

# FAYETTE LEGAL JOURNAL

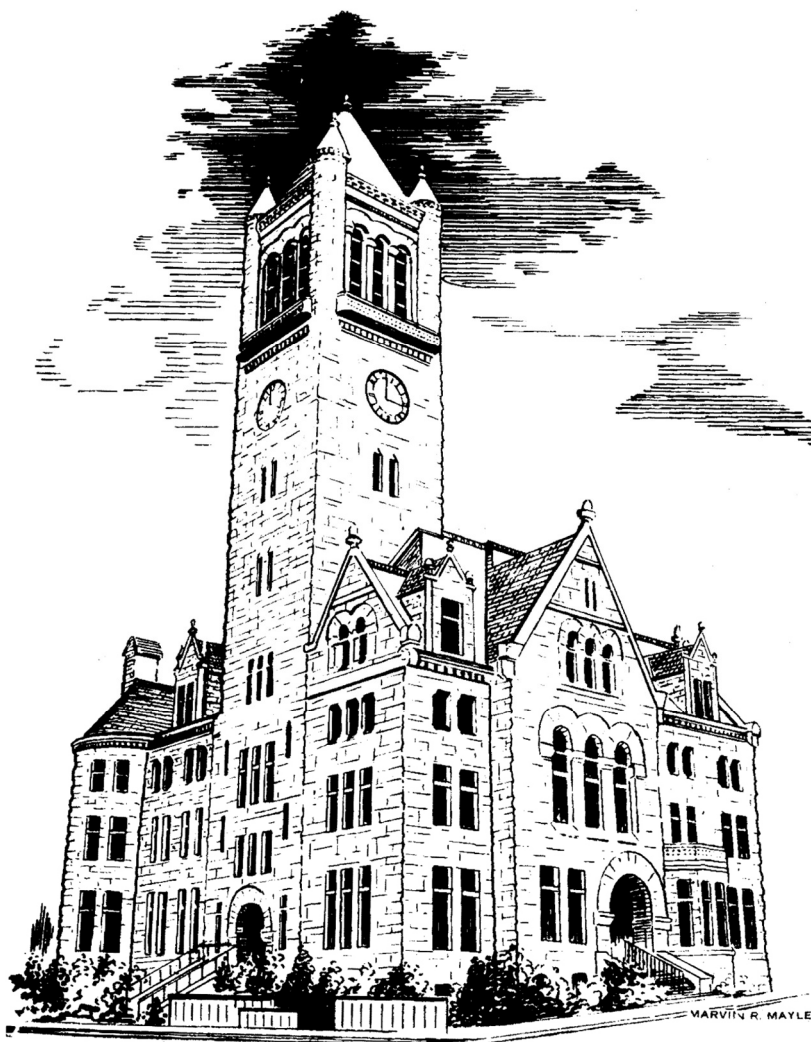
---

VOL. 86

APRIL 22, 2023

NO. 16

---



## FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at [www.fcbar.org](http://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. Copyright 2001 Fayette County Bar Association. All rights reserved.

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

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

## FAYETTE COUNTY BAR ASSOCIATION Board of Directors

**President:** John A. Kopas, III  
**President Elect:** Gretchen A. Mundorff  
**Vice-President:** Sheryl R. Heid  
**Secretary:** Anne N. John  
**Treasurer:** Louise D. Monaghan  
**Past President:** Mark D. Brooks  
**Executive Director:** Garnet L. Gordon

**Directors**  
Jennifer M. Casini  
Rachel A. Clark  
Sarah E. Connelly  
Jeremy J. Davis  
James E. Higinbotham, Jr.  
Margaret Zylka House

### 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

**YVONNE G. BROADWATER, a/k/a  
YVONNE GERALDINE BROADWATER,**  
late of Smock, Fayette County, PA (3)

*Executor:* Robert Eugene Broadwater  
c/o Radcliffe Law, LLC  
648 Morgantown Road, Suite B  
Uniontown, PA 15401  
*Attorney:* Robert R. Harper, Jr.

