

05-71-CD
Commonwealth vs. Teri Genco

SUE GENCO

Com. of Pa. v. Teri Genco
2005-071-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v.

TERI SUE GENCO

1/18/05
Marry -
Judge Hammerman
will not sign
DT

NO. 05-71-CD

Type of Pleading:
PETITION FOR APPEAL FROM AN
ORDER OF THE PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
SUSPENDING OPERATORS LICENSE

Filed on behalf of:
Petitioner, Teri Sue Genco

Counsel of record for this party:
R.E. VALASEK, ESQUIRE
3048 Leechburg Rd.
Lower Burrell, PA 15068
Phone: (724) 337-8811
Fax: (724) 337-8885

Co-Counsel of record for this party:
GARY A. KNARESBORO, ESQUIRE
Supreme Court I.D. No. 52097
33 Beaver Drive, Suite 2
DuBois, PA 15801
Phone: (814) 375-2311
Fax: (814) 375-2314

1cc c/A
FILED 3cc
01/21/05
JAN 14 2005
Atty Knaresboro
William A. Shaw
Notary/Clerk of Courts
pd-85.00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

COMMONWEALTH OF PENNSYLVANIA : NO. 05-71-CD
:
v. :
:
TERI SUE GENCO :
:

ORDER OF COURT

AND NOW, this ____ day of _____, 2005, upon review of the PETITION FOR APPEAL FROM AN ORDER OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION SUSPENDING OPERATORS LICENSE, it is the ORDER of the Court that SUPERSEDEAS is hereby granted. This ORDER shall remain in effect until further ORDER from this Court.

By the Court,

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

COMMONWEALTH OF PENNSYLVANIA : NO.

v.

TERI SUE GENCO


**PETITION FOR APPEAL FROM AN ORDER OF THE PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION SUSPENDING OPERATORS LICENSE**

AND NOW, comes the Petitioner, Teri Sue Genco, by and through her counsel R.E. Valasek, Esquire and Gary A. Knaresboro, Esquire and sets forth the following:

1. That your Petitioner is currently residing at 11 Chestnut Street, DuBois, Pennsylvania.
2. That on November 18, 2004, the Petitioner was arrested for D.U.I.
3. That the arresting officer requested a blood test from the Petitioner.
4. That the Petitioner refused, not knowing or understanding that her operators license would be suspended.
5. That the Petitioner was neither advised of nor read her O'Connell warnings.
6. That the Petitioner was neither advised of nor read the Implied Consent.

WHEREFORE, your Petitioner respectfully requests that this Honorable Court grant this PETITION FOR APPEAL FROM AN ORDER OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION SUSPENDING OPERATORS LICENSE and find that the said suspension is unlawful, and restore driving privileges.

Respectfully Submitted,


Gary A. Knaresboro, Esquire

FILED

JAN 14 2005

William A. Shaw
Prothonotary/Clerk of Courts

Gary A. Maresboro, Esquire

33 BEAVER DRIVE, SUITE 2
DUBOIS, PA 15801
TELEPHONE (814) 375-2311
FAX (814) 375-2314

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

COMMONWEALTH OF PENNSYLVANIA

: NO. 05-71-CD

v.

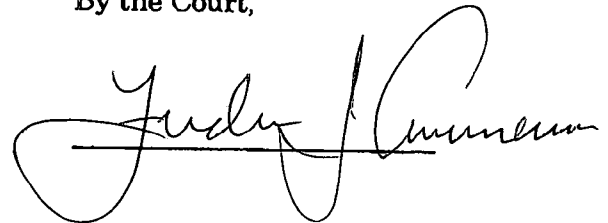
TERI SUE GENCO

ORDER OF COURT

AND NOW, this 21 day of January, 2005, upon review of the PETITION FOR APPEAL FROM AN ORDER OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION SUSPENDING OPERATORS LICENSE, it is the ORDER of the Court that SUPERSEDEAS is hereby granted. This ORDER shall remain in effect until further ORDER from this Court.

RULE RETURNABLE and hearing on the merits of said Petition shall be held on the 15 day of February, 2005, at 9:00, A.m. in Courtroom No. 2 of the Clearfield County Courthouse, Market and Second Streets, Clearfield, Pennsylvania.

