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HARTMANN



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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on April 28, 2017, a petition for change of name was filed in the Court of Common Pleas, requesting a decree to change the name of Megan Rebecca Browning to Megan Rebecca Douglas.

The Court has fixed the day of June 16, 2017 at 2:00 P.M. in Courtroom No. 4 at the Adams County Courthouse, as the time and place for the hearing on said petition when and where all persons interested may appear and show cause, if any they have, why the prayer of the said petitioner should not be granted.

6/9

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on May 17, 2017, the Petition of Kevin Lynch was filed in the above-named court requesting an Order to change the name of Kevin Lynch to Kevin J. Richards.

The Court has scheduled a date of July 21, 2017 at 11:30 o'clock A.M. in Courtroom Number 4, Third Floor, of the Adams County Courthouse, 111-117 Baltimore Street, Gettysburg, Pennsylvania, as the time and place for the hearing of said Petition, when and where all interested persons may appear and show cause, if any, why the request of the Petitioner should not be granted.

Heather Entwistle Roberts, Esq.
Entwistle & Roberts
37 West Middle Street
Gettysburg, PA 17325
Attorney for Petitioner

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COMMONWEALTH OF PENNSYLVANIA V.
DENNIS J. HARTMANN

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

2. Pennsylvania's Constitution specifically guarantees citizens the right to be secure in their persons . . . from unreasonable searches and seizures. A search or seizure is reasonable only if it is conducted pursuant to a search warrant issued by a magistrate upon a showing of probable cause.

3. There are three relevant cognizable categories of interactions between persons and police: a mere encounter, an investigative detention, and a custodial detention or arrest.

4. A mere encounter need not be supported by any level of suspicion, and does not require a person to stop or respond. An investigative detention; . . . must be supported by reasonable suspicion; it subjects a person to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest.

5. The taking of a blood sample or the administration of a breath test is a search.

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

7. The United States Supreme Court has explicitly held the Fourth Amendment permits warrantless breath tests incident to arrest for drunk driving.

8. Miranda warnings are necessary only when the suspect is subjected to custodial interrogation.

9. The standard for determining whether an encounter with the police is deemed custodial or if police have initiated a custodial interrogation is an objective one based on a totality of the circumstances, with due consideration given to the reasonable impression conveyed to the person interrogated.

10. Defendant's remarks, being unsolicited, not the result of custodial interrogation, constituted spontaneous, voluntary statements not subject to suppression.

11. Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested.

12. An investigative detention may properly ripen into an arrest based on probable cause when additional information confirming the earlier suspicion is uncovered.

13. The stain of an unconstitutional search may be erased when an individual has validly consented to the search.

14. In order for consent to be valid, it must be unequivocal, specific, and voluntary. The appellant must have intentionally relinquished or abandoned a known right or privilege.

15. At the point Defendant consented to the blood draw he was under arrest and in custody. Given the inherently coercive atmosphere of custodial arrest, this factor leans against a finding of a knowing and voluntary consent. Defendant was also never advised he had a right to refuse consent.

16. This Court is of the opinion that the Commonwealth has met its burden of establishing that Defendant's consent was the product of an essentially free and unconstrained choice, objectively valid and not the product of police coercion, deceit or misrepresentation.

17. The test to decide whether an individual is being subjected to custodial interrogation so as to necessitate Miranda warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.

18. However, Officer Gilberto followed up by asking Defendant when he last smoked marijuana. Defendant told him he smoked the night before. Since Defendant was in custody and the question was designed to elicit an incriminating response, Defendant was entitled to Miranda warnings.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CRIMINAL, CP-01-CR-1224-2016,
COMMONWEALTH OF PENNSYLVANIA V. DENNIS J.
HARTMANN

Roy A. Keefer, Esq., Attorney for Commonwealth

John Mooney, Esq., Attorney for Defendant

Wagner, J., May 17, 2017

OPINION ON DEFENDANT'S MOTION
FOR SUPPRESSION

Presently before the Court is Defendant Dennis J. Hartmann's Omnibus Pretrial Motion. A suppression hearing was held on April 20, 2017. The issues before the Court are whether (1) Officer Gilberto had reasonable suspicion to follow up after he encountered Defendant and then probable cause to arrest Defendant, (2) whether Defendant voluntarily consented to a blood draw following Defendant's arrest for DUI and (3) Defendant's Motion to Suppress Statements Made During Custodial Interrogation. Based upon the following Findings of Fact and Conclusions of Law, this Court will grant Defendant's Omnibus Pretrial Motion in part and deny it in part.