**LISA CAVALIERE, a/k/a LISA D.  
CAVALIERE, a/k/a LISA DAWN  
CAVALIERE,** late of Uniontown, Fayette  
County, PA (3)

*Administratrix:* Olive Elaine Cavaliere  
c/o Kopas Law Office  
556 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* John Kopas

**NANCY L. COLABIANCHI,** late of North  
Union Township, Fayette County, PA (3)

*Executrix:* Pamela L. Deli  
c/o Radcliffe Law, LLC  
648 Morgantown Road, Suite B  
Uniontown, PA 15401  
*Attorney:* William M. Radcliffe

**LINDA K. DAVIDSON,** late of Bullskin  
Township, Fayette County, PA (3)

*Personal Representative:* Diana R. Lilley  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Robert A. Gordon

**RUTHANNE HOLLIDAY,** late of Hopwood,  
Fayette County, PA (3)

*Administrators:*  
Kenneth Guiser  
135 Victoria Lane  
Hopwood, PA 15445  
Holly Packy  
270 Glenwood Drive  
Ambridge, PA 15003  
Laurel Flaherty  
107 Lang Ct.  
Pittsburgh, PA 15208

**EVELYN A. HOVANEK, a/k/a EVELYN  
ANN HOVANEK,** late of North Union  
Township, Fayette County, PA (3)

*Executor:* Dennis Martin  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

**JOANNE M. LIPTOCK,** late of Menallen  
Township, Fayette County, PA (3)

*Administrator:* Brian M. Liptock  
c/o 9 Court Street  
Uniontown, PA 15401  
*Attorney:* Vincent J. Roskovensky, II

**SHEILA ORLANDI,** late of Redstone  
Township, Fayette County, PA (3)

*Executor:* Anthony S. Dedola, Jr.  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Anthony S. Dedola, Jr.

**DUANE SWANEY, a/k/a DUANE BRUCE  
SWANEY,** late of Fairchance, Fayette County,  
PA (3)

*Executor:* Bruce S. Swaney  
c/o Kopas Law Office  
556 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* John Kopas

## Second Publication

**BETHANY ANNE AUGUSTINE**, late of Dunbar Township, Fayette County, PA (2)  
*Personal Representative:* Marilee Smiley  
 c/o 208 South Arch Street, Suite 2  
 Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**NORMA J. COFFMAN, a/k/a NORMA JEAN COFFMAN**, late of White, Fayette County, PA (2)  
*Executrix:* Pamela A. Glassburn  
 901 Garden Glen Loop  
 Lake Mary, FL 32746  
 c/o 4 North Beeson Boulevard  
 Uniontown, PA 15401  
*Attorney:* Sheryl R. Heid

**DEBORAH A. JAMIESON, a/k/a DEBORAH ANN JAMIESON**, late of South Union Township, Fayette County, PA (2)  
*Executor:* Thomas E. Jamieson  
 c/o Davis & Davis  
 107 East Main Street  
 Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

**EDWARD J. KOBALLA, a/k/a EDWARD JAMES KOBALLA**, late of Dawson, Fayette County, PA (2)  
*Personal Representative:* Lori Hodge  
 c/o 208 South Arch Street, Suite 2  
 Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**CHARLES K. POUNDSTONE, a/k/a CHARLES KEVIN POUNDSTONE**, late of Uniontown, Fayette County, PA (2)  
*Executrix:* Diane Lynn Poundstone  
 c/o Proden & O'Brien  
 99 East Main Street  
 Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

**WILLIAM JOSEPH SIMMEN, a/k/a WILLIAM J. SIMMEN**, late of Franklin Township, Fayette County, PA (2)  
*Personal Representative:* Richard E. Bower  
 c/o George & George  
 92 East Main Street  
 Uniontown, PA 15401  
*Attorney:* G.T. George

**WILLIAM DONALD WELLING**, late of Connellsville, Fayette County, PA (2)  
*Personal Representative:*  
 Mary Margaret Lehman  
 c/o 208 South Arch Street, Suite 2  
 Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**ROBERT G. WYETH**, late of Washington Township, Fayette County, PA (2)  
*Administratrix:* Linda Miller  
 107 Dublin Drive  
 Hunker, PA 15639  
 c/o 823 Broad Avenue  
 Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

**CASIMIR P. ZABELA**, late of Connellsville, Fayette County, PA (2)  
*Personal Representative:* Lou Ann Zabela  
 c/o 208 South Arch Street, Suite 2  
 Connellsville, PA 15012  
*Attorney:* Richard A. Husband

**RICHARD F. ZAIGLIN**, late of Masontown, Fayette County, PA (2)  
*Executor:* Thomas M. Clark, Jr.  
 c/o Goodwin Como, P.C.  
 108 North Beeson Boulevard, Suite 400  
 Uniontown, PA 15401  
*Attorney:* Benjamin F. Goodwin

