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FAYETTE LEGAL JOURNAL

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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

CLARA LEE ANDREWS, a/k/a CLARA L. ANDREWS, late of Masontown, Fayette County, PA ⁽³⁾

Executrix: Lisa M. Thornton
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Wendy L. O'Brien

JOYCE EMBACHER, a/k/a JOYCE S. EMBACHER, a/k/a JOYCE EILEEN EMBACHER, late of Georges Township, Fayette County, PA ⁽³⁾

Executor: Joseph W. Embacher
c/o Kopas Law Office
556 Morgantown Road
Uniontown, PA 15401
Attorney: John Kopas

ROBERT P. KOVACH, late of Uniontown, Fayette County, PA ⁽³⁾

Personal Representative: Robin R. Ruggieri and Jamie L. Metheny
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

LINDA G. KOVALSKY, late of Bullskin Township, Fayette County, PA ⁽³⁾

Administrator: Robert Franklin Lint
179 Hammondsville Street
Mount Pleasant, PA 15666
c/o Lederach Law
201 North Chestnut Street
P.O. Box 342
Scottdale, PA 15683
Attorney: James S. Lederach

DOMENICK LEO LEDONNE, a/k/a DOMENICK L. LEDONNE, late of Masontown, Fayette County, PA ⁽³⁾

Executor: Domenick A. LeDonne
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

BARRY I. PLETCHER, late of Saltlick Township, Fayette County, PA ⁽³⁾

Executrix: Suzanne Kelley
235 Quail Drive
Greensburg, PA 15601
c/o Turin & DeMatt, P.C.
115 North Main Street
Greensburg, PA 15601
Attorney: Todd T. Turin

Second Publication

KERGIN NADINE COBB, late of German Township, Fayette County, PA ⁽²⁾

Personal Representative:
Jessica Lynn Mesler
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

MICHAEL ANTHONY MESLER, late of German Township, Fayette County, PA ⁽²⁾

Personal Representative:
Jessica Lynn Mesler
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

FRANCINE PAVONE, a/k/a FRANCINE M. PETKO PAVONE, late of Redstone Township, Fayette County, PA ⁽²⁾

Executrix: Nadine Cape
c/o Leech Tishman Fuscaldo & Lamp
525 William Penn Place, 28th Floor
Pittsburgh, PA 15219
Attorney: Matthew Rak

First Publication

ANTHONY D. FAZIO, late of South Union Township, Fayette County, PA ⁽¹⁾

Executrix: Constance F. Slampak, a/k/a
Constance E. Slampak
107 Mae Lane
Uniontown, PA 15401
c/o King Legal Group, LLC
114 North Maple Avenue
Greensburg, PA 15601
Attorney: Bradley King

HELEN J. HARVEY, a/k/a HELEN JEAN HARVEY, late of Brownsville Township, Fayette County, PA ⁽¹⁾

Administratrix: Julie Carnathan
c/o Zebley Mehalov & White, P.C.
P.O. Box 2123
18 Mill Street Square
Uniontown, PA 15401
Attorney: Charles O. Zebley, Jr.

NORMA J. SMITLEY, late of South Union Township, Fayette County, PA ⁽¹⁾

Executor: Jeffrey T. Smitley
c/o 4 North Beeson Boulevard
Uniontown, PA 15041
Attorney: Sheryl R. Heid

WILLIAM RONALD SNODDY, JR., late of Farmington, Fayette County, PA ⁽¹⁾

Executrix: Krista Shaffer
c/o 11 Pittsburgh Street
Uniontown, PA 15401
Attorney: Thomas W. Shaffer

THOMAS LEE STINCHCOMB, JR., late of Henry Clay Township, Fayette County, PA ⁽¹⁾

Executor: David N. Stinchcomb
c/o 2969 Fingerboard Road
Oakland, Maryland 21550
c/o 202 East Union Street
Somerset, PA 15501
Attorney: Matthew R. Zatkó

MARK DOUGLAS WHoolERY, late of Uniontown, Fayette County, PA ⁽¹⁾
Administratrix: Rochelle L. Coddington
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

DAVID ZACCAGNINI, late of Brownsville, Fayette County, PA ⁽¹⁾

Administrator: Herbert G. Mitchell, Jr.
c/o Mitchell Law Office
902 First Street
P.O. Box 310
Hiller, PA 15444
Attorney: Herbert G. Mitchell, Jr.

