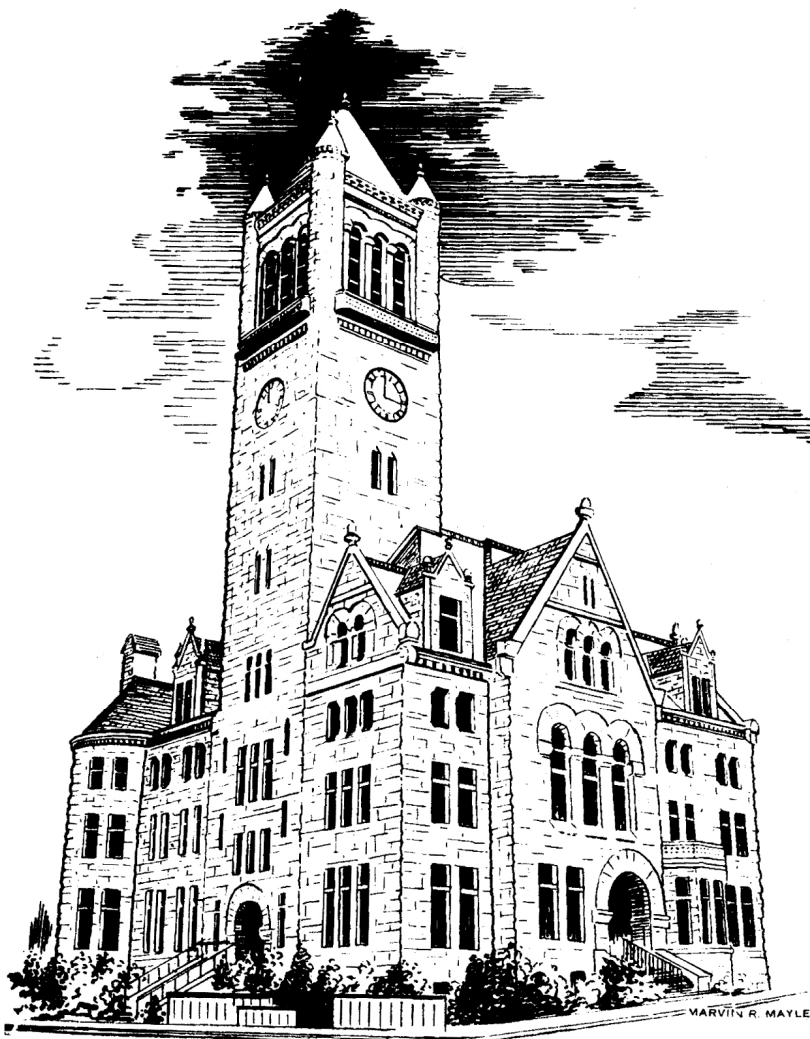


FAYETTE LEGAL JOURNAL

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FAYETTE LEGAL JOURNAL

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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.

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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

SARAH BARTUCH, SARAH KATHERINE BARTUCH, a/k/a SARAH K. BARTUCH, a/k/a SALLY BARTUCH, late of Masontown, Fayette County, PA (3)

Executor: Gina G. Barrett
15 Bayberry Terrace
Morgantown, WV 26508
c/o Rowan Law Offices
890 Vanderbilt Road
Connellsville, PA 15425
Attorney: Davina Burd

RONALD BURWELL, JR., late of German Township, Fayette County, PA (3)

Administrator: Bryan Burwell
53 Saint Clair Village
Morgantown, WV 26505
c/o 986 Brodhead Road
Moon Township, PA 15108
Attorney: Michele Conti

CARL THOMAS GASKILL, late of North Union Township, Fayette County, PA (3)

Personal Representative: Dewayne Gaskill
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

HAZEL HIXON, a/k/a HAZEL M. HIXON, late of Lower Tyrone Township, Fayette County, PA (3)

Personal Representative: Donna F. Hixon,
f/n/a Donna McBee
c/o River Front Professional Center
208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

CLARISSA HULET, a/k/a CLARISSA C. HULET, late of Saltlick Township, Fayette County, PA (3)

Executor: Julie Hoffer
1137 Buchanan Road
White, PA 15490
c/o John A. Cochran, Esquire/CPA
140 South Main Street #301
Greensburg, PA 15601
Attorney: John Cochran

WILLIAM FRANK JOHNSON, JR., a/k/a WILLIAM F. JOHNSON, a/k/a WILLIAM F. JOHNSON, JR., late of Brownsville, Fayette County, PA (3)

Executor: William F. Johnson, III
c/o Zebley Mehalov & White, P.C.
18 Mill Street Square
P.O. Box 2123
Uniontown, PA 15401
Attorney: Charles O. Zebley, Jr.

CHERYL LOUISE MORRIS, a/k/a CHERYL MORRIS, late of Stewart Township, Fayette County, PA (3)

Executrix: Kristie Metts
c/o Zebley Mehalov & White, P.C.
18 Mill Street Square
P.O. Box 2123
Uniontown, PA 15401
Attorney: Daniel R. White

CLAIRE S. PROVANCE, late of South Union Township, Fayette County, PA (3)

Personal Representative: James L. Provance
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

GEORGE D. PUSKAR, late of Dunbar Township, Fayette County, PA (3)
Personal Representative: Janet R. Puskar
 c/o Watson Mundorff & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Michelle L. Dietz

LOUISE S. SZWED (SMITH), late of Upper Tyrone Township, Fayette County, PA (3)
Administratrix: Marilyn L. Cassady
 c/o Adams & Adams
 55 East Church Street, Suite 101
 Uniontown, PA 15401
Attorney: Jason Adams

JOHN J. VARHACH, a/k/a JOHN VARHACH, late of Redstone Township, Fayette County, PA (3)
Personal Representative: Theresa Hemp-Hall
 c/o Davis and Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: James T. Davis

Second Publication

WENDY BLOOM, late of German Township, Fayette County, PA (2)
Administrator: David A. Bowser
 c/o Adams & Adams
 55 East Church Street, Suite 101
 Uniontown, PA 15401
Attorney: Jason Adams

IRENE E. MERRILL, late of South Union Township, Fayette County, PA (2)
Personal Representative: Lenora Brady
 c/o Watson Mundorff & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Michelle L. Dietz

VIRGINIA RUTH RAVENSCROFT, late of Ohiopyle, Fayette County, PA (2)
Executor: Marke Ravencroft
 c/o Adams & Adams
 55 East Church Street, Suite 101

Uniontown, PA 15401
Attorney: Jason Adams

ELIZABETH M. SALLY, a/k/a BETTY M. SALLY, late of Luzerne Township, Fayette County, PA (2)
Personal Representative: Melvin J. Sally, II
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: Jeremy J. Davis