By the Court,



FILED

6K 013:04/21
JAN 21 2005

3cc
Atty Valasek

William A. Shaw
Prothonotary/Clerk of Courts

6A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

TERI SUE GENCO

:
:
: No. 05-71-CD
:
:

ORDER

AND NOW, this 25th day of August, 2005, it is the ORDER of the Court that hearing on Defendant's License Suspension Appeal in the above matter has been scheduled for **Friday, September 23, 2005 at 11:30 A.M.** before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in the Clearfield County Courthouse, Clearfield, PA. Please report to the Court Administrator's Office. You will be directed from there where this hearing will be heard.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

0/2:20 LM

AUG 25 2005 (LM)

2CC 4/A

William A. Shaw
Prothonotary

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Commonwealth of Pennsylvania

vs.

No. 2005-71-CD

Teri Sue Genco

Motion to Quash Appeal

Filed on Behalf of:
Commonwealth of Pennsylvania,
Department of Transportation

Counsel for this Party:

William A. Kuhar, Jr., Esquire
Pa. ID #38885

Office of Chief Counsel
Firm #052
1209 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

412.565.7555

FILED *no cc*
019:30/61
SEP 07 2005 *(60)*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Commonwealth of Pennsylvania

vs.

No. 2005-71-CD

Teri Sue Genco

MOTION TO QUASH APPEAL

AND NOW, comes the Commonwealth of Pennsylvania, Department of Transportation and requests the Court to quash the above-captioned appeal from suspension, recall, disqualification, cancellation or revocation of operating or registration privileges, averring in support the following:

1. The defendant/petitioner, Teri Sue Genco, filed a statutory appeal at the above-referenced docket number, naming the Commonwealth of Pennsylvania as plaintiff/respondent.
2. The Court of Common Pleas of Clearfield County has scheduled a hearing on the appeal for September 23, 2005 at 11:30 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding.
3. Section 1550(a) of the Vehicle Code, 75 Pa.C.S. §1550(a), states that a copy of the petition for appeal, together with a copy of the notice of the action from which the appeal has been taken, must be served upon the Pennsylvania Department of Transportation's legal office.
4. To date, the defendant/petitioner has failed to serve a copy of her petition for appeal and a copy of the notice of the action from which the appeal has been taken on the Pennsylvania Department of Transportation's legal office.

5. The Commonwealth Court of Pennsylvania has held that an appeal, filed pursuant to Section 1550 or 1377 of the Vehicle Code, has been perfected only when notice of the appeal has been served on the Pennsylvania Department of Transportation. *Gilmore v. Commonwealth*, 590 A.2d 1369 (Pa. Cmwlth. 1991), *appeal denied*, 531 Pa. 565, 613 A.2d 561 (1992).

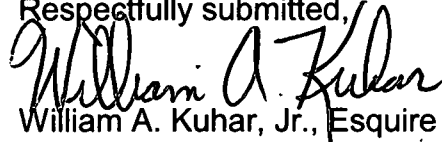
6. In *Gilmore*, the Commonwealth Court held that the trial court properly quashed the licensee's appeal because the licensee failed to meet his burden of proving that the notice of the appeal was served on the Pennsylvania Department of Transportation.

7. In the instant case, the defendant/petitioner has failed to perfect her appeal by serving a copy of her petition for appeal on the Pennsylvania Department of Transportation's legal office. As such, the Court lacks jurisdiction to hear the instant appeal and the appeal must therefore be quashed.

WHEREFORE, the Commonwealth of Pennsylvania, Department of Transportation, requests the Court to enter a rule upon the defendant/petitioner to show cause, if any, why the above-captioned statutory appeal should not be quashed because the defendant/petitioner failed to perfect the appeal by serving a copy of her

petition for appeal, together with a copy of the notice of the action from which the appeal has been taken, upon the Pennsylvania Department of Transportation's legal office.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William A. Kuhar, Jr.", written over the typed name.

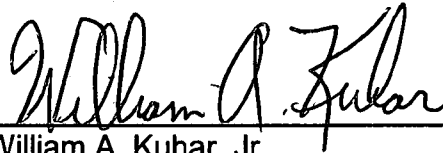
William A. Kuhar, Jr., Esquire
Assistant Counsel

CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on the date set forth below, he served a true and correct copy of the foregoing Motion to Quash Appeal upon counsel for the defendant/petitioner by regular United States first class mail, postage pre-paid, addressed as follows:

Gary A. Knaresboro, Esquire
33 Beaver Drive, Suite 2
DuBois, PA 15801

Date: 8/30/2005



William A. Kuhar, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Commonwealth of Pennsylvania

vs.