## First Publication

**ROBERT BEATTY, a/k/a ROBERT E. BEATTY, JR.**, late of South Connellsville Borough, Fayette County, PA (1)  
*Personal Representative:*  
 Sharon L. Whitney, PNC Private Bank  
 c/o Higinbotham Law Offices  
 68 South Beeson Boulevard  
 Uniontown, PA 15401  
*Attorney:* James Higinbotham

**RAYMOND J. CHESS, a/k/a RAYMOND****JOSEPH CHESS**, late of South UnionTownship, Fayette County, PA <sup>(1)</sup>*Executrix:* Alice N. Chess

352 Chess Road

Smithfield, PA 15478

c/o Williams Coulson

420 Fort5 Duquesne Boulevard, 16th. Floor

Pittsburgh, PA 15222

*Attorney:* Mary Jo Corsetti**SANDRA L. COZARD**, late of LuzerneTownship, Fayette County, PA <sup>(1)</sup>*Executrix:* Pamela A. Harman

c/o 51 East South Street

Uniontown, PA 15401

*Attorney:* Anthony S. Dedola, Jr.**TONI LOUISE DEMASSE, a/k/a****ANTOINETTE DEMASSE**, late of RedstoneTownship, Fayette County, PA <sup>(1)</sup>*Executrix:* Nicole Marie Loppolo

c/o Davis &amp; Davis

107 East Main Street

Uniontown, PA 15401

*Attorney:* James T. Davis**GAYLORD R. GARDNER, a/k/a GAYLORD****RAY GARDNER**, late of Fayette County, PA<sup>(1)</sup>*Executrix:* Jennifer Lynn Dzyak

126 Hilltop Drive

Scottdale, PA 15683

c/o 314 C Porter Avenue

Scottdale, PA 15683

*Attorney:* David G. Petonic**DEBRA J. GOTTFREID**, late of RedstoneTownship, Fayette County, PA <sup>(1)</sup>*Administrator:* Branden R. Gottfreid

c/o Monaghan &amp; Monaghan, LLP

57 East Main Street

Uniontown, PA 15401

*Attorney:* Gary D. Monaghan**KEITH CHARLES HUEY**, late ofWaltersburg, Fayette County, PA <sup>(1)</sup>*Administratrix:* Leona Huey

677 Old Route 51 Road

Waltersburg, PA 15488

c/o 4 North Beeson Boulevard

Uniontown, PA 15401

*Attorney:* Shery Heid**ERIC M. JOHNSON**, late of Hopwood,Fayette County, PA <sup>(1)</sup>*Administrator:* Kurt Johnson

c/o Davis &amp; Davis

107 East Main Street

Uniontown, PA 15401

*Attorney:* Samuel J. Davis**DOROTHY G. MAUST, a/k/a DOROTHY****GRACE MAUST**, late of Gibbon Glade,Fayette County, PA <sup>(1)</sup>*Executor:* Reid S. Maust

c/o Davis &amp; Davis

107 East Main Street

Uniontown, PA 15401

*Attorney:* Gary J. Frankhouser**HELEN G. MILLS**, late of Vanderbilt, FayetteCounty, PA <sup>(1)</sup>*Co-Executors:* William E. Mills and

Timothy E. Mills

c/o 815A Memorial Boulevard

Connellsville, PA 15425

*Attorney:* Margaret Zylka House

## LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
NO. 372 OF 2023, G.D.

RANDY L. SHEA, JR.  
Plaintiff.  
vs.  
TAYLOR D. SHEA,  
Defendant.

TO TAYLOR D. SHEA: A Divorce Complaint has been filed in the Court of Common Pleas of Fayette County, Pennsylvania, at No. 372 of 2023, G.D. on behalf of Randy L. Shea, Jr. The Defendant, Taylor D. Shea, whose last known address is 707 Maxwell Avenue, LaBelle, Fayette County, PA 15450 will be affected as a result of this filing. This notice shall act as service of the Divorce Complaint on the Defendant, Taylor D. Shea.