ELMER J. SASKO, a/k/a ELMER JOHN SASKO, late of South Union Township, Fayette County, PA (2)
Personal Representative: Douglas S. Sepic
 c/o Watson Mundorff & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Douglas S. Sepic

DANIEL WALTERS, a/k/a DANIEL WAYNE WALTERS, late of Nicholson Township, Fayette County, PA (2)
Personal Representative: Sabine Gaskill
 181 Bowood Road
 Smithfield, PA 15478
 c/o P.O. Box 622
 Smithfield, PA 15478
Attorney: Charity Grimm Krupa

First Publication

MARK A. KLINK, a/k/a MARK ALAN KLINK, SR., late of Dunbar Township, Fayette County, PA (1)
Administratrix: Tracy L. Klink
 c/o 9 Court Street
 Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

LOUIS E. SAVINI, late of South Union Township, Fayette County, PA (1)
Personal Representative: Philip J. Savini, Sr.
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: James T. Davis

WILLIAM F. SHILLINGS, late of North Union Township, Fayette County, PA (1)

Personal Representative:

Herbert G. Mitchell, Jr.

c/o 902 First Street

P.O. Box 310

Hiller, PA 15444

Attorney: Herbert G. Mitchell, Jr.

LOUIS N. USHER, JR., late of Jefferson Township, Fayette County, PA (1)

Executor: Victoria Ann Usher

535 Fayette City

Perryopolis, PA 15473

c/o 111 East Main Street

Uniontown, PA 15401

Attorney: Robert Harper

LEGAL NOTICES

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 July 11, 2019, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of The Smitten Shop with the principal place of business at: 235 Hague Lane, Uniontown, PA 15401.

The name or names and addresses of persons owning and interested are: Corin Ray Mascioli, 235 Hague Lane, Uniontown, PA 15401 and Kaitlyn Alyssa Johnson, 483 Laurel Hill Road, Smock, PA 15480.

NOTICE

NOTICE IS HEREBY GIVEN that an application for registration of a fictitious name, Uniontown Physicians, for the conduct of business in Fayette County, Pennsylvania, with the principal place of business being at 500 West Berkeley Street, Uniontown, PA 15401, was approved by the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on June 27, 2019, pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name and address of the entity owning or interested in the said business is: Fayette Physician Network, Inc., 500 West Berkeley Street, Uniontown, PA 15401.

NOTICE

NOTICE IS HEREBY GIVEN that an application for registration of a fictitious name, Uniontown Specialty Care, for the conduct of business in Fayette County, Pennsylvania, with the principal place of business being at 500 West Berkeley Street, Uniontown, PA 15401, was approved by the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on June 27, 2019, pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name and address of the entity owning or interested in the said business is: Fayette Physician Network, Inc., 500 West Berkeley Street, Uniontown, PA 15401.

NOTICE

NOTICE IS HEREBY GIVEN that an application for registration of a fictitious name, Uniontown Primary Care, for the conduct of business in Fayette County, Pennsylvania, with the principal place of business being at 500 West Berkeley Street, Uniontown, PA 15401, was approved by the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on June 27, 2019, pursuant to the Act of Assembly of December 16, 1982, Act 295.

The name and address of the entity owning or interested in the said business is: Fayette Physician Network, Inc., 500 West Berkeley Street, PA 15401.

SHERIFF'S SALE

Date of Sale: October 17, 2019

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, October 17, 2019, at 2:00 p.m. in Courtroom Number Five at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (3 of 3)

James Custer
Sheriff Of Fayette County

No. 500 of 2017 GD
No. 231 of 2019 ED

Property of: CHARLES BAILEY

Execution No.: 500 of 2017

Judgment Amount: \$45,284.11, Plus Costs

Attorney: Covelli Law Offices, P.C.

Address: 357 Regis Avenue Pittsburgh, PA 15236

ALL right, title, interest and claim of: CHARLES BAILEY of, in and to:

Property located in:
TOWNSHIP OF LUZERNE, BOROUGH OF HILLER, FAYETTE COUNTY, PA:

K/A 231-232 Frick Street, Hiller, PA 15444

Improvements: House

D.B.V. 2642, PG# 158

TAX MAP# 19-07-0015

Phelan Hallinan Diamond & Jones, LLP

No. 2219 of 2018 GD
No. 178 of 2019 ED

Wells Fargo Bank, N.A.

Plaintiff

v.

Deborah Davis a/k/a Deborah Bock Davis a/k/a Deborah M. Bock, in Her Capacity as Executrix and Devisee of The Estate of Janice M. Bock

a/k/a Janice Marie Bock a/k/a Janice Marie Fisher Bock a/k/a Janice Bock Thomas Bock, Jr a/k/a Thomas B. Bock, Jr, in His Capacity as Devisee of The Estate of Janice M. Bock a/k/a Janice Marie Bock a/k/a Janice Marie Fisher Bock a/k/a Janice Bock Brandon J. Bock a/k/a Brandon Bock, in His Capacity as Devisee of The Estate of Janice M. Bock a/k/a Janice Marie Bock a/k/a Janice Marie Fisher Bock a/k/a Janice Bock
Defendant(s)

By virtue of a Writ of Execution No. 2219 OF 2018 GD

Wells Fargo Bank, N.A.

v.

Deborah Davis a/k/a Deborah Bock Davis a/k/a Deborah M. Bock, in Her Capacity as Executrix and Devisee of The Estate of Janice M. Bock a/k/a Janice Marie Bock a/k/a Janice Marie Fisher Bock a/k/a Janice Bock

Thomas Bock, Jr a/k/a Thomas B. Bock, Jr, in His Capacity as Devisee of The Estate of Janice M. Bock a/k/a Janice Marie Bock a/k/a Janice Marie Fisher Bock a/k/a Janice Bock

Brandon J. Bock a/k/a Brandon Bock, in His Capacity as Devisee of The Estate of Janice M. Bock a/k/a Janice Marie Bock a/k/a Janice Marie Fisher Bock a/k/a Janice Bock

owner(s) of property situate in the BROWNSVILLE BOROUGH, Fayette County, Pennsylvania, being 317 WATER STREET, BROWNSVILLE, PA 15417-1632

Parcel No.: 02-07-0043

Improvements thereon: RESIDENTIAL DWELLING

WATSON MUNDORFF& SEPIC, LLP
720 VANDERBILT ROAD
CONNELLSVILLE, PA 15425

No. 396 of 2018 GD

No. 156 of 2019 ED

SOMERSET TRUST COMPANY

Plaintiff,

V.

MILISSA A. CHOMIAK, AN INDIVIDUAL, AND IN HER CAPACITY AS ADMINISTRATRIX OF THE ESTATE OF MICHAEL E. CHOMIAK AND OF THE ESTATE OF JOSEPHINE L. CHOMIAK; ESTATE OF MICHAEL E. CHOMIAK, DECEASED; AND ESTATE OF JOSEPHINE L. CHOMIAK, DECEASED.

