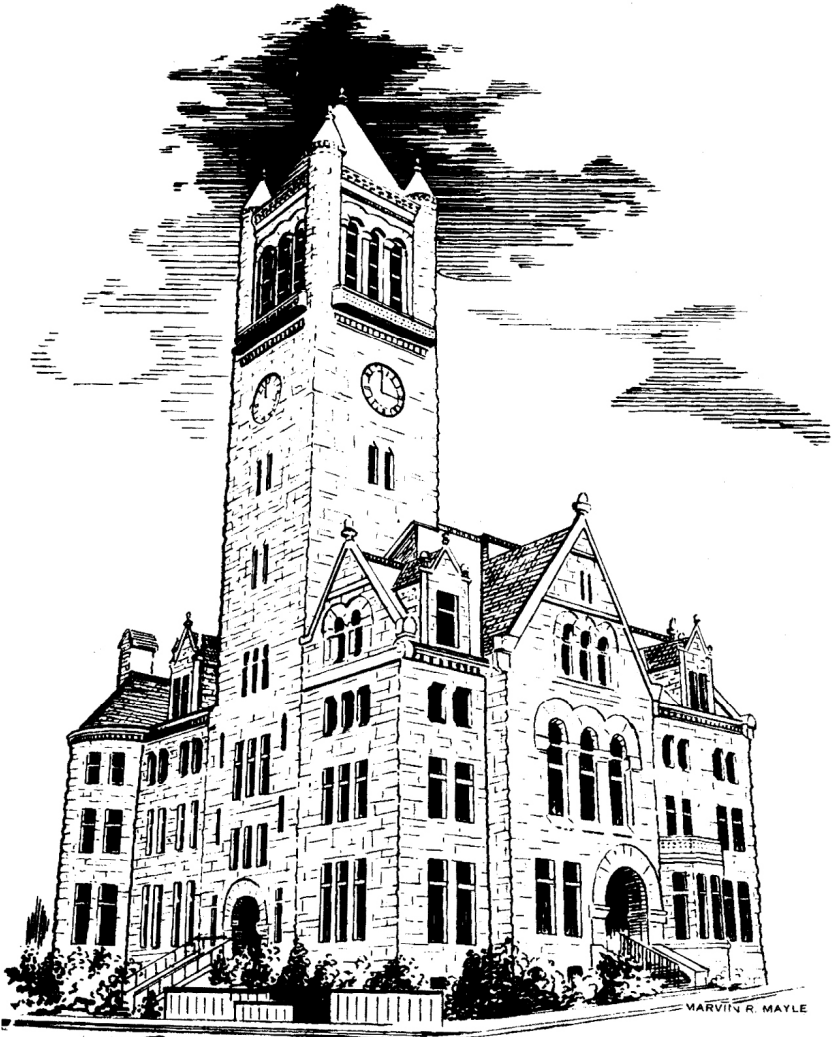


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

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First Publication

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 Belle Vernon, PA 15012
 c/o 300 Fallowfield Avenue
 Charleroi, PA 15022
Attorney: Richard C. Mudrick

LEGAL NOTICES

FICTITIOUS NAME ADVERTISEMENT

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act of December 16, 1982, P.L. 1309, No. 295, as amended, 54 Pa.C.S.A. 311, that on February 20, 2019, an application for the conduct of a business in Fayette County, Pennsylvania under an assumed or fictitious name was filed in the Office of the Secretary of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the conduct of a business in Fayette County, Pennsylvania, under the assumed or fictitious name, style or designation of MountainCreek Solutions, with its principal place of business at 1165 NATIONAL PIKE ROAD, Uniontown, Fayette County, Pennsylvania 15401. The name and address of the only entity interested in said business is MountainCreek Insurance Services, Inc., 1165 National Pike, Uniontown, Pennsylvania 15401.

G.T. George, Esq.
 George & George LLP
 92 East Main Street
 Suite One
 Uniontown, PA 15401

RECEIVER'S SALE
 UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF
 PENNSYLVANIA
 DOCKET # 2:18-cv-01155-RCM (the "Action")

Wherein, U.S. Bank National Association, as Trustee for the Registered Holders of GE Commercial Mortgage Corporation, Commercial Mortgage Pass-Through Certificates, Series 2007 - C-1 is the plaintiff (the "Plaintiff") and Spirit SPE Portfolio 2006-4, LLC is the defendant ("Defendant").

