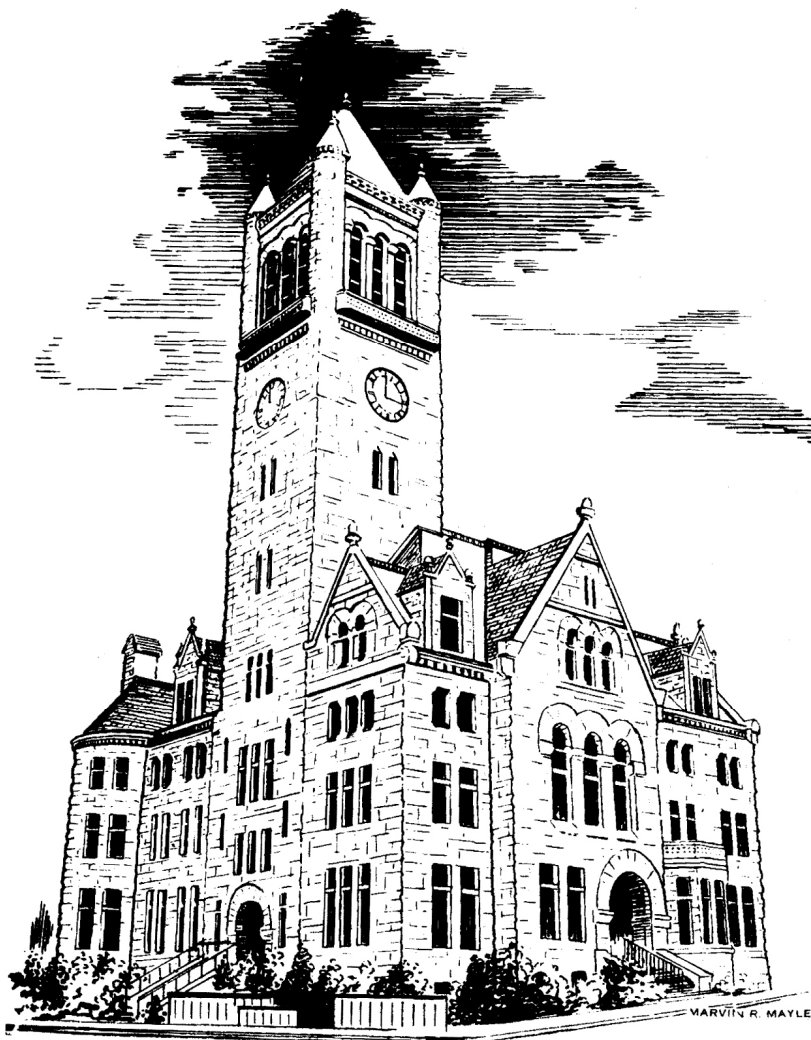


FAYETTE LEGAL JOURNAL

VOL. 83

DECEMBER 19, 2020

NO. 51



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 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: Louise D. Monaghan
President Elect: Gretchen A. Mundorff
Vice-President: Charles O. Zebley, Jr.
Secretary: Anne N. John
Treasurer: Vincent J. Roskovensky, II
Past President: James E. Higinbotham, Jr.

Executive Director: Garnet L. Gordon

Directors
Jennifer M. Casini
Rachel A. Clark
Jeremy J. Davis
Benjamin F. Goodwin
Robert A. Gordon
Sheryl R. Heid
Margaret Zylka House
Wendy L. O'Brien
Douglas S. Sholtis

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

BENJAMIN AUGUSTINE, late of Nicholson Township, Fayette County, PA (3)

Executor: Ben J. Augustine
c/o 84 East Main Street
Uniontown, PA 15401
Attorney: Vincent M. Tiberi

AGNES G. KROLIK, late of Washington Township, Fayette County, PA (3)

Co-Executors: Andrew A. Krolik and Cheryl Ann Jenkins
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

JAMES A. SILBAUGH III, a/k/a JAMES SILBAUGH, late of Connellsville, Fayette County PA (3)