By virtue of a Writ of Execution No. 156 of 2019, E.D.

Somerset Trust Company

v.

Milissa A. Chomiak, an individual, and in her capacity as administratrix of the estate of Michael E. Chomiak and of the Estate of

Josephine L. Chomiak; Estate of Michael E. Chomiak, deceased; and Estate of Josephine L. Chomiak, deceased.

Owner of property situate in REDSTONE TOWNSHIP, Fayette County, Pennsylvania being 48 Park Street, Republic, Pennsylvania 15475

Parcel No: 30240063

Improvements thereon: FRAME OR CB DETACHED GARAGE

BARLEY SNYDER
Joseph P. Schalk, Esquire
Court I.D. No. 91656
126 E. King Street
Lancaster, PA 17602
717.299.5201

No. 519 of 2019 GD

No. 221 of 2019 ED

MID PENN BANK, SUCCESSOR BY MERGER TO THE SCOTTTDALE BANK & TRUST COMPANY,

Plaintiff

v.

RONALD S. CRAIG, II,
Defendant

Property Address: 3393 Springfield Pike, Normalville, Fayette County, Pennsylvania
Parcel ID Number: 05-10-0053
Judgment Amount: \$63,486.97

BEING the same premises which Ronald Craig a/k/a Ronald S. Craig, a single man by deed dated April 19, 2010 and recorded April 21, 2010 in the Office of the Recorder of Deeds in and for Fayette County Pennsylvania in Record Book 3120, Page 711, granted and conveyed unto Ronald S. Craig and Ronald S. Craig, II, a single man, son of Ronald S. Craig, as joint tenants with right of survivorship and not as tenants in common.

No. 401 of 2019 GD

No. 215 of 2019 ED

U.S. Bank National Association, as indenture trustee, for the CIM Trust 2016-1, Mortgage-Backed Notes, Series 2016-1,

Plaintiff,

Vs.

**Barry W. Darr
Linda M. Darr,
Defendants**

ALL THAT RIGHT, TITLE, INTEREST AND CLAIMS OF BARRY W. DARR AND LINDA M. DARR OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN LOT OR PARCEL OF LAND SITUATE IN SPRINGFIELD TOWNSHIP, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA, BEING MORE FULLY DESCRIBED AT DBV 3006 PAGE 756

BEING KNOWN AS 724 MILL RUN ROAD, MILL RUN, PA 15464
TAX MAP NO. 35150058

KML LAW GROUP, P.C.
Suite 5000
701 Market Street
Philadelphia, PA 19106-1532
(215) 627-1322

No. 654 of 2019 GD
No. 155 of 2019 ED

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS INDENTURE TRUSTEE, FOR NEW CENTURY HOME EQUITY LOAN TRUST 2005-3
1600 S. Douglass Road, Suite 200-A
Anaheim, CA 92806
Plaintiff**

vs.

**LEA ANN DRISCOLL
Mortgagor(s) and Record Owner(s)
214 East Apple Street
Connellsville, PA 15425
Defendant(s)**

ALL THAT CERTAIN LOT OF LAND SITUATE IN IN THE CITY OF CONNELLSVILLE, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 214 EAST APPLE STREET, CONNELLSVILLE, PA 15425

TAX PARCEL # 05-06-0399
IMPROVEMENTS: A RESIDENTIAL DWELLING

SOLD AS THE PROPERTY OF: LEA ANN DRISCOLL

Jill M. Fein, Esquire
Hill Wallack LLP
777 Township Line Road, Suite 250
Yardley, PA 19067
(215) 579-7700

No. 358 of 2019 GD
No. 222 of 2019 ED

**Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A
Plaintiff**

v.

**Juanita Harris and Geary Harris
Defendant**

By virtue of a writ of execution case number: 2019-00358

Plaintiff: Wilmington Savings Fund Society, FSB, as trustee of Stanwich Mortgage Loan Trust A

v.

Defendant: Juanita Harris and Geary Harris

owners of property situate in the German Township, Fayette County, Pennsylvania, being pin number 15-26-0040

Property being known as: 57 Main Street, McClennandtown, PA 15458

Improvements thereon: Residential Property

STERN AND EISENBERG, PC
EDWARD J. MCKEE, ESQ.

No. 2168 of 2018 GD
No. 230 of 2019 ED

The Bank of New York Mellon as Trustee for the benefit of the Certificateholders of Popular ABS, Inc. Mortgage Pass-Through Ce1iificates Series 2006-B c/o Ocwen Loan Servicing, LLC

Plaintiff

v.

**Mark A. Herring
and
Pamela L. Custer
Defendant(s)**

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN HENRY CLAY TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 416 Braddock Road, Township of Clay a/k/a Markleysburg, PA 15459

PARCEL NO. 16-15-001708
 IMPROVEMENTS - RESIDENTIAL REAL ESTATE
 SOLD AS THE PROPERTY OF- Mark A. Herring and Pamela L. Custer

No. 1958 of 2014 GD
 No. 157 of 2019 ED

LSF9 Master Participation Trust
PLAINTIFF

vs.

Giancarlo Langeri, Sr. and Terri Langeri
DEFENDANTS

ALL that lot of land situate in South Union Township, Fayette County, Pennsylvania, upon which is erected a double frame dwelling numbered 103-104 as shown by plan of lots at Continental No. 1, laid out by Louis Kamansky and Gera Lux, a plot of which plan is of record in the Office of the Recorder of Deeds of said Fayette County in plan book volume 9 at page 1, said lot is more particularly bounded and described as follows:

BEGINNING at a point in the center line of Garner Street, comer with lot occupied by House N. 105/106 as shown on said recorded lot plan; thence along a line of said lots, North 60 degrees 41' West, a distance of 121.41 feet to a point in the center line of a 12.0 foot alley; thence in the center of said 12.0 foot alley, North 29 degrees 19' East, a distance of 79.5 feet to a point comers on Cross Street upon which is erected House No. 1 03-104; thence along Cross Street South 60 degrees 41' east, a distance of 123.41 feet to a point in the center line of Garner Street; thence in the comer line of said Gamer Street, south 29 degrees 19' West, a distance of 79.5 feet to the place of beginning.

THIS CONVEYANCE is made subject to all exceptions, reservations, easements, restrictions, limitations, rights of law, etc. as heretofore granted or excepted and reserved in prior instruments of record.

COMMONLY KNOWN AS: 507 Garner Street, Uniontown, PA 15401
 TAX PARCEL NO. 34-16-0297

No. 253 of 2017 GD
 No. 229 of 2019 ED

Wells Fargo Bank, NA
Plaintiff,

vs.

Rebecca L. Lycett
Defendant.

