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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

ROSITA F. NEGA, late of Belle Vernon, Fayette County, PA (3)

Executrix: Allison R. Barajas
10 Graham Avenue
Belle Vernon, PA 15012
c/o 33 Colonial Drive
Monessen, PA 15062
Attorney: Jack L. Bergstein

THOMAS D. SCHOMER, late of Connellsville, Fayette County, PA (3)

Executrix: Mary E. Shugarts
c/o Molinaro Law Offices
P.O. Box 799
Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

Second Publication

CYNTHIA CASEY, a/k/a CYNTHIA R. CASEY, a/k/a CYNTHIA L. KISNER, late of Franklin Township, Fayette County, PA (2)

Executor: Jeremy A. Kline, Sr.
c/o River Front Professional Center
208 Arch Street, Suite 2
Connellsville, Pa 15425
Attorney: Richard A. Husband

JUNE CAVANAUGH, a/k/a JUNE C. CAVANAUGH, late of Connellsville, Fayette County, PA (2)

Executor: Lester G. Cavanaugh
738 Connellsville Avenue
Connellsville, Pa 15425
c/o 310 Grant Street, Suite 1109
Pittsburgh, PA 15219
Attorney: Rosalie P. Wisotzki

JENNIE P. GRADOS, late of Jefferson Township, Fayette County, PA (2)

Co-Executrixes: Kathy M. Hawker
661 Grindstone Road
Grindstone, PA 15442 and
Jennifer L. Russo
220 Spruce Street
Canonsburg, PA 15317
c/o 513 Schoonmaker Avenue
Monessen, PA 15062
Attorney: Timothy M. Maatta

JODIE LEIGH GUTHRIE, late of Fairchance, Fayette County, PA (2)

Personal Representative: Donna J. Guthrie
c/o Davis & Davis
107 East Main Street
Uniontown, Pa 15401
Attorney: James T. Davis

FLORENCE LEIGHTY, late of Markleysburg, Fayette County, PA (2)

Personal Representative:
Jolene Van Sickle Glotfelty
2223 Hollywood Avenue
Grosse Pointe Woods, Michigan 48236
c/o Hartmann & Nihem, PLLC
63 Kercheval Avenue, Suite 200
Grosse Pointe Farms, MI 48236
Attorney: Heather Shoemaker

THOMAS S. TACCONI, late of Connellsville, Fayette County, PA (2)

Personal Representative: Joseph N. Tacconi
120 Mia Drive
Uniontown, PA 15401
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

SAMUEL R. THOMAS, late of Perry Township, Fayette County, PA (2)

Co-Executors: Samuel O. Thomas and
Gary E. Thomas
c/o Law Office of Howard F. Murphy
331 Regis Avenue
Pittsburgh, PA 15236
Attorney: Erin Santorella

First Publication

LEGAL NOTICES

ANNA CONAWAY, a/k/a ANNA P. CONAWAY, late of Masontown, Fayette County, PA (1)

Personal Representative: Angelina M. Durso
c/o Dellarose Law Office, PLLC
99 East Main Street, Suite 101
Uniontown, PA 15401
Attorney: Melinda Dellarose

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

No. 2162 of 2019, G.D.
The Honorable President Judge John F. Wagner, Jr.

**IN RE: CHANGE OF NAME OF
DYLAN JAMES FLESZAR**

NOTICE

Notice is hereby given that on October 3, 2019 the petition of Dylan James Fleszar was filed in the above named Court, requesting an Order to change the name of Dylan James Fleszar to Dylan James Radosevich.

