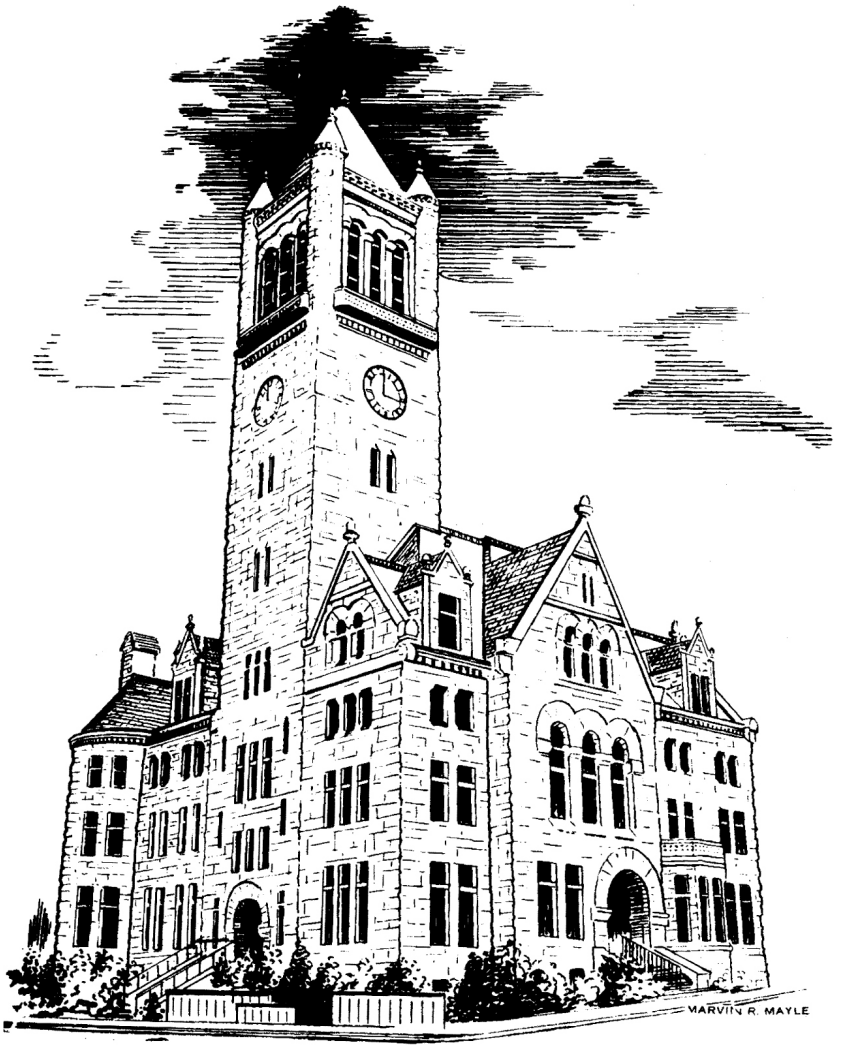
Fayette Legal Journal

VOL. 81 MARCH 31, 2018 NO. 13



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 2 West Main Street, Suite 711, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser.

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

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION
Board of Directors

ETHICS HOTLINE

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.

Call (800) 932-0311, ext. 2214.

LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential, non-judgmental, safe, and effective

To talk to a lawyer today, call:
1-888-999-1941
717-541-4360

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

REBECCA JANE COSTA, late of Connellsville, Fayette County, PA (3)
Administrator: Patricia A. Mandola
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

CAROLE M. EKAS, a/k/a CAROLE STEINHAGEN EKAS, late of Uniontown, Fayette County, PA (3)
Personal Representative: John K. Ekas
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

GEORGE GERBER, late of Menallen Township, Fayette County, PA (3)
Personal Representatives:
George A. Gerber and Terry L. Gerber
c/o 815 A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

HOWARD L. GOUCHER, JR., a/k/a HOWARD LESLIE GOUCHER, JR., late of South Connellsville, Fayette County, PA (3)
Personal Representatives:
Howard L. Goucher, III and
Rayna Dawn Gaydos
c/o 815 A. Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

BEATRICE J. KINNEER, a/k/a BEATRICE JEANE KINNEER, late of Connellsville, Fayette County, PA (3)
Personal Representative: Debra J. Gaudiello
402 E. Francis Avenue
Connellsville, PA 15425
c/o 815 A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

ROBERT J. KUKAN, late of North Union Township, Fayette County, PA (3)
Administrator: Bobbi Jo Chapman
c/o Monaghan & Monaghan, LLP
57 East Main Street
Uniontown, PA 15401
Attorney: Gary D. Monaghan

BERNICE MORRISON, late of South Union Township, Fayette County, PA (3)
Executor: William D. Bennett
13708 South Avenue
Columbiana, OH 44408
c/o 300 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Richard C. Mudrick

KATHLEEN G. SWEITZER, Fayette County, PA (3)
Co-Administrators:
David A. Sweitzer
230 Sweitzer Road
Mt. Pleasant, PA 15666
Amanda L. Stoner
109 Suncrest Court
Canonsburg, PA 15317
c/o 314 Porter Avenue, Suite C
Scottdale, PA 15683
Attorney: David G. Petonic

DIANA D. VINOSKI, late of Dunbar Township, Fayette County, PA (3)
Personal Representative:
Cecilia M. Kokot-Kessler
c/o Watson Mundorff Brooks & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

DONALD KEITH WISE, SR., late of Smithfield Borough, Fayette County, PA (3)
Administrator: Anna Rose Wise
641 Balfour Road
Winston-Salem, NC 27104
c/o 101 North Green Lane
Zelienople, PA 16063
Attorney: Sarah G. Hancher

LYNN ANN WHITE, a/k/a LYNN A. WHITE, late of North Union Township, Fayette County, PA (3)
Personal Representative: Maria Mackelprang
c/o 107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

DOLLIE M. ZAHRON, late of Dunbar Township, Fayette County, PA (3)
Executor: Harold R. Pritts, Jr.
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

Second Publication

RUTH COUGHENOUR, a/k/a RUTH L. COUGHENOUR, late of Bullskin Township, Fayette County, PA (2)
Executrix: Cheryl Kelly
c/o Donald McCue Law Firm, P.C.
Colonial Law Building
813 Blackstone Road
Connellsville, PA 15425
Attorney: Donald J. McCue