ALL that certain parcel of land lying and being situate in the City of Connellsville, County of Fayette, and Commonwealth of Pennsylvania, known as 503 South Arch Street, Connellsville, PA 15425 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 05070219

BEING the same premises which Joseph Pratt, Jr. and Margaret R. Pratt, husband and wife, by Deed dated October 19, 1979 and recorded in and for Fayette County, Pennsylvania in Deed Book 1262, Page 844, granted and conveyed unto James T. Lycett and Rebecca I. Lycett, husband and wife.

No. 863 of 2019 GD
 No. 220 of 2019 ED

PENNYMAC LOAN SERVICES, LLC

vs.

GREGORY A. MANDICH

ALL THAT CERTAIN piece or parcel of land, situated in Franklin Township, Fayette County, Pennsylvania

BEING KNOWN AS: 484 FLATWOODS ROAD, VANDERBILT, PA 15486

BEING THE SAME PREMISES which Raymond J. Grote, by Deed dated January 17, 2014 and recorded January 22, 2014 in the Office of the Recorder of Deeds in and for Fayette County in Deed Book Volume 3240, Page 2287, granted and conveyed unto GREGORY A. MANDICH, a married man.

PARCEL #13-06-0088

Phelan Hallinan Diamond & Jones, LLP

No. 1076 of 2018 GD
No. 225 of 2019 ED

**U.S. Bank National Association s/b/m to U.S.
Bank National Association nd
Plaintiff
v.
Judith L. Mcallister
Dean F. Mcallister
Defendant(s)**

By virtue of a Writ of Execution No. 1076
OF 2018 GD

U.S. Bank National Association s/b/m to U.S.
Bank National Association nd
v.
Judith L. Mcallister Dean F. Mcallister

owner(s) of property situate in the SALTICK
TOWNSHIP, Fayette County, Pennsylvania,
being 249 Alpine Heights Road, Champion, PA
15622-3026
Parcel No.: 31-18-0029
Improvements thereon: RESIDENTIAL
DWELLING

No. 1631 of 2018 GD
No. 224 of 2019 ED

**U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,
PLAINTIFF
VS.
JENNIFER M. MILLER AND
RICHARD C. MILLER JR.
DEFENDANTS**

ALL that tract of land in Redstone
Township, Fayette County, Pennsylvania, being
approximately 203 x 79 x 234 x 82.38; Survey at
Book 1097, page 819. HAVING THEREON
ERECTED DWELLING KNOWN AND
NUMBERED AS: 727 BRAZNELL ROAD
GRINDSTONE, PA 15442
TAX MAP#: 30-06-0004
Fayette Record Book 2913, Page 1498
TO BE SOLD AS THE PROPERTY OF
JENNIFER M. MILLER AND RICHARD C.
MILLER, JR.

Richard M. Squire & Associates, LLC
By: Richard M. Squire, Esquire
M. Troy Freedman, Esquire
Sarah K. McCaffery, Esquire
Chandra M. Arkema, Esquire
One Jenkintown Station , Suite 104
115 West Avenue
Jenkintown, PA 19046
Telephone: 215-886-8790

No. 335 of 2019 GD
No. 223 of 2019 ED

**J.P. Morgan Mortgage Acquisition Corp.
PLAINTIFF
v.
ADRIENNE RUSSELL;
DEFENDANT(S).**

TAX PARCEL NO.: 19070023
PROPERTY ADDRESS: 241 FRICK
STREET, HILLER, PA 15444
IMPROVEMENTS: Single Family
Dwelling
SEIZED AND TAKEN in execution as the
property of ADRIENNE RUSSELL

PARCEL ONE: ALL that certain lot or
piece of land situate in Luzerne Township,
Fayette County, Commonwealth of
Pennsylvania, being Lot No. 113 in a Plan of
Lots recorded by John W. Galbreath, doing
business as John W. Galbreath & Co., in the
Recorder's Office of Fayette County,
Pennsylvania, in Plan Book 9, Page 34.

PARCEL TWO: ALL that certain lot or
piece of land situate in the Township of Luzerne,
Fayette County, Commonwealth of
Pennsylvanian, being Lot No. 112 in a Plan of
Lots recorded by John W. Galbreath d/b/a John
W. Galbreath & Co. in the Recorder's Office of
Fayette County, Pennsylvania, in Plan Book 9,
Page 34.

BEING jointly identified and assessed as
Tax ID No. 19070023.

BEING known as 241 Frick Street, Hiller,
Pennsylvania 15444.

BEING the same premises which Marie A.
Gardner conveyed unto Adrienne Russell by
deed dated October 17, 2008 and recorded with
the Fayette County Recorder on October 22,
2008 in Deed Book 3076, Page 1973 and
Instrument no 200800014281.

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

No. 1116 of 2019 GD
 No. 235 of 2019 ED

**First Guaranty Mortgage Corporation
 (Plaintiff)**

vs.

**Tammy M. Shipley,
 (Defendant)**

By virtue of Writ of Execution No. 2019-01116

First Guaranty Mortgage Corporation
 (Plaintiff) vs. Tammy M. Shipley, (Defendant)
 Property Address 309 Locust Street,
 Masontown, PA 15461

Parcel I.D. No. 21-08-0110

Improvements thereon consist of a
 residential dwelling.

Judgment Amount: \$88,158.53

KML LAW GROUP, P.C.
 Suite 5000
 701 Market Street
 Philadelphia, PA 19106-1532
 (215) 627-1322

No. 1641 of 2018 GD
 No. 234 of 2019 ED

BAYVIEW LOAN SERVICING, LLC

4425 Ponce de Leon Blvd

Coral Gables, FL 33146

Plaintiff

vs.

AMANDA J. STILLWAGON

Mortgagor(s) and Record Owner(s)

101 East Church Avenue

Masontown, PA 15461

ALL THAT CERTAIN LOT OF LAND
 SITUATE IN THE BOROUGH OF
 MASONTOWN, COUNTY OF FAYETTE
 AND COMMONWEALTH OF
 PENNSYLVANIA.

BEING KNOWN AS: 101 EAST
 CHURCH AVENUE, MASONTOWN, PA

15461

TAX PARCEL# 21-07-0405
 IMPROVEMENTS: A RESIDENTIAL
 DWELLING

SOLD AS THE PROPERTY OF:
 AMANDA J. STILLWAGON

STERN AND EISENBERG, PC
 EDWARD J. MCKEE, ESQ.

No. 2307 of 2018 GD

No. 195 of 2019 ED

**The Bank of New York Mellon as Trustee for
 NovaStar Mortgage Funding Trust, Series
 2004-2, NovaStar Home Equity Loan Asset-
 Backed Certificates, Series 2004-2 c/o Ocwen
 Loan Servicing, LLC**

Plaintiff

v.