The Court has fixed January 15, 2020 at 9:30 A.M. in Courtroom Number 2, Fayette County Courthouse, Uniontown, Pennsylvania as the time and place for a hearing on the merits of said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

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

Milstead & Associates, LLC
Roger Fay, Esquire, ID No. 315987
Nelson Diaz, Esquire, ID No. 48624
1 E. Stow Road
Marlton, NJ 08053
(856) 482-1400
Attorneys for Plaintiff
File No. 227733-1

**COURT OF COMMON PLEAS
FAYETTE COUNTY**

No.: 2018-02679

**NOTICE OF SHERIFF'S SALE OF
REAL PROPERTY PURSUANT
TO P.A.R.C.P.3129**

**Wilmington Savings Fund Society, FSB, D/B/
A Christiana Trust, Not Individually but as
Trustee for Pretium Mortgage Acquisition
Trust,
Plaintiff,**

BRINLEY J. LOWHIGH, late of Springfield Township, Fayette County, PA (1)

Executrix: Leslie G. Ritenour
c/o 815A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

ANDREW T. SEPSKI, a/k/a ANDREW SEPSKI, late of South Union Township, Fayette County, PA (1)

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

MARJORIE HELEN ZEBLEY, a/k/a MARJORIE H. ZEBLEY, late of North Union Township, Fayette County, PA (1)

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

Vs.

Fred W. Tate, Jr., Individually and as known heir of Fred W. Tate Sr., Deceased Michelle Tate Unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under Fred W. Tate, Sr., Deceased, Defendants

TAKE NOTICE:

Your house (real estate) at 228 Lenox Street, Uniontown, PA 15401, is scheduled to be sold at sheriff's sale on **January 16, 2020 at 02:00 PM** in the Hallway of the Fayette County Courthouse, 61 E. Main Street, Uniontown, PA 15401 to enforce the Court Judgment of \$35,385.88 obtained by Wilmington Savings Fund Society, FSB, D/B/A Christiana Trust, Not Individually but as Trustee for Pretium Mortgage Acquisition Trust.

NOTICE OF OWNER'S RIGHTS YOU MAY BE ABLE TO PREVENT THIS SHERIFF'S SALE

To prevent this Sheriff's Sale you must take immediate action:

1. The Sale will be cancelled if you pay to Milstead & Associates, LLC, Attorney for Plaintiff, back payments, late charges, costs and reasonable attorney's fees due. To find out how much you must pay, you may call (856) 482-1400.

2. You may be able to stop the Sale by filing a petition asking the court to strike or open the Judgment, if the Judgment was improperly entered. You may also ask the Court to postpone the Sale for good cause.

3. You may also be able to stop the Sale through other legal proceedings. You may need an attorney to assert your rights. The sooner you contact one, the more chance you will have of stopping the Sale. (See notice on following page on how to obtain an attorney).

YOU MAY STILL BE ABLE TO SAVE YOUR PROPERTY AND YOU HAVE OTHER RIGHTS EVEN IF THE SHERIFF'S SALE DOES TAKE PLACE.

1. If the Sheriff's Sale is not stopped, your property will be sold to the highest bidder. You may find out the bid price by calling Milstead & Associates, LLC at (856) 482-1400.

2. You may be able to petition the Court to set aside the Sale if the bid price was grossly inadequate compared to the market value of your property.

3. The Sale will go through only if the Buyer pays the Sheriff the full amount due on

the Sale. To find out if this has happened you may call Milstead & Associates, LLC at (856) 482-1400.

4. If the amount due from the Buyer is not paid to the Sheriff, you will remain the owner of the property as if the Sale never happened.

5. You have a right to remain in the property until the full amount due is paid to the Sheriff and the Sheriff gives a Deed to the Buyer. At that time, the Buyer may bring legal proceedings to evict you.

6. You may be entitled to a share of the money which was paid for your house. A Schedule of distribution of the money bid for your house will be filed by the Sheriff on a date specified by the Sheriff not later than thirty days after the sale. This schedule will state who will be receiving that money. The money will be paid out in accordance with this schedule unless exceptions (reasons why the proposed distribution is wrong) are filed with the Sheriff within ten (10) days after.

7. You may also have other rights and defenses, or ways of getting your house back, if you act immediately after the Sale.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE LISTED BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Fayette County Notice to Defend
 Pennsylvania Bar Association

100 South Street
 P.O. Box 186
 Harrisburg, PA 17108
 800-692-7375

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
V.	:	
	:	
MICHAEL RICH,	:	No. 1110 of 2019
Defendant.	:	Honorable President Judge John F. Wagner, Jr.