LEGAL NOTICES

NOTICE

Notice is hereby given that the Articles of Incorporation have been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on July 3, 2023, for a domestic non-profit corporation known as Gans Church.

Said domestic non-profit corporation has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the domestic non-profit corporation is/are: religious services and all other church related activities for which the corporation may be organized under the Business Corporation Law.

DAVIS & DAVIS
BY: Gary J. Frankhouser, Esquire
107 East Main Street
Uniontown, PA 15401

SHERIFF'S SALE

Date of Sale: September 21, 2023

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 September 21, 2023, at 2:00 pm at <https://fayette.pa.realforeclose.com>.

The Conditions of sale are as follows:

All bidders must complete the Realauction on-line registration process at <https://fayette.pa.realforeclose.com> to participate in the auction.

All bidders must place a 10% deposit equal to the successful bid for each property purchased to Realauction via wire transfer or ACH per Realauction requirements. Upon the auction's close, buyer shall have 10 business days to pay the remaining balance to the Fayette County Sheriff's Office via cashier's check. No cash will be accepted. Failure to comply with the Conditions of Sale, shall result in a default and the down payment shall be forfeited by the successful bidder and applied to the costs and judgments. The schedule of distribution will be filed no later than 30 days after the sale of real property. If no petition has been filed to set aside the sale or objections to the distribution are filed within 10 days of filing the distribution, the Sheriff will prepare and record a deed transferring the property to the successful bidder.

(2 of 3)

James Custer
 Sheriff of Fayette County

Hladik, Onorato & Federman, LLP
 298 Wissahickon Avenue
 North Wales, PA 19454

No. 2283 of 2023 GD
 No. 143 of 2023 ED

NewRez LLC d/b/a Shellpoint Mortgage Servicing (Plaintiff)
vs.

Nathaniel J. Devincentis and Robert P. Davis (Defendants)

By virtue of Writ of Execution No. 2022-2283 NewRez LLC d/b/a Shellpoint Mortgage Servicing (Plaintiff) vs. Nathaniel J. Devincentis and Robert P. Davis (Defendants)

Property Address 500 Painter Street, Everson, PA 15631

Parcel I.D. No. 10-03-0186

Improvements thereon consist of a residential dwelling.

Judgment Amount: \$103,209.71

No. 2010 of 2019 GD
 No. 126 of 2023 ED

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, PLAINTIFF
VS.

CHRISTOPHER M. FITZGERALD, DEFENDANT

ALL those two certain pieces, parcels or lots of land situate in the City of Connellsville, County of Fayette and Commonwealth of Pennsylvania, as follows:

FIRST: known as Lot No. 14 Block No. 37, Sherwood Place Plan of Lots, Fayette Plan Book 3, page 52, being approximately 40 x 110; and

SECOND: known as Lot No. 15 Block No. 37, Sherwood Place Plan of Lots, Fayette Plan Book 3, page 52, being approximately 45 x 100.

HAVING THEREON ERECTED DWELLING KNOWN AND NUMBERED AS: 409 DAVIDSON AVENUE CONNELLSVILLE, PA 15425 and the vacant lot on Chestnut Avenue, Connellsville, PA 15425

Tax Parcel# 05-12-0159

Fayette County Deed Book 3004, page 1577

TO BE SOLD AS THE PROPERTY OF CHRISTOPHER M. FITZGERALD UNDER

FAYETTE COUNTY JUDGMENT NO. 2019-02010.

Robertson, Anschutz, Schneid, Crane & Partners, PLLC

A Florida professional limited liability company
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
(855) 225-6906
Fax: (866) 381-9549

No. 2442 of 2022 GD
No. 153 of 2023 ED

MORTGAGE ASSETS MANAGEMENT, LLC

Plaintiff

v.

ROSELLA GEORGE F/K/A ROSELLA ROSS A/K/A ROSELIA ROSS
Defendant(s)

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN WASHINGTON TOWNSHIP, FAYETIE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 376 NAOMI RD FAYETTE CITY, PA 15438
BEING PARCEL NUMBER: 41-13-0015
IMPROVEMENTS: RESIDENTIAL PROPERTY

KML LAW GROUP, P.C.

Suite 5000
701 Market Street
Philadelphia, PA 19106-1532
(215) 627-1322

No. 2350 of 2022 GD
No. 148 of 2023 ED

Lakeview Loan Servicing, LLC
4425 Ponce De Leon Blvd
MS5-251

Coral Gables, FL 33146

Plaintiff

vs.