Crissy Stimmel a/k/a Chrissy L. Stimmel

Defendant(s)

SITUATE IN THE THIRD WARD OF
 THE BOROUGH OF DAWSON, FAYETTE
 COUNTY, PENNSYLVANIA, BEING
 KNOWN AS 206 Cochran Street, Dawson, PA
 15428

PARCEL NO. 07-03-0015

IMPROVEMENTS - RESIDENTIAL
 REAL ESTATE

SOLD AS THE PROPERTY OF- Crissy
 Stimmel a/k/a Chrissy L. Stimmel

No. 990 of 2018 GD

No. 232 of 2019 ED

**U.S. Bank National Association, as Trustee
 for SASCO Mortgage Loan Trust 2006-WF3**

Plaintiff,

vs.

Anna M. Toth, AKA Anna Marie Toth

Defendant.

ALL that certain parcel of land lying and
 being situate in the Township of Washington,
 County of Fayette, and Commonwealth of
 Pennsylvania, known as 264 Gillespie Hollow
 Road, Fayette City, PA 15438 having erected
 thereon a dwelling house.

Being known and designated as Tax ID
 No.: 41220059

BEING the same premises which David J. Serra and Sherry A. Serra, his wife, by Deed dated June 26, 2006 and recorded in and for Fayette County, Pennsylvania in Deed Book 3000, Page 1648, granted and conveyed unto Anna Marie Toth.

No. 616 of 2019 GD
No. 228 of 2019 ED

U.S. Bank National Association
Plaintiff,
vs.
Melissa Weibl, AKA Melissa Sue Mancuso
Defendant.

ALL that certain parcel of land lying and being situate in the Township of North Union, County of Fayette, and Commonwealth of Pennsylvania, known as 27 Forbes Street, Uniontown, PA 1540 I having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 25-47-0062

BEING the same premises which Tracy Lynn Anderson, formerly known as Tracy Lann Richardson and Brian K. Anderson, her husband, by Deed dated May 16, 2013 and recorded in and for Fayette County, Pennsylvania in Deed Book 3219, Page 1979, granted and conveyed unto Melissa Sue Mancuso.

Phelan Hallinan Diamond & Jones, LLP

No. 937 of 2019 GD
No. 196 of 2019 ED

PHH Mortgage Corporation
Plaintiff
v.
Joseph G. Yeagley, Sr
Defendant(s)

By virtue of a Writ of Execution No. 937 OF 2019 GD

PHH Mortgage Corporation

v.

Joseph G. Yeagley, Sr

owner(s) of property situate in the UNIONTOWN CITY, Fayette County, Pennsylvania, being 21 Lemon Street,

Uniontown, PA 15401-2949

Parcel No.: 38-01-0291

Improvements thereon: RESIDENTIAL DWELLING

Phelan Hallinan Diamond & Jones, LLP

No. 740 of 2019 GD
No. 186 of 2019 ED

Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP
Plaintiff
v.

Thomas S. Zahand
Janine Zahand
Defendant(s)

By virtue of a Writ of Execution No. 740 OF 2019 GD

Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP

v.

Thomas S. Zahand
Janine Zahand

owner(s) of property situate in the BROWNSVILLE BOROUGH, 1ST, Fayette County, Pennsylvania, being 246 Bank Street, Brownsville, PA 15417-2045

Parcel No.: 02-06-0105

Improvements thereon: RESIDENTIAL DWELLING

END SHERIFF SALES

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
vs.	:	
	:	
GIL DANIEL AVELLANET,	:	No. 2486 of 2018
Defendant.	:	Honorable Linda R. Cordaro

OPINION AND ORDER

CORDARO, J.

July 31, 2019

SUMMARY

Defendant is charged with several violations of the Controlled Substance Act. Before the Court is Defendant's Omnibus Pretrial Motion in the form of a Motion to Suppress Evidence and a Writ of Habeas Corpus.

BACKGROUND

Defendant, Gil Avellanet, was charged with violations of the Controlled Substance Act, among other summary offenses, as a result of an incident that occurred on May 28, 2018. Attorney Brent Peck was appointed to represent Mr. Avellanet. {1} Defendant filed an Omnibus Pretrial Motion on May 8, 2019. The Motion is in the form of a Motion to Suppress Evidence and a Writ of Habeas Corpus. The Motion to Suppress Evidence challenges the constitutionality of the stop and the search of the vehicle. The Writ of Habeas Corpus alleges that the Commonwealth failed to present sufficient evidence to establish a prima facie case against Mr. Avellanet. A hearing on the Motion was held on July 1, 2019. The following testimony was presented at the hearing.

Corporal Patrick Bouch is a patrol supervisor for the Pennsylvania State Police Uniontown Barracks. He also performs patrol duties. On May 28, 2018, Corporal Bouch was on a shift in Uniontown. At around 8:30 PM, he was driving south on Morgantown Road when a vehicle turned left ahead of him onto Morgantown Road, traveling in the same direction. Corporal Bouch noticed that the vehicle did not have its headlights on, even though it was dusk. Corporal Bouch, now following the vehicle, also noticed that there were beads and other items hanging from the rearview mirror. Based on the headlights and the obstruction, Corporal Bouch initiated a traffic stop. {2}

{1} Attorney Peck was appointed as Conflicts Counsel, due to the Public Defender's Office's representation of the co-defendant in this case.

{2} The Preliminary Hearing Proceedings were admitted into evidence during the Hearing on the Omnibus Pretrial Motion. During the Preliminary Hearings, Corporal Bouch also testified that neither the driver nor the passenger was wearing a seat belt. (Preliminary Hearing Proceedings at 4.)

The vehicle pulled into the parking lot of a KFC. Corporal Bouch went to the driver's side window. Inside the vehicle were a driver and a front-seat passenger. The driver was identified as the Defendant, Gil Avellanet, and the passenger was identified as Alisha Bassinger. Corporal Bouch informed Mr. Avellanet of the reason for the stop and began a preliminary investigation, asking Mr. Avellanet for his license, registration, and proof of insurance. Corporal Bouch testified that the driver and passenger were both nervous, and that the passenger was squirming in her seat.

Almost immediately after Corporal Bouch started talking with the two, Ms. Bassinger asked if she could go into the KFC to use the restroom. Corporal Bouch allowed her but got her identification first and did not allow her to take anything with her. Corporal Bouch then asked Mr. Avellanet to step out of the car so the corporal could continue his investigation. Mr. Avellanet complied. Mr. Avellanet also provided the corporal with a valid driver's license.

Once Mr. Avellanet was out of the vehicle, Corporal Bouch learned that Mr. Avellanet was not the owner of the vehicle, but rather a third-party driver. Mr. Avellanet informed the corporal that he had been authorized by the owner to drive the vehicle. Corporal Bouch began asking Mr. Avellanet about his travels. When asked at the Hearing what his reasons were for this, Corporal Bouch cited the driver's and the passenger's nervousness upon the initial stop. Corporal Bouch also ran a criminal history check on both occupants and discovered that both had prior drug offenses.