Executrix: Donna Silbaugh
c/o Tremba, Kinney, Greiner, & Kerr
120 South Third Street
Connellsville, PA 15425
Attorney: John K. Greiner

Second Publication

JOYCE L. BARTLEY, late of Connellsville, Fayette County, PA (2)

Executor: James Gallagher
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, Pa 15425
Attorney: Jennifer M. Casini

FLOYD M. DRYLIE, late of Brownsville, Fayette County, PA (2)

Personal Representative: Anna M. Zooner
315 High Street
Brownsville, PA 15417
c/o P.O. 488
California, PA 15419
Attorney: Lisa J. Buday

LORETTA K. FRIEND, late of Hopwood, Fayette County, PA (2)

Executor: Garry Lee Friend
c/o 11 Pittsburgh Street
Uniontown, PA 15401
Attorney: Thomas W. Shaffer

PATRICIA JARRETT, a/k/a PAT JARRETT, a/k/a PATRICIA A. JARRETT, late of Smithfield, Nicholson Township, Fayette County, PA (2)

Executor: Richard A. Jarrett
174 Boy Scout Road
Masontown, PA 15461
c/o 76 East Main Street
Uniontown, PA 15401
Attorney: Douglas S. Sholtis

MARY AGNES SINCLAIR, late of Perryopolis, Fayette County, PA (2)

Co-Executrices: Lenora Palonder
P.O. Box 24
301 Liberty Street
Perryopolis, PA 15473
Mary Beth Cope
P.O. Box 6
801 Circle Street
Perryopolis, PA 15473
c/o Bassi, Vreeland & Associates, P.C.
P.O. Box 144
111 Fallowfield Avenue
Charleroi, PA 15022
Attorney: Bradley M. Bassi

TYLER SWENGLISH, a/k/a TYLER CHARLES SWENGLISH, late of German Township, Fayette County, PA (2)

Personal Representative:
Carl R. Swenglish
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

First Publication

LOIS E. NICHOLSON, late of Uniontown,
Fayette County, PA (1)

Executrix: Jean Keen

c/o P.O. Box 727

Uniontown, PA 15401

Attorney: Bernadette K. Tummons

SUSAN A. KURIMCAK, late of Bullskin
Township, Fayette County, PA (1)

Personal Representative:

Mary Louise Kurimcak

c/o 720 Vanderbilt Road

Connellsville, PA 15425

Attorney: Robert A. Gordon

LEGAL NOTICES**NOTICE**

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on November 3, 2020, 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 Downtown Kids, LLC, having an address of 47 Stadium Drive, Uniontown, Pennsylvania, 15401.

James E. Higinbotham, Jr., Esq.
HIGINBOTHAM LAW OFFICES
45 East Main Street, Suite 500
Uniontown, PA 15401
Telephone: 724-437-2800

NOTICE

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on July 30, 2020, 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 Ye Olde Inn, LLC, having an address of 106 Monarch Road, Dunbar, Pennsylvania, 15431.

James E. Higinbotham, Jr., Esq.
HIGINBOTHAM LAW OFFICES
45 East Main Street, Suite 500
Uniontown, PA 15401
Telephone: 724-437-2800

NOTICE

Notice is hereby given that Articles of Incorporation were filed on November 17, 2020 with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania for the purpose of obtaining a Certificate of Incorporation of a domestic nonprofit corporation which was organized under the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania, (15 Pa. C. S. A. Section 5306, et. sec.) as from time to time amended. The name of the Corporation is Price Ministries, Inc.

James E. Higinbotham, Jr., Esq.
HIGINBOTHAM LAW OFFICES
45 East Main Street, Suite 500
Uniontown, PA 15401
Telephone: 724-437-2800

NOTICE

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on July 30, 2020, 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 Rigger Family Holdings, LLC, having an address of 106 Monarch Road, Dunbar, Pennsylvania, 15431.

James E. Higinbotham, Jr., Esq.
HIGINBOTHAM LAW OFFICES
45 East Main Street, Suite 500
Uniontown, PA 15401
Telephone: 724-437-2800

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
No. 1822 of 2020, G.D.