BROC HOUGH
Mortgagor(s) and Record Owner(s)
1590 Banning Road
Dawson, PA 15428

ALL THAT CERTAIN LOT OF LAND SITUATE IN PERRY TOWNSHIP, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 1590 BANNING ROAD, DAWSON, PA 15428
TAX PARCEL #27-05-0035 AND 27-05-0036

IMPROVEMENTS: A RESIDENTIAL DWELLING
SOLD AS THE PROPERTY OF: BROC HOUGH

ATTORNEY: KML LAW GROUP, P.C.

Robertson, Anschutz, Schneid, Crane & Partners, PLLC

A Florida professional limited liability company
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
(855) 225-6906
Fax: (866) 381-9549

No. 1834 of 2022 GD
No. 150 of 2023 ED

BANK OF NEW YORK MELLON TRUST COMPANY, N.A. AS TRUSTEE FOR MORTGAGE ASSETS MANAGEMENT SERIES I TRUST

Plaintiff

v.

GILBERT A. HUMPHREYS, JR.
Defendant(s)

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN STEWART TOWNSHIP FAYETTE COUNTY, PENNSYLVANIA:

BEING KNOWN AS: 459 MAPLE SUMMIT ROAD MILL RUN, PA 15464
BEING PARCEL NUMBER: 37080032
IMPROVEMENTS: RESIDENTIAL PROPERTY

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

No. 1553 of 2022 GD
No. 128 of 2023 ED

FREEDOM MORTGAGE CORPORATION
10500 Kincaid Drive
Fishers, IN 46037-9764

Plaintiff
vs.

NEIL P. KOLENCIK
Mortgagor(s) and Record Owner(s)
4 Connor Street
Uniontown, PA 15401
Defendant(s)

ALL THAT CERTAIN LOT OF LAND
SITUATE IN SOUTH UNION TOWNSHIP,
COUNTY OF FAYETTE AND
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 4 CONNOR
STREET, UNIONTOWN, PA 15401

TAX PARCEL #34130082

IMPROVEMENTS: A RESIDENTIAL
DWELLING

SOLD AS THE PROPERTY OF: NEIL P.
KOLENCIK

ATTORNEY: KML LAW GROUP, P.C.

Robertson, Anschutz, Schneid, Crane &
Partners, PLLC
A Florida professional limited liability company
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
(855) 225-6906
Fax: (866) 381-9549

No. 584 of 2023 GD
No. 131 of 2023 ED

U.S. BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS
INDIVIDUAL CAPACITY BUT SOLELY
AS OWNER TRUSTEE FOR RCF 2
ACQUISITION TRUST C/O U.S. BANK
TRUST NATIONAL ASSOCIATION
Plaintiff

v.

DAVIDS LYNN JR
Defendant(s)

ALL THOSE CERTAIN LOTS OR
PIECES OF GROUND SITUATE IN THE
BOROUGH OF SOUTH CONNELLSVILLE,
COUNTY OF FAYEITE, PENNSYLVANIA:

BEING KNOWN AS: 211 W WINE ST
CONNELLSVILLE, PA 15425

BEING PARCEL NUMBER: 33-06-0043
IMPROVEMENTS: RESIDENTIAL
PROPERTY

Hladik, Onorato & Federman, LLP
298 Wissahickon Avenue
North Wales, PA 19454

No. 1968 of 2022 GD
No. 142 of 2023 ED

Towne Mortgage Company
(Plaintiff)

vs.

Rodger F. Kusich,
(Defendant)

By virtue of Writ of Execution No. 2022-
1968 Towne Mortgage Company (Plaintiff) vs.
Rodger F. Kusich, (Defendant)

Property Address 431 First Street,
Uniontown, PA 15401

Parcel I.D. No. 34-11-0026

Improvements thereon consist of a
residential dwelling.

Judgment Amount: \$89,367.06

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

No. 291 of 2023 GD
No. 103 of 2023 ED

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE TERWIN MORTGAGE TRUST 2006-7 ASSET-BACKED SECURITIES, SERIES 2006-7
3217 S. Decker Lake Drive
Salt Lake City, UT 84119
Plaintiff

vs.
DAVID L. MATTIS
C MICHELLE MATTIS
Mortgagor(s) and Record Owner(s)
1504 East Gibson Avenue
South Connellsville, PA 15425
Defendant(s)

ALL THAT CERTAIN LOT OF LAND SITUATE IN SOUTH CONNELLSVILLE BOROUGH, COUNTY OF FAYETTE AND COMMONWEALTH OF PENNSYLVANIA. BEING KNOWN AS: 1504 EAST GIBSON AVENUE, SOUTH CONNELLSVILLE, PA 15425
TAX PARCEL #33-03-0102
IMPROVEMENTS: A RESIDENTIAL DWELLING
SOLD AS THE PROPERTY OF: DAVID L. MATIIS AND C MICHELLE MATIIS
ATTORNEY: KML LAW GROUP, P.C.

