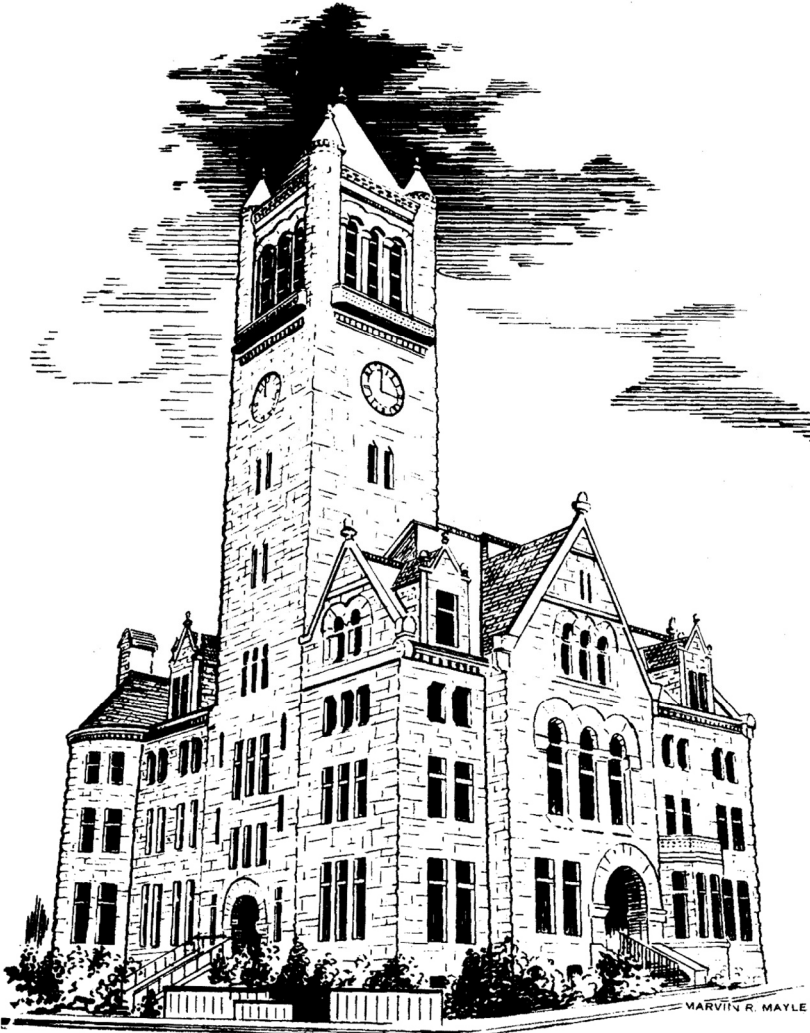


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FAYETTE LEGAL JOURNAL

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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

ANTHONY ANDREW ADAMS, late of Redstone Township, Fayette County, PA (3)
Personal Representative: Mark Adams and Anthony M. Adams
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: James T. Davis

ENOCH J. ELEY, JR., late of Fayette City, Fayette County, PA (3)
Executor: James M. Eley
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: James T. Davis

BERNARD J. FARRIS, JR., late of Dunbar Township, Fayette County, PA (3)
Executrix: Jacqueline A. Gnibus, a/k/a Jacqueline Farris Gnibus
 c/o 208 South Arch Street, Suite 2
 Connellsville, PA 15425
Attorney: Richard A. Husband

NORMA J. FRAZIER, a/k/a NORMA FRAZIER, late of Bullskin Township, Fayette County, PA (3)
Personal Representative: Vincent L. Frazier
 c/o Watson Mundorff, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Timothy J. Witt

SUZANNE KING, a/k/a SUZANNE S. KING, late of Fayette County, PA (3)
Executor: Thomas R. King
 982 Crabbapple Drive

State College, PA 16801
 c/o Miller, Kistler & Campbell
 720 South Atherton Street, Suite 201
 State College, PA 16801
Attorney: Terry Williams

JOHN RUSSELL, a/k/a JOHN MORTON RUSSELL, II, late of Springhill, Fayette County, PA (3)
Administrator: Eva Russell
 245 Fallen Timber Road
 Point Marion, PA 15474
 c/o Zihmer Law Firm
 3244 Washington Road, Suite 210
 McMurray, PA 15317
Attorney: Tracy Zihmer

