 310
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c/o 51 East South Street
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Administratrix: Kathleen M. Heino
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111 Fallowfield Avenue
Charleroi, PA 15022
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96 East Main Street
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DOROTHY HALBROOK, a/k/a DOROTHY J. HALBROOK, a/k/a DOROTHY JEAN HALBROOK, late of North Union Township, Fayette County, PA ⁽³⁾

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45 East Main Street, Suite 500
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Falling Waters, WV 25419
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Pittsburgh, PA 15228
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HELEN LOWDEN, a/k/a HELEN D. LOWDEN, late of Dunbar Township, Fayette County, PA ⁽³⁾

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Second Publication

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 Uniontown, PA 15401
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 Connellsville, PA 15425
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Uniontown, PA 15401
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PHILIP PLASKI, late of Masontown, Fayette County, PA (2)

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107 East Main Street
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Executrix: Diana Lou Forcier
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Attorney: Charity Grimm Krupa

LENNIE VOYTOVICH, late of Jefferson Township, Fayette County, PA (2)

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107 East Main Street
Uniontown, PA 15401
Attorney: Jeremy J. Davis

First Publication

ELMER HENCKEL, JR., a/k/a ELMER M. HENCKEL, JR., a/k/a ELMER M. HENCKEL, late of Gibbon Glade, Fayette County, PA (1)

Personal Representative: Sue Ann Henckel
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BEATRICE MAE HISSEM, a/k/a BEATRICE HISSEM, late of Saltlick Township, Fayette County, PA (1)

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c/o Zebbley Mehalov & White, P.C.
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P.O. Box 2123
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Attorney: Mark M. Mehalov

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Personal Representative: Deborah A. Testa
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Samuel J. Davis

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Administratrix: Patricia M. Berardi
c/o Fitzsimmons and Barclay
55 East Church Street, Suite 102
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Attorney: James N. Fitzsimmons, Jr.

ANTHONY P. RADOVICH, JR., late of
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Personal Representative: Dave Radovich
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99 East Main Street, Suite 101
Uniontown, PA 15401
Attorney: Melinda D. Dellarose

VENICE L. WITHERSPOON, a/k/a
VENICE L. YEAGLEY, late of North Union
Township, Fayette County, PA (1)
Co-Executors: George P. Yeagley and
Glenn A. Yeagley
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55 East Church Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons, Jr.

LEGAL NOTICES

NOTICE OF LOCATION OF PENNSYLVANIA LIQUOR STORE

FOR THE SALE OF LIQUOR- In accordance with the provisions of the Act of April 12, 1951, P. L. 90, known as the "Liquor Code", notice is hereby given that the Pennsylvania Liquor Control Board has determined upon the location of a Fine Wine & Good Spirits Store #2612, New Hope Commons, 99 Matthew Drive, Uniontown, PA 15401-8983, Fayette County.

PENNSYLVANIA LIQUOR CONTROL BOARD

NOTICE OF TRUST ADMINISTRATION

NOTICE is hereby given of the administration of the Kalb Family Revocable Living Trust dated September 27, 1999. Margaret L. Kalb, Settlor of the Trust of Dunbar Township, Fayette County, Pennsylvania, died on February 18, 2021. All persons having claims against Margaret L. Kalb., or the Trust are requested to make known the same to the Trustees or Attorney named below. All persons indebted to Margaret L. Kalb, or the Trust are requested to make payment without delay to the Trustee or Attorney named below. William G. Kalb., 5708 Summerwood Crossing, Galena, Ohio 43021 or to Richard A. Husband, Esquire, 208 South Arch Street, Suite 2, Connellsville, PA 15425.

Richard A. Husband, Esquire
208 South Arch Street
Connellsville, PA 15425

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,
PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
V.	:	
	:	
CLAY DOUGLAS SWAN,	:	No. 1485 of 2020
DEFENDANT.	:	Honorable President Judge John F. Wagner, Jr.

OPINION AND ORDER

Wagner, P.J.

March 8, 2021

Before the Court is the Omnibus Pre-Trial Motion filed by the Defendant, Clay Douglas Swan, which includes a Motion to Dismiss The Criminal Charges And/OR Quash The Information for pre-arrest delay. For the following reasons, the Defendant's motion is denied.

FACTS OF CASE

The Defendant is charged with Driving Under the Influence: Controlled Substance, 75 Pa. C.S. § 3802(D)(1)(i); Turning Movements and Required Signals, 75 Pa. C.S. § 3334(A) and Failure to Use Safety Belt, 75 Pa. C.S. § 4581(A)(2) as a result of a traffic stop which occurred on February 28, 2019. Pennsylvania State Trooper Anthony Vitton while traveling on State Route 711 in Springfield Township, Fayette County observed a vehicle with an inoperable passenger side headlight. The Trooper stopped the vehicle, approached the driver, and detected an odor of alcohol and an odor of marijuana. When questioned, the Defendant responded that he had a couple of beers and had smoked a joint while driving. The Defendant was asked to exit the vehicle. Then the Trooper observed glassy, bloodshot eyes, dilated pupils and a green tongue. The Defendant was slow to respond and appeared to be lethargic. The Defendant consented to a at the hospital. On March 15, 2019 a lab report prepared by Forensic Analyst Swan of NMS Labs that the Defendant had the active ingredient THC for marijuana in his blood was completed.