Kaitlin D. Shire, Esquire
Hill Wallack LLP
777 Township Line Road, Suite 250
Yardley, PA 19067
(215) 579-7700

No. 606 of 2019 GD
No. 108 of 2023 ED

1900 Capital Trust II, by U.S. Bank Trust National Association, not in its individual capacity but solely as Certificate Trustee
Plaintiff
v.
Barbara K. Meadows and Charles Jason Brooks
Defendant

By virtue of a writ of execution case number: 2019-00606 Plaintiff: 1900 Capital Trust II, by U.S. Bank Trust National Association, not in its individual capacity but solely as Certificate Trustee v. Defendant: Barbara K. Meadows and Charles Jason Brooks owners of property situate in the Springhill Township, Fayette County, Pennsylvania, being pin number 36-07-0106
Property being known as: 4505 Morgantown Rd, Lake Lynn, PA 15451
Improvements thereon: Residential Property

No. 750 of 2022 GD
No. 151 of 2023 ED

PENNSYLVANIA HOUSING FINANCE AGENCY,
PLAINTIFF
vs.
RANDY W. MILNE,
DEFENDANT

ALL that lot of ground and buildings thereon Brownsville Borough, Fayette County, Pennsylvania, being approximately 180 x 30.50; HAVING THEREON ERECTED DWELLING KNOWN AND NUMBERED AS: 316 CHURCH STREET, BROWNSVILLE, PA 15417.
TAX PARCEL # 02-06-0401
Fayette County Instrument No. 2011-00011791
TO BE SOLD AS THE PROPERTY OF RANDY W. MILNE.

ANNE N. JOHN, Esq.
ATTORNEY AT LAW

No. 587 of 2023 GD
No. 144 of 2023 ED

No. 2416 of 2022 GD
No. 156 of 2023 ED

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

vs.

ESTATE OF NATHANIEL L. MORGAN, a/k/a NATHANIEL LOMAR MORGAN, III, DECEASED; NATHANIEL LOMAR MORGAN, IV, ADMINISTRATOR; BRENDA L. MORGAN; NATHANIEL L. MORGAN, IV, IN HIS CAPACITY AS HEIR OF THE ESTATE OF NATHANIEL L. MORGAN, III, DECEASED, ALL KNOWN AND UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING ANY RIGHT, TITLE OR INTEREST FROM OR UNDER NATHANIEL L. MORGAN, DECEASED; ESTATE OF TONYA R. COOPER, DECEASED, NATHANIEL L. MORGAN, IV, ADMINISTRATOR AND IN HIS CAPACITY AS HEIR; TREY COOPER, IN HIS CAPACITY AS HEIR IN THE ESTATE OF TONYA R. COOPER; AND ALL KNOWN AND UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS FIRMS OR ASSOCIATIONS CLAIMING ANY RIGHT, TITLE OR INTEREST FROM OR UNDER TONYA R. COOPER, DECEASED,

Defendants.

ALL that certain lot of ground situate in the City of Uniontown, formerly South Union Township, Fayette County, Pennsylvania, being Lot No. 13 in the Plan of Lots laid out by Charles G. O'Bryon, Richard W. Dawson and George F. Titlow, recorded in Plan Book 2, page 6.

FOR prior title see Record Book 2805, page 938.

BEING TAX MAP No.: 38-10-0041.

UPON which is erected a single-family aluminum/vinyl dwelling known locally as 52 Easy Street, Uniontown, PA 15401.

THE UNITED FEDERAL CREDIT UNION,

Plaintiff,

vs.

KENNETH E. RAHO, JR. and SAVANHA RAHO, his wife,

Defendants

ALL that certain piece, parcel or lot of land known as Lot No. 181 in that certain plan of lots known as the R. B. Hays Addition to Masontown (formerly German Township), known as Tax Parcel No. 21-07- 0111 and which is more particularly described in a deed recorded in the Office of the Recorder of Deeds for Fayette County in Record Book 3295, page 918.