Second Publication

PATRICIA PETERS-ADAMSON, a/k/a PATRICIA ANN PETERS ADAMSON, late of Brownsville Township, Fayette County, PA
Executor: Ronald R. Peters, Jr. (2)
 c/o 206 Derrick Avenue
 Uniontown, PA 15401
Attorney: Gary Altman

DENNIS RALPH BALLAS, a/k/a DENNIS R. BALLAS, late of German Township, Fayette County, PA (2)
Executor: John Maykuth
 c/o Higinbotham Law Offices
 68 South Beeson Boulevard
 Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

BARBARA J. BERDAR, late of South Union Township, Fayette County, PA (2)
Executrix: Debra J. Crago
 c/o Higinbotham Law Offices
 68 South Beeson Boulevard
 Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

KATHLEEN S. LACLAIR, late of South Union Township, Fayette County, PA (2)
Executor: Michael M. LaClair
 c/o Davis & Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: Gary J. Frankhouser

DONNA LEE MARTIN, late of North Union Township, Fayette County, PA (2)
Executor: David Dean Martin
 c/o Higinbotham Law Offices
 68 South Beeson Boulevard
 Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

SANDRA L. MURRAY, a/k/a SANDRA LEE MURRAY, late of Lower Tyrone Township, Fayette County, PA (2)
Executrix: Soni Mancuso
 c/o 11 Pittsburgh Street
 Uniontown, PA 15401
Attorney: Thomas W. Shaffer

SUE ROGERS, late of Uniontown, Fayette County, PA (2)
Administrator: Curtis Rogers
 c/o 208 Sandle Wood Drive
 East Stroudsburg, PA 18301
Attorney: Curtis Rogers

First Publication

INEZ E. BONTRAGER, late of Connellsville, Fayette County, PA (1)
Executor: Greta Moore
 484 Narrows Roads
 Connellsville, PA 15425
 c/o Stewart Law, LLC
 229 South Maple Avenue
 Greensburg, PA 15601
Attorney: Christina Dubosky

AUDREY BROOKS, a/k/a AUDREY A. BROOKS, late of Bullskin Township, Fayette County, PA (1)
Executor: Mark D. Brooks
 c/o Tremba Kinney Greiner & Kerr
 1310 Morrell Avenue, Suite C
 Connellsville, PA 15425
Attorney: John Greiner

CAROL D. FOSTER, late of Luzerne Township, Fayette County, PA (1)
Personal Representative:
 Tammy L. Cooper
 c/o Higinbotham Law Offices
 68 South Beeson Boulevard
 Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

LORI LEE FRANCZYK, late of Fairchance Borough, Fayette County, PA (1)
Executrix: Dina Nassiri
 c/o Fitzsimmons and Barclay
 55 East Church Street, Suite 102
 Uniontown, PA 15401
Attorney: James N. Fitzsimmons, Jr.

GEORGE WILLIAM KENDALL, late of Springhill Township, Fayette County, PA (1)
Administratrix: Susan D. Austin
 c/o 51 East South Street
 Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

LEGAL NOTICES

NOTICE

The Joseph J. Kerestesy Inter Vivos Revocable Trust was established by Joseph Jody Kerestesy who has since passed away. All persons having claims against Joseph Jody Kerestesy are requested to make such claim(s) known to the trustee of said Trust, Veronica Brestensky, or her attorney, Charles R. Pass III, Esquire, addressed to 429 Fourth Avenue, Suite 1204, Pittsburgh, PA 15219.

Charles R. Pass III, Esquire
 429 Fourth Avenue, Suite 1204
 Pittsburgh PA 15219

(2 of 3)

Notice is hereby given pursuant to the provisions of the Fictitious Names Act of Pennsylvania that an application for registration of a fictitious name was filed with the Department of State of the Commonwealth of Pennsylvania, for the conduct of a business under the fictitious name of RxVIP Brownsville with its principal office or place of business at 27 Market St., Brownsville, PA 15417. The names and addresses, including street and number, if any, of all persons who are parties to the registration are: RxVIP PA 3 LLC, 27 Market St., Brownsville, PA 15417.

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA,
 CIVIL DIVISION
 Docket No. 1732 of 2024 G.D.

IN RE: Change of Name of Morgan Rebecca
 Rogers (M.R.R.), a minor child. By and through
 Gina Bream, her natural mother and guardian,
 petitioner.