Corporal Bouch then asked Mr. Avellanet if he would consent to a vehicle search. Mr. Avellanet declined, citing the fact that he was not the owner of the vehicle. At that time, Ms. Bassinger returned from the KFC. Corporal Bouch then asked Ms. Bassinger if she would consent to a search of the vehicle. Ms. Bassinger similarly declined based on the fact that she was not the owner of the vehicle and did not feel comfortable providing consent.

Corporal Bouch learned that the owner of the vehicle was a friend of Ms. Bassinger. {3} Corporal Bouch had Ms. Bassinger contact the owner, Theresa Stafford, by phone. Corporal Bouch then spoke to Ms. Stafford on the phone. The corporal informed Ms. Stafford that he "had a traffic stop," that Ms. Bassinger told him that Ms. Stafford had provided authorization to drive the vehicle, and that he suspected they may be transporting contraband in the vehicle. Corporal Bouch asked Ms. Stafford over the phone for consent to search the vehicle. Ms. Stafford consented to a search.

There does not appear to be any dispute that Ms. Stafford had provided Mr. Avellanet and Ms. Bassinger authorization to drive the vehicle.

{3} Corporal Bouch testified at the Preliminary Hearing that the vehicle was owned by two women; Theresa Stafford and Christina Becktal. (Pre liminary Hearing Proceedings at 6.)

Based on the owner's consent, Corporal Bouch proceeded to search the vehicle. There was an open-top Michael Kors purse on the front seat of the passenger's side. The purse was next to the center console. Sitting inside the purse, but at the top, was a plastic bag with ten bricks of heroin. There was additional drug paraphernalia inside the purse, including norepinephrine tablets, a pill grinder/cutter, a cut plastic straw, and a green respirator mask. Corporal Bouch testified that a cut straw is typically used for snorting drugs. Corporal Bouch believes that the purse belonged to Ms. Bassinger.

Corporal Bouch also testified that he found multiple cell phones in the vehicle, which he said is additional evidence of drug trafficking. However, on cross examination, Corporal Bouch admitted that there were only two cell phones found in the vehicle, and that one of them may have been broken.

Corporal Bouch also searched Mr. Avellanet but did not find any drugs or paraphernalia on his person. Based on the discovery of drugs in the vehicle, Corporal Bouch arrested Mr. Avellanet and Ms. Bassinger. The bricks of heroin were sent to a lab, where they tested positive for 8 grams of heroin, +/- 3 grams. This was equal to 497 individual doses.

As a result of this incident, Mr. Avellanet was charged with: 1) Possession of a Controlled Substance with Intent to Deliver (35 P.S. §780-113(a)(30)); 2) Conspiracy to Commit Possession of a Controlled Substance with Intent to Deliver (18 Pa.C.S.A. §903; 35 P.S. §780-113(a)(30)); 3) Possession of a Controlled Substance (35 P.S. §780-113(a)(16)); and 4) Possession of Drug Paraphernalia (35 P.S. §780-113(a)(32)). Mr. Avellanet was also charged with the following summary offenses related to the traffic violations: 5) Obstructed Window (75 Pa.C.S.A. §4524(c)); 6) Failure to Display Headlights (75 Pa.C.S.A. §4302(a)(1)); and 7) Failure to Wear a Safety Belt (75 Pa.C.S.A. §4581(a)(2)(ii)).

LEGAL ISSUES

Defendant's Omnibus Pretrial Motion challenges the stop of the vehicle, the search of the vehicle, and whether the Commonwealth presented sufficient evidence to establish a prima facie case on the controlled substance charges. Collectively, there are three issues before the Court:

- 1) Whether the vehicle stop was constitutional?
- 2) Whether the search of the vehicle was constitutional?
 - A) Whether the Officer had reasonable suspicion to continue to investigate after completing the stop based on the alleged traffic violations?
 - B) Whether a non-present owner of the vehicle has authority to consent to a search of the vehicle over the objections of the present occupants?
- 3) Whether the Commonwealth presented a prima facie case that Defendant had constructive possession of heroin found in a purse in the vehicle?

DISCUSSION

The Fourth Amendment to the United States Constitution as well as Article 1, Section 8 of the Pennsylvania Constitution guarantee the right of The People to be free from unreasonable searches and seizures, and that no warrant shall issue except upon probable cause. The protection provided by Article 1, Section 8 of the Pennsylvania Constitution "extends to areas where an individual has a reasonable expectation of privacy." *Commonwealth v. Shaw*, 770 A.2d 295, 299 (Pa. 2001). A search conducted without a warrant is presumed to be unreasonable and thus unconstitutional unless an established exception applies. *Commonwealth v. Strickler*, 757 A.2d 884, 888 (Pa. 2000). Unreasonable searches and seizures include those "entailing only a brief detention." *Id.*

Law enforcement officers may stop a vehicle if they believe that a provision of the Motor Vehicle Code is being violated. *Commonwealth v. Pless*, 679 A.2d 232, 233 (Pa. Super. Ct. 1996) (citing *Commonwealth v. DeWitt*, 608 A.2d 1030, 1032 (Pa. 1992)).

Here, Corporal Bouch stopped Mr. Avellanet's vehicle based on his driving without headlights on at dusk. This is in violation of 75 Pa.C.S.A. §4302(a)(1), which requires that headlights be on between sunset and sunrise. Corporal Bouch's stop of the vehicle was therefore constitutional. {4}

Incident to a stop, officers "may check the vehicle's registration and the driver's license and issue a citation." *Pless* at 233 (citing *Commonwealth v. Talley*, 634 A.2d 640, 643 (Pa. Super. Ct. 1993)). However, "[a]fter producing a valid driver's license and vehicle registration, the driver must be allowed to proceed without further delay by the police, unless the police have reasonable grounds to suspect an illegal transaction in drugs or other serious crime[s]." *Pless* at 233 (citing *Commonwealth v. Lopez*, 609 A.2d 177, 182 (Pa. Super. Ct. 1992)).

Beyond the initial traffic stop, a law enforcement officer may detain an individual in order to conduct an investigation if the officer reasonably suspects that the individual is engaging in criminal conduct. *Commonwealth v. Kemp*, 961A.2d 1247, 1255 (Pa. Super. Ct. 2008) (citing *Commonwealth v. Rogers*, 849 A.2d 1185, 1189 (Pa. 2004) (internal citation omitted)). The reasonable suspicion standard is less stringent than probable cause. *Id.* In order to determine whether an officer had reasonable suspicion, the totality of the circumstances must be considered. *Id.* This is to determine whether the officer who initiated the stop had a "particularized and objective basis" for suspecting the individual stopped. *Commonwealth v. Reppert*, 814 A.2d 1196, 1203-04 (Pa. Super. Ct. 2002) (internal citations omitted). To establish grounds for reasonable suspicion, the officer must articulate specific observations that, in conjunction with reasonable inferences derived from those observations, led the officer to reasonably

{4} Further, the Commonwealth presented sufficient evidence at the Preliminary Hearing and the Hearing on Defendant's Omnibus Pretrial Motion to establish a prima facie case against Mr. Avellanet for the other two summary traffic offenses.

conclude, in light of the officer's experience, that criminal activity was afoot and the person stopped was involved in that activity. Reppert at 1204 (citing *Commonwealth v. Cook*, 735 A.2d 673, 677 (Pa. 1999)).