Execution for Sale of Premises and other things

Dinsmore & Shohl LLP
 Attorney Richard A. O'Halloran
 (610) 408-6035

By virtue of the Consent Judgment in Mortgage

Foreclosure in favor of Plaintiff and against Defendant entered on October 30, 2018, and the Consent Order Appointing Receiver entered on October 30, 2018, Gina M. Zumpella, Esquire, the Court-appointed Receiver (the “Receiver”) in the Action, shall conduct a sale (the “Sale”) by public venue, pursuant to 28 U.S.C. § 2001, et seq.

The Sale will take place on April 2, 2019 (the “Sale Date”) at 2:00 P.M., prevailing time, at 55 Wedding Lane, Mt. Pleasant, PA 15666. The premises being sold is Parcel ID 39-5-2-1 (the “Mortgaged Premises”).

The Receiver shall sell the Mortgaged Premises, and Defendant’s interest, rights and other property, identified in the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Mortgage”) and the UCC Financing Statements (the “UCC-1s”) in favor of Plaintiff and as more fully described in the Complaint filed in the Action (the aforementioned interests, rights and other property, together with the Mortgaged Premises, collectively, the “Mortgaged Property”), to the highest bidder.

The above concise description of the Mortgaged Premises and Mortgaged Property does not constitute a legal description of the real estate. A full legal description can be found at the offices of Dinsmore & Shohl LLP.

Depending upon the nature and amount of the successful bid, surplus money may be generated from the Sale. Claims must be filed at the offices of Dinsmore & Shohl LLP, Attn: Nicholas Godfrey, Esquire, 1300 Six PPG Place, Pittsburgh PA 15222, (412) 288-5861, nicholas.godfrey@dinsmore.com not later than three (3) days before the Sale Date. A schedule of distribution will be filed with the Court by the Receiver no later than thirty (30) days from the date of the passing of the deed to the Mortgaged Property to the successful bidder, unless Plaintiff is the successful bidder by way of a credit bid that does not exceed the amount of the indebtedness evidenced by the judgment order, and funds, if any, shall be distributed not more than ten (10) days following the posting of the schedule of distribution. Claims to the proceeds from the Sale, if any, must be made with the offices of Dinsmore & Shohl LLP, to the

attention of Nicholas Godfrey, before distribution. Plaintiff will not be required to make a cash bid, but rather will be permitted to credit bid against its judgment. Any sums in the Receiver’s estate as of the date of passing of title following the foreclosure sale shall, after payment of all costs associated with the receivership, be the property of Plaintiff.

Approximate amount due to Plaintiff on the execution is \$6,727,925.22, with continuing interest and costs thereafter.

Receiver makes no representations or warranties (expressed or implied) as to the existence or validity of any liens and encumbrances on the Mortgaged Property which is the subject matter of this Sale. Lienholders and/or claimants are hereby notified that liens and claims relating to the Mortgaged Property will be divested as a result of the Sale, unless lienholders or claimants take necessary steps to protect their rights.

Twenty percent (20%) of the amount bid will be required as a non-refundable deposit at time of Sale, in cash or Certified Check to be held by the Receiver, balance to be paid within thirty (30) days following the date of the Sale. Plaintiff will not be required to post a deposit or tender cash on any credit bid it makes. The Sale may also be subject to additional terms and conditions which may be announced on the date of the Sale.

Receiver hereby reserves the right to adjourn this Sale from time to time on its own initiative or at the request of Plaintiff. Any adjournment or adjournments will be announced at the Sale date or adjourned Sale date, and Receiver will not be required to advertise any such new date(s).

For questions, contact Richard A. O’Halloran, Esquire at (610) 408-6035 or richard.ohalloran@dinsmore.com.

JUDICIAL OPINION

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

COMMONWEALTH OF
PENNSYLVANIA

:
:
:
:
:
:
:

vs.

JORY ROGERS,
Defendant.

No. 775 of 2018
Honorable Linda R. Cordaro

OPINION AND ORDER

CORDARO, J.

February 7, 2019

SUMMARY

Before the Court is Defendant's Omnibus Pretrial Motion to Suppress Evidence. For the following reasons, Defendant's Motion is denied.

BACKGROUND

As a result of events that happened on September 3, 2017, Jory Rogers was charged with two counts of DUI and six traffic-related summary offenses.

On October 29, 2018, Defendant filed a motion to Suppress Evidence, stating that the stop of the vehicle was made without reasonable suspicion or probable cause and that the Defendant was subjected to a blood draw without his consent. This Court held a hearing on the Motion on December 20, 2018. Both parties were given time after the hearing to provide this Court with legal memorandums.

