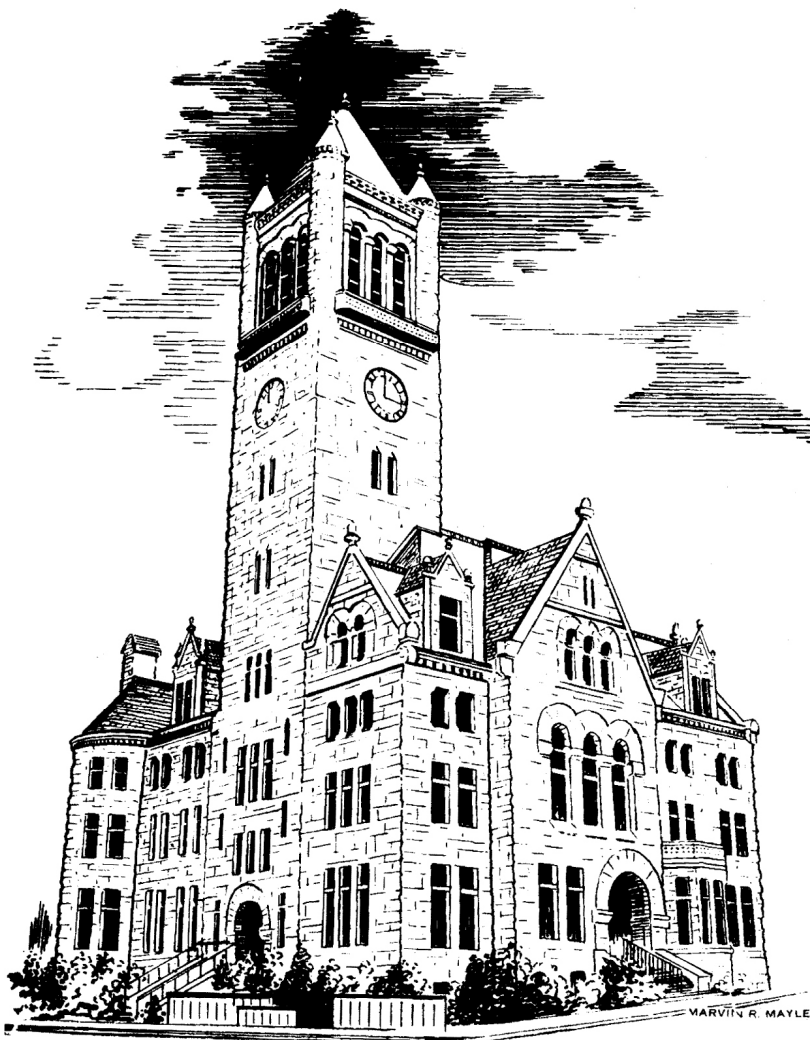


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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

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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

**JOSEPH BERCINI, a/k/a JOSEPH M. BERCINI**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Jo Ann Bercini  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**TERESE BURKETT**, late of Wharton Township, Fayette County, PA <sup>(3)</sup>

*Administrator:* Robert Burkett  
c/o 42944 National Pike Road  
P.O. Box 2P.O. Box 245  
Chalk Hill, PA 15421  
*Attorney:* Charles C. Gentile

**PATRICIA PEPERAK, a/k/a PATRICIA L. PEPERAK**, late of Connellsville, Fayette County, PA <sup>(3)</sup>

*Personal Representatives:*  
Cynthia D. Peperak and Donald R. Peperak  
c/o Riverfront Professional Center  
2008 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**PAUL E. REED**, late of Connellsville, Fayette County, PA <sup>(3)</sup>

*Executor:* Christopher M. Roley  
c/o Molinaro Law Offices  
P.O. Box 799  
Connellsville, PA 15425  
*Attorney:* Carmine V. Molinaro, Jr.