Notice Of Name Change Petition

TO ALL PERSONS INTERESTED: Notice is
 hereby given that an Order of said Court
 authorized the filing of said Petition and fixed
 the 21st day of October, 2024, at 11:15 o'clock,
 a.m. as the date and time and Courtroom No. 5,
 Fayette County Courthouse, Uniontown,
 Pennsylvania, as the place for a hearing, when
 and where all persons may show cause, if any,
 why the request of the Petitioner should not be
 granted.

Pavina Law, LLC
 Bryan L. Pavina Jr., Esquire
 4 N. Beeson Blvd.
 Uniontown, PA 15401
 Attorney for Petitioner

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA
 ORPHANS' COURT DIVISION
 NO. 2 ADOPT 2024

IN RE: ADOPTION OF
 JOSIE JOHNSTON

NOTICE

TO: Robert Johnston

A petition has been filed asking the Court
 to put an end to all rights you have to your child,
 Josie Johnston. The court has set a hearing to
 consider ending your rights to your child. That
 hearing will be held in Courtroom No. 4 of the
 Fayette County Courthouse, Uniontown, Fayette
 County, Pennsylvania, on **Thursday, October
 31, 2024 at 1:30 p.m.** Your presence is required
 at the hearing. You should contact Fayette
 County Children and Youth Services or their
 counsel Ewing Newcomer Esq., to obtain a copy
 of the petition prior to the hearing. You are
 warned that even if you fail to appear at the
 scheduled hearing the hearing will go on without
 you and your rights to your child may be ended
 by the court without your being there.

Your rights may also be subject to
 termination pursuant to subsection (d) if you fail

to file wither an acknowledgement of paternity
 or claim of paternity pursuant to Section 5103
 (relating to acknowledgment and claim of
 paternity), and fail to either appear at the hearing
 for the purpose of objecting to the termination of
 your rights or file a written objection to such
 termination with the court prior to the hearing.

YOU HAVE A RIGHT TO BE
 REPRESENTED AT THE HEARING BY A
 LAWYER. YOU SHOULD TAKE THIS
 PAPER TO YOUR LAWYER AT ONCE. IF
 YOU DO NOT HAVE A LAWYER OR
 CANNOT AFFORD ONE, GO TO OR
 TELEPHONE THE OFFICE SET FORTH
 BELOW TO FIND OUT WHERE YOU CAN
 GET LEGAL HELP. THIS OFFICE CAN
 PROVIDE YOU WITH INFORMATION
 ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A
 LAWYER, THIS OFFICE MAY BE ABLE TO
 PROVIDE YOU WITH INFORMATION
 ABOUT AGENCIES THAT MAY OFFER
 LEGAL SERVICES TO ELIGIBLE PERSONS
 AT A REDUCED FEE OR NO FEE.

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 PO BOX 186
 HARRISBURG, PA 17108
 (800) 692-7375

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA
 CIVIL ACTION - LAW
 No. 1845 of 2024, G.D.

IN RE: NAME CHANGE OF A.J.F.

NOTICE

Notice is hereby given that, on September
 10, 2024, the Petition of Megan Haggerty was
 filed in the above-named court, requesting an
 Order to change the name of A. J. Foster to A.
 J. Haggerty.

The Court has fixed the day of October 21,
 2024, at 1:30PM, in Room #5, of Fayette
 County Court House, Pennsylvania as the time
 and place for the hearing on said Petition, when
 and where all interested parties may appear and
 show cause, if any, why the request of the
 Petitioner should not be granted.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN
 518 Madison Drive
 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 ACTION

COMMONWEALTH OF PENNSYLVANIA,	:	
v.	:	
Donald Vincent Barney,	:	No. 789 of 2024
Defendant.	:	Judge Mark M. Mehalov

ATTORNEYS OF RECORD

Mr. Michael A. Aubele, Esq., District Attorney, for the Commonwealth

Mr. Robert Gordon, Esq., Private Attorney for the Petitioner

OPINION AND ORDER

MEHALOV, J.

September 26th, 2024

This matter comes before the Court on Defendant's Omnibus Pre-trial Motion in the form of a Petition for Writ of Habeas Corpus and a Motion to Suppress Traffic Stop. Defendant is charged with DUI General Impairment {1} and DUI BAC 0.16% and greater {2}. After thoughtful consideration, the Court will DENY the Motion in its entirety.