FINDINGS OF FACT

1. Officer Gilberto has been a police officer with Littlestown Borough Police Department for approximately five years. He has been involved in more than 80 DUI arrests with at least more than twenty involving DUI controlled substances.
2. Officer Gilberto received training at the police academy on DUI. He has undergone more than 50 hours of DUI training, including training on conducting Standardized Field Sobriety Tests (SFST's).

3. Some of Officer Gilberto's training involved the clues and cues of controlled substance impairment. Also, Officer Gilberto attended the Advanced Roadside Impaired Driving Enforcement (ARIDE) training which is a two day, sixteen hour course which deals with controlled substance impairment.
4. On the morning of May 30, 2016 at 7:28 a.m., Officer Gilberto stopped Defendant's vehicle for a missing inspection sticker.
5. While Defendant was still in his vehicle, Officer Gilberto observed Defendant's pupils were constricted, his movements were slow when retrieving and handing Officer Gilberto the requested documents, his eyelids were droopy and he was quiet with a flat affect.
6. Officer Gilberto did not detect an odor of alcohol or marijuana.
7. Defendant was still inside his vehicle when Officer Gilberto asked him about drug use. Defendant denied using drugs or medications.
8. Officer Gilberto asked Defendant to exit the vehicle and Defendant complied.
9. Officer Gilberto administered SFST's. Specifically, the horizontal gaze nystagmus (HGN), the walk and turn and the one leg stand. Officer Gilberto noticed numerous clues or cues indicative of impairment. Officer Gilberto felt Defendant did not successfully complete the tests.
10. Officer Gilberto then requested Defendant submit to a portable breath test (PBT) to which Defendant complied. The PBT did not detect the presence of alcohol.
11. Based on the totality of the circumstances, Officer Gilberto was of the opinion Defendant was under the influence of a controlled substance which rendered him incapable of safely driving and placed Defendant under arrest for DUI.
12. Officer Gilberto handcuffed Defendant and advised Defendant he was under arrest. Officer Gilberto advised Defendant he was transporting Defendant to Hanover Hospital for a blood draw. Defendant stated he wasn't on any drugs or medication. Officer Gilberto advised if that was the case, blood test results would show there was nothing in his blood.

13. While in the parking lot of Hanover Hospital, Officer Gilberto requested Defendant submit to a chemical test of his blood and asked Defendant if he was willing to submit to the test. Defendant agreed to the test and they entered the hospital.
14. As Officer Gilberto and Defendant waited for the blood draw to occur, Defendant initiated conversation with Officer Gilberto telling him that Defendant wasn't a bad guy, that he doesn't use any drugs other than marijuana and he doesn't consider marijuana a drug. Officer Gilberto then asked Defendant when Defendant last smoked marijuana. Defendant told him he smoked marijuana the night before.
15. Defendant's blood was drawn and was sent to NMS Labs for testing. Defendant's blood was positive for hydroxy-Delta 9 THC, Delta-9 Carboxy THC and Delta-9 THC.
16. Officer Gilberto never read the revised DL-26 form to Defendant nor did he provide Defendant with **O'Connell** warnings.
17. Defendant did not ask Officer Gilberto any questions with regard to the blood draw or what would happen if Defendant refused.