**LOUISE E. ZELINA**, late of Masontown, Fayette County, PA <sup>(3)</sup>

*Executrix:* Marilyn L. Butcho  
603 Main Street  
Masontown, PA 15401  
c/o 76 East Main Street  
Uniontown, PA 15401  
*Attorney:* Douglas S. Sholtis

### Second Publication

**DORIS M. ANDERSON**, late of Washington Township, Fayette County, PA <sup>(2)</sup>

*Co-Executors:*  
Barry William Anderson  
1549 Walter Street  
Monongahela, PA 15063  
Cheryl Jean Nagy  
209 Otto Street  
Belle Vernon, PA 15012  
c/o Bassi, Vreeland & Associates, P.C.  
P.O. Box 144  
111 Fallowfield Avenue  
Charleroi, PA 15022  
*Attorney:* Bradley M. Bassi

**MICHAEL E. DIMARCO, SR., a/k/a MICHAEL E. DIMARCO**, late of Uniontown, Fayette County, PA <sup>(2)</sup>

*Co-Executrix:* Michele P. DiMarco  
*Co-Executor:* Michael E. DiMarco, Jr.  
*Co-Executrix:* Meribeth DiMarco Briggs  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**JANICE LYNN ELLIOTT**, late of Masontown, Fayette County, PA <sup>(2)</sup>

*Personal Representative:* Emily Elliott  
103 Harbison Avenue  
Masontown, PA 15461  
c/o 84 East Main Street  
Uniontown, PA 15401  
*Attorney:* Vincent M. Tiberi

**LOUIS FINLEY MCCORMICK, a/k/a FINLEY MCCORMICK**, late of Uniontown, Fayette County, PA (2)

*Co-Executrices:* Nancy L. Poli and Lisa Poli Rose  
c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
P.O. Box 2123  
Uniontown, PA 15401  
*Attorney:* Daniel R. White

**PATSY PATRICELLI**, late of Connellsville, Fayette County, PA (2)

*Personal Representative:* Sandra Lee Sison  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Charles W. Watson

## First Publication

**GEORGE CLAY, a/k/a GEORGE R. CLAY**, late of Washington Township, Fayette County, PA (1)

*Executor:* Dana R. Clay  
410 Jacobs Street  
Belle Vernon, PA 15012  
*Executrix:* Sheran Ann Clay Summers  
243 Clark Road  
Perryopolis, PA 15473  
c/o 300 Fallowfield Avenue  
Charleroi, PA 15022  
*Attorney:* Richard C. Mudrick

**BRADLEY R. FISHER, a/k/a BRADLEY RAY FISHER**, late of Morgantown, Monongalia County, West Virginia (1)

*Administrator:* Robert Lee Rogers  
1946 Fairchance Road  
Morgantown, WV 26508  
c/o 76 East Main Street  
Uniontown, PA 15401  
*Attorney:* Douglas S. Sholtis

**VERNA R. HILLEN, a/k/a VERNA RUTH HILLEN**, late of Bullsken Township, Fayette County, PA (1)

*Personal Representative:*  
Brenda Lee Mattia  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Charles W. Watson

**JEFFREY LAUFFER, a/k/a JEFFREY DAVID LAUFFER**, late of Everson Borough, Fayette County, PA (1)

*Executor:* Jane Lauffer  
742 State Route 31  
Ruffs Dale, PA 15679  
c/o 231 South Main Street, Suite 402  
Greensburg, PA 15601  
*Attorney:* Marilyn Gaut

**MARY ANN MLINARCIK, a/k/a MARY A. MLINARCIK, a/k/a MARY MLINARCIK**, late of Uniontown, Fayette County, PA (1)

*Administrator:* William J. Mlinarcik  
c/o John & John  
96 East Main Street  
Uniontown, PA 15401  
*Attorney:* Simon B. John

**KENNETH LINDSAY MURPHY, JR., a/k/a KENNETH L. MURPHY, JR.**, late of Dunbar Township, Fayette County, PA (1)

*Administrators DBN:* Ora L. Murphy and Samantha Stouffer  
432 East Crawford Avenue  
Connellsville, PA 15425  
c/o King Legal Group, LLC  
114 North Maple Avenue  
Greensburg, Pa 15601  
*Attorney:* Robert W. King

**RICHARD A. PARENTE, JR.**, late of Belle Vernon, Fayette County, PA (1)

*Executrix:* Kimberly Ann Livingston  
130 Shady Avenue  
Belle Vernon, PA 15012  
c/o 566 Donner Avenue  
Monesson, PA 15062  
*Attorney:* Aaron J. Bialon

## LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL ACTION -- LAW  
No. 111 of 2013, G.D.  
Judge Nancy D. Vernon

ANTHONY KEYTON,  
PLAINTIFF

vs.

ASHLEY HOLLAND,  
DEFENDANT

vs.

MIRANDA WILCZNSKI and  
VICTORIA WILCZNSKI,  
INTERVENORS

### LEGAL NOTICE AND ORDER OF COURT

You, ANTHONY KEYTON, have been sued to modify certain legal and physical custody rights concerning your child in the above custody action.

