

# FAYETTE LEGAL JOURNAL

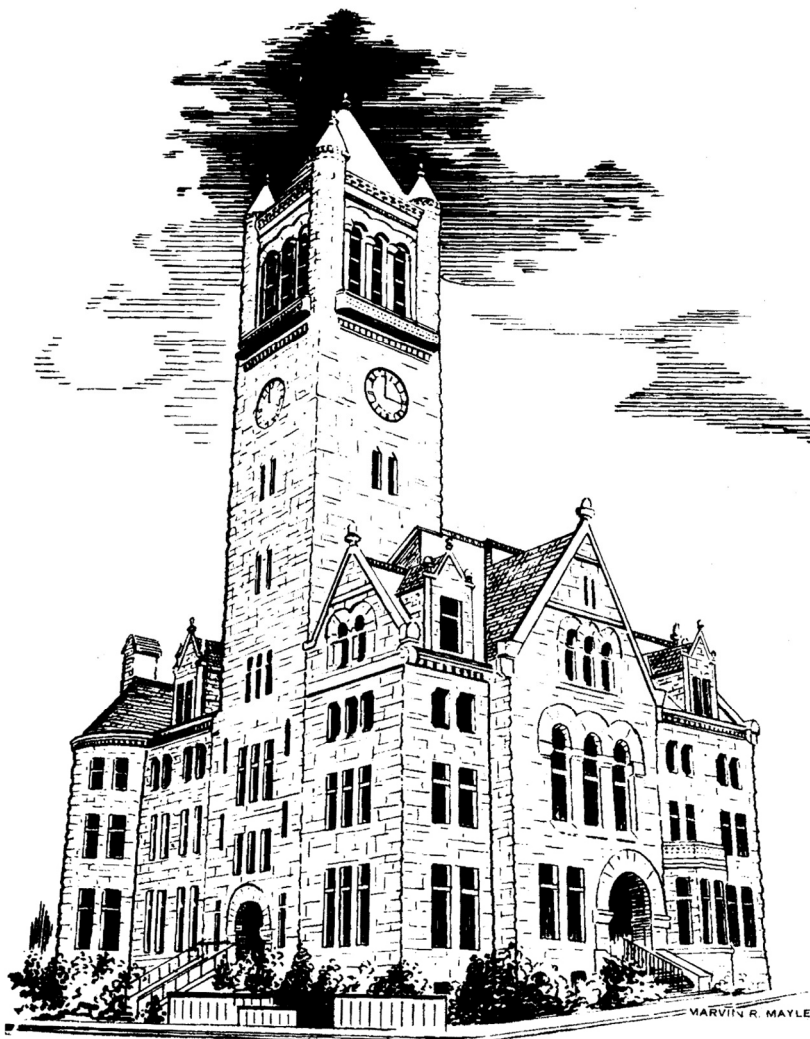
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## FAYETTE LEGAL JOURNAL

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

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The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

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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

**DONALD BEREITER, a/k/a DONALD J. BEREITER, JR.**, late of North Union Township, Fayette County, PA <sup>(3)</sup>

*Administratrix:* Haley F. Bereiter  
c/o Goodwin Como, P.C.  
108 North Beeson Boulevard, Suite 400  
Uniontown, PA 15401  
*Attorney:* Benjamin Goodwin

**STELLA J. BROADWATER**, late of Brownsville, Fayette County, PA <sup>(3)</sup>

*Personal Representative:*  
Jodi Lynn Delgado  
c/o Dellarose Law Office, PLLC  
99 East Main Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Melinda D. Dellarose

**PATRICIA M. FRANKS, a/k/a PATRICIA FRANKS**, late of Masontown, Fayette County, PA <sup>(3)</sup>

*Personal Representatives:*  
Gerald R. Solomon and Eugene Franks, III  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Samuel J. Davis

**TAYLOR GALL, a/k/a TAYLOR WALLACE GALL**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Vicki J. Gall  
c/o Higinbotham Law Offices  
68 South Beeson Boulevard  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**KENNETH R. LYNN**, late of Belle Vernon, Fayette County, PA <sup>(3)</sup>

*Executrix:* Pamela J. Ambrose  
616 Henry Street  
Belle Vernon, PA 15012  
c/o 1202 West Main Street  
Monongahela, PA 15063  
*Attorney:* James W. Haines, Jr.