CONCLUSIONS OF LAW

1. The initial vehicle stop was lawful as Officer Gilberto noticed Defendant's vehicle was missing the inspection sticker. ¹
2. Officer Gilberto had reasonable suspicion to place Defendant in an investigative detention and then probable cause to arrest Defendant for DUI.
3. Defendant was under arrest at the time Officer Gilberto asked him to submit to a blood draw.
4. Officer Gilberto never advised Defendant of his **Miranda** warnings.
5. Defendant's consent to provide a blood sample was knowing and voluntary.
6. Defendant's statements at Hanover Hospital that he was not a bad guy, he doesn't use drugs other than marijuana, which he

¹ See 75 Pa.C.S.A. § 4728.

doesn't consider a drug were initiated by Defendant and not in response to custodial interrogation by Officer Gilberto. Defendant's subsequent response that he smoked marijuana the night before was in response to custodial interrogation by Officer Gilberto.²

LEGAL STANDARD

In a suppression hearing, the Commonwealth has the burden to establish,

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

The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."³ The Fourth Amendment is applicable to the states through the Fourteenth Amendment of the U.S. Constitution. **Commonwealth v. Kohl**, 615 A.2d 308, 311 (Pa. 1992). Pennsylvania's Constitution specifically guarantees citizens the right to be "secure in their persons . . . from unreasonable searches and seizures."⁴ A search or seizure is reasonable only if "it is conducted pursuant to a search warrant issued by a magistrate upon a showing of probable cause." **Kohl**, 615 A.2d at 313. When police obtain evidence in violation of an individual's Fourth Amendment rights, the Commonwealth is precluded from using that evidence at trial. **Commonwealth v. Pratt**, 930 A.2d 561, 563 (Pa. Super. 2007).

"There are three relevant cognizable categories of interactions between persons and police: a mere encounter, an investigative detention, and a custodial detention or arrest." **Commonwealth v. Chase**, 960 A.2d 108, 117 (Pa. 2008). "A mere encounter need not be supported by any level of suspicion, and does not require a person to stop or respond." **Id.** "An 'investigative detention,' . . . must be supported by reasonable suspicion; it subjects a person to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest." **Id.** "An arrest

² Officer Gilberto asked Defendant when the last time he smoked marijuana was.

³ U.S. Const. amend. IV.

⁴ Pa. Const. art. I, § 8.

or custodial detention must be supported by probable cause.” **Id.**

“The taking of a blood sample or the administration of a breath test is a search.” **Birchfield v. North Dakota**, 136 S. Ct. 2160, 2173 (2016). **See also Commonwealth v. Ellis**, 608 A.2d 1090, 1092 (Pa. Super. 1992) (citing **Commonwealth v. Hipp**, 551 A.2d 1086 (Pa. 1988)) (“The administration of a blood test is a search within the meaning of the Fourth Amendment if it is performed by an agent of the government.”). In the current case, the police officer requested Defendant provide a blood sample after arresting him for a DUI offense. Since Defendant’s blood was taken at the request of law enforcement, the blood draw was a search and must comply with both the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution to be admissible at trial.

The United States Supreme Court has explicitly held “the Fourth Amendment permits warrantless breath tests incident to arrest for drunk driving.”⁵ **Birchfield**, 136 S. Ct. at 2184. Conversely, absent an exception to the warrant requirement, a blood test conducted without a warrant, “incident to a lawful drunk-driving arrest[,]” violates the Fourth Amendment.⁶ **Id.** at 2185 n. 8.

“*Miranda* warnings are necessary only when the suspect is subjected to custodial interrogation.” **Commonwealth v. Fisher**, 769 A.2d 1116, 1125 (Pa. 2001). **See also Commonwealth v. Morgan**, 610 A.2d 1013, 1016 (Pa. Super. 1992). The standard for determining whether an encounter with the police is deemed ‘custodial’ or police have initiated a custodial interrogation is an objective one based on a totality of the circumstances, with due consideration given to the reasonable impression conveyed to the person interrogated.” **Commonwealth v. Mannion**, 725 A.2d 196, 200 (Pa. Super. 1999). The test to decide whether an individual

is being subjected to custodial interrogation so as to necessitate *Miranda* warnings is whether he is physically

⁵ The Court found breath tests did not offend the Fourth Amendment since “breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests” **Id.** at 2185.

⁶ As compared to a breath test, blood tests entail a significant bodily intrusion, as well as implicate serious concerns regarding an individual’s privacy rights. **Id.** at 2178.

deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.