You are ORDERED to appear in person at the Fayette County Courthouse, Third Floor, 61 East Main St., Uniontown, PA 15401 on THURSDAY, MAY 2, 2019 at 1:15 PM for a conciliation/mediation conference.

If you fail to appear as provided by this order, an order for custody may be entered against you or the court may issue a warrant for your arrest.

You must file with the Court a verification regarding any criminal record or abuse history regarding you and anyone living in your household on or before the initial in-person contact with the Court (including, but not limited to, a conference with a conference officer or Judge or conciliation) but not later than 30 days after service of the Complaint or Petition.

No party may make a change in the residence of any child which significantly impairs the ability of the other party to exercise custodial rights without first complying with all of the applicable provisions of 23 Pa.C.S. § 5337 and Pa.R.C.P. No. 1915.17 regarding relocation.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHON THE OFFICE SET FORTH BELOW TO FIND OUT

### WHERE YOU CAN GET LEGAL HELP.

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

### NOTICE

Notice is hereby given that A.C. Moyer Company, Inc., a Pennsylvania business corporation with its principal office at 139 Rosy Hill Road, Lemont Furnace, Fayette County, Pennsylvania 15456, has elected to dissolve and will file Articles of Dissolution in the Office of the Department of State of the Commonwealth of Pennsylvania under the provisions of the Pennsylvania Business Corporation Law, 15 Pa.C.S.A. §1977.

William M. Radcliffe, Esquire  
RADCLIFFE LAW, L.L.C.  
648 Morgantown Road, Suite B  
Uniontown, PA 15401

### CORPORATION NOTICE

NOTICE is hereby given that Articles of Incorporation were filed and approved by the Commonwealth of Pennsylvania, Department of State, Harrisburg, Pennsylvania, on March 4, 2019, for the purpose of obtaining a Certificate of Incorporation of a business corporation which was organized under the Commonwealth of Pennsylvania Business Corporation Law of 1988, as amended.

The name of the corporation is PENN WELLNESS GROUP, P.C.

The purpose or purposes for which it was organized: To engage in and do any lawful act concerning any or all lawful business for which corporation s may be incorporated under the Pennsylvania Business Corporation Law.

TIMOTHY M. MAATTA  
ATTORNEY AT LAW  
513 Schoonmaker Avenue  
Monessen, PA 15062  
(724) 684-3131

## SHERIFF'S SALE

Date of Sale: June 20, 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, June 20, 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. (1 of 3)

James Custer  
Sheriff Of Fayette County

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Phelan Hallinan Diamond & Jones, LLP

No. 3 of 2019 GD  
No. 63 of 2019 ED

**Lsf9 Master Participation Trust**  
**Plaintiff**

v.

**Jenny Rebecca Dean**  
**Jeffrey K. Dean**  
**Defendant(s)**

By virtue of a Writ of Execution No. 3-OF-2019-GD, Lsf9 Master Participation Trust v. Jenny Rebecca, Dean Jeffrey K. Dean, owner(s) of property situate in the STEWART TOWNSHIP, Fayette County, Pennsylvania, being 380 Burnworth Road, and 376 Burnworth Road, Mill Run, PA 15464-1524

Parcel No.: 37-08-0089 and 37-13-0014-06  
Improvements thereon: RESIDENTIAL DWELLING

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Phelan Hallinan Diamond & Jones, LLP

No. 2153 of 2018 GD  
No. 84 of 2019 ED

**Wells Fargo Bank, NA**  
**Plaintiff**

v.

**Donna L. Dominic**  
**William J. Dominic**  
**Defendant(s)**

By virtue of a Writ of Execution No. 2153-OF-2018-GD, Wells Fargo Bank, NA v. Donna L. Dominic, William J. Dominic, owner(s) of property situate in the LUZERNE TOWNSHIP, Fayette County, Pennsylvania, being 415 3rd Street, Allison, PA 15413.

Parcel No.: 19200036  
Improvements thereon: RESIDENTIAL DWELLING

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Phelan Hallinan Diamond & Jones, LLP

Phelan Hallinan Diamond & Jones, LLP

No. 2199 of 2012 GD  
No. 79 of 2019 ED

No. 1532 of 2013 GD  
No. 91 of 2019 ED

**JPMorgan Chase Bank, National Association**  
**Plaintiff**  
v.  
**Eric J. Glagola**  
**Hanna E. Glagola**  
**Defendant(s)**

**Wilmington Savings Fund Society, FSB d/b/a**  
**Christiana Trust, Not in It'S Individual**  
**Capacity But Solely as The Trustee for The**  
**Brougham Fund I Trust**  
**Plaintiff**  
v.