**JOHN A. MOLINARO**, late of Springfield Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Francis Molinaro  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**FANNIE MARGARET WATT**, late of North Union Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Walter Leonard Dillinger  
c/o Higinbotham Law Offices  
68 South Beeson Boulevard  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**GARNET J. WINEMILLER**, late of Bullskin Township, Fayette County, PA <sup>(3)</sup>

*Personal Representatives:*  
Robert K. Winemiller and  
Randy R. Winemiller  
c/o 208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

### Second Publication

**GEORGE W. CHRISTNER, a/k/a GEORGE CHRISTNER**, late of Grindstone, Redstone Township, Fayette County, PA <sup>(2)</sup>

*Personal Representative:* Ray Christner  
c/o Dellarose Law Office, PLLC  
99 East Main Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Melinda Deal Dellarose

**ANN Y. COMADENA**, late of Washington Township, Fayette County, PA <sup>(2)</sup>

*Executor:* Mark E. Comadena  
208 South Bone Drive  
Normal, Illinois 61761  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

---

**JANE GARY, a/k/a JANE A. GARY**, late of Fayette County, PA (2)

*Co-Executors:*

Kimberly F. Martz

P.O. Box 120

Donegal, PA 15628

Kelly J. Miller

371 Albright's Lake Road

Greensburg, PA 15601

c/o 533 Rugh Street, Suite 3

Greensburg, PA 15601-5635

*Attorney:* L. Christian DeDiana

---

**ROBERT J. HOLLIS, SR.**, late of Georges Township, Fayette County, PA (2)

*Administratrix:* Roberta Haines

c/o 84 East Main Street

Uniontown, PA 15401

*Attorney:* Vincent M. Tiberi

---

**KATHRINE L. LUDWIG, a/k/a KATHRINE LEE LUDWIG, a/k/a KATHRINE LUDWIG**, late of Dunbar Township, Fayette County, PA (2)

*Co-Executors:*

Donald G. Ludwig, III

129 Morrell Road

Dunbar, PA 15431

Yvonne Ludwig

733 Boyce Road

Bridgeville, PA 15017

c/o 329 West Otterman Street

Greensburg, PA 15601

*Attorney:* Judith K. Ciszek

---

**MARY ALICE NICKELSON, a/k/a MARY A NICKELSON**, late of Bullskin Township, Fayette County, PA (2)

*Personal Representative:* David Nickelson

c/o 208 South Arch Street, Suite 2

Connellsville, PA 15425

*Attorney:* Richard A. Husband

---

**ALICE FAYE NIDA**, late of Wharton Township, Fayette County, PA (2)

*Administratrix:* Melissa Turner

c/o P.O. Box 727

Uniontown, PA 15401

*Attorney:* Melissa Turner

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## First Publication

**LORETTA M. AUL, a/k/a LORETTA MAE AUL**, late of Washington Township, Fayette County, PA (1)

*Executor:* George Francis Aul

117 Hillman Street

Belle Vernon, PA 15012

c/o 1747 Rostraver Road

Belle Vernon, PA 15012

*Attorney:* Megan A. Kerns

---

**RICHARD WAYNE BITNER, a/k/a RICHARD W. BITNER**, late of Connellsville, Fayette County, PA (1)

*Personal Representative:* Seth R. Bitner

c/o Watson Mundorff, LLP

720 Vanderbilt Road

Connellsville, PA 15425

*Attorney:* Timothy J. Witt

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**CHARLES S. BROWNFIELD**, late of Uniontown, Fayette County, PA (1)