The Honorable Judge Steve P. Leskinen

**IN RE: CHANGE OF NAME,
SAUL DAVILA**

NOTICE

Notice is hereby given that on October 15, 2020 the petition of Saul Davila was filed in the above named Court, requesting an Order to change the name of Saul Davila to Saul Amezcuita Davila.

The Court has fixed January 15, 2021 at 9:30 A.M. in Courtroom Number 1, Fayette County Courthouse, Uniontown, Pennsylvania as the time and place for a hearing on the merits of said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

Sheryl R. Heid, Esquire
4 N. Beeson Blvd.
Uniontown, PA 15401
(724)437-4700

NOTICE

Notice that on the 24th day of September, 2020, a Petition was filed with the Court of Common Pleas of Fayette County, Pennsylvania, at No. 1676 of 2020, G.D., by Jack R. Heneks, Jr., Esquire, on behalf of JOHN WILLIAM DEAK, JR. by his Natural Father and Guardian, JOHN WILLIAM PLETCHER to change his name to JOHN WILLIAM PLETCHER, JR.

The Court has fixed the 16th day of February, 2021, at 1:30 p.m. in Courtroom 5 of the Fayette County Courthouse before Judge Joseph M. George, Jr., as the time and place for the hearing on said Petition. Any and all persons interested may appear and show cause, if there is any, why the prayer of the Petition should not be granted.

To: Jesse Jeffries

**In Re: P.L., minor child,
born August 17, 2015**

A petition for involuntary termination of parental rights has been filed asking the court to put an end to all rights you have to your child, P.L., born August 17, 2015. The court has set a hearing to consider ending your rights to your child.

The hearing will be held in the Greene County Courthouse, 10 E. High Street, Waynesburg, PA 15370 on January 15, 2021, at 9:00 a.m. in the assigned courtroom before the Judge.

You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without you being present.

You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help. Southwestern Pennsylvania Legal Aid, 63 S. Washington Street, Waynesburg, PA 15370; (724) 627-3127 or Lawyer Referral Service, 10 E. High Street, Waynesburg, PA; (724) 852-5237.

This notice given by Greene County Children and Youth Services, 150 Fort Jackson County Building, 19 South Washington Street, Waynesburg, PA 15370.

(2 of 3)

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, January 4, 2021, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2616-0577	RITA M. CARNES	Willa Jean Brown a/k/a Jean Brown and Elaine Swank, Adminstratrices DBNCTA

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Tuesday, January 19, 2021, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George Jr.** or his chambers, 3rd 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 (1 of 2)

JUDICIAL OPINION

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

COMMONWEALTH OF
PENNSYLVANIA,

v.

JUSTIN FRIEND,
Defendant.

:
:
:
:
:
:
:

No. 2151 of 2019

Honorable Senior Judge Gerald R. Solomon

OPINION AND ORDER

SOLOMON, SJ.

October 21, 2020

Before the Court is the Omnibus Pretrial Motion of Justin Friend, Defendant, in the nature of a Motion to Dismiss, Motion to Conform Information, Motion to Suppress Statements, and Motion to Suppress blood test results. After Hearing, we make the following Findings of Fact.

FINDINGS of FACT

1. On May 18, 2019, Trooper Lauren Vernail and Trooper Wyatt Tidholm, Pennsylvania State Troopers, were dispatched to a vehicle crash. N.T. 6/8/20, at 7-8.

2. Upon arrival, Trooper Vernail observed Defendant seated in the driver's seat on an ATV, in the roadway, and visibly intoxicated. Id. at 8-9.

3. Defendant's speech was slurred and there was a strong odor of alcohol emanating from his person. Id. at 9.

4. Trooper Vernail investigated the scene and found no evidence that the ATV had been on the side of the roadway or had rolled. Id. at 14-16.

5. Trooper Wyatt Tidholm, who had arrived with Trooper Vernail, observed Defendant seated on the ATV with his hands on the handlebars as if he could operate it. Id. at 18, 20.