NOTICE: If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Petitioner. You may lose money or property or other rights important to you. **YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

PENNSYLVANIA LAWYER REFERRAL  
SERVICE  
PENNSYLVANIA BAR ASSOCIATION  
100 South Street, P.O. Box 186  
Harrisburg, PA 17108  
TELEPHONE: 1-800-692-7375

IN THE COURT OF COMMON PLEAS,  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
No. 386 of 2023  
Tax Assessment Map No. 04-25-0020

RICHARD HOVANEC,  
Plaintiff,  
vs.  
HAROLD ANGEL, HELEN ANGEL and THE  
HEIRS OF HAROLD ANGEL AND HELEN  
ANGEL,  
Defendants.

**PUBLIC NOTICE TO: THE HEIRS OF  
HAROLD ANGEL AND HELEN ANGEL  
CLAIMING ANY INTEREST IN THE  
REAL ESTATE IDENTIFIED AS Tax Map  
No.: 04-25-0020**

### NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER  
TO YOUR LAWYER AT ONCE. IF YOU  
DO NOT HAVE A LAWYER, TELEPHONE  
THE OFFICE SET FORTH BELOW TO  
FIND OUT WHERE YOU CAN GET  
LEGAL HELP. IF YOU CANNOT AFFORD  
A LAWYER, THIS OFFICE MAY BE ABLE  
TO PROVIDE YOU WITH INFORMATION  
ON AGENCIES THAT MAY OFFER  
LEGAL SERVICES TO ELIGIBLE  
PERSONS AT A REDUCED FEE OR NO  
FEE.**

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
100 South Street  
P.O. Box 186  
Harrisburg, PA 17108  
Telephone: (800) 692-7375

---

**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 December 13, 2022, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of The Twist with the principal place of business at: 267 Walnut Hill Road, Uniontown, PA 15401. The name or names and addresses of persons owning and interested are: Nancy Glad of 267 Walnut Hill Road, Uniontown, PA 15401

John A. Kopas III, Esquire  
556 Morgantown Road  
Uniontown, PA 15401  
Telephone: 724-437-1111

---

**NOTICE**

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on December 8th, 2022, for a Limited Liability Company, organized under the Limited Liability Company Law of 1994, as from time to time amended. The name of the Company is SCNL Enterprises, LLC, having an address of 267 Walnut Hill Road, Uniontown, PA 15401. The purpose of the Limited Liability Company is for ice cream, refreshments and food sales and related activities thereto of all types and any other lawful purpose for which a corporation may be organized.

John A. Kopas III, Esquire  
556 Morgantown Road  
Uniontown, PA 15401  
Telephone: 724-437-1111

---

**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 15, 2023, for a limited liability company known as Royal Rentals Events of Uniontown, 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: Equipment, tent rentals 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

---

IN THE UNITED STATES BANKRUPTCY  
COURT FOR THE WESTERN DISTRICT OF  
PENNSYLVANIA

IN RE: MICHELE L. PANEPINTO  
BANKRUPTCY NUMBER: 19-22944 C

**NOTICE OF SALE TO CREDITORS AND  
OTHER PARTIES IN INTEREST**

Notice is hereby given that Christopher M. Frye, Attorney for the Debtors, has filed a Motion for Sale of Real Estate Free and Clear of Liens.

The Debtor, Michele L. Panepinto, has received an offer of \$295,000.00 with 6% seller assist for her real property being known as 501 King Street, Perryopolis, PA 15473 in Fayette County, Pennsylvania free and clear of all liens and encumbrances.

A bankruptcy court hearing will be held on May 25, 2023 at 1:30 PM via Zoom for the purpose of passing on said Motion when and where all objections will be heard, when and where the public is invited, and when and where higher and better offers will be accepted.

Additional information is available at the office of the Debtor’s attorney, Christopher M. Frye, Esquire, Steidl and Steinberg, Suite 2830 – Gulf Tower, 707 Grant Street, Pittsburgh, PA 15219, (412) 391-8000.

**Registers’ Notice**

Notice by JEFFREY L. REDMAN, Register of Wills and Ex-Officio Clerk of the Orphans’ Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans’ Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans’ Court Division of Fayette County on

**Monday, May 1, 2023, at 9:30 A.M.**

Estate Number:	2678-0462
Estate Name:	Edward Hill, an incapacitated person
Executor:	PNC Bank, NA, Guardian

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on **Monday, May 15, 2023, at 9:30 A.M.** in Courtroom No. 1 of the Honorable President Judge Steve P. Leskinen or his chambers, Second Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN  
Register of Wills and Ex-Officio Clerk of the  
Orphans’ Court Division (2 of 2)