*Executrix:* Ann LeReche

c/o Proden & O'Brien

99 East Main Street

Uniontown, PA 15401

*Attorney:* Wendy L. O'Brien

---

**TIMOTHY DAVID CHESLER, a/k/a TIMOTHY D. CHESLER**, late of Uniontown, Fayette County, PA (1)

*Executrix:* Sara Ryan Chesler

c/o Radcliffe Law, LLC

648 Morgantown Road, Suite B

Uniontown, PA 15401

*Attorney:* William M. Radcliffe

---

**PHILLIP CRAIG DYE, a/k/a PHILLIP C. DYE**, late of Connellsville, Fayette County, PA

*Co-Executors:* Ronald J. Haggerty, Jr. and

Carole L. Gratchic (1)

c/o Casini & Geibig, LLC

815B Memorial Boulevard

Connellsville, PA 15425

*Attorney:* Jennifer M. Casini

---

**JOHN POLIDORA**, late of Connellsville, Fayette County, PA (1)

*Personal Representative:* Anthony Polidora

c/o Watson Mundorff, LLP

720 Vanderbilt Road

Connellsville, PA 15425  
 Attorney: Timothy J. Witt

**ELWOOD D. RITENOUR**, late of White,  
 Fayette County, PA (1)

*Executor:* Ronald Alonzo Ritenour  
 c/o Radcliffe Law, LLC  
 648 Morgantown Road, Suite B  
 Uniontown, PA 15401  
*Attorney:* William M. Radcliffe

**DIANNA JEAN ZAWACKI**, late of South  
 Union Township, Fayette County, PA (1)

*Executor:* Lee Zawacki  
 c/o 815A Memorial Boulevard  
 Connellsville, PA 15425  
*Attorney:* Margaret Z. House

## LEGAL NOTICES

### 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 12, 2022, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of CandleHut Media with the principal place of business at: 325 Wickhaven Road, Wickhaven, PA 15492. The name or names and addresses of persons owning and interested are: Jamie Lee Finch.

### NOTICE OF CERTIFICATE OF ORGANIZATION - LIMITED LIABILITY COMPANY

Notice is hereby given that Certificate of Organization was filed and approved with the Department of State of the Commonwealth of Pennsylvania for a limited liability company formed under the Limited Liability Company Law of 1994 on the 10th day of October, 2021. The name of the company is BELLA TIZZO BOUTIQUE, Limited Liability Company.

Margaret Zylka House, Esq.  
 815A Memorial Boulevard  
 Connellsville, PA 15425  
 724-628-4955

### NOTICE

Notice is hereby given that a Certificate of Organization has been approved and filed with the Department of State for the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania on December 2, 2021 for a Limited Liability Company known as Artistically Inked, L.L.C.

Said Limited Liability Company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania. The purpose and purposes of the Limited Liability Company are designing and applying tattoos for customers and any or all lawful purposes related thereto, for which a limited liability company may be organized under the Business Corporation Law, as amended.

Donald McCue Law Finn, P.C.  
 813 Blackstone Road,  
 Connellsville, PA 15425

# SHERIFF'S SALE

Date of Sale: March 17, 2022

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, March 17, 2022, at 2:00 p.m. in Courtroom Number Five at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (2 of 3)

James Custer  
Sheriff Of Fayette County

Hladik, Onorato & Federman, LLP  
of Counsel to Greenspoon Marder LLP  
298 Wissahickon Avenue  
North Wales, PA 19454

No. 1656 of 2020 GD  
No. 193 of 2021 ED

**Wilmington Savings Fund Society FSB, as Trustee of Stanwich Motigage Loan Trust A, (Plaintiff)**

vs.

**David T. Budinsky aka David Theodore Budinsky and Mary Budinsky aka Mary Irene Budinsky, (Defendant)**

By virtue of Writ of Execution No. 2020-1656

Wilmington Savings Fund Society FSB, as Trustee of Stanwich Motigage Loan Trust A, (Plaintiff) vs. David T. Budinsky aka David Theodore Budinsky and Mary Budinsky aka Mary Irene Budinsky, (Defendant)

Property Address 224 Mountain View Road, Uniontown, PA 15401161 Lucky Lane, Dawson,

Parcel I.D. No. 3427018701

Improvements thereon consist of a residential dwelling.

Judgment Amount: \$111,662.69

Brock & Scott, PLLC

No. 1733 of 2020 GD  
No. 213 of 2021 ED

**U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BNC MORTGAGE LOAN TRUST 2007-2 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-2**

v.