MARILYN DWYER, late of Perryopolis Borough, Fayette County, PA (2)
Executor: Allen David Householder
c/o 1103 East Carson Street
Pittsburgh, PA 15203
Attorney: Amy R. Schrempf

ANN ELIAS, a/k/a ANN L. ELIAS, a/k/a ANN LOUISE ELIAS, late of North Union Township, Fayette County, PA (2)
Administrator: Richard J. Silvestro
c/o 556 Morgantown Road
Uniontown, PA 15401
Attorney: John A. Kopas, III

ANNA MAE HARRIS, late of Perryopolis, Fayette County, PA (2)
Executrix: Audrey Harris
205 Blue Top Road
Perrypolis, PA 15473
c/o France, Lint & Associates, P.C.
308 Fallowfield Avenue
Charleroi, PA 15022
Attorney: David N. Lint

ANN LOUISE NATALE, a/k/a ANNA LOUISE NATALE, late of Connellsville, Fayette County, PA (2)
Executor: S. Fred Natale
c/o P.O. Box 760
Connellsville, PA 15425
Attorney: Carolyn W. Maricondi

WILLIAM G. RUSKO, late of Uniontown, Fayette County, PA (2)
Administrator: Susan Swartz
c/o 11 Pittsburgh Street
Uniontown, PA 15401
Attorney: Thomas W. Shaffer

First Publication

JEFFREY L. COZART, late of German Township, Fayette County, PA (1)
Administrator: Jason Cozart
c/o Stepp Law Offices
64 North Richhill Street, Suite 101
Waynesburg, PA 15370
Attorney: Kelly A. Stepp

VIOLET KOBAL, late of Washington Township, Fayette County, PA (1)
Administrator: Patricia Anderson
c/o 35 West Pittsburgh Street
Greensburg, PA 15601
Attorney: Christoper W. Huffman

LOIS ANN ROSNECK, late of Redstone Township, Fayette County, PA (1)
Executrix: Susan L. Danley
c/o Radcliffe Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William M. Radcliffe

SANDRA LEE STEWART, late of Point Marion, Fayette County, PA (1)
Executor: Delbert Lee Stewart
c/o Fieschko & Associates, Inc.
436 7th Avenue, Suite 2230
Pittsburgh, PA 15219
Attorney: Joseph E. Fieschko, Jr.

SYLVIA R. SAVO, a/k/a SALLY SAVO, late of Uniontown, Fayette County, PA (1)
Personal Representative: Sylvia A. Prosser
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

LEGAL NOTICES

NOTICE

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on March 12, 2018, for a limited liability company known as B&T Investments LLC.

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

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

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

Notice of Action in Mortgage Foreclosure
In the Court of Common Pleas of
Fayette County, Pennsylvania
Civil Action – Law
NO. 2043 of 2017

KeyBank, N.A. successor by merger to First Niagara Bank,
Plaintiff
vs.
Clifford Bowser, Known Heir of Evelyn Broadwater a/k/a Evelyn R. Broadwater, Roy M. Broadwater a/k/a Roy Broadwater, Jr., Known Heir of Evelyn Broadwater a/k/a Evelyn R. Broadwater and Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or Under Evelyn Broadwater a/k/a Evelyn R. Broadwater,
Defendants.

Notice of Sale of Real Property

To: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Evelyn Broadwater a/k/a Evelyn R. Broadwater and Clifford Bowser, Known Heir of Evelyn Broadwater a/k/a Evelyn R. Broadwater, Defendant(s), whose last known addresses are 19 Old Pittsburgh Lane, Franklin n/k/a Smock, PA 15480-0000; 111 Meadowood Street, Greensboro, NC 27409 and 3718 West Avenue, Greensboro, NC 27407.

Your house (real estate) at 19 Old Pittsburgh Lane, Franklin n/k/a Smock, PA 15480-0000, is scheduled to be sold at the Sheriff's Sale on 5/3/18 at 2:00 p.m. in the Fayette County Courthouse, 61 Main St., Uniontown, PA 15401, to enforce the court judgment of $51,755.70, obtained by Plaintiff above (the mortgagee) against you. If the sale is postponed, the property will be relisted for the Next Available Sale. Property Description: ALL THAT CERTAIN LOT OF LAND SITUATE IN FRANKLIN TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA. Being Known as 19 Old Pittsburgh Lane, Franklin n/k/a Smock, PA 15480-0000. PARCEL NUMBER: 13080019. IMPROVEMENTS: RESIDENTIAL PROPERTY. TITLE TO SAID PREMISES IS VESTED IN ROY BROADWATER AND EVELYN BROADWATER, HIS WIFE BY DEED FROM CHARLES H. NOAKES AND MARIE M.

NOAKES, HUSBAND AND WIFE DATED 10/25/1957 RECORDED 1/22/1958 IN DEED BOOK 892 PAGE 172. UDREN LAW OFFICES, P.C. IS A DEBT COLLECTOR AND THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU ARE NOT OBLIGATED UNDER THE NOTE OR YOU ARE IN BANKRUPTCY OR YOU RECEIVED A DISCHARGE OF YOUR PERSONAL LIABILITY UNDER THE NOTE IN BANKRUPTCY, THIS COMMUNICATION IS NOT SENT TO COLLECT THE DEBT; RATHER, IT IS SENT ONLY TO PROVIDE INFORMATION WITH REGARD TO THE LENDER'S RIGHT TO ENFORCE THE LIEN OF MORTGAGE. Udren Law Offices, P.C., Attys. for Plaintiff, 111 Woodcrest Rd., Ste. 200, Cherry Hill, NJ 08003, 856.669.5400.

SHERIFF'S SALE

Date of Sale: May 3, 2018

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, May 3, 2018, 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. (3 of 3)

James Custer
Sheriff Of Fayette County

Stephen M. Hladik, Esquire
Hladik, Onorato & Federman, LLP 298
Wissahickon Avenue
North Wales, PA 19454

No. 1989 of 2017 GD
No. 44 of 2018 ED

Home Point Financial Corporation,
Plaintiff,
vs.
Blane E. Prinkey, Jr. and Kierstin B. Prinkey,
Defendants.