The address of the subject property is 311 Shady Lane, Masontown, Pennsylvania, 15461.

Seized and taken in execution as the property of Kenneth E. Raho, Jr. and Savanha Raho, owners, at the suit of The United Federal Credit Union in the Court of Common Pleas of Fayette County, Pennsylvania at No. 587 of 2023, G.D.

No. 1494 of 2022 GD
No. 123 of 2023 ED

UNITED BANK,

Plaintiff,

vs.

DEBORAH ROLLISON, deceased, JENIFER ADAMS, JONI L. RHODES and DENVER JAMES ROLLISON,

Defendants.

ALL that certain lot of land lying and situate in Georges Township, Fayette County, Pennsylvania as set forth in the Re-Subdivision of Lot Number 5 in the Chury Plan of Lots Number I, a subdivision which is of record in the Recorder of Deeds Office of Fayette County, Pennsylvania at Plan Book Volume 62, page 51, known as Tax Parcel No. 14-15-0122-07 and which is more fully described in a deed recorded as aforesaid in Record Book 2744, page 37.

The address of the subject property is 155 Zebley Road, Uniontown, Pennsylvania 15401.

Seized and taken in execution as the property of Deborah Rollison, deceased, Jenifer Adams, Joni L. Rhodes and Denver James Rollison, owners, at the suit of United Bank in the Court of Common Pleas of Fayette County, Pennsylvania at No. 1494 of 2022, G.D.

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

No. 184 of 2020 GD
No. 116 of 2023 ED

**PNC BANK, NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO
NATIONAL CITY BANK**

**3232 Newmark Drive
Miamisburg, OH 45342**

Plaintiff

vs.

**EUGENE ROUSE
MELISSA ROUSE**

Mortgagor(s) and Record Owner(s)

**213 Stone Church Road
Merrittstown, PA 15463**

Defendant(s)

ALL THAT CERTAIN LOT OF LAND
SITUATE IN REDSTONE TOWNSHIP,
COUNTY OF FAYETTE AND
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 213 STONE
CHURCH ROAD, MERRITTSTOWN, PA
15463 213 STONE CHURCH ROAD,
MERRITTSTOWN, PA 15463

TAX PARCEL #30-17-0035

IMPROVEMENTS: A RESIDENTIAL
DWELLING

SOLD AS THE PROPERTY OF:
EUGENE ROUSE AND MELISSA ROUSE
ATTORNEY: KML LAW GROUP, P.C.

*** END SHERIFF'S SALE***


DiBella Weinheimer
Geer McAllister Best Coco Lloyd Whalen



Holly Whalen ◊ Amy Coco ◊ Bethann Lloyd

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Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

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JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA :
 v. :
 :
 TRAVIS ROGER TRUAX, : No. 1851 of 2022
 Defendant. : Honorable Linda R. Cordaro

OPINION AND ORDER

Linda R. Cordaro, J.

June 20, 2023

Before this Court is Defendant's Omnibus Pretrial Motion for suppression of physical evidence and suppression of Defendant's statements to law enforcement. A hearing on the motion was held on May 10, 2023, at which a mobile vehicle recording (MVR) of the encounter was admitted into evidence as a joint exhibit. The Defendant and the Commonwealth also submitted memoranda supporting their respective positions. For the following reasons, Defendant's motion is granted.

FINDINGS OF FACT

The following facts were established based on the MVR and the testimony of Trooper Anthony Parente at the May 10, 2023 hearing.

On July 22, 2022, around 1:15 a.m., Trooper Parente and Trooper Grant Rukat were traveling in a marked patrol unit in Lower Tyrone Township, Fayette County. Trooper Parente observed another vehicle approaching them from the opposite direction, and the vehicle failed to turn off its high beams as it passed. The troopers turned their patrol unit around and pursued the other vehicle, a red sedan. Within moments, the sedan pulled off the main road, and the troopers activated the patrol vehicle lights as they came to a stop behind the vehicle. The lights remained on for the duration of the encounter.

The passenger (Defendant) opened his door slightly, and the troopers immediately ordered him to close it and to put his hands on the dash. The troopers then approached the vehicle with their firearms unholstered and pointed at the ground. Trooper Parente approached the passenger's side of the sedan and Trooper Rukat approached the driver's side.