**JOHN ALBERT CLAY; JILLIAN N. CLAY**

By virtue of a Writ of Execution No. 1733 of 2020

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR BNC MORTGAGE LOAN TRUST 2007-2 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-2 V. JOHN ALBERT CLAY; JILLIAN N. CLAY

owner(s) of property situate in the PERRY TOWNSHIP, FAYETTE County, Pennsylvania, being 46 MEMORIAL DR. PERRYOPOLIS. PA 15473

Tax ID No. 27-10-0071

Improvements thereon: RESIDENTIAL

DWELLING

Judgment Amount: \$104,041.06

KML LAW GROUP, P.C.  
Suite 5000  
701 Market Street  
Philadelphia, PA 19106-1532  
(215) 627-1322

No. 2711 of 2019 GD  
No. 195 of 2021 ED

**NATIONSTAR MORTGAGE LLC D/B/A  
CHAMPION MORTGAGE COMPANY  
8950 Cypress Waters Boulevard Coppell, TX  
75019**

**Plaintiff**

**vs.**

**FRANK FAUST Solely in His Capacity as  
Heir of John G. Faust Deceased  
JOHN FAUST Solely in His Capacity as Heir  
of John G. Faust Deceased  
NANCY I. FAUST Solely in Her Capacity as  
Heir of John G. Faust Deceased  
The Unknown Heirs of John G. Faust  
Deceased  
VICKI ROSENSTEEL Solely in Her  
Capacity as Heir of John G. Faust Deceased  
Mortgagor(s) and Record Owner(s)  
1320 Hawthorne Street  
Connellsville, PA 15425  
Defendant(s)**

ALL THAT CERTAIN LOT OF LAND  
SITUATE IN TOWNSHIP OF  
CONNELLSVILLE, COUNTY OF FAYETTE  
AND COMMONWEALTH OF  
PENNSYLVANIA.

BEING KNOWN AS: 1320  
HAWTHORNE STREET, CONNELLSVILLE,  
PA 15425

TAX PARCEL #06-03-0030  
IMPROVEMENTS: A RESIDENTIAL  
DWELLING

SOLD AS THE PROPERTY OF: FRANK  
FAUST Solely in His Capacity as Heir of John  
G. Faust Deceased, JOHN FAUST Solely in His  
Capacity as Heir of John G. Faust Deceased,  
NANCY I. FAUST Solely in Her Capacity as  
Heir of John G. Faust Deceased, The Unknown  
Heirs of John G. Faust Deceased AND VICKI  
ROSENSTEEL Solely in Her Capacity as Heir  
of John G. Faust Deceased

No. 336 of 2020 GD

No. 209 of 2021 ED

**PNC Bank, National Association  
Plaintiff,  
vs.**

**Aaron B. Hollis, AKA Aaron Hollis; Bobby L.  
Hollis, AKA Bobby Hollis  
Defendants.**

ALL that certain parcel of land lying and  
being situate in the Borough of Fayette City,  
County of Fayette, and Commonwealth of  
Pennsylvania, known as 179 Connellsville  
Street, Fayette City, PA 15438 having erected  
thereon a dwelling house.

Being known and designated as Tax ID  
No.: 12030011

BEING the same premises which Joyce  
Moody and Enoch James Eley, Jr., Co-Executors  
of the Estate of Wilma Eley, deceased, Gerald L.  
Eley, Craig Moody, Laura Moody, Wesley  
Moody, Leonard Eley, Jr., Linnie Druciak,  
Deborah Parshall, James M. Eley and Janet  
Maher, by Deed dated November 16, 2006 and  
recorded in and for Fayette County,  
Pennsylvania in Deed Book 3008, Page 1026,  
granted and conveyed unto Aaron B. Hollis and  
Bobby L. Hollis, husband and wife.

No. 1831 of 2021 GD

No. 232 of 2021 ED

**MID PENN BANK, successor in interest to  
SCOTSDALE BANK & TRUST  
COMPANY,  
Plaintiff**

**v.**

**ROBBY KIMMEL  
Defendant**

**PARCEL A:**

All that certain parcel of land lying and  
being situate in the Borough of South  
Connellsville, Fayette County, Pennsylvania,  
known as 108 Park Avenue, South  
Connellsville, PA, 15425.