Property Address: 108 Hess Lane, Connellsville, PA 15425

Parcel I.D. No. 06-02-0048

Improvements thereon consist of a residential dwelling.

Judgment Amount: $114,895.24 (3 of 3)

JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA,		
vs.	:	
ETHAN STEWART KENNEY,	:	NO. 1323 of 2014
Defendant.	:	Judge Nancy D. Vernon

OPINION AND ORDER

VERNON, J. March 19, 2018

Before the Court are four Motions Nunc Pro Tunc to Dismiss filed by Defendant, Ethan Stewart Kenney, requesting dismissal of (1) Accidents Involving Death or Personal Injury – 75 Pa.C.S. §3742(a) for Spoliation of Evidence, (2) DUI: Minor – First Offense – 75 Pa.C.S. §3802(e) due to Warrantless Collection of Defendant's Blood, (3) Homicide by Vehicle while DUI – 75 Pa.C.S. §3735(a) for Spoliation of Evidence and Warrantless Collection of Defendant's Blood, and (4) All Counts.

PROCEDURAL HISTORY

The procedural history of this case is lengthy. Defendant filed an Omnibus Pretrial Motion on September 17, 2014, a hearing was held before the Honorable President Judge John F. Wagner, Jr. on December 2, 2014, and thereafter Defendant filed an Amended Omnibus Pretrial Motion on December 16, 2014 and a Second Amended Omnibus Pretrial Motion on February 9, 2015. Following an extended briefing schedule, by Opinion and Order dated May 18, 2015, President Judge Wagner denied Defendant's Omnibus Pretrial Motion and Amendments.

Thereafter, in preparation for trial, Defendant attempted to inspect his vehicle involved in the accident, to which the Commonwealth did not produce the vehicle, and resulting in Defendant's filing of a discovery motion and a Motion to Dismiss for Spoliation of Evidence with this Court. The Court directed on September 29, 2015 that the Commonwealth permit Defendant to inspect and examine the vehicle by a date certain or should it fail to do so, this Court ordered "the Commonwealth of Pennsylvania's examination of said vehicle is PRECLUDED FROM TRIAL." The Commonwealth failed to make the vehicle available to the Defendant.

From this Order, and still without advising the Court of the whereabouts of the vehicle, the Commonwealth appealed to the Superior Court noting the Order of September 29, 2015 substantially handicapped its prosecution. The Superior Court affirmed on January 6, 2017, and the Supreme Court of Pennsylvania denied the Commonwealth's

Petition for Allowance of Appeal. The matter returned to the Court of Common Pleas and Defendant filed the within Motions on July 7, 2017. A hearing was held pursuant to these Motions on September 21, 2017, and briefs were received by this Court from the Defendant and the Commonwealth in mid-December 2017.

For consideration in this Court's decision, the Commonwealth presented the Preliminary Hearing Transcript, dated July 4, 2012, as Exhibit 1; the report of Cyril Wecht of Pathology Associates Incorporated as Exhibit 2; Certificate of Death as Exhibit 3; the Report of Trooper Charles Morrison as Exhibit 4; the photographs of the scene, collectively entered, as Exhibit 5; and the Omnibus Pretrial Motion Hearing Transcript before Honorable President Judge John F. Wagner, Jr., dated December 2, 2014, and the Opinion and Order, dated May 18, 2015, as Exhibit 6.

DISCUSSION

Accidents Involving Death or Personal Injury – 75 Pa.C.S. §3742(a) for Spoliation of Evidence

In his first Motion, Defendant moves to dismiss the charge of Accidents Involving Death or Personal Injury. In support of his Motion, Defendant paraphrases the Court's Order of September 29, 2015, when he argues that "the Commonwealth is prohibited from providing any testimony and/or evidence relating to said vehicle." See, OPT, paragraph 18. Defendant also cites in support of the dismissal that the Commonwealth admitted in its Notice of Appeal that the Court Order of September 29, 2015, "substantially handicap[ped] the prosecution" pursuant to Pa.R.A.P. 311(d).

Initially, we must clarify Defendant's interpretation of the Court Order of September 29, 2015. Defendant repeated throughout his Motion that this Court "entered an Order directing the Commonwealth to make the vehicle available for inspection by Friday, October 2, 2015, or any evidence relating to said vehicle would be precluded from trial." See, OPT, paragraph 10.

A review of the Order of September 29, 2015, reveals this Court precluded the "testimony and/or evidence of the Commonwealth of Pennsylvania's examination of said vehicle." Importantly, the Court excluded the testimony and evidence related to the "examination" of the vehicle and not "any evidence" of the vehicle as Defendant contends. This distinction in wording is notable as Defendant now attempts to preclude photographs of the accident scene which depict the vehicle by relying on the Order of September 29, 2015, and arguing the photographs are impermissible "evidence" of the vehicle.

The Record supports that the Order of September 29, 2015 was entered in fairness to Defendant since the Commonwealth utilized an expert to examine the vehicle and the Defendant was unable to do so. See, Motions Court Proceedings, N.T., 9/28/2015. With regard to photographs and testimony of the accident scene, the Commonwealth and Defendant have had equal access to photographs, including the depictions therein of

the vehicle. This Court will not preclude the evidence, including photographs, or testimony of matters that were determined by the Commonwealth from investigating the accident scene, rather only precluding testimony and evidence learned through actual examination of the vehicle.

Turning now to the charge of Accidents involving death or personal injury, 75 Pa.C.S.A. § 3742(a) mandates that a person who is involved in a motor vehicle accident, which results in personal injury or death, stop at or as close to the scene as possible and remain there until the requirements of Section 3744 are met. Section 3744 requires, in pertinent part, that a driver who is involved in an accident resulting in injury or death must give his name, his address, and the registration number of the vehicle he is driving to the other driver, and, upon request, he must exhibit his driver's license and financial responsibility card to any police officer at the scene of the accident or who is investigating the accident. Also, the driver must render reasonable assistance to anyone involved in the accident. 75 Pa.C.S.A. § 3744.

> When analyzing ... [a defendant's] behavior under this standard to determine whether it violated the Act, two things must be observed. One, the purpose of the Act must be considered. As the Commonwealth Court observed in Commonwealth v. Stamoolis, 6 Pa.Cmwlth. 617, 297 A.2d 532, 533 (1972), the aim of the law was at preventing drivers from leaving the scene of the accident and trying to avoid their responsibilities. Second, in applying the law strictly an absurd result must not follow.