**Susan Carol Johnson**  
**Robert W. Johnson**  
**Defendant(s)**

By virtue of a Writ of Execution No. 2012-02199, JPMorgan Chase Bank, National Association v. Eric J. Glagola, Hanna E. Glagola, owner(s) of property situate in the REDSTONE TOWNSHIP, Fayette Count y, Pennsylvania, being 419 First Street, Chestnut Ridge, PA 15422.

By virtue of a Writ of Execution No. 1532-OF-2013-GD, Wilmington Savings Fund Society, FSB d/b /a Christiana Trust, Not in It'S Individual Capacity But Solely as The Trustee for The Brougham Fund I Trust v. Susan Carol Johnson, Robert W. Johnson, owner(s) of property situate in the NICHOLSON TOWNSHIP, Fayette County, Pennsylvania, being RR 2 Box 337 A. a/k/a 694 Woodside Oldframe Road, Smithfield, PA 15478-1130.

Parcel No.: 30-20-0130  
Improvements thereon: RESIDENTIAL DWELLING

Parcel No.: 24-05-0009  
Improvements thereon: RESIDENTIAL DWELLING

No. 1251 of 2018 GD  
No. 62 of 2019 ED

**BAYVIEW LOAN SERVICING, LLC**  
vs.  
**DIANE L. HOGSETT**

Phelan Hallinan Diamond & Jones, LLP

ALL THAT CERTAIN PARCEL OF LAND SITUATE IN LUZERNE TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA.

No. 2264 of 2018 GD  
No. 67 of 2019 ED

BEING THE SAME PREMISES which John T. Hogsett, Jr and Diane L. Hogsett, his wife, by Deed dated August 20, 2014 and recorded September 29, 2014 in the Office of the Recorder of Deeds in and for Fayette County in Deed Book Volume 3260, Page 39, granted and conveyed unto DIANE L. HOGSETT.

**Ditech Financial LLC**  
**Plaintiff**  
v.

**Frantz Morency, Jr, in His Capacity as Heir of Jeanette Morency a/k/a Jeanette Brown Morency,, Deceased Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right, Title or Interest From or Under Jeanette Morency a/k/a Jeanette Brown Morency, Deceased**  
**Defendant(s)**

BEING KNOWN AS: 423 HOPEWELL ROAD, BROWNSVILLE, PA 15417  
PARCEL # 19-25-0068-01

By virtue of a Writ of Execution No. 2264-OF-2018-GD Ditech Financial LLC v. Frantz Morency, Jr, in His Capacity as Heir of Jeanette Morency a/k/a Jeanette Brown Morency,, Deceased Unknown Heirs, Successors, Assigns, and All Persons, Firms, or Associations Claiming Right,

Title or Interest From or Under Jeanette Morency a/k/a Jeanette Brown Morency, Deceased owner(s) of property situate in the MASONTOWN BOROUGH, Fayette County, Pennsylvania, being 312 Provins Avenue, Masontown, PA 15461-1928  
 Parcel No.: 21-07-0099  
 Improvements thereon: RESIDENTIAL DWELLING

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Phelan Hallinan Diamond & Jones, LLP

No. 126 of 2019 GD  
 No. 76 of 2019 ED

**Wells Fargo Bank, N.A.**  
**Plaintiff**  
 v.  
**Timothy E. Morrell**  
**Anthony Interval, Jr**  
**Defendant(s)**

By virtue of a Writ of Execution No. 126 OF 2019 GD, Wells Fargo Bank, N.A. v. Timothy E. Morrell Anthony Interval, Jr owner (s) of property situate in the BELLE VERNON BOROUGH, Fayette County, Pennsylvania being 233 Water Street, Belle Vernon, PA 15012 -1118  
 Parcel No.: 01030043  
 Improvements thereon: RESIDENTIAL DWELLING

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McCABE, WEISBERG & CONWAY, LLC  
 123 South Broad Street, Suite 1400  
 Philadelphia, PA 19109  
 (215) 790-1010

No. 2485 of 2018 GD  
 No. 80 of 2019 ED

**Lakeview Loan Servicing, LLC**  
**Plaintiff**  
 v.  
**Steven Price and Sandra Price**  
**Defendants**

ALL THAT CERTAIN LOT OF LAND SITUATE IN SOUTH UNION TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING LOT NO. 5 IN REVISED PLAN OF LOTS LAID OUT BY GREENBURY CROSSLANDS AND RECORDED JN RECORDER'S OFFICE OF FAYETTE COUNTY, PENNSYLVANIA, IN PLAN BOOK 5, PAGE 16 SAID PLAN TO TAKE THE PLACE OF PLAN FOR THE SAME PREMISES AS RECORDED IN PLAN BOOK 4, PAGE 221.