Being known and designated as Tax ID  
No.: 33-07-0033

Being the same premises which Robby  
Kimmel a/k/a Robbie Kimmel, Executor of the  
Estate of Dale Kimmel, Deceased, by Deed  
dated March 5, 2013 and recorded March 8,  
2013 in the Office of the Recorder of Deeds in  
and for the County of Fayette in Record Book  
3213, Page 1351, granted and conveyed unto  
Robbie Kimmel a/k/a Robby Lee Kimmel.

**PARCEL B:**

All that certain parcel of land lying and being situate in the City of South Connellsville, formerly Connellsville Township, Fayette County, Pennsylvania, known as 1927-1929 First Street, Connellsville, PA 15425.

Being known and designated as Tax ID No.: 33-07-0032

Being the same premises which Robby Kimmel a/k/a Robbie Kimmel, Executor of the Estate of Dale Kimmel, Deceased, by Deed dated September 24, 2012 and recorded September 24, 2012 in the Office of the Recorder of Deeds in and for the County of Fayette in Record Book 3199, Page 763, granted and conveyed unto Robbie Kimmel a/k/a Robby Lee Kimmel.

No. 1107 of 2021 GD  
No. 194 of 2021 ED

**Deutsche Bank National Trust Company, as Trustee for Popular ABS, Inc., Series 2007-A, Plaintiff,**

**v. Benjamin Knox, Defendant(s).**

SITUATE IN THE THIRD WARD OF THE GERMAN TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 643 Stevenson Street, Ronco, PA 15476

PARCEL NO. 15-31-0010 and 15-31-0002 IMPROVEMENTS- RESIDENTIAL REAL ESTATE SOLD AS THE PROPERTY OF- Benjamin Knox

No. 1789 of 2021 GD  
No. 214 of 2021 ED

**The Huntington National Bank Plaintiff,**

**vs. Clayton W. Miller Defendant.**

ALL that certain parcel of land lying and being situate in the Borough of South Connellsville, County of Fayette, and Commonwealth of Pennsylvania, known as 1819 2nd Street, Connellsville, PA 15425 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 33080058

BEING the same premises which John R. Lohr and Myrna L. Lohr, husband and wife, by Deed dated July 29, 2008 and recorded in and for Fayette County, Pennsylvania in Deed Book 3068, Page 2254, granted and conveyed unto Clayton W. Miller, married.

DWALDMANLAW, P.C.  
BY: JENNIE C. SHNAYDER, ESQUIRE  
ID #315213  
4900 CARLISLE PIKE, #182  
MECHANICSBURG, PA 17050  
TELEPHONE: (844) 899-4162  
FACSIMILE: (844) 882-4703

No. 617 of 2020 GD  
No. 224 of 2021 ED

**AMERICAN CAPITAL GROUP, LLC**

**vs. Charles L. Murphy, Sr. Maureen Murphy**

All that certain two (2) pieces, parcels or lots of land situate in the City of Connellsville, County of Fayette and Commonwealth of Pennsylvania

TAX PARCEL# 05-11-0045 and 05-11-0046  
PROPERTY ADDRESS: 250 E. Fairview Avenue, Connellsville, PA 15425

Hladik, Onorato & Federman, LLP  
298 Wissahickon Avenue  
North Wales, PA 19454

No. 192 of 2021 GD  
No. 920 of 2021 ED

**The Bank of New York Mellon As Trustee for CWABS, Inc. Asset-Backed Certificates, Series 2005-17**

**(Plaintiff) vs. Becky Ridgely, (Defendant)**

By virtue of Writ of Execution No. 2021-00920

The Bank of New York Mellon As Trustee for CWABS, Inc. Asset-Backed Certificates, Series 2005-17 (Plaintiff) vs. Becky Ridgely, (Defendant)

Property Address 161 Lucky Lane, Dawson, PA 15428  
Parcel I.D. No. 1804006301



Improvements thereon consist of a residential dwelling.

Judgment Amount: \$81,623.59

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No. 988 of 2019 GD  
No. 225 of 2021 ED

**PNC Bank, National Association**  
**Plaintiff,**  
**vs.**  
**Seven Point Five, LLC**  
**Defendant.**

ALL that certain parcel of land lying and being situate in the Borough of Perryopolis, County of Fayette, and Commonwealth of Pennsylvania, known as 97 Knox, AKA 97 Knox Street, Perryopolis, PA 15473 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 28070054

BEING the same premises which The Fayette County Tax Claim Bureau, by Deed dated November 19, 2018 and recorded in and for Fayette County, Pennsylvania in Deed Book 3389, Page 688, granted and conveyed unto Seven Point Five, LLC.