Trooper Parente asked the Defendant, "What are you doing?" He then asked the Defendant where he had come from, what he did there, and where his home was. He asked to see a license, registration, and insurance. Trooper Rukat then asked the driver, Kaitlyn Olszewski, to exit the vehicle, and Trooper Parente asked the Defendant to exit as well.

Trooper Parente opened the passenger door, ordered the Defendant to put his hands on the dash, and leaned inside the vehicle. {1} According to Trooper Parente's testimony, before the Defendant stepped out, he turned his body away from the trooper and reached down between the center console and the seat. Trooper Parente immediately asked him what he was grabbing, and the Defendant exited the vehicle, holding his wallet in his right hand. He stood beside the open passenger door, looking through his wallet while the trooper ordered him repeatedly over several seconds to put his hands on the vehicle. When the Defendant did so, the trooper patted him down and said, "You need to stop whatever you're thinking about doing." The Defendant explained that he had been trying to get to his license, and the trooper then permitted him to do so.

Trooper Parente then positioned himself so that the Defendant was backed up against the open passenger door and asked what the Defendant "shoved between the seats." The Defendant insisted that he was retrieving his wallet, which the trooper said was untrue because he had felt the wallet in the Defendant's pocket. The trooper asked again, "What's in the car that you just shoved?" then demanded that the Defendant to look at him while he was talking. The Defendant said he did not think he shoved anything. The trooper then asked the Defendant "What are you on?" and ordered, "Get over here, back here, let's go," directing the Defendant toward the front of the patrol vehicle where Ms. Olszewski already stood. The Defendant slowly obeyed. As he approached the patrol vehicle, Trooper Parente suddenly informed him that he was not under arrest, he was "just getting detained" because "I'm asking you to do all this stuff, and you're not doing it." He handcuffed the Defendant and repeated to the weeping Ms. Olszewski that the Defendant was not being arrested, just detained.

Trooper Parente proceeded to ask the Defendant why he had opened his door, and the Defendant explained that he had thought to change places with Ms. Olszewski because she was not licensed. The trooper confirmed that the Defendant was the vehicle owner. Trooper Rukat then approached and asked if the Defendant was "acting weird" because he had warrants and declared it was the "weirdest interaction" he had ever experienced.

Trooper Rukat then spoke with the Defendant and Ms. Olszewski as Trooper Parente walked around the Defendant's vehicle, using his flashlight to look inside. Trooper Parente then returned and asked again where the pair were coming from, and whether the Defendant had been arrested before. He inquired about a rolled dollar bill and a razor blade in the vehicle. Trooper Rukat informed the pair that this was their "one and only time to be honest," and they needed to disclose whether there was something in the car.

Trooper Parente then stated that "it goes one of two ways": either he could ask for consent to search the vehicle, and if nothing was found, then they were "acting weird for no reason" and "see you later." However, if they refused consent, then the troopers could tow and seize the vehicle and apply for a search warrant. If the warrant were approved, a search would be performed, and afterward the vehicle would be released to the registered owner. Trooper Parente asked if they understood, then announced that he was not allowed to talk to them any further until there was either a "yes or no" as to whether there was consent.

{1} The angle from which the MVR recorded does not clearly show the inside of the vehicle, but the trooper soon after referred to having felt the Defendant's wallet in his pocket.

The Defendant and Ms. Olszewski discussed with each other for a few moments before Trooper Rukat interjected to repeat that it was a "yes or no" question. The Defendant hesitated, and Trooper Rukat again said, "It's yes or no, this is your last chance." Ultimately, the two troopers asked the Defendant "yes or no" five times until he finally agreed.

After the search, Trooper Parente asked the Defendant, who was still in handcuffs, "What'd you throw out the window?" (a cigarette) and then asked about a bag found in the vehicle. The Defendant hesitated, and the trooper said, "We're on an honesty trend." He asked if the Defendant used meth or just pills, and the Defendant said he did not take pills regularly. The trooper persisted, and the Defendant then admitted to taking pills and to smoking marijuana once in a while.

Trooper Parente asked the Defendant if he wanted to "talk about what [he] dumped [between the seat and console]." The Defendant admitted there may have been "percs" and "oxys." The trooper said, "Now it's another charge. You shouldn't have done that." He told the Defendant that he would receive information on the charges by mail. Then he informed the Defendant he was under arrest and administered Miranda rights at approximately 1:51 a.m., more than thirty minutes from when the traffic stop began.