---

—◆◆—

**DiBella Weinheimer**  
Geer McAllister Best Coco Lloyd Whalen



Holly Whalen ♦ Amy Coco ♦ Bethann Lloyd

INSIST UPON OUR EXPERIENCED TEAM

**LAWYERS DEFENDING LAWYERS**

- Disciplinary Board
- Legal Malpractice
- Security Fund / IOLTA
- Ethics & Conflict Analysis
- Subpoena Assistance
- Licensure
- Conflict Resolution

[WWW.DIBELLA-WEINHEIMER.COM](http://WWW.DIBELLA-WEINHEIMER.COM) 412 261-2900

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



WE ARE PROUD TO ANNOUNCE OUR  
RECOGNITION BY FORBES AS A  
2023 BEST-IN-STATE WEALTH  
MANAGEMENT TEAM

The Highest Standard of Success in Financial Relationships

Fayette Legacy Partners of Janney Montgomery Scott  
43 S Beeson Boulevard, Uniontown, PA 15401  
724.425.1018 | [www.fayettelegacy-janney.com](http://www.fayettelegacy-janney.com)



© JANNEY MONTGOMERY SCOTT LLC • MEMBER: NYSE, FINRA, SIPC • REF. 884050-1222

JUDICIAL OPINION

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

COMMONWEALTH OF  
PENNSYLVANIA,

vs.

SEBASTION BURNWORTH,  
Defendant.

:  
:  
:  
:  
:  
:  
:  
:

No. No. 842 of 2022  
Honorable Linda R. Cordaro

OPINION AND ORDER

Linda R. Cordaro, J.

January 24, 2023

Currently before this Court is the Defendant's Omnibus Pretrial Motion for dismissal of charges on the grounds that the Commonwealth has inadequate evidence to support a prima facie case. This Court heard testimony and argument on January 11, 2023, and a copy of the DL-26B form as well as the mobile video recording (MVR) of the traffic stop were admitted into evidence. For the following reasons, Defendant's Motion is granted in part, and denied in part.

BACKGROUND

The following facts were established via testimony and MVR evidence. On January 6, 2022, Troopers Cody Sembrich and Andrew Prezi were on patrol when they observed the Defendant's vehicle. They checked the vehicle registration and, finding the registration was expired, executed a traffic stop around 10:21 a.m. The vehicle had two occupants, the Defendant, who was driving, and his girlfriend in the front passenger seat.

Trooper Stemrich asked the Defendant for his documentation. The Defendant provided a Pennsylvania identification card but no driver's license, as his license was under DUI suspension. Trooper Stemrich returned to the patrol vehicle with the Defendant's identification card. When he went back to the Defendant's vehicle, the trooper detected a strong odor of marijuana and observed the Defendant had glassy, bloodshot eyes. He asked who had smoked and when, and the Defendant admitted he had smoked that morning.

Trooper Stemrich, who has been employed by the Pennsylvania State Police since June 2021, asked the Defendant to exit the vehicle and performed standard field sobriety tests (SFSTs), including the horizontal gaze nystagmus (HGN), the walk-and-turn, and the one-leg raise. According to the trooper's testimony, the Defendant performed satisfactorily on the HGN and the one-leg stand, but showed two (2) cues on the walk-and-turn: an improper number of steps and an improper turn. This was corroborated in testimony given by Trooper Prizzi, who has been employed by the Pennsylvania State Police for thirteen (13) years. Trooper Prizzi also clarified that there is no "pass/fail" stand-

ard for SFSTs, but that an individual's performance on the tests is among the totality of observations that could support probable cause to make an arrest.

Upon questioning, the Defendant disclosed that he had smoked around 6:00 a.m. He also confirmed that he had a medical marijuana card and did obtain the marijuana from a dispensary. The Defendant's performance on the walk-and-turn, combined with the bloodshot, glassy appearance of his eyes, the odor of marijuana in the vehicle, and his admission to having smoked earlier, led to Trooper Stemrich's belief that the Defendant was under the influence and could not safely operate a vehicle. A search of the vehicle yielded an empty vape cartridge with suspected marijuana residue. The Defendant was arrested and read the DL-26B, and he signed the form refusing a blood draw.