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\*\*\* END SHERIFF'S SALE \*\*\*

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# **WARMAN ABSTRACT & RESEARCH LLC**

**JOHN F. WARMAN**  
**518 Madison Drive**  
**Smithfield, PA 15478**  
**724-322-6529**  
**johnfranciswarman@gmail.com**

**COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE**

**A DECADE OF EXPERIENCE   E&O INSURED   WILL TRAVEL   ACCEPTING NEW CLIENTS**

**JUDICIAL OPINION**

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

Commonwealth of Pennsylvania :  
 :  
 v. :  
 Jason William Golden, :  
 Defendant. : No. 1674 of 2020

OPINION

Cordaro, J.

SUMMARY

As a result of a stop of Defendant's vehicle, Defendant was charged with Possession of a Controlled Substance with Intent to Deliver and other related crimes. Currently before the Court is Defendant's Omnibus Pretrial Motion, which challenges the legality of the stop and the subsequent interrogation of Defendant. This Court held a Hearing on the Motion on February 25, 2021. No testimony was presented at the Hearing; rather, the parties submitted video evidence of the stop and interrogation at the Hearing for this Court to review and were allowed time after the Hearing to submit memorandums in support of their respective arguments. After reviewing the evidence presented and the relevant caselaw on the matter, Defendant's Omnibus Pretrial Motion is granted.

BACKGROUND

The relevant facts of this case as set forth in the Affidavit of Probable Cause are as follows:

On 07/12/2019, at approximately 1417 hours, I [Trooper Kezmarsky] was in full uniform operating unmarked Pennsylvania State Police Unit B04-29. I was traveling south bound on 43 at mile marker 17.2 when I observed a white Mitsubishi four door PA registration.KRP-8319 traveling at a high rate of speed. I paced the vehicle until mile marker 15-4. The vehicle was traveling 80 mph in a posted 70 mph zone. I activated my emergency equipment and conducted a traffic stop at the off ramp of 43 exit 15. As I approached on the driver side, I contacted [Defendant], he indicated that his operating license was suspended Oater it was confirmed [Defendant's] operating license was suspended DUI related). I then identified [Passenger]. Both parties displayed signs of nervousness throughout the traffic stop even after I told the driver I was going to give him a warning. I asked [Defendant] to exit the vehicle and speak with me in front of my unit. I asked [Defendant] if there was anything illegal in the vehicle and if the vehicle was his, he stated "No, its hers", then stated both of theirs. I asked [Defendant] if I could search the vehicle, he told me to ask [Passenger]. I asked [Passenger], if the car was hers, she stated "Both of ours". I asked if I could search the vehicle [Passenger] stated "Umm, I don't care". As she exited the vehicle, she had a handbag in her possession. I asked if it was okay if I search her bag and she stated "Yeah". Located inside of her handbag was a black

zipper bag that had a lock on it. I asked [Passenger] what was inside she stated, "My Methadone". After I asked for her prescription, she changed her statement and stated that there was not any Methadone inside of the bag.

[Passenger] could not provide a prescription for the controlled substance. [Passenger] was not willing to open the bag. I told [Passenger] that the bag was containing heroin and a large amount of money later to be counted (\$1,040 USC), as I could feel it when I pulled it out of her handbag.

[Defendant] and [Passenger] were taken back to PSP Uniontown and the vehicle was towed to PSP Uniontown. All evidence was transported back to PSP Uniontown.

...

(Affidavit of Probable Cause, 5/21/18, at 1). The Commonwealth subsequently charged Defendant with traffic and drug offenses, and Passenger with drug offenses.

Defendant filed an Omnibus Pretrial Motion on February 9, 2021. Passenger, who retained separate counsel, also filed an Omnibus Pretrial Motion, raising similar challenges. A Hearing on both Omnibus Pretrial Motions was held on February 25, 2021.