"[T]he fundamental inquiry of a reviewing court must be an objective one, namely, whether the facts available to the officer at the moment of the intrusion warrant a [person] of reasonable caution in the belief that the action taken was appropriate." Reppert at 1204 (internal citations, quotes, and brackets omitted). Another role of the suppression court is to determine at which point an officer's interaction with a driver becomes a seizure. See Reppert at 1204 ("We conclude, initially, that the [suppression] court failed to recognize the point at which [the officer's] interaction with [the driver] became a seizure...").

One issue in the present case is whether there was a point during the encounter between Corporal Bouch and Mr. Avellanet where the investigation evolved beyond the initial traffic stop. If such an interaction developed, the officer would need reasonable suspicion to justify a further detention and investigation of Mr. Avellanet.

Here, Corporal Bouch initiated a valid traffic stop on Mr. Avellanet based on his headlights not being on at dusk. Incident to the stop, Corporal Bouch began a constitutionally-permissible preliminary investigation by approaching the driver's side window and asking Mr. Avellanet for his driver's license and vehicle registration. At that time, Corporal Bouch noticed that Mr. Avellanet and the passenger, Ms. Bassinger, were nervous. Ms. Bassinger asked to use the restroom. Once Corporal Bouch obtained her identification, he allowed her to go into the KFC and use the restroom.

Corporal Bouch then asked Mr. Avellanet to step out of the vehicle.

In Reppert, the Superior Court stated that "an officer's direction to a driver to alight from a motor vehicle after a traffic stop involves a display of authority..." which constitutes a seizure, therefore requiring reasonable suspicion. *Id.* at 1203 (emphasis in original omitted). However, the United States Supreme Court in *Pennsylvania v. Mimms* held that "once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures." *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977) (per curiam). Leading up to the Supreme Court's decision in *Mimms*, the Pennsylvania Supreme Court found that evidence should have been suppressed following a vehicle stop where an officer asked the driver to step out of the vehicle without having reasonable suspicion that the driver was engaged in any suspicious behavior. *Id.* at 106-12. The U.S. Supreme Court reversed the Pennsylvania Supreme Court, holding that an officer may order a driver to step out of a vehicle in the initial stage of a traffic stop, even without reasonable suspicion of further crimes being committed. *Id.*

Despite the seemingly opposite results, there does not appear to be any conflict between Reppert and *Mimms*. In Reppert, the officer had initiated a traffic stop, terminated the stop without issuing a citation, then reengaged a backseat passenger by asking him to step out of the vehicle, which the Pennsylvania Court held as an impermissible

display of authority. Reppert at 1199, 1203. On the other hand, in *Mimms*, the officer in question asked every driver to step out of the vehicle as a matter of practice. *Mimms* at 109-10. Citing officer safety and the minor inconvenience of having to step out of a vehicle, the U.S. Supreme Court held that it is not unconstitutional to ask a driver to step out of a vehicle in the initial stage of a traffic stop, even without reasonable suspicion of an additional crime. *Id.* at 110-11.

There do not appear to be any cases that stand for the proposition that Pennsylvania's Article 1, Section 8 protections are broader than the federal protections in this regard. As a result of the U.S. Supreme Court's holding in *Mimms*, Corporal Bouch's request that Mr. Avellanet exit the vehicle was not unconstitutional.

After Corporal Bouch asked Mr. Avellanet to step out of the car, the officer obtained Mr. Avellanet's driver's license and the vehicle registration. Mr. Avellanet notified Corporal Bouch that he did not own the vehicle, but that he had authority to drive the vehicle from the third-party owner. Corporal Bouch then ran a criminal check on Mr. Avellanet and Ms. Bassinger, at which point he learned that both had a prior history of drug crimes.

Corporal Bouch then asked Mr. Avellanet for consent to search the vehicle. This is the point at which this Court finds that the encounter extended beyond the initial reason for the traffic stop; i.e., because Mr. Avellanet was driving at dusk without headlights on and had some beads hanging from the rearview mirror.

Based on a totality of the circumstances at that point during the encounter, Corporal Bouch did not have reasonable suspicion that Mr. Avellanet was engaged in drug trafficking or other serious crimes. At that point, the information that Corporal Bouch had was as follows. First, Mr. Avellanet and the passenger appeared nervous when Corporal Bouch approached the vehicle and started speaking with them. Second, the passenger asked to use the restroom. Third, Mr. Avellanet was not the owner of the vehicle, although he claimed he had authority from the owner to drive. Fourth, Mr. Avellanet and Ms. Bassinger had a criminal history of drug-related crimes.

The following cases shed light on the factors at issue here.

In *Reppert*, *supra*, an officer pulled a vehicle over for expired inspection and registration stickers. *Reppert* at 1199. The driver told the officer that he had been stopped for that same reason three days prior, and that the other officer had given him five days in which to have the car inspected. *Id.* The officer accepted the explanation without issuing a citation. *Id.* The officer then observed a passenger in the backseat who appeared nervous and who had been moving his head and shoulder prior to the stop. *Id.* Based on those reasons, he ordered the passenger out of the vehicle and eventually found drugs on his person. *Id.*

The Superior Court in *Reppert* held that the officer did not have reasonable suspicion to search the passenger based on furtive head and shoulder movements or based on his nervous appearance, stating that "[o]ur courts have determined, on several occasions, that... excessive nervousness [does not] provide a sufficient basis upon which to conduct an investigatory detention." *Id.* at 1205.

Similarly, in *Commonwealth v. Sierra*, the Pennsylvania Supreme Court held that excessive nervousness could not be used to demonstrate, or even suggest, illegal activity. *Commonwealth v. Sierra*, 723 A.2d 644,647 (Pa. 1999). In *Commonwealth v. Parker*, the Superior Court held that an officer did not have reasonable suspicion to ask a driver for consent to search the car, based on the officer having previously assisted in arresting the driver for a drug offense in the past. *Commonwealth v. Parker*, 619 A.2d 735, 737 (Pa. Super. Ct. 1993).