Finally, the trooper obtained the Defendant's phone number and social security number and asked if he was "good to drive home." The Defendant said he was, and the last moments of MVR footage show the Defendant heading toward the driver's side of his vehicle while Ms. Olszewski went toward the passenger's side.

DISCUSSION

The Defendant is charged with possession of a controlled substance {2} and paraphernalia. {3} The first count of his OPT is for suppression of physical evidence procured through an illegal search of his vehicle. A warrantless search is deemed to be unreasonable, subject to specific exceptions, which include consent to the search. *Commonwealth v. Strickler*, 757 A.2d 884,888 (Pa. 2000). If the underlying encounter is lawful, then the voluntariness of the consent becomes the exclusive focus. *Id.* at 888-89. The Commonwealth must establish that the consent was "the product of an essentially free and unconstrained choice ... under the totality of the circumstances." *Id.* at 901. The second count of Defendant's OPT is for suppression of the Defendant's statements to troopers on the grounds that the Defendant was subjected to custodial interrogation without proper Miranda warnings. A person is deemed to be in custodial interrogation if, in the totality of circumstances, he had a reasonable belief that his freedom of action was restricted by the interrogation. *Commonwealth v. Zogby*, 689 A.2d 280,282 (Pa. Super. Ct. 1997). The purpose of a Miranda warning is to ensure an individual is "effectively apprised of his rights and that his privilege against self-incrimination has been adequately safeguarded ... " *Miranda v. Arizona*, 384 U.S. 436, 498 (1966).

{2} 35 Pa.C.S.A. § 780-112(a)(16)

{3} 35 Pa. C.S.A. § 780-113(a)(32)

The exclusionary rule prohibits the use of evidence obtained from an accused in violation of the Fourth or Fifth Amendments as well as the indirect use of such evidence. *Commonwealth v. Whitaker*, 461 Pa. 407,412 (Pa. 1975). The purpose of this "exclusionary rule" is to discourage law enforcement officers from constitutionally violative conduct by suppressing evidence obtained by unconstitutional means. *Commonwealth v. Santiago*, 160 A.3d 814, 827-28 (Pa. Super. Ct. 2017).

As to the first count of Defendant's motion contending that his consent to a search was not voluntary, as set forth in *Commonwealth v. Acosta*, the presence of multiple coercive factors in an encounter may lead to the conclusion that consent was not voluntary. 815 A.2d 1078, 1085 (Pa. Super. Ct. 2003). The *Acosta* factors include

(1) the existence of a prior, lawful detention; (2) the withholding of [a defendant's] vehicular documentation; (3) the presence of other officers and marked police cars with flashing lights in close proximity to [a defendant]; and (4) the absence of an express endpoint to the detention in the form of an admonition by the authorities that [the defendant] was free to leave.

Id.

Here, the totality of circumstances included that: troopers initially approached the Defendant's vehicle with firearms drawn; Trooper Parente cornered the Defendant and demanded to know what he had shoved between the seats; the same trooper put the Defendant in handcuffs and told him was detained; both troopers demanded five times that he answer "yes or no" as to whether he consented; the Defendant was told his vehicle would be towed if he did not consent; the patrol vehicle lights remained activated throughout the encounter; and at no time was the Defendant free to leave. These multiple factors indicate that the Defendant's consent was not voluntary under the circumstances.

Although the Commonwealth maintains that the Defendant's consent was voluntary, it also argues that Trooper Parente did not need the Defendant's consent because he was entitled to conduct a protective search based on reasonable suspicion that the Defendant had a weapon. The Commonwealth correctly asserts that, if reasonable suspicion did exist, then troopers could have conducted a protective search. The Commonwealth's memorandum cites to *Commonwealth v. Buchert*, in which the Pennsylvania Superior Court held that the combination of a defendant's furtive movement, his extreme nervousness, and that the stop occurred at night gave the officer reason to suspect a threat to his safety sufficient to authorize a warrantless search of the vehicle. 68 A.3d 911 (Pa. Super. Ct. 2013). The Commonwealth argues that here, troopers were entitled to perform a warrantless search when the circumstances included: the early hour; the stop occurred in the dark and in a considerably rural area; the Defendant initially attempted to open his door; he was reluctant to exit the vehicle; he moved to turn his whole body away from the trooper to reach between the seat and console; and he lied that he had been reaching for his wallet.