OPINION AND ORDER

WAGNER, P.J. November 5, 2019

Before the Court is the Omnibus Pretrial Motion in the form of a Motion to Suppress/Motion to Dismiss and a Writ of Habeas Corpus. The issues raised by the defendant as to why evidence should be suppressed and the case dismissed are as follows:

- The stop was in violation of the constitutional standard of probable cause.
- The stop was in violation of the reasonable suspicion standard.
- The Defendant's blood was drawn without a valid warrant and/or voluntary consent due to the coercive nature of the circumstances surrounding the request.
- As to the Writ of Habeas Corpus, the Defendant asserts that the Commonwealth has failed to present sufficient proof evidence to establish a prima facie case.

BACKGROUND

On November 23, 2018, at 8:55 P.M., Pennsylvania State Trooper Zollar was traveling on Eighty Acres Road, Dunbar Township, in Fayette County. The Trooper observed a Toyota pulled over on the berm of the road in front of Garry's Auto with the engine running. The Trooper turned his vehicle around to check on the situation. When the Trooper pulled up behind the vehicle, he did not activate his emergency lights. He approached the vehicle and the Defendant was the only person in the vehicle and he was sitting in the driver's seat. The Trooper inquired if the Defendant was doing okay. The Defendant responded that he had pulled over to telephone his son. While speaking with the Defendant, the Trooper detected a strong odor of alcohol emanating from the Defendant's person. He also observed that the Defendant's speech was slurred and unintelligible at times. The Trooper also detected the odor of marijuana emanating from the vehicle.

The Trooper asked if he had been drinking and the Defendant responded that he just drank a beer and pointed to a cooler on the floor in front of the passenger seat. The Trooper asked the Defendant to exit the vehicle to perform field sobriety tests and Ad-

vanced Roadside Impaired Driving Enforcement tests. The Defendant had difficulty walking to the rear of his vehicle. Additionally, the Trooper observed signs of impairment as the Defendant performed the tests. The Trooper asked the Defendant if he would submit to his blood being drawn and the Defendant consented to the draw. The Trooper then took the Defendant into custody. A search of the vehicle located a small amount of marijuana and a smoking device with residue on it. A blood test was performed at 9:49 P.M. Subsequently, on December 6, 2018, the toxicology report showed positive findings for alcohol (.079) and marijuana in the Defendant's blood.

Thereafter, he was charged with Driving Under the Influence of a Controlled Substance and The Defendant was charged with violations of the Controlled Substance, Drug, Device and Cosmetic Act, Possession of a Small Amount of Marijuana and Possession of Paraphernalia, 35 Pa. C.S. §§(A)(31) and §§(A)(32). He was also charged with Driving Under the Influence, 75 Pa. C.S. §3802 (A)(1), (D)(1), (D)(1)(i), (D)(1)(iii), (D)(2), and (D)(3).

ARGUMENT

Count I - Motion to Suppress Evidence/Motion to Dismiss

The Pennsylvania Supreme Court has recognized three levels of interaction between citizens and police. The first is a mere encounter, or request for information, which need not be supported by any level of suspicion. *Commonwealth v. Strickler*, 757 A.2d 994 (Pa. 2000). The second category of interaction, an investigative detention or Terry stop, see *Terry v. Ohio*, 392 U.S. 1 (1968). This contact subjects an individual to a stop and period of detention but is not so coercive as to constitute the functional equivalent of an arrest. *Strickler* at 899. To survive constitutional scrutiny, "an investigative detention must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity and may continue only so long as necessary to confirm or dispel such suspicion." *Id.* The third contact is an arrest or custodial detention must be supported by probable cause to believe the person is engaged in criminal activity. *Id.*

To determine whether a mere encounter rises to the level of an investigatory detention, it must be determined whether, as a matter of law, the police conducted a seizure of the person involved. To determine whether a seizure has occurred, all the circumstances surrounding the encounter must be examined to determine whether the demeanor and conduct of the police would have communicated to a reasonable person that he was not free to decline the officer's request or to terminate the encounter. The focal point of the inquiry must be whether, considering the circumstances surrounding the incident, a reasonable person, innocent of any crime, would have thought he was being restrained if he had been in Defendant's shoes. *Commonwealth v. Livingstone*, 174 A.3d 609 (Pa. 2017), quoting *Commonwealth v. Collins*, 950 A.2d 1041 (Pa.Super. 2008).