Id. (quoting **Commonwealth v. Busch**, 713 A.2d 97, 100 (Pa. Super. 1998)) (internal quotations omitted). “Interrogation occurs when the police should know that their words or actions are reasonably likely to elicit an incriminating response . . . and the circumstances must reflect a measure of compulsion above and beyond that inherent in custody itself.” **Fisher**, 769 A.2d at 1125. “[Defendant’s] remarks, being unsolicited, not the result of custodial interrogation, constituted spontaneous, voluntary statements not subject to suppression.” **Id.**

DISCUSSION: REASONABLE SUSPICION AND PROBABLE CAUSE

Defendant does not contest that Officer Gilberto had probable cause to stop Defendant’s vehicle based on the missing inspection sticker.⁷ Instead, Defendant argues that upon learning Defendant had just purchased the vehicle and was within the ten day grace period where a person can drive without the inspection sticker,⁸ Officer Gilberto should have ended the encounter. Therefore, he argues, Officer Gilberto did not have reasonable suspicion to continue the encounter or probable cause to arrest Defendant.

“There are three relevant cognizable categories of interactions between persons and police: a mere encounter, an investigative detention, and a custodial detention or arrest.” **Commonwealth v. Chase**, 960 A.2d 108, 117 (Pa. 2008). “A mere encounter need not be supported by any level of suspicion, and does not require a person to stop or respond.” **Id.** “An ‘investigative detention,’ . . . must be supported by reasonable suspicion; it subjects a person to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest.” **Id.** “An arrest or custodial detention must be supported by probable cause.” **Id.**

⁷ See 75 Pa.C.S.A. § 4728.

⁸ “Newly-purchased vehicles may be driven without a current inspection certificate for ten days after sale or resale or entry into this Commonwealth, whichever occurs later.” 75 Pa.C.S.A. § 4703(d).

“Our courts have mandated that law enforcement officers, prior to subjecting a citizen to investigatory detention, must harbor at least a reasonable suspicion that the person seized is then engaged in unlawful activity.” **Commonwealth v. Beasley**, 761 A.2d 621, 625-26 (Pa. Super. 2000). “[T]he question of whether reasonable suspicion existed at the time of an investigatory detention must be answered by examining the totality of the circumstances to determine whether there was a particularized and objective basis for suspecting the individual stopped of criminal activity.” **Id.** “The officer . . . must articulate specific facts which, in conjunction with reasonable inferences derived from those facts, led him reasonably to conclude, in light of his experience, that criminal activity was afoot.” **Id.** “Probable cause to arrest exists when the facts and circumstances within the police officer’s knowledge and of which the officer has reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested.” **Commonwealth v. Weaver**, 76 A.3d 562, 565 (Pa. Super. 2013) (quoting **Commonwealth v. Williams**, 941 A.2d 14, 27 (Pa. Super. 2008)). “Probable cause justifying a warrantless arrest is determined by the totality of the circumstances.” **Id.**

As stated above, Officer Gilberto legally stopped Defendant’s vehicle based on a violation of the Motor Vehicle Code, a missing inspection sticker. Officer Gilberto was able to ascertain that Defendant had recently purchased his vehicle and thus was in the ten day window where he could drive the vehicle without the inspection sticker. However, during this initial interaction with Defendant while Defendant was still in his vehicle, Officer Gilberto noticed that Defendant’s pupils were constricted, he was slow in retrieving and handing Officer Gilberto the documents he asked for, his eyelids were droopy and he was quiet with a flat affect. He made these observations while initially talking with Defendant. Officer Gilberto asked Defendant whether he used drugs. Defendant denied using drugs or medications. Based on those specific and articulable facts and observations, Officer Gilberto had reasonable suspicion to believe Defendant was involved in illegal activity. At that point, Officer Gilberto lawfully asked Defendant to exit the vehicle, essentially placing Defendant in an investigative detention.