EXCEPTING AND RESERVING THEREOUT AND THEREFROM ALL THE STONE COAL AND MINERAL S UNDER THE COAL EXCEPT SO MUCH AS MAY BE NEEDED AS PILLARS OR SUPPORTS, TOGETHER WITH ALL MINING RIGHTS, PRIVILEGES, ETC. AS CONTAINED IN A DEED OF GREENBURY CROSSLAND, ET UX TO THE CHICAGO AND CONNELLSVILLE COKE COMPANY, DATED APRIL 11, 1889, AND RECORDED IN THE RECORDER'S OFFICE OF FAYETTE COUNTY, PENNSYLVANIA, IN DEED BOOK 85, PAGE 52.

All that certain piece or parcel or Tract of land situate in the Township of South Union, Fayette County, Pennsylvania, and being known as 21 Bradbury Street, Uniontown, Pennsylvania 15401.

Being known as: 21 Bradbury Street, Union town, Pennsylvania 15401

Title vesting in Steven Price and Sandra Price, husband and wife, by deed from Mark A. Wehrer dated November 16, 2007 and recorded December 19, 2007 in Instrument Number 200700018104.

Tax Parcel Number: 34-17-0051

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No. 2761 of 2018 GD  
 No. 66 of 2019 ED

STERN AND EISENBERG, PC  
 ANDREW J. MARLEY, ESQ.

**Specialized Loan Servicing LLC**  
**PLAINTIFF**

No. 2440 of 2018 GD  
 No. 72 of 2019 ED

vs.

**Brian S. Reedy**  
**DEFENDANT**

**Wells Fargo Bank, national Association, as  
 Trustee for Option One Woodbridge Loan  
 Trust 2003-1, Asset Backed Certificates,  
 Series 2003-1 c/o Ocwen Loan Servicing, LLC**  
**Plaintiff**

v.

**Irvin L. Shipley III a/k/a Irvin L. Shipley**  
**Defendant(s)**

ALL those certain lots of land situate in North Union Township, Fayette County, Pennsylvania, known as Lots Nos. 46 and 47 in the Laurel Terrace Plan of Lots as laid out by Areford Brothers and recorded in the Recorder's Office of Fayette County in Plan Book 5, page 3, said lots being more particularly bounded and described as follows:

COMMONLY KNOWN AS: 84 Brown Street, Uniontown, PA 15401  
 TAX PARCEL NO. 25430029

SITUATE IN THE THIRD WARD OF THE CONNELLSVILLE TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 907 Norton Boulevard, Connellsville, PA 15425

PARCEL NO. 06-05-0037  
 IMPROVEMENTS- RESIDENTIAL REAL ESTATE

SOLD AS THE PROPERTY OF - Irvin L. Shipley III a/k/a Irvin L. Shipley

ANNE N. JOHN Esq.  
 ATTORNEY AT LAW

No. 2812 of 2018 GD  
 No. 88 of 2019 ED

**FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF GREENE COUNTY, a corporation,**  
**Plaintiff**

vs.

**ALLEN F. RICHTER,**  
**Defendant**

KML Law Group, P.C.  
 Suite 5000 - BNY Independence Center  
 701 Market Street  
 Philadelphia, PA 19106  
 215-627-1322

No. 652 of 2017 GD  
 No. 68 of 2019 ED

**PNC BANK, NATIONAL ASSOCIATION**  
**3232 Newmark Drive**  
**Miamisburg, OH 45342**  
**Plaintiff**

vs.

**LINDA D. SIMS**  
**Mortgagor(s) and Record Owner(s)**  
**35 Pershing Avenue**  
**Uniontown, PA 15401**  
**Defendant(s)**

ALL that certain lot or parcel of land located in Bullsken Township, Fayette County, Pennsylvania, being Lot No. 32 in the Merit Manor Plan of Lots No. 2, laid out by Caldarelli Homes, Inc., which plan is of record in the Recorder's Office of Fayette County, Pennsylvania in Plan Book Volume 10, page 172.