It is a traditional function of State Troopers and police officers to stop and aid motorists who are stranded or who may need personal assistance. The Trooper was traveling on a dark rural road in November at 8:55 P.M., when he observed the Defendant's vehicle pulled over in front of Garry's Auto. The Defendant in that situation is the type of person that the Trooper has a duty to assist. *Id.* When the Trooper stopped to check

on the Defendant, he did not block his vehicle in by pulling in front of it nor did he activate his emergency lights. An absence of outward signs of the vehicle being in distress does not ban a Trooper from conducting a safety check. *Id.* The vehicle was stopped on the berm of a rural road in front of an auto shop is sufficient to suggest to the Trooper that assistance might be needed. *Id.* When the Trooper checked on the Defendant, it was then that he became aware that there was the probability of a criminal act.

Not all searches and seizure are forbidden by either the Pennsylvania or United States Constitution, only unreasonable searches and seizures are forbidden. *Id.* All the circumstances surrounding the stop must be considered to determine if a reasonable person would believe he was not free to leave. The crucial question is whether the Trooper by means of physical force or a show of authority has restrained a citizen's freedom of movement. The issue of whether an individual has been seized is distinct from the issue of whether the seizure was reasonable. *Strickler*, 757 at 890. A search may be deemed reasonable pursuant to an exception to the warrant requirement.

The Community Caretaking Doctrine is invoked to validate a search or seizure under the Fourth amendment. The Community Caretaking Doctrine is an exception to the state and federal search and seizure requirements. *Id.* The Community Caretaking Doctrine contains three specific exceptions: the emergency aid exception, the auto impoundment/inventory exception and the public safety exception. *Id.* Each of these exceptions contemplate that the Trooper's actions are motivated by a desire to render aid and assistance rather than the investigation of criminal activity. The Trooper's initial contact was not to investigate any crime but rather to render aid or assistance. The Trooper's actions were independent from the detection, investigation and acquisition of evidence of a crime. *Id.*

The Troopers conduct in providing a safety check on Defendant was supported by the record and there was no testimony of any coercive behavior on the part of the Trooper in either his manner or in his actions. Inoffensive contact between a citizen and the police cannot amount to a seizure, thus the interaction between the Trooper and the Defendant began as a mere encounter under the Community Caretaking Doctrine. Upon contact with the Defendant, the Trooper detected the strong odor of alcohol and the odor of marijuana. The Trooper then believed that the Defendant probably was driving under the influence of either alcohol or drugs and that criminal activity was occurring. The Defendant agreed to submit to a blood test after failing the field sobriety tests.

The stop was not in violation of the constitutional standard of probable cause nor was it in violation of the reasonable suspicion standard. No evidence was presented that the Defendant was coerced to submit to a blood draw.

The testimony was that he voluntarily agreed to submit to the blood test. After his arrest, a search of the vehicle was performed, the trooper located a controlled substance, marijuana; and paraphernalia, with visible residue on it in the vehicle.

The Defendant was in control of a motor vehicle with the engine running while stopped on the berm or curtilage of a public highway while under the influence of alcohol and drugs. The Defendant possessed a small amount of marijuana and paraphernalia. Sufficient evidence was presented to support the DUI charges for general impairment

and the violations of the Controlled Substance, Drug, Device and Cosmetic Act: Possession of a small Amount and Possession of Paraphernalia.

Count III - Motion to Suppress Evidence

The Defendant asserts that the blood draw should be suppressed as it was obtained without a valid consent to the blood test. The Commonwealth bears the burden to establish that a "consent is the product of a free and unconstrained choice-not the result of duress or coercion, express or implied or a will overborne-under the totality of the circumstances." *Commonwealth v. Krenzel*, 20 I 9 Pa. Super. 159 (2017). While, there was no testimony of coercion by the Trooper, no warrant was obtained and the Defendant was not provided with the DL-268 form to read and sign. Nor did the Trooper provide the warnings required by 75 Pa. C.S. Section 1547(b)(2) which states:

(a) General rule.-Any person who drives, operates or is in actual physical control of the movement of a vehicle in this Commonwealth shall be deemed to have given consent to one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving, operating or in actual physical control of the movement of a vehicle in violation of section 3802....