Officer Gilberto then asked Defendant to perform SFST's such as the HGN,⁹ the walk and turn and the one leg stand. While Defendant was completing those tests, Officer Gilberto noticed numerous clues and cues indicative of impairment. Officer Gilberto was of the opinion that Defendant did not successfully finish those tests. Defendant also completed the PBT which did not detect the presence of alcohol. Based on the above information, his training and experience and continued observations of Defendant, Officer Gilberto was of the opinion Defendant was under the influence of a controlled substance to a degree which rendered him incapable of safely driving. Defendant was then handcuffed and placed under arrest. "An investigative detention may properly ripen into an arrest based on probable cause when additional information confirming the earlier suspicion is uncovered." **Commonwealth v. Savich**, 716 A.2d 1251, 1257 (Pa. Super. 1998) (quoting **Commonwealth v. Brown**, 611 A.2d 1318, 1320 (Pa. Super. 1992)). This Court finds Officer Gilberto had reasonable suspicion and then probable cause to arrest Defendant. Therefore, his Motion to Suppress on that basis is denied.

DISCUSSION: KNOWING AND VOLUNTARY CONSENT

Here Officer Gilberto did not obtain a search warrant prior to the blood draw. As the Commonwealth has not established an exigent circumstance, Defendant's blood test results must be suppressed as an unreasonable search and seizure in violation of Article I, Section 8 of the Pennsylvania Constitution unless the Commonwealth establishes Defendant provided knowing and voluntary consent.¹⁰

The stain of an unconstitutional search may be erased when an individual has validly consented to the search. **See Commonwealth v. Cleckley**, 738 A.2d 427, 429 (Pa. 1999) (citing **Commonwealth v. Slaton**, 608 A.2d 5, 8-9 (Pa. 1992)). Pennsylvania courts have employed an objective, totality of the circumstances approach in

⁹ Contrary to Defendant's contention, an officer may rely on the results of the HGN test in determining if he has probable cause to arrest. **See Weaver**, 76 A.3d at 566-68. "Officer Hunter, who was trained in the administration of the HGN test, was permitted to rely on his observations gained from that procedure to support his conclusion that Appellant was driving under the influence of a controlled substance." **Id.** at 567.

¹⁰ The Commonwealth bears the burden of establishing Defendant knowingly and voluntarily consented to the search. **Commonwealth v. Smith**, 77 A.3d 562, 573 (Pa. 2013).

deciding whether an individual provided the necessary consent to search. **Smith**, 77 A.3d at 573. “In order for consent to be valid, it must be ‘unequivocal, specific, and voluntary.’ The appellant must have intentionally relinquished or abandoned a known right or privilege.” **Commonwealth v. Dunne**, 690 A.2d 1233, 1236 (Pa. Super. 1997) (citing **Commonwealth v. Gibson**, 638 A.2d 203, 207 (Pa. 1994)).

The **Smith** Court aptly stated:

In determining the validity of a given consent [to provide a blood sample], ‘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.

Smith, 77 A.3d at 573. (internal citations omitted).

The Pennsylvania Supreme Court has also explained:

[e]valuation of the voluntariness of a defendant’s consent necessarily entails consideration of a variety of factors, factors which, of course, may vary depending on the circumstances. Accordingly, no hard and fast rule can be gleaned that would dictate what factors must be considered in each instance. We find instructive, however, the following factors considered by the Supreme Court of Appeals of West Virginia when evaluating the voluntariness of a defendant’s consent: 1) the defendant’s custodial status; 2) the use of duress or coercive tactics by law enforcement personnel; 3) the defendant’s knowledge of

his right to refuse consent; 4) the defendant's education and intelligence; 5) the defendant's belief that no incriminating evidence will be found; and 6) the extent and level of the defendant's cooperation with the law enforcement personnel.

Cleckley, 738 A.2d at 433 n. 7 (Pa. 1999) (adopting the factors espoused by the Supreme Court of Appeals of West Virginia).

At the point Defendant consented to the blood draw he was under arrest and in custody. Given the inherently coercive atmosphere of custodial arrest, this factor leans against a finding of a knowing and voluntary consent. Defendant was also never advised he had a right to refuse consent. **See Commonwealth v. Strickler**, 757 A.2d 884, 901 (Pa. 2000). However, this is not outcome determinative to a finding of knowing and voluntary consent. **See Cleckley**, 738 A.2d at 433 (“[O]ne’s knowledge of his or her right to refuse consent remains a factor to consider in determining the validity of consent; it simply is not a determinative factor since other evidence is oftentimes adequate to prove the voluntariness of a consent.”). Here, even though Defendant was not told he could refuse the test, he knew he was consenting to the taking and search of his blood by law enforcement.