On April 14, 2020, charges were filed against this Defendant. On 14 September 2020, the Defendant waived the charges at his preliminary hearing to court. On October 15, 2020, the Defendant waived his arraignment. After receiving discovery in the matter on October 29, 2020, the Defendant filed his Omnibus Pretrial Motion asserting a violation of his rights due to prearrest delay.

At the time of the hearing on the Omnibus Pretrial Motion, Trooper Vittone testified that the Defendant consented to the blood draw at the hospital. He also testified that

he was not aware and did not receive the NMS Lab report on the defendant. He subsequently requested on May 9, 2019, a copy of the report, but did not receive one. After a second supplemental request on April 1, 2020, he received the report and charges were filed. While the report was forwarded to the State Police, the Trooper testified that he never received it and does not know what happened to it.

The Defendant argues that he was unable to request that the test sample be independently tested and was prejudiced by the delay. The Defendant gave no specific reason why he would have had his blood tested by a separate lab. He made no specific allegation that the testing by the NMS was flawed.

DISCUSSION

The Defendant asserts that his due process rights were violated due to the unreasonable pre-arrest delay that occurred which was not the result of any continuing investigation of the crime or for any legitimate reason. As a result of the delay in filing the charges, the Defendant asserts that he did not have the opportunity to have an independent testing done of the lab results from NMS Labs. The Trooper testified that he did was not able to file the charges as he did not receive the lab results of the blood tests from NMS Labs.

The Commonwealth is not required to file charges as soon as it obtains any evidence of a defendant's guilt. *Commonwealth v. McCauley*, 588 A.2d 941 (Pa. Super. 1991). A delay for a reasonable investigation does not violate due process even if it adversely affects the defendant's case. *Id.* With respect to a claim of denial of due process based on inordinate delay between the commission of an offense and indictment, the primary protection against stale prosecutions is whatever limitation period established for a particular offense. However, even when the indictment occurs within the relevant limitation period, an accused may nevertheless seek dismissal of the charges when he can establish that the delay denied him his due process of law. *Commonwealth v. Louden*, 803 A.2d 1181 (Pa. 2002). In determining whether prearrest delay violates due process, the inquiry must consider both the existence of prejudice to the accused and the reasonableness of the Commonwealth's delay. *Commonwealth v. Wright*, 865 A.2d 894 (Pa. Super. 2004). The Defendant must demonstrate that the pre-arrest delay was the product of intentional, bad faith or reckless conduct of the prosecution *Commonwealth v. Scher*, 803 A.2d 1204 (Pa. 2002). When an accused claims prejudice through the loss of a witness or evidence, the accused must demonstrate in what specific manner the witness would have aided the defense, how the delay caused the harm, and that the lost testimony or evidence is not available by other means. *Commonwealth v. Scher*, 803 A.2d 1204 (Pa. 2002) (a plurality opinion). To prevail on prearrest delay, the Defendant must establish that the prearrest delay caused him actual prejudice, that is, it substantially impaired his ability to defend against the charges. *Id.* To establish actual prejudice, the accused must establish that he was meaningfully impaired in his ability to defend against the state's charges to such an extent that the disposition of the criminal proceeding was likely affected. *Id.* It is not sufficient for a defendant to make speculative or conclusory claims of possible prejudice as the result of the passage of time. *Id.*

The Defendant alleges that he lost the opportunity to have his blood tested by an independent laboratory because of the passage of time and that evidence became una-

available. However, he was aware that his blood had been drawn and made no direct request of the lab or state police to retain the evidence. He also made no specific allegations as to why an independent testing of the blood would have given a different exculpatory result. As the Defendant has only shown speculative harm and not actual harm he has failed to establish the first prong of the two part test.

The Trooper testified that he failed to receive the NMS test results on the Defendant's blood. He on two occasions attempted to obtain the result. Once it was obtained he timely filed the charges. Without the results of the report, he was unable to proceed on what charges, if any, should be filed. The credibility of the officer is not at issue in this proceeding. The Trooper admitted that he had delayed filing due to his failure to receive the lab report. Without the lab report, he had no basis on which to file the charge. However, the evidence presented establishes a reasonable basis for the delay. The Defendant failed to establish that the delay was intentional so that the prosecution could gain a tactical advantage over the Defendant.

As the charges were filed within the statute of limitations for the charge of Driving Under the Influence, the Defendant's Motion is without merit and therefore denied.

ORDER

AND NOW, this 8th day of March 2021, after consideration of the Omnibus Pretrial Motion filed in this case, the motion is hereby DENIED. The Defendant's case is to be placed. back on the trial list.

BY THE COURT:
Wagner, P.J.

ATTEST:
Clerk of Courts

LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, April 21st** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: **Sheriff's Sales**
- Presenters: Anne N. John, Esquire, and Charles O. Zebley, Esquire

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

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- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2016

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**** All fees to be paid at the door ****

A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Monday, April 19th.

WARMAN ABSTRACT & RESEARCH LLC

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