(b)(2) it shall be the duty of the police officer to inform the person that:

(i) the person's operating privilege will be suspended upon refusal to submit to chemical testing and the person will be subject to a restoration fee of up to \$2,000; and

(ii) if the person refuses to submit to chemical breath testing upon conviction or plea for violating section 3802(a)(1) the person will be subject to the penalties provided in section 3804(c)....

In determining whether the Defendant's consent was voluntary, the Trooper did not coerce him, and he fully cooperated and performed field sobriety tests. There is no evidence that he was specifically informed of his rights under DL-26B or Section I 547. The Trooper was statutorily required to inform the Defendant of his right to refuse chemical testing and the consequences that would occur from his refusal. *Id.* The Defendant did not make a knowing and conscious choice of whether to submit to the blood test as the Trooper failed to convey the necessary information for him to make an informed decision. *Krenzel* at 1032.

As the DUI charge at 75 Pa. C.S. §3802(a)(1) does not require any results from a blood or breath test, the general impairment charge in the DUI statute is not impacted by the failure to inform the Defendant of his right to submit to the blood test.

Therefore, the DUI charges at Sections (D)(1), (D)(1)(i), (D)(1)(iii), (D)(2), and (D)(3) are hereby suppressed and dismissed as the Defendant's consent was not a fully informed decision.

Count II - Writ of Habeas Corpus

A Writ of Habeas Corpus is the means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a prima facie case. *Commonwealth v. Hendricks*, 927 A.2d 289 (Pa. Super. 2008). A prima facie consists of evidence read in the light most favorable to the Commonwealth that sufficiently establishes both the commission of a crime and the accused is probably the perpetrator of the crime. *Id.*

Sufficient evidence was presented that the Defendant was in violation of the general impairment portion of the DUI statute. 75 Pa. C.S. §3802(a)l). He was in control of a motor vehicle that was running on the curtilage of a highway, the Trooper observed indicia of impairment, in that he detected a strong odor of alcohol emanating from the Defendant, his eyes were bloodshot and glassy, and the Defendant failed the field sobriety testing.

The Trooper, after arrest of the Defendant located a small amount of marijuana in the vehicle as well as paraphernalia with what appeared to be a controlled substance on it.

There is sufficient evidence to establish that the Defendant was in possession of a controlled substance and paraphernalia.

Wherefore, the Court issues the following order:

ORDER

AND NOW, this 5th day of November, 2019, upon review of the Defendant's Omnibus Pretrial Motion, it is hereby ORDERED and DECREED that the Motion is GRANTED as to suppression of evidence and dismissal of the charges of Driving Under the Influence, 75 Pa. C.S. §§ 3802(D)(1), (D)(1)(i), (D)(1)(iii), (D)(2), and (D)(3).

The motion is DENIED as to the charges of Driving Under the Influence, 75 Pa. C.S. §3802(a)(1), Possession of a Small Amount, 35 Pa. C.S. §780-113(a)(31)(i); and Possession of Paraphernalia, 35 Pa. C.S. §780-113(a)(32).

BY THE COURT:
Wagner, P.J.

ATTEST:
Clerk of Courts



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December 12 **Criminal Law Update 2019**
12 p.m. to 4:15 p.m.
3 substantive/1 ethics

December 18 **The Year in Review for the General Practitioner 2019**
8:30 a.m. to 3:45 p.m.
5 substantive/1 ethics

December 19 **Essential Ethics 2019**
9 a.m. to 4:15 p.m.
6 ethics





You're invited for some holiday cheer to celebrate
this special time of year!

FAYETTE COUNTY BAR ASSOCIATION
WINTER SOCIAL
cocktails and appetizers

THURSDAY, DECEMBER 12TH AT 5:00PM
UNIONTOWN COUNTRY CLUB

In support of the holiday season, please bring new, unwrapped
toys for donation to Fayette County Children & Youth Services.
Monetary donations payable to "CYS Advisory Board."

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