DISCUSSION

Factual Background:

On November 17th, 2023, Game Warden Zachery Hays observed a red Ford SW drive by him Northbound on Route 51 near the intersection of Tippecanoe Road. Upon witnessing the subject vehicle driving erratically and at a high rate of speed, Game Warden Hays began following the vehicle. Once following the vehicle, Hays observed the Ford pass multiple other vehicles, at speeds exceeding 100 mph. Hays observed the Ford drive in between lanes and changing lanes continuously. The Ford continued through a traffic light in Star Junction at a high rate of speed. At this point, Hays activated his emergency lights and siren and initiated a traffic stop at 3287 Pittsburgh Road in Perry Township. Hays then called for a Pennsylvania State Trooper to conduct the arrest. At approximately 10:28 p.m., Trooper Matthew Dechicchis was dispatched to the scene to assist Game Warden Hays.

The suspect vehicle was registered to Defendant. Defendant displayed signs consistent with impairment. Defendant consented to HGN and a Breathalyzer. Defendant was handcuffed, searched incident to arrest and transported to the Belle Vernon PSP barracks. He was read the DL-126 form verbatim. Defendant confirmed that he understood the form. Defendant consented to the breath test. Two (2) separate breath tests indicated a BAC of 0.165%.

{1} 75 § 3802(a)(1)

{2} 75 § 3802(c)

Analysis:

Defendant first raises a Motion for Writ of Habeas Corpus. The Supreme Court of United States has held, "[t]he function of habeas corpus is not to correct a practice but only to ascertain whether the procedure complained of has resulted in an unlawful detention. *Eagles V. U.S. ex rel. Samuels*, 329 U.S.304, 67 S.Ct.313 (1946). To summarize, "the writ of habeas corpus exists to vindicate the right of personal liberty in the face of unlawful governmental deprivation." *Commonwealth v. Jackson*, 809 A.2d 411, 416 (Pa. Super. 2002).

Our Superior Court in *Jackson*, supra, held, "[i]n the pretrial setting, the focus of the habeas corpus hearing is to determine whether sufficient Commonwealth evidence exists to require a defendant to be held in government 'custody' until he may be brought to trial." *Id.* The *Jackson* Court also stated "the trial court should accept into evidence the record from the preliminary hearing as well as any additional evidence which the Commonwealth may have to prove it prima facie case." *Id.* Guidance from *Jackson* also imparts on this Court that "the Commonwealth need not produce evidence of such character and quantum of proof as to require a finding by a jury of the accused's guilt beyond a reasonable doubt. But it should be such as to present 'sufficient probable cause to believe, that the person charged committed the offense stated.'" *Id.* Under *Jackson*, the Commonwealth must prove all elements of the crimes charged to satisfy its burden. *Id.*

Defendant argues that the Commonwealth has failed to present a prima facie case that Defendant "drove, operated, or was in actual physical control" of the subject vehicle at the time in question. Defendant further claims that the Commonwealth has not stated a prima facie case that Defendant consumed a sufficient amount of alcohol to render him incapable of safely operating a motor vehicle.

Defendant was stopped while driving a motor vehicle at speeds in excess of 100 miles per hour. Upon the stop, Defendant was properly read the form DL-126 and gave informed consent to a breath test. Two separate administrations of the breath test showed a BAC of 0.165%. Thus, there is sufficient evidence to deny the Habeas Corpus and allow the matter to move forward.

The second issue raised is a Motion to Suppress the Traffic Stop. Defendant alleges that Game Warden Hays was not a person authorized to effectuate such a traffic stop. Pursuant to 58 Pa. Code§ 131.6-Administration of police powers by wildlife conservation officers states:

a) General.

(1) Section 901(a)(1 7) of the act (relating to powers and duties of enforcement officers) authorizes wildlife conservation officers, when acting within the scope of their employment, to pursue, apprehend or arrest any individual suspected of violating any provision of 18 Pa.C.S. (relating to Crimes Code) or any other offense classified as a misdemeanor or felony and, in addition, to serve and execute warrants and subpoenas for these offenses.

(2) For the purposes of enforcement of the authority granted by section 901(a)(1 7) of the act, "when acting within the scope of their employment" means that period of time that a wildlife conservation officer is currently engaged in any activity the officer is employed to perform at the time and places the officer is authorized to perform the activity.