Commonwealth v. Klein, 795 A.2d 424 (Pa.Super 2002) quoting Commonwealth v. Gosnell, 327 Pa.Super. 465, 476 A.2d 46, 48 (1984).

Julia Livengood testified that on June 9, 2013, she saw Catherine Healy leave a party with Ethan Kenney in a truck. Preliminary Hearing, N.T., 7/24/2104, at 67. Livengood left behind them, approximately ten to fifteen minutes later, driving Jeremy Castrodad, and within five minutes of leaving the party came upon a guardrail in the middle of Ridge Boulevard and saw the crashed truck. Id. at 68-69, 79. Livengood and Castrodad called 911 at 3:08 a.m. and stopped at the scene of the accident where she saw one passenger in the truck and "realized that it was Cat." Id. at 69, 79. Livengood then saw Defendant in the woods, behind a tree, and when she identified herself, Defendant came out of the woods. Id. at 70. Livengood described the victim's condition as "blood and guts everywhere […] couldn't really recognize that it was her. She was gasping for air, breathing really heavily." Id. at 71. When he came out of the woods, Livengood testified that the Defendant jumped back into the truck and tried to resuscitate the victim. Id. at 73. After the EMTs and State Police arrived, Livengood did not see Defendant ever talk to anyone and she watched as he walked back into the woods. Id. at 74. Trooper Andrew Barron of the Pennsylvania State Police was on the scene of the accident for two to three hours and no driver of the vehicle was identified by the Pennsylvania State Police as being present on scene. Id. at 28. Defendant was located at 6:00 a.m. walking approximately fifty yards from his father's home. Id. at 44.

In analyzing Defendant's behavior, we find that he did not substantially fulfill the Act's requirements. There is no contention that Defendant was not the driver of the vehicle in which Catherine Anne Healy, a passenger, died as a result of injuries sustained in the accident – fulfilling the necessary elements of "person involved in motor vehicle accident" and "death" in the Act. Following the accident, Defendant left the vehicle, leaving Catherine Healy alone in the truck, entered the nearby woods and stood behind a tree, returning to render aid only once the occupants of the car passing by identified themselves. According to Livengood, Defendant then left the scene again once police arrived, never to return.

Although Defendant contends the legislative intent of the act is to avoid "hit and run" type of accidents, the Superior Court has opined "the aim of the law was at preventing drivers from leaving the scene of the accident and trying to avoid their responsibilities." Klein, supra. The law of Pennsylvania required Defendant to remain at the scene of the accident until the requirements of Section 3744 were met. Section 3744 required Defendant to "exhibit his driver's license and financial responsibility card to any police officer at the scene of the accident or who is investigating the accident." Defendant, the driver of a vehicle involved in a fatal motor vehicle accident, left the scene without identifying himself as the driver of the vehicle. These actions could easily be described as an apparent attempt to avoid responsibility and were sufficient evidence to establish a violation of Accidents Involving Death or Personal Injury, 75 Pa.C.S. §3742(a).

Defendant's further contention that the Commonwealth's appeal certified that the Order of September 29, 2015, "substantially handicap[ped] the prosecution" and thus, according to Defendant, would be unable to establish a prima facie evidence of Accidents Involving Death or Personal Injury, is without merit upon the analysis of the facts presented to this Court, independent of any examination of the vehicle. As such, the Motion to Dismiss this count is denied.

DUI: Minor – First Offense – 75 Pa.C.S. §3802(e)
due to Warrantless Collection of Defendant's Blood

Defendant next contends that the warrantless collection of his blood after being advised of Pennsylvania's Implied Consent law pursuant to O'Connell violates the Supreme Court of the United States holding in Birchfield v. North Dakota, 136 S.Ct. 2160 (2016). Birchfield held that implied consent laws which impose criminal penalties on drivers who refuse to submit to blood tests violate the Fourth Amendment. Following Birchfield, the Superior Court of Pennsylvania has observed that Pennsylvania's implied-consent law "impose[s] criminal penalties on the refusal to submit to" a blood test in contravention of Birchfield. Commonwealth v. Evans, 153 A.3d 323, 331 (Pa.Super. 2016) (quoting Birchfield, 136 S.Ct. at 2185–86).

Through interviews of Livengood and Castrodad and matching the vehicle registration to Defendant's father, the Pennsylvania State Police determined that Defendant,

Ethan Kenney, date of birth January 2, 1995, was alleged to be the driver of the vehicle. Preliminary Hearing, N.T., 7/24/2104, at 29. In an attempt to locate the Defendant, Trooper Patrick Biddle of the Pennsylvania State Police began driving towards the Defendant's father's residence on Laurel Hill Road, Dunbar, Pennsylvania at six o'clock in the morning. Id. at 43-44. Approximately fifty yards before arriving at the residence, Trooper Biddle observed a male walking along the side of the roadway with blood on his face, cuts on his arms, and remnants of "plants" on his shirt. Id. at 44. Trooper Biddle approached the man, now identified as the Defendant, and immediately smelled the odor of alcohol on his breath and observed that his eyes were bloodshot. Id. at 44-45. Trooper Biddle opined that Defendant was under the influence of alcohol and was not capable of safely operating a motor vehicle. Id. at 45.

Trooper Biddle took Defendant into custody, stopped at his father's house to advise him what was going on, and then took him straight to the hospital to secure a blood sample. Id. at 45, 56. Trooper Biddle read Defendant his O'Connell warnings at the hospital at 7:15 am and Defendant submitted to a blood draw. Id. at 46.

At the time set for hearing on the instant Motions, the following exchange occurred between this Court and the Assistant District Attorney:

> The Court: Before we begin, do we have a stipulation by the Commonwealth that this is a Birchfield decision.
> Mr. Peck: Yes, Your Honor.
> The Court: So that is not an issue that needs to be testified to?
> Mr. Peck: Correct.

N.T., Omnibus Pretrial Motion, 9/21/2017, at 23.