### DISCUSSION

A petition for a writ of habeas is "the proper means for testing a pre-trial finding that the Commonwealth has sufficient evidence to establish a *prima facie* case" against a defendant. *Commonwealth v. Scott*, 578 A.2d 933,936 (Pa. Super. Ct. 1990). A pre-trial petition writ of habeas corpus is similar in its purpose to a preliminary hearing in that it seeks to prevent unlawful detention for a crime which was never committed, or for a crime for which there is no evidence of the accused's connection. *Id.* at 937. Accordingly, to establish its *prima facie* case, the Commonwealth must present evidence as to each material element of the crimes charged and establish sufficient probable cause that the accused is the person who committed the offenses. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991).

The Defendant is charged with four counts: DUI under 75 Pa.C.S.A. § 3802(d)(2); driving with a suspended license under 75 Pa.C.S.A. § 1543(b)(1)(i); careless driving under 75 Pa.C.S.A. § 3714(a); and driving an unregistered vehicle under 75 Pa.C.S.A. § 1301(a). Defendant's Motion requests dismissal of all charges. The DUI statute under which Defendant is charged states that an individual may not "drive, operate or be in actual physical control of a vehicle" if that individual is "under the influence of a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle."

The Commonwealth's evidence does not adequately establish impairment such that the Defendant could not safely operate a vehicle. An officer may render an opinion as to whether an individual is intoxicated based on his observations, which may include an individual's performance on field sobriety tests. *Commonwealth v. Ragan*, 652 A.2d 925, 928 (Pa. Super. Ct. 1995) (citing *Commonwealth v. Neiswonger*, 488 A.2d 68 (Pa. Super. Ct. 1985)). If a police officer has "perceived a defendant's appearance and acts, [he is] competent to testify as to his opinion as to the defendant's state of intoxication and to his ability to drive a vehicle safely." *Neiswonger*, 488 A.2d at 70. In *Neiswonger*, the officer's opinion that the defendant was under the influence to a degree of substantial impairment was based on his observations that the defendant performed two field sobriety tests badly, that he smelled of alcohol, that he had slurred speech, and that he staggered and swayed. *Id.* at 68.

Here, Trooper Stemrich testified that his opinion that the Defendant could not safely drive was based upon the Defendant's glassy, bloodshot eyes; the odor of marijuana

in the vehicle; the length of time since the Defendant had last smoked; and the cues from the walk-and-turn. However, the sole observation that may suggest impairment is the Defendant's performance on the walk-and-turn, which Trooper Prizzi confirmed is only one part in a totality of observations. The other observations may indicate the Defendant consumed marijuana, but in the absence of any other evidence of actual impairment, it has not been established that he could not safely operate a vehicle.

Furthermore, there are no facts to support a charge of careless driving, that is, that the Defendant drove a vehicle "in careless disregard for the safety of persons or property" under 75 Pa.C.S.A. § 3714(a). There is, however, sufficient evidence to support the remaining charges related to license and registration suspension. Therefore, the Court enters the following:

#### ORDER

AND NOW, this 24th day of January, 2023, in consideration of Defendant's Omnibus Pretrial Motion for writ of habeas and after a hearing on the matter, Defendant's Motion with respect to the charges at Counts 1 and 3 of the Information is GRANTED, and these charges are DISMISSED. The Defendant's Motion with respect to the charges at Counts 2 and 4 of the Information is DENIED.

BY THE COURT:  
Linda R. Cordaro, Judge

ATTEST:  
Clerk of Courts



*Join us for an evening of camaraderie with your colleagues at the*

128th ANNUAL  
FAYETTE COUNTY BAR ASSOCIATION

# *Bar Banquet*

FRIDAY, APRIL 28, 2023

5:30 COCKTAIL RECEPTION  
6:30 DINNER

*The Mansion at Linden Hall*

432 LINDEN HALL ROAD  
DAWSON, PA 15428

KINDLY REPLY BY FRIDAY, APRIL 14TH  
WITH MENU SELECTION:

*prime rib, chicken marsala, or gulf shrimp with lump crabmeat*

RSVP TO THE ASSOCIATION  
724-437-7994 OR CINDY@FCBAR.ORG  
NO CHARGE FOR FCBA MEMBERS  
\$150 GUEST FEE

*Quality...Experience...Results...  
It's what your clients deserve.*

***Medical Malpractice • Auto Accidents • Personal Injury***



**GISMONDI**  
& ASSOCIATES

**412-281-2200**

**[www.gislaw.com](http://www.gislaw.com)**

**700 Grant Bldg., 310 Grant St., Pgh., PA 15219**