6. Defendant appeared to be intoxicated to Trooper Tidholm, with slurred speech and a very heavy odor of alcoholic beverage emanating from his person and breath. Id. at 22.

7. Defendant staggered and stumbled, and was swaying, as Trooper Tidholm spoke with him. Id.

8. Defendant is not contending that he was not impaired or that there is not prima facie evidence that he was impaired. Id. at 24.

9. The Defendant's ATV was located on the roadway with only the front left tire just off the paved roadway. Id. at 25.

10. Defendant was placed in custody and agreed to a chemical test of his breath. Id. at 26.

11. Defendant stated that he drove on the roadway that night. Id. at 37.

12. Defendant was not read Form DL 26A before he consented to and gave a sample of his breath. *Id.* at 14.
13. Defendant did not testify or call any witnesses.
14. The testimony of Trooper Vemail and Trooper Tidholm was credible.

DISCUSSION

In his Omnibus Pretrial Motion, and at the time of hearing on the Motion, Defendant contends that the ATV of Defendant was not being operated on the roadway where it was found, his statements should be suppressed, and that the results of his breath test should be suppressed because he was not read Form DL 26A before he consented to the test. The motion also puts forth "facts" that were not testified to by any witness at the time of Hearing on the Motion. Be that as it may, we will address the motion of Defendant based on the testimony and evidence received at the time of Hearing.

Initially, we note that Defendant is not contending that he was not impaired or that there is *prima facie* evidence that he was impaired. Thus, we will only address the issues raised at the time of Hearing.

In his first issue, styled in the nature of a Motion to Dismiss and a Motion to Conform Information, Defendant contends that he was not operating the vehicle on the roadway. Rather, he was operating it off-road. Thus, Defendant contends he has wrongly been charged. However, the record in this matter indicated that Defendant waived his preliminary hearing and that he was represented by counsel. Therefore, pursuant to P.R.Crim.P. Rule 541, while a defendant who is represented by counsel may waive his preliminary hearing, he is thereafter precluded from raising the sufficiency of the Commonwealth's *prima facie* case unless the parties have agreed at the time of the waiver that the defendant may later challenge the sufficiency of the Commonwealth's *prima facie* case. No such evidence was presented by Defendant at the time of hearing. Thus, Defendant is precluded from raising the sufficiency of the Commonwealth's *prima facie* case.

In his next issue, Defendant seeks to Suppress to Statements. From the record, the only incriminating statement made by Defendant was that he had consumed beer. However, Counsel for Defendant stated at the hearing that Defendant is not contesting the Commonwealth's claim that Defendant was impaired. *Id.* at 24-25.

The remaining issue is Defendant was not read Form DL-26A before he consented to and gave a sample of his breath. As to this issue, Trooper Tidholm testified that when this arrest occurred, the "standard procedure at the time" was to not read Form DL-26A before seeking consent. *Id.* at 42-43. While this may have been the standard procedure at the time, subsequent decisions by the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania have held that an individual must be read the Form, which advises the individual of his rights and penalties, so that the individual may make an informed decision regarding whether to consent to the request of the officer. Thus, since the Form as not read to Defendant, the results of the breath test must be suppressed.

WHEREFORE, we will enter the following Order.

ORDER

AND NOW, this 21st day of October, 2020, it is hereby ORDERED and DECREED that the Omnibus Pretrial Motion of Defendant, Justin Friend, is DENIED, with the exception that the results of the breath test are hereby ORDERED and DECREED suppressed.

BY THE COURT:
SOLOMON, SJ.

ATTEST:
Clerk of Courts

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**



Does the Public Health Crisis Have You Feeling Anxious, Stressed or Depressed ?

Call Now
to learn more about our free services.

LAWYERS CONCERNED FOR LAWYERS
— PENNSYLVANIA —

100% Confidential Helpline
1-888-999-1941
www.lclpa.org

Peer & staff support, assessment by a qualified healthcare provider, literature, intervention assistance and resources

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

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI
& ASSOCIATES

412-281-2200

www.gislaw.com

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