Nonetheless, in responding to Defendant's Motion pursuant to Birchfield, the Commonwealth does contest that Defendant's consent was voluntary and the suppression of his blood alcohol content is not warranted pursuant to Birchfield. In the only hearing to occur after the Birchfield decision, on September 21, 2017, the Commonwealth presented no evidence or testimony to this Court regarding the application of Birchfield. Thus, the Court is constrained to rely on the previously developed record.

The only evidence of record regarding Defendant's consent occurred through the testimony of Trooper Biddle at the preliminary hearing:

> Q: Did you issue him O'Connell warnings and ask him to submit to a blood test?
> A: Yes, at the hospital at approximately seven fifteen (0715) hours, I did read him his O'Connell warnings.
> Q: Did you say seven fifteen (7:15) or seven fifty (7:50)?
> A: Seven fifteen (7:15).
> Q: Seven fifteen (7:15). And did he submit to a blood draw?
> A: He did.

Preliminary Hearing, N.T., 7/24/2104, at 46.

> In determining the validity of a given consent, the Commonwealth bears the burden of establishing that a consent is the product of an essentially free and unconstrained choice—not the result of duress or coercion, express or implied, or a will overborne—under the totality of the circumstances. The standard for measuring the scope of a person's consent is based on an objective evaluation of what a reasonable person would have understood by the exchange between the officer and the person who gave the consent. Such evaluation includes an objective examination of the maturity, sophistication and mental or emotional state of the defendant. Gauging the scope of a defendant's consent is an inherent and necessary part of the process of determining, on the totality of the circumstances presented, whether the consent is objectively valid, or instead the product of coercion, deceit, or misrepresentation.

Commonwealth v. Ennels, 167 A.3d 716, 723 (Pa. Super. 2017) quoting Commonwealth v. Smith, 77 A.3d 562, 573 (Pa. 2013).

The Commonwealth argued in its brief that Defendant, from the time he was picked up on the side of the road until his blood was drawn, did not "refuse to provide his blood sample or question or raise concern over being informed of the right to refuse under §1547. The record clearly proves that the Defendant had more than thirty minutes and multiple opportunities to object, but he did not express that he was overborne once during that time frame." The Commonwealth's argument of "failing to object" misstates the law of consent in the Commonwealth. The Superior Court's decision in Ennels, supra, is controlling. In Ennels, as in the instant case, the police officer read the DL–26 Form to Ennels, who had been arrested on suspicion of DUI; Ennels signed the form and the officer conducted the warrantless blood draw. On appeal from the trial court's grant of Ennels' suppression motion, the Superior Court applied Birchfield and concluded that the trial court did not err in finding Ennels' consent invalid "because Ennels consented to the blood draw after being informed that he faced enhanced criminal penalties for failure to do so[.]" Ennels, supra at 724.

As in Ennels, Defendant consented to the warrantless blood draw after being informed, by the police, that refusal to submit to the test could result in enhanced criminal penalties. Clearly, under Birchfield, the voluntariness of Defendant's consent to the blood draw is questionable, given that he provided his consent only after being informed that harsher penalties would apply if he refused, and as such the results of the test for Defendant's blood alcohol content are suppressed. Consequently, the Court must consider whether sufficient evidence remains, independent of Defendant's blood alcohol content, that could be considered by the fact finder in determining whether Defendant could be convicted of driving under the influence.

Defendant is charged with DUI by a Minor, Section 3802(e), which provides that "[a] minor may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the minor's blood or breath is 0.02% or higher within two hours after the minor has driven, operated or been in actual physical control of the movement of the vehicle."

Section 3802(e) involves a narrowly focused inquiry that is solely concerned with a determination of whether a defendant, under the age of twenty-one, had a 0.02% or greater blood alcohol level at the time he drove a motor vehicle. Evidence beyond that provided by a scientific testing of a defendant's blood alcohol level is not relevant to a determination of whether an accused violated Section 3802(e). No abundance of impairment evidence could remedy the technical shortcoming of lack of blood alcohol content. Commonwealth v. Loeper, 663 A.2d 669 (Pa. 1995). Having suppressed Defendant's blood alcohol concentration, supra, it is clear the Commonwealth cannot establish a 0.02% or greater blood alcohol level for conviction on a violation of 75 Pa.C.S. §3802(e).

Following Birchfield, prosecutions initiated by relying on blood alcohol content have routinely been amended to charge instead DUI - general impairment pursuant to 75 Pa.C.S. §3802(a)(1). Should the Commonwealth move to amend the Information from 75 Pa.C.S. §3802(e) - minor to 75 Pa.C.S. §3802(a)(1) - general impairment, the Court will grant the same. Considering this as a possibility, Defendant submitted in his brief argument that the Commonwealth also cannot sustain a conviction for DUI – general impairment.

Evidence of impairment, independent of blood alcohol content, is relevant in proving a general impairment charge of driving under the influence. To convict under §3802(a)(1), the Commonwealth must prove that the defendant was operating a motor vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely operating the motor vehicle. Commonwealth v. Kerry, 906 A.2d 1237 (Pa.Super. 2006).

Where a motorist is charged with a violation of §3802(a)(1), there is no restraint upon the Commonwealth in the manner in which it may prove that an accused was intoxicated to a degree that rendered him incapable of safe driving. Loeper, supra. In Segida, our Supreme Court addressed the sufficiency of the evidence required to sustain a DUI conviction pursuant to Section 3802(a)(1). Commonwealth v. Segida, 985 A.2d 871 (Pa. 2009). "The types of evidence that the Commonwealth may proffer in a subsection 3802(a)(1) prosecution include but are not limited to, the following: the offender's actions and behavior, including manner of driving and ability to pass field sobriety tests; demeanor, including toward the investigating officer; physical appearance, particularly bloodshot eyes and other physical signs of intoxication; odor of alcohol, and slurred speech." Id. In addition, the Commonwealth may introduce the opinion of a qualified police officer that the motorist was under the influence of alcohol to a degree which rendered the defendant incapable of safe driving and the occurrence of a one-vehicle accident under circumstances suggestive of serious driver error. Commonwealth v. Palmer, 751 A.2d 223 (Pa.Super. 2000); Commonwealth v. Mahaney, 540 A.2d 556, 559 (Pa.Super. 1988). The accident itself may constitute evidence that a motorist drove when he was incapable of doing so safely. Segida at 881. Evidence generally supportive of a criminal prosecution showing a defendant's consciousness of guilt includes his flight from the scene of the alleged crime. Commonwealth v. Clark, 961

A.2d 80, 91-92 (Pa. 2008). The Supreme Court also instructed, "The weight to be assigned these various types of evidence presents a question for the fact-finder, who may rely on his or her experience, common sense, and/or expert testimony." Segida at 879.