The following testimony was presented at the hearing. Trooper Richard Nagy of the Pennsylvania State Police testified that on September 3, 2017, he was driving a marked patrol vehicle on routine patrol with Trooper Michael Carcella. The Troopers were driving on Connellsville Street in Fayette County when Trooper Nagy saw a black BMW traveling at a high rate of speed in the opposite direction. Trooper Nagy turned around to pursue the vehicle; it took a while for the troopers to catch up.

After catching up to the BMW, Trooper Nagy observed the vehicle make a right turn onto Lincoln Street while using a turn signal. He then saw the vehicle make a left turn into a Sonoco gas station, this time without using a turn signal. Based on the failure to use a turn signal, Trooper Nagy initiated a traffic stop on the BMW.

The driver of the vehicle was identified as the Defendant, Jory Rogers. Trooper Nagy immediately detected a strong odor of alcohol coming from Mr. Rogers. Mr. Rogers also had bloodshot eyes and slurred speech. Mr. Rogers provided Trooper Nagy with a drivers license from Ohio.

Trooper Nagy proceeded to administer field sobriety tests to Mr. Rogers, who

displayed signs of impairment during the tests. A breath test also detected the presence of alcohol. At that time, Trooper Nagy placed Mr. Rogers under arrest. Trooper Nagy asked Mr. Rogers if he would consent to a blood draw. Mr. Rogers initially denied consent, but later agreed to the blood draw.

Trooper Nagy transported Mr. Rogers to Uniontown Hospital. Mr. Rogers was being disruptive and was verbally assaulting the troopers. Mr. Rogers proceeded to equivocate on whether he would have his blood drawn; Trooper Nagy believed this to be a delay tactic. Trooper Nagy read the DL-26B Form to Mr. Rogers. Mr. Rogers finally gave consent, although he did not sign the DL-26B Form.

The results of the blood draw showed that Mr. Rogers's blood alcohol content was 0.106. Trooper Nagy later ran the license provided by Mr. Rogers and found that he also had a suspended Pennsylvania license.

As a result of the incident on September 3, 2017, Mr. Rogers was charged with the following:

- 1) Driving under the Influence of Alcohol or Controlled Substances: General Impairment (75 Pa.C.S.A. §3802(a)(1));
- 2) Driving under the Influence of Alcohol or Controlled Substances: Highest Rate of Alcohol (75 Pa.C.S.A. §3802(b));
- 3) Displaying a Foreign License During Suspension or Revocation (75 Pa.C.S.A. §1573(a));
- 4) Driving Without a License (75 Pa.C.S.A. §1501(a));
- 5) Driving While Operating Privilege is Suspended or Revoked (75 Pa.C.S.A. §1543(b)(1)(i));
- 6) Driving While Operating Privilege is Suspended or Revoked (75 Pa.C.S.A. §1543(b)(1.1)(i));
- 7) Failure to Use a Turn Signal (75 Pa.C.S.A. § 3334(a)); and
- 8) Careless Driving (75 Pa.C.S.A. §3714(a)).

The first two charges are misdemeanors. The remaining six are summary offenses.

DISCUSSION

Defendant's Motion to Suppress challenges the legality of the vehicle stop, as well as the validity of the Defendant's blood draw. {1}

{1} Defendant's Memorandum of Law, dated January 2, 2019, does not provide any additional arguments to what he presented in his original motion or at the hearing. Rather, Defendant states that "investigators required (Mr. Rogers) to undergo a blood test without first obtaining a warrant, and without obtaining voluntary consent..." The Memorandum then begins to describe recently decided caselaw on the subject of consent without providing any facts regarding the case at hand or providing any analysis or arguments as to why Mr. Rogers's consent was not voluntary.

Defendant's argument that the stop of Mr. Rogers's vehicle was unconstitutional is without merit. In his Omnibus Pretrial Motion, Defendant argues that "[t]he stop of the vehicle was conducted absent reasonable suspicion" and that "[t]he stop of the vehicle was conducted absent probable cause." However, there is a difference between reasonable suspicion and probable cause and a distinction as to which one an officer must have to stop a vehicle.

In order to constitutionally stop a vehicle, the nature of a suspected violation determines whether an officer needs reasonable suspicion or probable cause. *Commonwealth v. Salter*, 121 A.3d 987, 993 (Pa. Super. Ct. 2015). The Superior Court explained the difference:

If it is not necessary to stop the vehicle to establish that a violation of the Vehicle Code has occurred, an officer must possess probable cause to stop the vehicle. Where a violation is suspected, but a stop is necessary to further investigate whether a violation has occurred, an officer need only possess reasonable suspicion to make the stop.