Despite the fact Defendant was in custody at the time he consented, there are a number of factors leaning towards a finding of knowing and voluntary consent. While Defendant was in handcuffs and in custody when Officer Gilberto asked if he would consent to the blood draw, Officer Gilberto removed the cuffs prior to walking into the hospital. Furthermore, Defendant was not handcuffed when he submitted to the blood draw. Defendant affirmatively consented to the blood draw. No evidence was presented to show Defendant was argumentative, belligerent, or uncooperative. Officer Gilberto testified Defendant was talkative while they were waiting for the blood draw and cooperative during the actual blood draw. Defendant had a significant amount of time to consider Officer Gilberto’s request to submit to a blood draw prior to agreeing to the blood draw. This fact illustrates that Defendant’s consent was the product of considered deliberation.

Officer Gilberto never read him either the old or the revised version of the DL-26 form or the **O’Connell** warnings. Defendant did not ask Officer Gilberto any questions about the blood draw or

what would happen if he refused. No testimony was presented that Officer Gilberto referenced criminal penalties for a refusal or that he threatened or coerced Defendant into consenting.

Upon consideration of the totality of all the factors present in this case, this Court is of the opinion that the Commonwealth has met its burden of establishing that Defendant's consent was the product of an essentially free and unconstrained choice, objectively valid and not the product of police coercion, deceit or misrepresentation. Therefore, Defendant knowingly and voluntarily consented to the search of his person and the warrantless blood draw was legal. Defendant's Motion to Suppress the Blood Test results is denied.

DISCUSSION: *MIRANDA* WARNINGS

Defendant argues since Officer Gilberto never advised him of his **Miranda** warnings after he placed Defendant under arrest, any statements made thereafter must be suppressed.

“*Miranda* warnings are necessary only when the suspect is subjected to custodial interrogation.” **Commonwealth v. Fisher**, 769 A.2d 1116, 1125 (Pa. 2001). **See also Commonwealth v. Morgan**, 610 A.2d 1013, 1016 (Pa. Super. 1992). “The standard for determining whether an encounter with the police is deemed ‘custodial’ or police have initiated a custodial interrogation is an objective one based on a totality of the circumstances, with due consideration given to the reasonable impression conveyed to the person interrogated.” **Commonwealth v. Mannion**, 725 A.2d 196, 200 (Pa. Super. 1999). The test to decide whether an individual

is being subjected to custodial interrogation so as to necessitate *Miranda* warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.

Id. (quoting **Commonwealth v. Busch**, 713 A.2d 97, 100 (Pa. Super. 1998)) (internal quotations omitted). “Interrogation occurs when the police should know that their words or actions are reasonably likely to elicit an incriminating response . . . and the circumstances must reflect a measure of compulsion above and beyond that inherent in custody itself.” **Fisher**, 769 A.2d at 1125.

Officer Gilberto testified that while they were waiting for the blood draw Defendant initiated conversation and told Officer Gilberto that he wasn't a bad guy, that he doesn't use drugs other than marijuana and that he doesn't consider marijuana a drug. Defendant's statements were not in response to any question or interrogation by Officer Gilberto. As those statements were "unsolicited, not the result of custodial interrogation, [they] constituted spontaneous, voluntary statements not subject to suppression." **Fisher**, 769 A.2d at 1125.

However, Officer Gilberto followed up by asking Defendant when he last smoked marijuana. Defendant told him he smoked the night before. Since Defendant was in custody and the question was designed to "elicit an incriminating response", Defendant was entitled to **Miranda** warnings. As no testimony was presented that Officer Gilberto ever provided Defendant with his **Miranda** warnings, Defendant's statement that he smoked marijuana the night before must be suppressed.

Defendant's Motion to Suppress Statements Made During Custodial Interrogation is granted in part and denied in part.

ORDER OF COURT

AND NOW, this 17th day of May, 2017, for the reasons set forth in the attached Opinion, Defendant's Omnibus Pre-Trial Motion is denied in part and granted in part.