Intoxication is a matter of common observation and lay persons are permitted to tender their opinion on the issue. See In Interest of Wright, 401 A.2d 1209 (Pa.Super. 1979); Commonwealth v. Boerner, 407 A.2d 883 (Pa.Super. 1979) (intoxication is not a condition outside the realm of understanding or powers of observation of ordinary persons). A police officer may utilize both his experience and personal observations to render an opinion as to whether a person is intoxicated. Commonwealth v. Bowser, 624 A.2d 125 (Pa.Super. 1993), Commonwealth v. Williams, 941 A.2d 14 (Pa.Super. 2008).

Police officers have also been permitted to express opinions as to a defendant's capability to safely operate a vehicle. In Commonwealth v. Neiswonger, the Superior Court upheld a DUI conviction that included a police officer's opinion that the defendant was not capable of safely driving a vehicle, even though the officer had not observed the defendant driving. Commonwealth v. Neiswonger, 488 A.2d 68 (Pa.Super. 1985). Regardless of whether the police officer observed a defendant driving, the Superior Court held that the officer, if he has perceived a defendant's appearance and acts, is competent to testify to his opinion as to the defendant's state of intoxication and to his ability to drive a vehicle safely. Id. The Superior Court held that "the appearance of capacity of safe driving is as much a matter of common knowledge as is the appearance of intoxication." Id.

Our Supreme Court has interpreted the requirement of "under the influence of alcohol" as:

> The statute does not require that a person be drunk, or intoxicated, or unable to drive his automobile safely in traffic, but merely that the Commonwealth prove beyond a reasonable doubt that the defendant was operating his automobile under the influence of intoxicating liquor ... The statutory expression "under the influence of intoxicating liquor" includes not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of drinking alcoholic beverages and (a) which makes one unfit to drive an automobile or (b) which substantially impairs his judgment, or clearness of intellect, or any of the normal faculties essential to the safe operation of an automobile.

Commonwealth. v. O'Bryon, 820 A.2d 1287, 1291 (Pa.Super. 2003) quoting Commonwealth v. Griscavage, 517 A.2d 1256, 1258 (Pa. 1986).

The Superior Court also held that a police officer's testimony regarding the defendant's actions in leaving the scene of the crash were consistent with drunken driving than with a head injury that the defendant claimed that she suffered as a result of the accident. O'Bryon, supra. The Commonwealth is not required to prove that Defendant did not imbibe alcohol after the accident. Segida, supra.

Here, the Commonwealth presented the testimony of Trooper Biddle who testified that Defendant left the scene of the accident and was located approximately three hours later walking towards his home. Preliminary Hearing, N.T., 7/24/2104, at 45. Trooper Biddle could smell the odor of alcohol emanating from Defendant when he initiated contact and noted that Defendant had bloodshot eyes. Id. at 45. Trooper Biddle also testified that Defendant did not have anything on his person. Omnibus Pretrial Proceedings, N.T., 12/2/2014, at 5. Trooper Biddle offered the opinion that Defendant was under the influence of alcohol and that he was not capable of safely operating a motor vehicle. N.T., 7/24/2104, at 45. Further, Trooper Biddle testified that while in custody in the police car and without being prompted, Defendant stated, "It sucks making one mistake that can fuck up your life." Id. at 45.

The Commonwealth also presented the testimony of fact witness Julia Livengood who testified that she was at a party with Defendant where she observed the Defendant drinking alcohol that "looked like a beer" and that she believed Defendant to be intoxicated at the party around 1:30 a.m. on the morning of the accident. Id. at 87, 90. Livengood left the party from 1:30 a.m. until she returned to retrieve items around 3:00 a.m., and could not provide any details on Defendant's drinking, or not drinking, alcohol in that timeframe. Id. at 90. When she came upon the accident scene, Livengood testified that she remained about fifteen feet away from Defendant's person and was never close enough to Defendant to determine whether she could smell alcohol. Id. at 81-82. Livengood "couldn't say" whether Defendant was intoxicated at the accident scene, testifying that "[Defendant] wasn't stumbling around, either, but I'm sure that just like in the moment, an adrenaline rush was in effect, also. I don't see why he wouldn't be drunk. He had been drinking all night, so--." Id. at 87-88.

Lastly, the Commonwealth presented the emergency medical personnel, Paramedic Gabriel Nalepka, who first responded to the scene to testify that upon arrival he noted a black truck with "catastrophic damage." Omnibus Pretrial Proceedings, N.T., 12/2/2014, at 6-7. Nalepka observed a female in the passenger seat with "a large gaping wound across her face, copious amounts of blood everywhere." Id. at 7. He also observed one male attempting chest compressions and mouth to mouth ventilations. Id. Nalepka was unable to identify Defendant as the male operator, but denied seeing any open containers of alcohol or "anything around" the vehicle. Id. at 7-8. Nalepka did testify "the smell of alcohol was prevalent throughout the vehicle." Id. EMT Katherine Boyle responded with Nalepka on the ambulance and noted a couple of people outside of the vehicle yelling for help and a male and female occupant inside the vehicle. Id. at 10-11. Boyle confirmed that she did not see anything on the male inside the vehicle but also could not identify Defendant as the male. Id. at 11-12.

We note that the Commonwealth, in initiating this prosecution, relied on Defendant's blood alcohol content for evidence of Defendant's intoxication. The Pennsylvania State Police did not perform field sobriety tests on the Defendant when they first encountered him. Preliminary Hearing, N.T., 7/24/2104, at 54. Trooper Biddle did perform an HGN test on Defendant when he was at the hospital prior to the blood draw.

The Commonwealth inferred the result was a failure of the test, but the Trooper never testified to the result nor was the failure submitted to the Court in evidence or testimony. Id. at 54.