Teri Sue Genco

:
:
:
:
:

No. 2005-71-CD

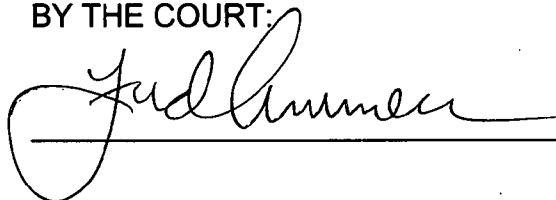
ORDER OF COURT

AND NOW, this 6th day of September, 2005,

upon consideration of the foregoing Motion to Quash Appeal filed on behalf of the Commonwealth of Pennsylvania, Department of Transportation, a rule is entered upon the defendant/petitioner, Teri Sue Genco, to show cause, if any, why the above-captioned statutory appeal should not be quashed due to the defendant/petitioner's failure to perfect this appeal by serving a copy of her petition for appeal and a copy of the notice of the action from which the appeal has been taken upon the Pennsylvania Department of Transportation's legal office.

Said rule is returnable on the 23rd day of September, 2005, at 11:30 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in a yet to be determined courtroom in the Clearfield County Courthouse in Clearfield, Pennsylvania.

BY THE COURT:


J.

FILED

019:3081
SEP 07 2005

2cc

Atty Kuhar

(68)

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CIVIL DIVISION

v.

No. 2005-71-CD

TERI SUE GENCO,

Petitioner

MOTION TO CONTINUE
APPEAL FROM AN ORDER OF
THE PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION SUSPENDING
OPERATORS LICENSE HEARING

Filed on behalf of:
TERI SUE GENCO,
Petitioner

Counsel of Record for
this party:

R. E. VALASEK, ESQUIRE
Pa. I.D. No. 27383

R. E. VALASEK LAW OFFICES
Firm No. 596
3048 Leechburg Road
Lower Burrell, PA 15068-3446

[724] 337-8811

FILED 4cc
019:46801 Atty Valasek
SEP 20 2005 @

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CIVIL DIVISION

v.

No. 2005-71-CD

TERI SUE GENCO,

Petitioner

MOTION TO CONTINUE
APPEAL FROM AN ORDER OF
THE PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION SUSPENDING
OPERATORS LICENSE HEARING

MOTION TO CONTINUE APPEAL FROM AN ORDER OF THE PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION SUSPENDING OPERATORS LICENSE HEARING

AND NOW, Comes the Petitioner, TERI SUE GENCO, by and through her attorneys, R. E. VALASEK, ESQUIRE and R. E. VALASEK LAW OFFICES, and files the following MOTION TO CONTINUE and, in support thereof, avers as follows:

1. A Order was received from the Court of Common Pleas of Clearfield County advising that this case will be presented to the Court on 23 September 2005 at 11:30 A.M. before Specially Presiding Senior Judge John K. Reilly, Jr., Clearfield County Courthouse.

2. The Petitioner's Attorney, R. E. Valasek, Esquire, will be unavailable due to his being in North Carolina for the arrival of his son's return to the States from Iraq.

3. The Office of Chief Counsel was contacted on 13 September 2005 and Willaim A. Kuhar, Jr., Assistant Counsel has consented to continue this matter.

4. This Motion is not made to delay or hinder the prosecution but is made in good faith for the above-stated reason.

5. No party in this matter will be prejudiced by a continuance.

WHEREFORE, Petitioner, Teri Sue Genco, respectfully requests your Honorable Court to continue this matter until such time as may suit the convenience of the Court.

AND, HE WILL EVER PRAY, ETC.,

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By



R. E. Valasek, Esquire,
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA)	CIVIL DIVISION
)	
v.)	No. 2005-71-CD
)	
TERI SUE GENCO,)	
)	
Petitiner)	

CERTIFICATE OF SERVICE


I hereby certify on this 14th day of September 2005, that a true and correct copy of the within MOTION TO CONTINUE was served upon the following individual in the manner indicated below and addressed as follows:

FIRST-CLASS MAIL

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, Pennsylvania 16830

Respectfully submitted,

R. E. VALASEK LAW OFFICES

By 
R. E. Valasek, Esquire,
Attorney for Defendant

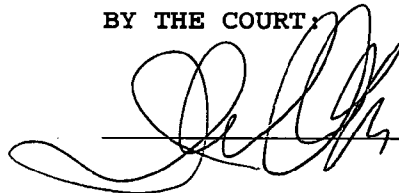
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA)	CIVIL DIVISION
)	
v.)	No. 2005-71-CD
)	
TERI SUE GENCO,)	
)	
Petitioner)	