Id.

The *Salter* Court illustrated this difference by comparing a traffic stop for speeding to one for a DUI. *Id.* In order to stop a vehicle for a speeding violation, an officer must have probable cause that a violation occurred. *Id.* This is because once the officer pulls the vehicle over, there is nothing further that can be determined about the speed the vehicle was traveling that led the officer to believe there was a speeding violation. *Id.* On the other hand, in order to stop a vehicle for a suspected DUI, an officer only needs to have reasonable suspicion that a violation occurred. *Id.* In that case, the officer needs an opportunity to further investigate whether the driver was operating under the influence of alcohol or a controlled substance. *Id.*

In order to conduct a traffic stop for failure to use a turn signal, an officer would need to have probable cause that there was a violation of the Motor Vehicle Code. This is because there is nothing further that can be determined about whether there was failure to use a turn signal after the vehicle is stopped. See *Commonwealth v. Brown*, 64 A.3d 1101, 1105 (Pa. Super. Ct. 2013) (holding that an officer must have probable cause to stop a vehicle based on failure to use a turn signal).

To satisfy the probable cause standard, an officer must be able to articulate specific facts at the time of the stop that would provide probable cause that the vehicle or the driver was in some violation of the Vehicle Code. See *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. Ct. 2010).

Here, Trooper Nagy testified that he first witnessed Mr. Rogers driving at a high rate of speed in the opposite direction, which caused Trooper Nagy to turn around and pursue the vehicle. Further, Trooper Nagy witnessed Mr. Rogers make a left turn without a turn signal, a violation of 75 Pa.C.S.A. § 3334(a). This violation of the Vehicle Code gave Trooper Nagy probable cause to stop Mr. Rogers's vehicle. Once Trooper Nagy began speaking to Mr. Rogers about the reason for the stop, it became

clear that Mr. Rogers was under the influence of alcohol based on Mr. Rogers's irritability, bloodshot eyes, slurred speech, inability to perform the field sobriety tests, and breathalyzer results. For those reasons, Trooper Nagy asked Mr. Rogers if he would submit to a blood draw. The stop of the vehicle as well as the investigation of Mr. Rogers's possible inebriation were constitutionally valid.

Defendant next argues that he was subjected to a blood draw without his consent, in violation of his constitutional rights. Defendant's argument appears to be rooted in the Birchfield decision, as well as a challenge to whether, under the totality of the circumstances, Mr. Rogers voluntarily gave consent to the blood draw. {2}

The U.S. Supreme Court in Birchfield held that a blood draw constitutes a search under the Fourth Amendment, as it implicates privacy concerns. *Birchfield v. North Dakota*, 136 S.Ct. 2160, 2163 (2016). In Pennsylvania, a search conducted without a warrant is unreasonable and unconstitutional unless an exception applies. *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000). One exception to this rule is voluntary consent. *Id.* However, the Supreme Court in Birchfield held that consent is not voluntary when states impose criminal penalties for refusing to submit to a blood draw. *Birchfield* at 2185. While the threat of criminal penalties renders consent involuntary, it is lawful to impose civil and evidentiary penalties for refusing to submit to a blood draw. *Id.*

Pa. C.S.A. §1547(b)(2)(ii), which was enacted before Birchfield, required police officers to inform those who were suspected of driving under the influence of the possibility of enhanced criminal penalties. After Birchfield, however, Pennsylvania courts held that a defendant could not be subjected to enhanced criminal penalties for refusing a blood draw. *Commonwealth v. Evans*, 153 A.3d 323, 331 (Pa. Super. 2016). In *Evans*, the court held that even a threat of enhanced criminal penalties for denying a blood draw is grounds for suppression of the results. *Id.* The rulings in Birchfield and *Evans* rendered Pa. C.S.A. §1547(b)(2)(ii) unenforceable, effectively severing that section from the rest of the Vehicle Code. *Garlick v. Commonwealth, Dept. of Trans., Bureau of Driver Licensing*, 176 A.3d 1030, 1036 (Pa. Commw. 2018).