The Horizontal Gaze Nystagmus (HGN) test requires an officer to move an object gradually out of the driver's field of vision toward his ear and to watch the driver's eyeball to detect involuntary jerking. Commonwealth v. Miller, 532 A.2d 1186, 1188-89 (Pa.Super. 1987). HGN test results have been deemed scientific evidence based on the scientific principle that alcohol consumption causes nystagmus. Id. Therefore, an adequate foundation must be presented prior to admission of HGN test results. Commonwealth v. Stringer, 678 A.2d 1200 (Pa.Super. 1996). The testimony must establish that the scientific procedure "has gained general acceptance in the scientific community as a whole due to its reliability, as evidenced by published scientific studies." Id. The Miller Court also held that the testimony of the officer who administered the test, whose sole training was a two-day course on the test, did not qualify him as an expert to testify about the test's scientific principles or its general acceptance in the scientific community. Id. Thus, even if Defendant failed the HGN test, a proper foundation for admission was not presented by the Commonwealth and the HGN test will not be considered in our decision.

Here, Julia Livengood testified that Defendant "had been drinking all night." Defendant's actions and behavior reveal that he was the driver of the truck involved in a one-vehicle accident during dry road conditions and that he fled the scene. The accident itself can constitute evidence that Defendant drove when he was incapable of doing so safely. The medical personnel testified Defendant's vehicle smelled of alcohol. During Defendant's first contact with police, the odor of alcohol was emanating from his person and his eyes were bloodshot. This evidence and testimony, if believed by the fact-finder, could support a jury's determination that Defendant was incapable of safe driving as a result of consuming alcohol. Based on this evidence and testimony, we will permit the Commonwealth to proceed on a charge of DUI – general impairment.

Homicide by Vehicle while DUI – 75 Pa.C.S. §3735(a)
for Spoliation of Evidence and Warrantless Collection of Defendant's Blood

Again relying on the Commonwealth's certification that the Order of September 29, 2015 substantially handicapped the prosecution and the allegation that the Order precluded the Commonwealth from "presenting any evidence and/or expert testimony regarding the vehicle," Defendant moves for the dismissal of the Homicide by Vehicle while DUI charge. Section 3735(a) provides that:

> Any person who unintentionally causes the death of another person as the result of a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and who is convicted of violating section 3802 is guilty of a felony of the second degree when the violation is the cause of death and the sentencing court shall order the person to serve a minimum term of imprisonment of

> not less than three years. A consecutive three-year term of imprisonment shall be imposed for each victim whose death is the result of the violation of section 3802.

The offense of homicide by vehicle while driving under the influence consists of three distinct elements: 1) driving under the influence of alcohol or controlled substance; 2) the death of another person; and 3) death as the result of driving under the influence. Commonwealth v. Caine, 683 A.2d 890, 892 (Pa.Super. 1996). The first element, driving under the influence, has been discussed herein, and the second element, the death of Catherine Anne Healy is not in contention. The third element – whether the DUI violation is the "cause of death" – is Defendant's contention in this Motion.

It is undisputed that the Commonwealth must prove a direct causal relationship between the acts of a defendant and the victim's death. Criminal responsibility is properly assessed against one whose conduct was a direct and substantial factor producing the death. Commonwealth v. Fabian, 60 A.3d 146, 151 (Pa.Super. 2013). "A defendant's actions are the legal cause of death if they are a direct and substantial factor in bringing it about." Commonwealth v. Paquette, 301 A.2d 837, 839 (Pa. 1973). Causation is an issue of fact for the jury. Commonwealth v. Kostra, 502 A.2d 1287, 1289 (Pa.Super. 1985); Commonwealth v. Hicks, 353 A.2d 803, 805 (Pa. 1976).

Defendant alleges that the Commonwealth's evidence is not sufficient to show that his alleged intoxication was the cause of the accident and, therefore, of the victim's death. Appellant suggests that the evidence establishes that the accident would have occurred regardless of the state of his intoxication, and directs the Court to this testimony of Pennsylvania State Police Trooper Todd Stephenson at the preliminary hearing:

> Q: […] What specific evidence do you have to present today to this Judge that driving while legally intoxicated was the direct and substantial cause of the accident and Ms. Healy's death? In other words, could this accident have happened the same way whether or not Ethan Kenney was intoxicated? That's my question. Please answer it.
> A: Could this accident have happened the same way ---
> Q: Yes.
> A: -- if he was or was not -- yes.

Preliminary Hearing, N.T., 7/24/2104, at 135-136.

We must note that Defendant argued this Motion to the Honorable President Judge John F. Wagner, Jr., based upon this same testimony, and the issue was decided by Opinion and Order dated May 18, 2015. President Judge Wagner opined:

> Taking into account the whole of Trooper Stephenson's testimony and that of other witnesses, as well as the findings set forth in the autopsy report, the Court finds that the Commonwealth met its prima facie burdens as to Defendant driving under the influence of alcohol, as well as the charge of homicide by vehicle while DUI,

> by presenting the testimony of witness Julia Livengood and Pennsylvania State Troopers Patrick Biddle and Todd Stephenson. Such evidence in the totality of the circumstances establishes prima facie that Defendant was the driver of the vehicle, that he had been drinking alcohol prior to the accident to the extent that he was not capable of safely operating a motor vehicle, that Defendant was speeding at more than twice the speed limit immediately before his vehicle left the road and struck the guardrail, a bridge abutment, and a tree, and that a young woman who was a passenger in Defendant's vehicle died of head injuries she sustained in the crash. See Autopsy Report.

Opinion and Order dated May 18, 2015, at 3-4.

Reviewing this finding, the only evidence President Judge Wagner relied on that is now excluded by this Court's Order of September 29, 2015, would be "that Defendant was speeding at more than twice the speed limit" since the same could not be established without examination of data recovered from the vehicle and any reliance on the "whole of Trooper Stephenson's testimony" that would have been derived from examination of the vehicle post-accident.

Turning back to the evidence presented following this Court's Order of September 29, 2015, the Commonwealth presented the testimony of Trooper Morrison and Trooper Stephenson to establish the charge of Homicide by Vehicle while DUI subsequent to the exclusion of the examination of the vehicle. At the hearing on the instant Motion before this Court, Trooper Charles Morrison, who serves as a Forensic Services Unit Member, testified as to what he observed and photographs that he took of the accident scene. Hearing on Omnibus Pretrial Motion Proceedings, N.T., 9/21/2017, at 23-24 and 26-47. Trooper Morrison testified that the speed limit at the crash scene was 25 miles per hour. Id. at 27.