ORDER OF COURT

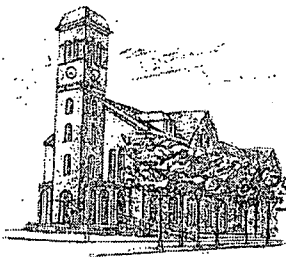
AND NOW, to-wit, on this 16 day of Sept,
2005, upon consideration of the within MOTION TO CONTINUE, and upon
motion of R. E. VALASEK, ESQUIRE, Counsel for Defendant and consent
thereto by the William A. Kuhar, Jr., Esquire, Assistant Counsel to the
Governor's Office of General Counsel, IT IS HEREBY ORDERED, ADJUDGED,
and DECREED that the presentation of the above case to Court is hereby
CONTINUED to the _____ day of _____, 2005, at _____ M.
in Courtroom # _____ before until further Order of Court.

BY THE COURT,

 J.

FILED 4cc
09:46 AM
SEP 20 2005
Valasek
@

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

X You are responsible for serving all appropriate parties.

_____ The Prothonotary's office has provided service to the following parties:

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

LA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

vs.

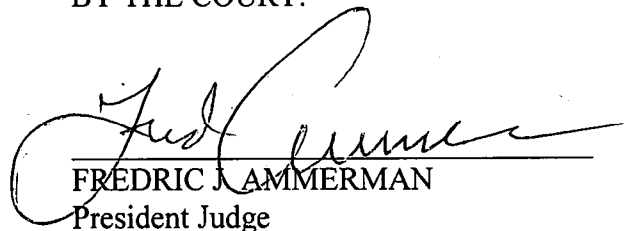
TERI SUE GENCO

:
:
:
: No. 05-71-CD
:
:

ORDER

AND NOW, this 7 day of August, 2006; it is the ORDER of the Court that hearing on Defendant's License Suspension Appeal in the above matter has been scheduled for **Tuesday, September 26, 2006 at 10:30 A.M.** before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in the Clearfield County Courthouse, Clearfield, PA. Please report to the Court Administrator's Office. You will be directed from there where this hearing will be heard.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

AUG 08 2006

07121366
William A. Shaw
Prothonotary/Clerk of Courts

SENT TO COMMONWEALTH

ATTY KANNON BOER

SENT TO

ATTY VALASEK
ON 8-11-06.

FILED

AUG 08 2006

William A Shaw
Prothonotary/Clerk of Courts

DATE: 8-8-06

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☒ Plaintiff(s) Attorney ☐ Other

☒ Defendant(s) Attorney

☐ Special Instructions:

WMAH on 8-11-06
WJ

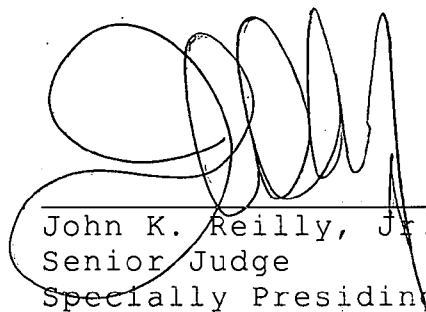
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA	*	
DEPARTMENT OF TRANSPORTATION	*	
vs.	*	
TERI SUE GENCO	*	NO. 05-71-CD

ORDER OF COURT

NOW, this 26th day of September, 2006,
following hearing into the above-captioned appeal from
license suspension, appellant having failed to appear in
person but having been represented by counsel, IT IS THE
ORDER OF THIS COURT that said appeal be and is hereby
dismissed and the action of the Department affirmed.

BY THE COURT:



John K. Reilly, Jr.
Senior Judge
Specially Presiding

FILED 1CC Amy Kuhar
0/9:31/07
SEP 28 2006 2CC Amy Valasek
William A. Shaw 2 CC Amy Knaresboro
Prothonotary/Clerk of Courts (CW)

FILED

SEP 28 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/28/06

____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) X Plaintiff(s) Attorney ____ Other

____ Defendant(s) X Defendant(s) Attorney

____ Special Instructions:

DL-28 (12-03)

CHEMICAL TESTING WARNINGS AND REPORT OF REFUSAL TO SUBMIT
TO CHEMICAL TESTING AS AUTHORIZED BY SECTION 1547 OF THE
VEHICLE CODE IN VIOLATION SECTION 3802