FOR prior title see Record Book 1836 at page 101.

Assessment Map No.: 04-33-0085.

Upon which is erected a single family dwelling known locally as 211 Van Drive, Connellsville, PA 15425.

ALL THAT CERTAIN LOT OF GROUND SITUATE IN THE THIRD WARD OF THE CITY OF UNIONTOWN, FAYETTE COUNTY, PENNSYLVANIA

TAX PARCEL# 38040578  
 PROPERTY ADDRESS: 35 Pershing Avenue Uniontown, PA 15401

IMPROVEMENTS: A residential dwelling.  
SOLD AS THE PROPERTY OF: LINDA D. SIMS

Phelan Hallinan Diamond & Jones, LLP

No. 26 of 2019 GD  
No. 81 of 2019 ED

**Wells Fargo Bank, N.A.**

**Plaintiff**

v.

**Matthew A. Szuch**

**Defendant(s)**

By virtue of a Writ of Execution No. 26-OF-2019-GD, Wells Fargo Bank, N.A. v. Matthew A. Szuch, owner(s) of property situate in the LUZERNE TOWNSHIP, Fayette County, Pennsylvania, being 816 Green Street, A/K/A 816 Greene Street-Hiller, Brownsville, PA 15417-2202

Parcel No.: 19130063

Improvements thereon: RESIDENTIAL DWELLING

No. 140 of 2019 GD  
No. 89 of 2019 ED

**FIRST NATIONAL BANK OF PENNSYLVANIA, successor to PARKVALE SAVINGS BANK,**

**Plaintiff,**

vs.

**ALLEN M. THOMAS**

**and MARK MARINO,**

**Defendants.**

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF ALLEN M. THOMAS AND MARK MARINO, OF, IN AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN REAL ESTATE SITUATED IN LUZERNE TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA. HAVING ERECTED THEREON A DWELLING KNOWN AS 1005 HIGH STREET, BROWNSVILLE, PA 15417. INSTRUMENT NUMBER 201900000123 AND PARCEL NUMBER 19-13-0184.

Phelan Hallinan Diamond & Jones, LL P

No. 2804 of 2018 GD  
No. 90 of 2019 ED

**Bank of America, N.A.**

**Plaintiff**

v.

**Brenda L. Wideman**

**Defendant(s)**

By virtue of a Writ of Execution No. 2804 OF 2018 GD, Bank of America, N.A. v. Brenda L. Wideman, owner(s) of property situate in the SPRINGFIELD TOWNSHIP, Fayette County, Pennsylvania, being 2847 Springfield Pike Road, a/k/a 2847 Springfield Pike, Connellsville, PA 15425-6459

Parcel No.: 35-04-0066

Improvements thereon: RESIDENTIAL DWELLING

\*\*\* END SHERIFF'S SALE \*\*\*



**JUDICIAL OPINION**

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

COMMONWEALTH OF  
PENNSYLVANIA

:  
:  
:  
:

vs.

DAVID E. CAPAN,  
Defendant.

: No. 2158 of 2018  
: Honorable Judge Linda R. Cordaro

**OPINION**

CORDARO, J.

March 12, 2019

**SUMMARY**

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

**BACKGROUND**

As the result of an incident that happened on June 14, 2018, Defendant was charged with DUI: Highest Rate of Impairment, and four other traffic-related summary offenses.

On November 9, 2018, the Defendant, David Capan, filed an Omnibus Pretrial Motion challenging that there was no probable cause or reasonable suspicion to stop the vehicle, that the Commonwealth failed to present a prima facie case against the Defendant, and that blood was drawn from the Defendant without a search warrant or voluntary consent.

This Court held a hearing on Mr. Capan's Omnibus Pretrial Motion on January 3, 2019. The following testimony was presented at the hearing.

On June 14, 2018, Trooper Jason Tanner was driving a marked vehicle on North Gallatin Avenue. Trooper Tanner was driving immediately behind Trooper Nathan Spangler, who was driving a separate marked vehicle in the same direction. At the intersection of North Gallatin Avenue and Edison Street, there is a stop sign on Edison, but not on North Gallatin. While driving on North Gallatin towards that intersection, Trooper Tanner observed a vehicle on Edison Street make a left onto North Gallatin Avenue without stopping at the stop sign. The vehicle almost hit Trooper Spangler, who had to slam on his breaks to avoid a collision.