(b) Limitation. A wildlife conservation officer will arrest or take other appropriate enforcement action pursuant to the authority vested by section 901(a)(17) of the act only in one or more of the following circumstances:

- (1) The offense occurs in the officer's presence.
- (2) The offense occurs on lands or waters owned, leased or otherwise controlled by the Commission.
- (3) The offense arises out of Commission operations.
- (4) Another law enforcement agency has reasonably requested the assistance.

Defendant, through his counsel, has provided as argument the case of Commonwealth vs. Brent James Carlson, 705 A. 2d 468 (Pa. Super 2013). While this case appears to have a similar fact pattern, it is distinguishable from the instant case. In Carlson, Game Warden Brunst was carrying out his assigned duty to transport and deposit a deer carcass at a specified game lands facility. During the process of transporting said deer carcass, Brunst observed a vehicle to the front of his vehicle. Brunst observed this vehicle cross the center line once by the time he reached the game lands facility entrance. Brunst acknowledged that the vehicle had not interfered with any traffic as none was approaching. Based on this information, Brunst decided to delay the disposition of the deer carcass and to follow the subject vehicle. Afterwards, Brunst did observe erratic driving.

The important facts which serve to distinguish Carlson from the case at hand, is this abandonment of official duty. In the instant case, Hays did not abandon any official duty; but rather continued driving his vehicle on his intended route when he observed erratic driving. As Hays continued in his duties, he observed a vehicle changing lanes erratically and driving at excessive speeds on a roadway known to be dangerous. As such, we find that Game Warden Hays, in the normal course of the execution of his duties, observed a potentially hazardous situation in which Defendant was driving in such a manner as to place himself and others in danger of life and limb. Hays, as a Game Warden, had a vehicle equipped with emergency lights and thus had the ability to effectuate a traffic stop to prevent a potentially hazardous situation. Upon stopping Defendant, Hays took the proper steps and contacted the Pennsylvania State Police to perform the actual arrest of Defendant. We find that Game Warden Hays did not abandon his official duties and acted appropriately in these circumstances. Thus, we deny this Omnibus Pretrial Motion in its entirety.

Wherefore, we will enter the following Order:

ORDER

And now, this 26th day of September, 2024, upon consideration of the Defendant's Omnibus Pre-Trial Motion it is hereby ORDERED and DECREED that the motion is DENIED in its Entirety.

The Commonwealth is DIRECTED to list this matter for trial.

BY THE COURT:
MARK M. MEHALOV, JUDGE

ATTEST:
Clerk of Courts

LUNCH & LEARN SERIES

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

- Date: **Wednesday, October 23rd from 12:00 p.m. to 1:30 p.m.**
- Location: **Courtroom 1 of the Fayette County Courthouse**
- Discussion topics: **Clean Slate 3.0 and Pardons:
Removing Pennsylvania Criminal Records**
- Presenters: **Brian V. Gorman, Esquire**

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

FREE for volunteers of Summit Legal Aid's
Clean Slate Clinic on Friday, October 25th

Members of the FCBA

- \$5 fee for attendance without CLE Credit
- \$15 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2019

- \$5 fee for attendance with CLE Credit

Non-members of the FCBA

- \$15 fee for attendance without CLE Credit
- \$40 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 email to cindy@fcbar.org on or before Monday, October 21st.

BENCH BAR CONFERENCE**Bench Bar Conference**

Wednesday, October 16, 2024

The Historic Summit Inn

AGENDA

8:30 - Meet the Sponsors & Breakfast Buffet

9:00 - 12:15 - Conference Seminars (2.0 Substantive and 1.0 Ethics CLE Credits)

Estate Planning for Impactful Giving in Fayette County

Presenters: Jordan R. Pallitto and Daniel L. DeMarco, Esquire - The Hill Group

**Artificial Intelligence and the Criminal Justice System:
Balancing Technology, Ethics, and Law**

Presenter: Daniel Hickton, Esquire - Counsel 1337 PLLC

Fayette County Criminal Practice Discussion

Presenter: District Attorney Michael A. Aubele, Esquire

Acknowledgment of 50 Year Member Gary N. Altman, Esquire**Remarks by Pennsylvania Supreme Court Chief Justice Debra Todd**

Introduction by Gretchen A. Mundorff, Esquire

12:30 - Lunch Buffet

Fees to Attend

FCBA members - \$85

Non-members of the FCBA - \$135

Attorneys admitted to practice in Pennsylvania after January 1, 2019 - \$50

RSVP due Wednesday, October 2nd
724-437-7994 or cindy@fcbars.org

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