(relating to driving under the influence of Alcohol or Controlled Substance)

esw

9-26-06

Side 1

NAME			SEX	DATE OF BIRTH		
FIRST	MIDDLE	LAST		MONTH	DAY	YEAR
Lee	Sue	Geraci	F	09	07	1960
ADDRESS: A.P.O. this number may be used in addition to the actual residence address, but cannot be used as the only address.			CITY	STATE	ZIP CODE	
11 Chestnut St. DuBois, PA. 15801			DuBois	PA	15801	
DRIVER NUMBER		STATE	CHEM TEST REQUEST DATE		SOCIAL SECURITY NUMBER	
944324971		NY	MONTH	DAY	YEAR	
			11	18	2004	194-58-9793

SECTION 1547 - CHEMICAL TESTING WARNINGS

1. Please be advised that you are under arrest for driving under the influence of alcohol or controlled substance in violation of Section 3802 of the Vehicle Code.
2. I am requesting that you submit to a chemical test of Blood (blood, breath or urine. Officer chooses the chemical test).
3. It is my duty as a police officer to inform you that if you refuse to submit to the chemical test, your operating privilege will be suspended for at least one year. In addition, if you refuse to submit to the chemical test, and you are convicted of, plead to, or adjudicated delinquent with respect to violating Section 3802(a) of the Vehicle Code, because of your refusal, you will be subject to the more severe penalties set forth in Section 3804(c) of the Vehicle Code, which include a minimum of 72 hours in jail and a minimum fine of \$1,000.00.
4. It is also my duty as a police officer to inform you that you have no right to speak with an attorney or anyone else before deciding whether to submit to testing and any request to speak with an attorney or anyone else after being provided these warnings or remaining silent when asked to submit to chemical testing will constitute a refusal, resulting in the suspension of your operating privilege and other enhanced criminal sanctions if you are convicted of violating Section 3802(a) of the Vehicle Code.

I certify that I have READ the above warning to the motorist regarding the suspension of their operating privilege and gave the motorist an opportunity to submit to chemical testing.

Signature of Officer: Off. Shawn A. McClearyDate: 11-18-04

I have been advised of the above.

Signature of Motorist: X

Date: _____

Motorist refused to sign, after being advised.

Signature of Officer: Off. Shawn A. McClearyDate: 11-18-04

AFFIDAVIT

1. The above motorist was placed under arrest for driving under the influence of alcohol or a controlled substance in violation of Section 3802 of the Vehicle Code, and there were reasonable grounds to believe that the above motorist had been driving, operating or in actual physical control of the movement of a motor vehicle while under the influence of alcohol or a controlled substance or both.

or

That the above named motorist was involved in an accident in which the operator or passenger of any vehicle involved or a pedestrian required treatment at a medical facility or was killed.

2. The above motorist was requested to submit to chemical testing as authorized by Section 1547 of the Vehicle Code.
3. The above motorist was read by a police officer of the chemical test warnings contained in paragraph 3 and 4 above.
4. The above named motorist refused to submit to chemical testing after having been read the above warnings.

OFFICER NOTE: The refusal to sign this form is not a refusal to submit to the chemical test. You must still give the motorist an opportunity to take the chemical test after reviewing this form. If the individual was operating a commercial motor vehicle while having any alcohol or a controlled substance in their system, you must also complete the reverse side of this form. I certify that all information given in this form is true and correct.

Officer Signature Off. Shawn A. McClearyOfficer Name Shawn A. McCleary

(Type or Print)

Badge Number 318Jurisdiction: City of DuBoisMailing Address 16 W Scribner Ave. DuBois, PA. 15801Phone: (814) 371-2324

PLEASE LIST NAME, BADGE NUMBER, AND PHONE NUMBER OF ARRESTING OFFICER IF NOT THE SAME OFFICER WHO WITNESSED THE REFUSAL:

Forward to

Department of Transportation
Bureau of Driver Licensing
P.O. Box 60037
Harrisburg, PA 17106-0037

Note: Any pertinent facts not covered by the affidavit should be submitted on a separate sheet and attached hereto. That sheet should include the names of additional witnesses necessary to prove the elements to which you have attested.

THIS FORM MAY BE DUPLICATED

ADDITIONAL SUPPLIES OF THIS FORM MAY BE SECURED BY COMPLETING FORM OS-511A

2840947