However, the troopers did not conduct a weapons search, regardless of whether they were entitled to do so. Furthermore, a protective weapons search is limited in scope to the area where a weapon might be, whereas the search performed here was considerably more intrusive. E.g., *Commonwealth v. Boyd*, 17 A.3d 1274 (Pa. Super. Ct. 2011)

(finding that the limited search of the center console was justified given the time and location of the stop and the defendant's movements); *In re O.J.*, 958 A.2d 561 (Pa. Super. Ct. 2008) (finding that a search was permissible because the stop occurred at night; the defendant failed to stop immediately; the defendant moved his hands over the console; and the search was confined to the area where officers observed the hand movements). Therefore, even if evidence here was found in an area of the vehicle where a warrantless weapons search could have been conducted, ultimately, it was obtained only via a more expansive search based on the Defendant's supposed consent.

Finally, the Commonwealth argues that the doctrine of inevitable discovery applies since neither the Defendant nor Ms. Olszewski were licensed, the troopers would have had no choice but to tow the Defendant's vehicle, and therefore contraband would have been discovered during an inventory search. "If the prosecution can establish by a preponderance of the evidence that the illegally obtained evidence ultimately or inevitably would have been discovered by lawful means, the evidence is admissible." *Commonwealth v. King*, 259 A.3d 511,522 (Pa. Super. Ct. 2021) (quoting *Commonwealth v. Bailey*, 986 A.2d 860,862 (Pa. Super. Ct. 2009)).

However, in this case, as the MVR shows, the troopers allowed the Defendant himself to drive away. This demonstrates that troopers did, in fact, have a choice of what to do with the vehicle. {4} Therefore, the inventory search, like the protective weapons search, remained hypothetical, not factual.

In *Commonwealth v. Perel*, two judges of the three-judge panel held that evidence procured from a warrantless search based on invalid consent should have been suppressed. 107 A.3d 185, 196 (Pa. Super. Ct. 2014). In *Perel*, the Superior Court stated that the inevitable discovery doctrine is not a substitute for the warrant requirement, and police must demonstrate that evidence would have been discovered, not merely that they legally could have discovered it. {5} *Id.* The facts of the instant case are that troopers searched the Defendant's vehicle based solely upon his consent, which was involuntary.

{4} The Defendant was not offered the option to have someone else drive his vehicle. In *King*, the Superior Court found that because the unlicensed defendant's vehicle was illegally parked in obstruction of a driveway and no one was available to drive it to an appropriate location, impoundment and towing of the vehicle was required. *Id.* at 522.

{5} The dissenting opinion agreed that the search was improper, but stated that suppression was not the proper remedy because the police had ample grounds to establish probable cause for a warrant, the facts indicated that they would have applied for a warrant, and therefore the inevitable discovery doctrine did apply. *Id.* at 205-06. The majority observed that under this view, "police only need to seize the item or search the premises and then invoke the inevitable discovery doctrine with the assertion that they 'could have obtained a warrant.'" The inevitable discovery doctrine does not operate in such a constitutionally impoverished manner." *Id.* at 196.

The facts also demonstrate that towing the vehicle was not an inevitability since the Defendant was permitted to drive his vehicle away. Trooper Parente did testify that if the Defendant had not consented to a search, then his vehicle would have been towed. However, this clearly was a discretionary choice, not a foregone conclusion. Therefore, although troopers could have discovered evidence if the vehicle had been towed, the facts do not support that the evidence thereby would have been discovered, and the doctrine of inevitable discovery therefore does not apply here. The physical evidence therefore shall be suppressed.

As to Defendant's second count for suppression of statements made to troopers, Trooper Parente testified that the Defendant indeed was not free to leave, and he recalled administering Miranda warnings before asking the Defendant questions. However, the MVR shows that the handcuffed Defendant did not receive his Miranda rights until almost the end of the encounter - after he was informed that he was arrested and after multiple potentially incriminating questions had been asked and answered. Despite being only "detained but not arrested," any statements the Defendant made to troopers clearly were during the equivalent of a custodial interrogation and shall be suppressed. Therefore, the Court enters the following:

ORDER

AND NOW, this 20th day of June, 2023, in consideration of Defendant's Omnibus Pretrial Motion and after a hearing, as well as review of the mobile video recording (MVR) and the memoranda of both parties, it is hereby ORDERED and DIRECTED that Defendant's Motion is GRANTED.

All evidence obtained from the vehicle search shall be suppressed, and all statements made by the Defendant to troopers prior to the administration of Miranda shall be suppressed.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

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