This Court reviewed the MVR of the traffic stop, which was submitted into evidence by agreement of all parties at the Hearing. The events in Trooper Kezmarsky's Affidavit of Probable Cause are accurate. However, this Court notes that Trooper Kezmarsky also told Defendant not once, not twice, but three times that the Trooper was only going to issue a warning and let him go before the Trooper asked Defendant whether he could search his vehicle. The arresting troopers in the MVR also made it clear that the continued detention of Defendant and Passenger after the initiation of the stop was because Defendant seemed excessively nervous. Additionally, Passenger was very apprehensive when the troopers asked to search the vehicle.

## DISCUSSION

Defendant's Omnibus Pretrial Motion challenges the legality of aspects of the stop of his vehicle and the subsequent interrogation. This Court finds that aspects of the stop were unconstitutional and that any evidence produced thereafter shall be suppressed. As such, this Court declines to review any issues related to the interrogation of Defendant.

The Fourth Amendment to the United States Constitution as well as Article 1, Section 8 of the Pennsylvania Constitution guarantee the right of The People to be free from unreasonable searches and seizures, and that no warrant shall issue except upon probable cause. The protection provided by Article 1, Section 8 of the Pennsylvania Constitution "extends to areas where an individual has a reasonable expectation of privacy." *Commonwealth v. Shaw*, 710 A2d 295, 299 (Pa. 2001). A search conducted without a warrant is presumed to be unreasonable-and thus unconstitutional-unless an established exception applies. *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000). Unreasonable searches and seizures include those "entailing only a brief detention." *Id.*

Law enforcement officers may stop a vehicle if they believe that a provision of the

Motor Vehicle Code is being violated. *Commonwealth v. Pless*, 679 A.2d 232, 233 (Pa. Super. Ct. 1996) (citing *Commonwealth v. DeWitt*, 608 A.2d 1030, 1032 (Pa. 1992)). Here, Trooper Kezmarsky pulled Defendant over for allegedly driving 80 mph in a 70-mph zone. Trooper Kezmarsky's stop of Defendant's vehicle was therefore constitutional.

Incident to a stop, officers "may check the vehicle's registration and the driver's license and issue a citation." *Pless* at 233 (citing *Commonwealth v. Talley*, 634 A.2d 640,643 (Pa. Super. Ct. 1993)). However, "[a]fter producing a valid driver's license and vehicle registration, the driver must be allowed to proceed without further delay by the police, unless the police have 'reasonable grounds to suspect an illegal transaction in drugs or other serious crime[s].'" *Pless* at 233 (citing *Commonwealth v. Lopez*, 609 A2d 177, 182 (Pa. Super. Ct. 1992)).

Beyond the initial traffic stop, a law enforcement officer may detain an individual in order to conduct an investigation if the officer reasonably suspects that the individual is engaging in criminal conduct. *Commonwealth v. Kemp*, 961A.2d 1247, 1255 (Pa. Super. Ct. 2008) (citing *Commonwealth v. Rogers*, 849 A.2d 1185, 1189 (Pa. 2004) (internal citation omitted)). The reasonable suspicion standard is less stringent than probable cause. *Id.* In order to determine whether an officer had reasonable suspicion, the totality of the circumstances must be considered. *Id.* This is to determine whether the officer who initiated the stop had a "particularized and objective basis" for suspecting the individual stopped. *Commonwealth v. Reppert*, 814 A2d 1196, 1203-04 (Pa. Super. Ct. 2002) (internal citations omitted). To establish grounds for reasonable suspicion, the officer must articulate specific observations that, in conjunction with reasonable inferences derived from those observations, led the officer to reasonably conclude, in light of the officer's experience, that criminal activity was afoot and the person stopped was involved in that activity. *Reppert* at 1204 (citing *Commonwealth v. Cook*, 735 A2d 673, 677 (Pa. 1999)).

"[T]he fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of the intrusion warrant a [person] of reasonable caution in the belief that the action taken was appropriate." *Reppert* at 1204 (internal citations, quotes, and brackets omitted). Another role of the suppression court is to determine at which point an officer's interaction with a driver becomes a seizure. See *Reppert* at 1204 ("We conclude, initially, that the [suppression] court failed to recognize the point at which [the officer's] interaction with [the driver] became a seizure . . .").