Defendant specifically cites Birchfield and *Evans* in his Memorandum of Law. However, there is no evidence here that Mr. Rogers was ever told he would be subjected to enhanced criminal penalties, which would have rendered his consent invalid. On the contrary, Trooper Nagy testified that he read the DL-26B Form to Mr. Rogers. The version of the Form that was read to Mr. Rogers does not mention any enhanced criminal penalties should the accused refuse a blood draw.

{2} Refer to Footnote 1.

Beyond the question of enhanced criminal penalties, in order to determine whether consent for a blood draw is voluntary, a court must look at the totality of circumstances. *Commonwealth v. Smith*, 77 A.3d 562, 571 (Pa. 2013), citing *Commonwealth v. Au*, 42 A.3d 1002 (Pa. 2012). The scope of one's consent is determined by "what a reasonable person would have understood by the exchange between the officer and the person who gave consent." *Smith* at 573, citing *Commonwealth v. Reid*, 811 A.2d 530, 549 (Pa. 2002). The evaluation includes an objective examination of the "maturity, sophistication, and mental or emotional state of the defendant." *Smith* at 573, citing *Commonwealth v. Strickler*, 757 A.2d 884, 901 (Pa. 2000). Further, "one's knowledge of his or her right to refuse consent remains a factor in determining the validity of consent..." *Smith* at 573, citing *Commonwealth v. Cleckley*, 738 A.2d 427, 433 (Pa. 1999).

Here, Trooper Nagy testified that Mr. Rogers repeatedly changed his mind about the blood draw. However, Trooper Nagy attributed that to an attempt to delay the blood draw – presumably so Mr. Rogers's blood alcohol levels would drop. Mr. Rogers eventually gave clear consent to a blood draw. Mr. Rogers did not testify at the Omnibus Pretrial hearing, so this Court heard no testimony that suggests that Mr. Rogers did not give consent to a blood draw. There was also no testimony that Mr. Rogers did not understand what it was he was consenting to. On the contrary, the evidence presented by the Commonwealth suggests that Mr. Rogers did know what a blood draw was by the fact that he was trying to delay it-presumably so that the time delay would allow his blood alcohol level to drop. This Court finds the testimony of Trooper Nagy to be credible. Based on the totality of these circumstances, the Court finds that Mr. Rogers knowingly and unambiguously consented to a blood draw.

CONCLUSION

Defendant's Omnibus Pretrial Motion is denied. This case shall be listed for trial.

ORDER

AND NOW, this 7th day of February 2019, in consideration of Defendant's Omnibus Pretrial Motion to Suppress Evidence, it is ORDERED and DIRECTED that the Motion is DENIED. This case shall be listed for trial.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

SAVE THE DATE

SAVE *the* DATE

04.12.2019

Fayette County Bar Banquet

Aaron's Building

Connellsville

CONFERENCE ROOM RENTAL

The Fayette County Bar Association announces the availability of a conference room for rent located at the FCBA Office, 45 East Main Street, Suite 100, Uniontown. Seating is available for 16 persons. Contact Cindy at 724-437-7994 or cindy@fcbar.org to reserve.

Fayette County Bar Association Conference Room Rental Policy

FCBA Members

FCBA members may utilize the FCBA's conference room at no charge one time per calendar month for a maximum of four hours; afterwards, the member will be charged half the non-member rate. The reserving member must be present throughout the rental or the non-member rate will apply.

Non-Members

FCBA's conference room rental fee for non-members is \$50 for reservations up to four hours and \$100 for reservations of four hours up to eight hours during the hours of 9:00 a.m. to 5:00 p.m. Reservations that begin before 9:00 a.m. or continue after 5:00 p.m. will be charged \$25 per hour and extended rentals must be reserved two weeks in advance. A deposit of \$25 is required to reserve the conference room. Reserving non-members who do not show or do not cancel the room with twenty-four hours' notice will forfeit the \$25 deposit.

LUNCH & LEARN SERIES

FCBA LUNCH & LEARN SERIES

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

- Date: **Friday, March 22nd from 12:00 p.m. to 1:30 p.m.**
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **Pennsylvania's New Guardianship Tracking System ("GTS") Workshop**
- Presenter: Rich Ammons, Systems Trainer at the Administrative Office of Pennsylvania Courts

Topics will include: overview of the GTS, how to log in to the GTS and navigate the GTS Dashboard, how to submit guardianship reports online, how to determine if a report was accepted by the Court, and additional support for GTS submissions

CLE Credit

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

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2012

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$20 fee for attendance with CLE Credit

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

A light lunch will be provided.

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Wednesday, March 20th.

Professional Ethics Committee of the Fayette Bar Association

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