The Adams County Court Administrator is directed to list this matter for a non-jury trial.

ESTATE NOTICES

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

FIRST PUBLICATION**ESTATE OF MARIE C. EYLER, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Administrator: Jeanne K. Davis, 8605 Hampton Valley Rd., Emmitsburg, MD 21727

ESTATE OF JACOB F. KRAMER, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: Gary C. Kramer, 47 Crestview Drive, East Berlin, PA 17316

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF GEORGE S. LAMBERT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Nancy J. Bushey-Lambert, 2104 Taneytown Road, Gettysburg, PA 17325; Bonnie K. Brown, 107 Community Way, Apt 611, Staunton, VA 24401; Craig L. Lambert, 2150 Taneytown Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FELICITAS R. REESE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrices: Linda Leonard and Luann Gebhart, c/o Amy S. Loper, Esq., O'Donnell & Barr Law Group, LLP, 11 Carlisle Street, Suite 301 Hanover, PA 17331

Attorney: Amy S. Loper, Esq., O'Donnell & Barr Law Group, LLP, 11 Carlisle Street, Suite 301 Hanover, PA 17331

ESTATE OF SARAH E. SLAYBAUGH, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Yvonne M. Gilbert, 1828 Baltimore Pike, Gettysburg, PA 17325

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

ESTATE OF DONNA F. VARNER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administratrix: Rosemary Todd, 8625 Anthony Highway, Waynesboro, PA 17268

Attorney: Jerrold A. Sulcove, Esq., Black and Davison, 82 West Queen Street, Chambersburg, PA 17201

ESTATE OF JAMES ALLEN WALKER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administratrix: Gayle E. Walker, c/o Jennifer McKenrick Stetter, Esq., Stonesifer and Kelley, a division of Barley Snyder, 209 Broadway, Hanover, PA 17331

Attorney: Jennifer McKenrick Stetter, Esq., Stonesifer and Kelley, a division of Barley Snyder, 209 Broadway, Hanover, PA 17331

NOTICE OF REVOCABLE TRUST**ADMINISTRATION****JON PENSYL REVOCABLE TRUST**

NOTICE IS HEREBY GIVEN of the administration of the Jon Pensyl Revocable Trust dated January 5, 2012. Jon Pensyl, settlor of the Trust, of Franklin Township, Adams County, Pennsylvania died on April 5, 2017. All persons having claims against Jon Pensyl are requested to make known the same to the Trustee or Attorney named below. All persons indebted to Jon Pensyl are requested to make payment without delay to the Trustee or Attorney named below.

Jody A. Sieg, Trustee
844 Hunterstown-Hampton Road
New Oxford, PA 17350

Teeter, Teeter & Teeter
108 West Middle Street
Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF JEANNE MARIE BOLLINGER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Jane R. Griffith, 209 Berwick Road, Abbottstown, PA 17301; Tamera J. Wolf, 319 Tallahassee Blvd., Abbottstown, PA 17301

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF PHYLLIS KNOX GETTIER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Personal Representative: Kevin Trump, 620 Jasantown Rd., Westminster, Md 21158

ESTATE OF LEONA MAE SHAFFER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Dennis R. Shaffer, 4555 Blue Hill Rd., Glenville, PA 17329; Robert P. Shaffer, 1116 Chataleine Dr., Fallston, MD 21047

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF PAMELA H. WEBSTER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Tammy Peros, c/o Christopher E. Rice, Esq., Martson Law Offices, 10 East High Street, Carlisle, PA 17013

Attorney: Christopher E. Rice, Esq., Martson Law Offices, 10 East High Street, Carlisle, PA 17013

THIRD PUBLICATION**ESTATE OF JOSHUA L. DEARDORFF, DEC'D**

Late of the Borough of Biglerville, Adams County, Pennsylvania

Beverly G. Deardorff, 161 South Main Street, Biglerville, PA 17307

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF ROBERT L. HINKLE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Tami W. Bubbs, c/o Ronald Perry, Esq., Katherman, Heim & Perry, 345 East Market Street, York, PA 17403

Attorney: Ronald Perry, Esq., Katherman, Heim & Perry, 345 East Market Street, York, PA 17403