Trooper Tanner turned around to pursue the vehicle, at which point he activated his emergency lights. Trooper Spangler also turned around and began following Trooper Tanner. Trooper Tanner then followed the vehicle onto Brushwood Avenue, where he initiated a traffic stop. The vehicle that went through the stop sign was driven by Defendant, David Capan.

During the stop, Mr. Capan was agitated and upset. Trooper Tanner detected a smell of alcohol from Mr. Capan and asked him if he would perform field sobriety tests. Mr. Capan was uncooperative during the field sobriety tests. Trooper Tanner then asked Mr. Capan if he would consent to a blood draw. Mr. Capan consented to the blood draw.

The blood draw results showed that Mr. Capan's blood alcohol level was 0.181. As a result of the stop, Mr. Capan was charged with: DUI: Highest Rate of Alcohol, 75 Pa.C.S.A. §3802(c); Failure to Stop at a Stop Sign, 75 Pa.C.S.A. §3323(b); Careless Driving, 75 Pa.C.S.A. §3714(a); Reckless Driving, 75 Pa.C.S.A. §3736(a); and Failure to Use a Safety Belt, 75 Pa.C.S.A. §4581(a)(2)(ii).

Trooper Tanner testified that after he charged Mr. Capan, he viewed the MVR (Motor Vehicle Recording). The MVR saves up to 30 seconds before the emergency lights are activated and then continues to record from that point. There was no issue with the recording equipment.

According to Trooper Tanner, it is a policy of the Pennsylvania State Police that MVRs are saved for 30 days on a system following a recording. An officer may request that the MVR is preserved by submitting a form. If an officer does not request the MVR, the recordings are deleted automatically. The reason for this, according to Trooper Tanner, is because of the volume of MVRs and the amount of space they require.

Trooper Tanner testified that after viewing the MVR, he did not submit the form to preserve the recording. After 30 days, the recording deleted. When asked why he did not preserve the recording, Trooper Tanner said that the video did not show Mr. Capan in full range during the stop, specifically once the car was pulled over.

Following the hearing, Defendant changed his argument from what was presented in his original Omnibus Pretrial Motion. Defendant now argues that Mr. Capan's case should be dismissed because of the Troopers' failure to preserve the MVR. After the hearing, Defendant had until January 23, 2019 to provide this Court with additional authority through a memorandum. The Commonwealth had until February 4, 2019 to provide additional authority as well.

#### DISCUSSION

Defendant now argues that the Troopers acted in bad faith by not preserving the MVR. Defendant cites a number of reasons to support his argument. First, the MVR was on and recorded parts of the incident. Second, the decision not to preserve the MVR was made unilaterally by Trooper Tanner. Third, there is no comparable evidence by which he can refute the testimony of the Troopers. Defendant concludes that the case should be dismissed for failure to preserve the MVR.

Under the due process clause of the Fourteenth Amendment, defendants are entitled to access of certain kinds of evidence prior to trial, so that they have a "meaningful opportunity to present a complete defense." *California v. Trombetta*, 467 U.S. 479,485 (1984). Providing defendants with exculpatory evidence protects the innocent from erroneous conviction and ensures the integrity of our criminal justice system. Id.

When the Commonwealth fails to provide a defendant with evidence that is materially exculpatable, "a federal due process violation occurs and the evidence must be suppressed without regard to the good or bad faith of the prosecution." *Commonwealth v. Snyder*, 963 A.2d 396,408 (Pa. Super. Ct. 2009) (citing *Illinois v. Fisher*, 540 U.S. 544,547 (2004)). However, if the Commonwealth fails to provide a defendant with potentially useful evidence, the failure to preserve such evidence does not violate due process unless a criminal defendant can show bad faith on the part of the police. *Snyder* at 408 (citing *Fisher* at 547-48). Evidence is potentially useful if "no more can be said than it could have been subjected to tests, the results of which might have exonerated the defendant." *Arizona v. Youngblood*, 488 U.S. 51, 57 (1988).

In order to determine whether a federal due process violation has occurred, a court must first determine whether the evidence was "materially exculpatable" or "potentially useful." *Snyder* at 405.

Here, Defendant failed to show that the MVR is materially exculpatory. Defendant appears to concede as much in his Memorandum in Support of his Omnibus Pretrial Motion, where he argues that this is "a situation where the police in 'bad faith' destroyed potentially useful evidence." Defendant's Memorandum in Support at Unnumbered Page 3.