In *Reppert*, *supra*, an officer pulled a vehicle over for expired inspection and registration stickers. *Reppert* at 1199. The driver told the officer that he had been stopped for that same reason three days prior, and that the other officer had given him five days in which to have the car inspected. *Id.* The officer accepted the explanation without issuing a citation. *Id.* The officer then observed a passenger in the backseat who appeared nervous and who had been moving his head and shoulder prior to the stop. *Id.* Based on those reasons, he ordered the passenger out of the vehicle and eventually found drugs on his person. *Id.*

The Superior Court in *Reppert* held that the officer did not have reasonable suspi-

cion to search the passenger based on furtive head and shoulder movements or based on his nervous appearance, stating that "[o]ur courts have determined, on several occasions, that ... excessive nervousness [does not] provide a sufficient basis upon which to conduct an investigatory detention." *Id.* at 1205.

Similarly, in *Commonwealth v. Sierra*, the Pennsylvania Supreme Court held that excessive nervousness could not be used to demonstrate, or even suggest, illegal activity. *Commonwealth v. Sierra*, 723 A.2d 644,647 (Pa. 1999). Likewise, the Pennsylvania Superior Court recently affirmed that "absent more, a police officer's assessment that the occupants of a vehicle appear nervous does not provide reasonable suspicion for an investigative detention." *Commonwealth v. Mattis*, ---A.3d---, 2021 WL 1707124 at \*3 (Pa. Super. Ct. Apr. 30, 2021).

There are several cases where the appellate courts have held that nervousness was a contributing factor to reasonable suspicion. See, i.e., *Commonwealth v. Kemp*, 961A2d 1247, 1254 (Pa. Super. Ct. 2008); *Commonwealth v. Rogers*, 849 A2d 1185, 1190 (Pa. 2004). However, 'in those cases there were other factors besides just nervousness. In *Kemp*, when the trooper approached the vehicle, he was overpowered by the scent of air fresheners. *Kemp* at 1254. That trooper testified that based on his training and experience, air fresheners were being utilized as a masking agent to obscure the odor of drugs. *Id.* The trooper also testified that the driver was operating a third-party vehicle, and was unable to name the owner. *Id.* Additionally, the trooper detected an odor of raw marijuana. *Id.*

In *Rogers*, the driver was nervous and had a prior drug conviction, but also provided the officer with incomplete documents, had an opened box of laundry detergent on the backseat, and was unable to provide the officer with details of his travel plans. *Rogers* at 1187-88. In both *Kemp* and *Rogers*, nervousness was only one of several factors wherein the courts held that the officers had reasonable suspicion to continue their investigations.

Here, Trooper Kezmarsky stopped Defendant's vehicle for speeding. Incident to the stop, Trooper Kezmarsky asked Defendant to produce his driver's license and vehicle registration. Although Defendant's driver's license was suspended, Trooper Kezmarsky told Defendant three times that he was going to let him go with a warning. Rather than letting Defendant go, however, Trooper Kezmarsky continued the detention of Defendant by asking him to get out of his car and questioning him about his travels. This eventually led to the troopers asking Defendant and Passenger whether they would consent to a search of the vehicle. Trooper Kezmarsky cited excessive nervousness as the reason for doing so.

At the point when Trooper Kezmarsky asked Defendant to step out of the vehicle, the purpose for the Trooper's initial stop-which was based on a speeding violation- had already ceased. Trooper Kezmarsky needed reasonable suspicion that Defendant was engaged in criminal activity to continue to detain Defendant after that point. Trooper Kezmarsky only cited that Defendant was excessively nervous to explain his continued detention of Defendant. In accordance with the cases from the higher courts cited supra, excessive nervousness alone is insufficient to continue an investigatory detention of a driver. The subsequent investigation of Defendant and Passenger was therefore uncon-

stitutional, and all evidence produced as a result of such investigation must be suppressed.

#### CONCLUSION

For the foregoing reasons, this Court finds that the evidence obtained as a result of an unconstitutional detention of Defendant during the traffic stop shall be suppressed. Further, Counts 1 through 4 shall be dismissed. Counts 5 and 6 are not affected by this decision.

BY THE COURT:  
Linda R. Cordaro, Judge

ATTEST  
Clerk of Courts

June 11, 2021

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