There are several cases where the appellate courts have held that nervousness was a contributing factor to reasonable suspicion. See, i.e., *Commonwealth v. Kemp*, 961A.2d 1247, 1254 (Pa. Super. Ct. 2008); *Commonwealth v. Rogers*, 849 A.2d 1185, 1190 (Pa. 2004). However, in those cases there were other factors besides just nervousness. In *Kemp*, when the trooper approached the vehicle, he was overpowered by the scent of air fresheners. *Kemp* at 1254. That trooper testified that based on his training and experience, air fresheners were being utilized as a masking agent to obscure the odor of drugs. *Id.* The trooper also testified that the driver was operating a third-party vehicle, and was unable to name the owner. *Id.* Additionally, the trooper detected an odor of raw marijuana. *Id.*

In *Rogers*, the driver was nervous and had a prior drug conviction, but also provided the officer with incomplete documents, had an opened box of laundry detergent on the backseat, and was unable to provide the officer with details of his travel plans. *Rogers* at 1187-88. In both *Kemp* and *Rogers*, nervousness was one of only several factors where the courts held that the officers had reasonable suspicion to continue their investigations.

Here, after Mr. Avellanet provided Corporal Bouch with the appropriate documents and informed the corporal that he was not the owner of the vehicle but had authority to drive it, Corporal Bouch simply did not have reasonable suspicion to continue his investigatory detention. Nervousness alone cannot be a cause for reasonable suspicion to detain an individual after a traffic stop. Nervousness is likely a common reaction to being pulled over by police officers, and if nervousness was sufficient to suspect pulled-over individuals of serious crimes, officers would be free to detain individuals beyond an initial traffic stop without abandon. This is exactly the type of unreasonable searches and seizures that the Fourth Amendment and Article 1, Section 8 are intended to protect citizens against.

Further, driving a vehicle that belongs to another person is hardly out of the ordinary, and certainly does not elicit reasonable suspicion that serious crimes are being committed. Here, Mr. Avellanet and Ms. Bassinger both provided the name of the owners and related to Corporal Bouch that the owners had given them permission to drive the vehicle. It was also uncontested here that the owners did in fact give Mr. Avellanet the authority to drive the vehicle.

With regard to the occupants' prior drug charges, the Superior Court's ruling in *Parker* is analogous to the present case. Learning that a driver has a prior history of drug-related charges does not, on its own, provide reasonable suspicion that the driver is currently engaged in drug trafficking.

Even when the factors are taken together, there still was not reasonable suspicion that Mr. Avellanet or Ms. Bassinger were transporting drugs. Once Mr. Avellanet provided Corporal Bouch with the pertinent documents-license, registration, and proof of insurance-there simply was no reason to continue to detain them. The continued detention of the occupants and the subsequent investigation was unconstitutional.

Further, even if there had been reasonable suspicion to continue to detain Mr. Avellanet and Ms. Bassinger, there is no apparent caselaw in Pennsylvania that allows a non-present vehicle owner to consent to a search over the objections of a present driver and passengers. In fact, such a rule would lead to an absurd result, as drivers of a leased vehicle or a rented vehicle or even drivers borrowing their parents' car would basically have no expectation of privacy in their vehicles.

Based on the foregoing analysis, this Court need not address the issue of whether the Commonwealth presented a prima facie case for the drug charges against Mr. Avellanet based on constructive possession of the purse in the passenger's seat.

CONCLUSION

Because there was no reasonable suspicion to continue the investigation beyond the initial traffic stop, and because a non-present owner does not have authority to consent to a search of a vehicle over the objection of the present driver and passengers who are authorized to use a vehicle, the Defendant's Motion is granted. The evidence seized as a result of the unconstitutional search shall be suppressed, and Counts 1-4 against Mr. Avellanet shall be dismissed.

ORDER

AND NOW, this 31st day of July, 2019, in consideration of Defendant's Omnibus Pretrial Motion and after a hearing on the Motion, it is ORDERED and DIRECTED that the Motion is GRANTED IN PART. Any evidence seized during the traffic stop shall be suppressed, and the following Counts shall be dismissed:

Count 1: Possession with Intent to Deliver (35 P.S. §780-113(a)(30));

Count 2: Conspiracy to Commit Possession with Intent to Deliver (18 Pa.C.S.A.

§903; 35 P.S. §780-113(a)(30));

Count 3: Intentional Possession of a Controlled Substance (35 P.S. §780- 113 (a)(16)); and

Count 4: Use or Possession of Drug Paraphernalia (35 P.S. §§780-113(a)(32)).

The Motion is DENIED IN PART, as to Counts 5-7.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

Evan's Destination Day Camp 5k Run/Walk

Dear Colleagues:

As part of a new community outreach initiative, the Bar Association will be a major sponsor of this year's Evan's Destination Day Camp 5K Walk/Run for Autism which will take place on Saturday, September 14th at Sheepskin Trail, Hutchinson Park, Hopwood. 100% of all funds raised go to the students at the Highlands Hospital Regional Center for Autism in Connellsville. A brochure for the Walk/Run is attached and for more information regarding Evan's Destination Day Camp please go to: <https://www.facebook.com/EvansDestinationDayCamp/>.

In support of our sponsorship, the FCBA would encourage you, your family and friends to participate in this fun (non-timed) Walk/Run to benefit local children with Autism. I had the privilege of participating in last year's event; and, it was a lot of fun. It was especially rewarding to see the local children with Autism who participated in the event. The joy on their faces was heartwarming and contagious.

If you would like to participate, please mail the completed registration form, along with a check made payable to "Highlands Hospital Regional Center for Autism" for the registration fee, to John Carom, c/o Abby's, 197 Morgantown Street, Uniontown, PA 15401.

Let's join together and have a great showing. Thank you very much for your support of this worthy endeavor. I'm looking forward to seeing you on the 14th!

Jim Higinbotham
FCBA President

EVAN'S DESTINATION DAY CAMP
5K RUN/WALK FOR AUTISM

Benefits
The Highlands Hospital Regional Center for Autism

SATURDAY, SEPTEMBER 14, 2019

www.evansdestinationdaycamp.com

[EvansDestinationDayCamp](https://www.facebook.com/EvansDestinationDayCamp)

Highlands HOSPITAL

LUNCH & LEARN SERIES

FCBA LUNCH & LEARN SERIES

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

- Date: **Wednesday, September 18th from 12:00 p.m. to 1:30 p.m.**
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **Basics of Powers of Attorney and Living Wills**
Form POA and Living Will will be provided
- Presenter: Timothy J. Witt, Esquire

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.

RSVP

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 Monday, September 16th

BENCH BAR SAVE THE DATE



FAYETTE COUNTY

BAR ASSOCIATION

LOCAL LAWYERS SERVING OUR COMMUNITY | FCBAR.ORG

SAVE THE DATE

Bench Bar Conference

Wednesday, October 16th

8:30 a.m. - 1:00 p.m.

The Historic Summit Inn

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

Medical Malpractice • Auto Accidents • Personal Injury



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& ASSOCIATES

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