In relation to the posted speed limit, Defendant cross-examined Trooper Morrison, an argument first presented to President Judge Wagner, that the posting of the speed limit of 25 miles per hour is a nullity since an engineering and traffic study was not completed pursuant to 75 Pa.C.S. §3363. President Judge Wagner opined that:

> "Any local speed limit in effect prior to the enactment of the 1976 Vehicle Code is "grandfathered in" and was not invalidated by the current version of the Code. […] The Commonwealth is entitled to a rebuttable presumption that the speed limit signs on Ridge Boulevard are official signs and were posted in conformity with the requirements of the Motor Vehicle Code and were lawfully authorized."

Opinion and Order dated May 18, 2015, at 5.

Finding this issue has already been decided, we will again deny any motion to suppress evidence that the posted speed limit is 25 miles per hour, but we will also note 67 Pa. Code § 212.108 provides, "Engineering and traffic studies are not required for statutory speed limits […]."

Trooper Todd Stephenson was then recognized as an expert in the field of Collision Analysis and Reconstruction Specialist. Id. at 59. Trooper Stephenson opined that he was able to render an opinion as to the vehicle's speed while excluding his examination of the actual vehicle. Id. at 62. Trooper Stephenson opined that he could correlate the path that the vehicle took from the evidence on the ground at the accident scene, namely that the vehicle left the roadway surface and then went into a grassy area, noting a

> "contact patch of a tire starting to angle and starting to pull onto the pavement, that pull off is as a result of the tire mark that is on the roadway and there's striations in that tire mark that you can see in the photos that show the directions of those striations. … [A]ll the evidence leads to the point of rest of that vehicle." Id. at 63 -64.

Trooper Stephenson based the path of travel of the vehicle and the final rest position on the location of the vehicle, rather than any examination performed on the condition of the vehicle. Id. at 64-65. Trooper Stephenson testified that the examination of the accident scene revealed that:

> "the first tire mark that left the roadway was about 86 feet prior to the first point of impact that the vehicle undertook. The vehicle left the roadway. It struck a -- there was a bridge abutment, there was guard rails leading up to that bridge abutment and going away from the bridge abutment. The vehicle struck the guardrail, broke up the guard rail and actually gouged across the bridge abutment, left scarring on the bridge abutment itself. As the vehicle came down, it pressed the guard rail downward which in turn pulled one of the guard rail posts up out. … [T]he vehicle starts to rotate counterclockwise. The vehicle struck a tree and right back across the side of the vehicle. Once that right rear rim of the vehicle hit the tree, it induced rotation in the opposite direction. It caused the vehicle to start to rotate clockwise entering the roadway and coming to rest in the opposite direction that it had initially traveled."

Id. at 65.

Upon this opinion of how the crash occurred, Trooper Stephenson opined that based on his training and experience, that he was "willing to say that the vehicle was not traveling 25 mile an hour as that's not an action that a 25 mile an hour vehicle would take." Id. at 66. Trooper Stephenson continued that the speed of the vehicle was "greater than the posted speed limit undoubtedly." Id. at 66. On cross-examination, Trooper Stephenson admitted he did not know an exact speed of the vehicle, that he could not quantify a speed, and that the speed "could be 26" miles per hour. Id. at 67-70.

The testimony presented to this Court by Trooper Morrison and Trooper Stephenson supplemented the record with regard to the Commonwealth's theory as to how the accident occurred, as determined without examination of the vehicle, and included the

speed of Defendant's vehicle prior to crashing. Defendant argues in his brief that it is "unfathomable" that the Pennsylvania State Police are capable of determining the speed to be greater than 25 miles per hour without relying on examination of the vehicle. Defendant cites in his brief scholarly articles and cases in other jurisdictions that a person cannot consciously disregard information that he had previously learned, and that Trooper Stephenson's testimony was based on evidence that had been suppressed. At the hearing, Trooper Stephenson testified that Defendant's vehicle was traveling greater than 25 miles per hour and testified as to his rendering of how the accident occurred based on his examination of the accident scene. Nothing in Trooper Stephenson's testimony related to the examination of the vehicle post-accident.

Upon this evidence, sufficient at this stage to proceed to trial, the finder of fact would be free to assess and weigh the evidence and testimony in determining whether the alleged DUI violation was the cause of death and the Motion to Dismiss Homicide by Vehicle while DUI is denied.

Motion Nunc Pro Tunc to Dismiss all Counts

Lastly, Defendant moves to dismiss all remaining charges citing the Court's Order of September 29, 2015, the Commonwealth's certification that the prosecution was substantially handicapped, and alleging the Commonwealth had no evidence to demonstrate that the Defendant was under the influence of alcohol. Upon our findings, supra, this Motion is denied.

ORDER

AND NOW, this 19th day of March, 2018, upon consideration of the Motions Nunc Pro Tunc to Dismiss filed by Defendant, Ethan Stewart Kenney, requesting dismissal of Accidents Involving Death or Personal Injury – 75 Pa.C.S. §3742(a); Homicide by Vehicle while DUI – 75 Pa.C.S. §3735(a); and all other counts, it is hereby ORDERED and DECREED the Motions are DENIED.

It is further ORDERED and DECREED that the Motion to Dismiss DUI: Minor – First Offense – 75 Pa.C.S. §3802(e) is GRANTED, but that the Commonwealth is given leave to amend the information in accordance with the foregoing Opinion to charge Defendant with DUI – general impairment.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Clerk of Courts

125th ANNUAL BAR BANQUET

The Board of Directors of the Fayette County Bar Association cordially invites you to the **125th Annual Fayette County Bar Banquet**

A celebration of camaraderie, good food and entertainment in appreciation for your contribution to the Association.

Spouses/guests are welcome & encouraged.
Cocktail attire suggested.

Festivities include…
Hors d/oeuvres & Open Bar @ 5:30 p.m.
Dinner @ 6:30 p.m.
Music by TK the DJ from 5:30 to 10:30 p.m.

Date: April 20, 2018

Location
Aaron's Building
139 Pittsburgh Street
Connellsville, Pennsylvania 15425

Please RSVP by April 11, 2018
by returning your invitation enclosure
or to Cindy at 724-437-7994 or cindy@fcbar.org