As stated before, evidence is potentially useful if "it could have been subjected to tests, the results of which might have exonerated the defendant." *Snyder* at 408. Relevantly here, Defendant was charged with Failure to Stop at a Stop Sign, Careless Driving, and Reckless Driving. Trooper Tanner testified that he witnessed Mr. Capan drive through a stop sign without stopping, which almost caused a collision between Mr. Capan and the vehicle driven by Trooper Spangler. Because the MVR could have showed whether Mr. Capan stopped at the stop sign, the MVR was potentially useful in determining whether Mr. Capan was indeed guilty of the summary offenses of Failing to Stop at a Stop Sign, Careless Driving, and Reckless Driving.

As the MVR in this case was potentially useful-rather than materially exculpatory-evidence, Mr. Capan had to show that Trooper Tanner acted in bad faith by not preserving the MVR. However, the testimony presented at the hearing on Defendant's Omnibus Pretrial Motion did not support such a conclusion.

First, Trooper Tanner's testimony was that he did not preserve the tape because he could not see Mr. Capan in full range during the field sobriety tests. While it may have been wise to preserve the video if it showed Mr. Capan turning onto North Gallatin Avenue without stopping at the stop sign, it is clear that Trooper Tanner was not considering that aspect of the incident when he viewed the MVR and decided against preserving it. That is hardly a showing of bad faith.

Second, the combined testimony of the Troopers tends to corroborate that Mr. Capan did not stop at the stop sign. The Troopers were driving separate vehicles, and both turned around to pursue Mr. Capan when they witnessed him fail to stop at the stop sign on Edison Street. It seems unlikely that both Troopers just happened to imagine this at the same time. Trooper Spangler also had to slam on his breaks to avoid a collision with Mr. Capan.

Further, when Mr. Capan testified at the hearing on his Omnibus Pretrial Motion, he said that the speed limit on North Gallatin Avenue- the road the Troopers were driving on- was 35miles per hour, which is roughly 51 feet per second. Mr. Capan also testified that he thought that the first Trooper's vehicle was about 100 feet away when he decided to make the turn onto North Gallatin Avenue. By that logic, and by the Defendant's own admission, if the Troopers were traveling at the posted speed limit of 35 miles per hour, they were only 2 seconds away from Mr. Capan when he turned left in front of their vehicles. Even without the MVR, Mr. Capan's own testimony indicates that he did not safely proceed through the stop sign.

There was no evidence that the Troopers destroyed the MVR in bad faith in regard to the charges of Failure to Stop at a Stop Sign, Careless Driving, or Reckless Driving.

Additionally, there is no evidence that the MVR could have been useful to show that Mr. Capan was driving under the influence of alcohol. Trooper Tanner pulled Mr. Capan over for driving through a stop sign-not for suspicion of drunk driving. There was no testimony that the MVR contained any evidence to show that Mr. Capan was driving under the influence. Rather, Trooper Tanner made that determination based on the smell of alcohol and Mr. Capan's irritability once he was pulled over. Even if the MVR could have been potentially useful in challenging the legality of the stop, the previous analysis would apply, and Defendant would have to show that the officers acted in bad faith in not preserving the MVR. Based on the testimony of the Troopers, this Court finds that the Troopers did not act in bad faith in not preserving the MVR.

The final argument pursued in Defendant's Memorandum in Support of his Omnibus Pretrial Motion is that "[Defendant's attorney's] office has handled many similar cases in Fayette County" and that there is an "alarming tendency" for the State Police in Uniontown not to preserve MVRs. Defendant's Memorandum at Unnumbered Page 4. However, this Court does not consider anecdotal arguments when making decisions.

#### CONCLUSION

As a result of the foregoing analysis, Defendant's Omnibus Pretrial Motion is denied. This case shall be listed for trial.

BY THE COURT:  
Linda R. Cordaro, Judge

ATTEST:  
Clerk of Courts

Date: March 12, 2019





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

- Date: **Wednesday, April 17th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **Family Law Duo: The 2019 Changes in Alimony Pendente Lite & How to Prepare for a Master's Conference in a Divorce Case**
- Presenter: Sheryl R. Heid, Esquire, and Chris Edenfield, D.R. Hearing Officer

Topics will include: major changes to Alimony Pendente Lite; a system's approach to preparing for a Master's hearing; how to collect and organize your client's financial materials before the Master's prehearing conference making settlement more likely and the best use of the Master's time; etc.

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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](mailto:cindy@fcbar.org) on or before Monday, April 15th.

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