

# FAYETTE LEGAL JOURNAL

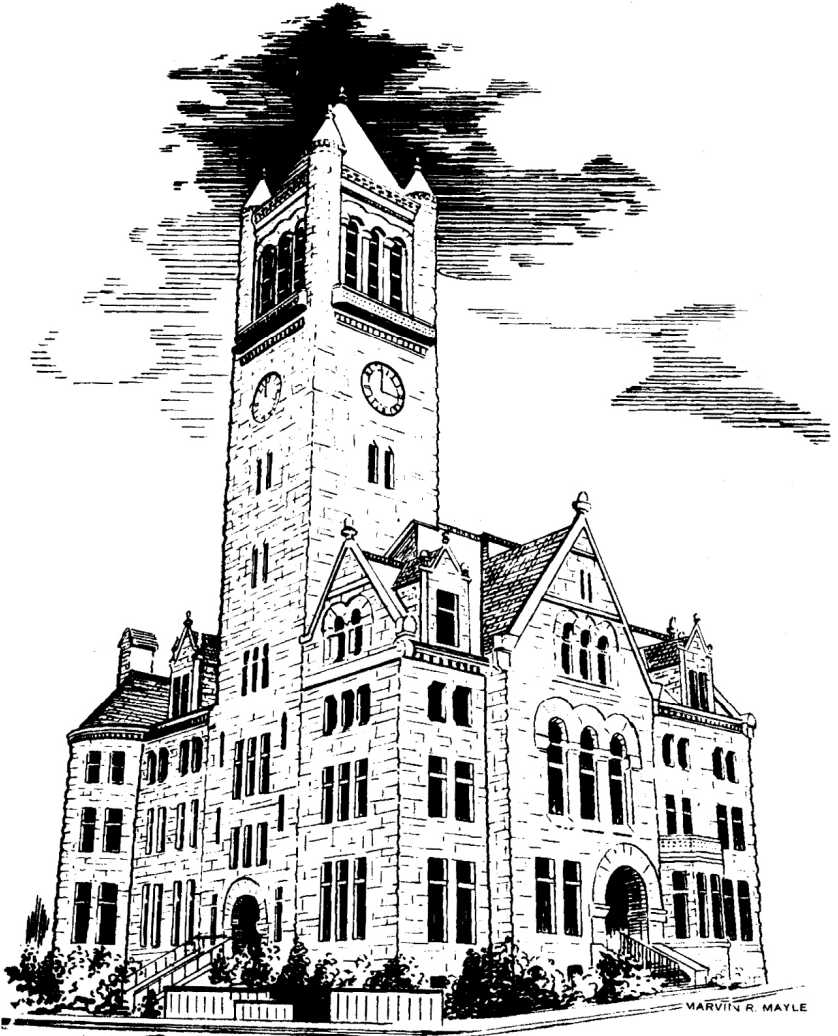
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VOL. 83

DECEMBER 12, 2020

NO. 50

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## FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at [www.fcbar.org](http://www.fcbar.org) no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

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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

**GEORGE EDWARD BAILEY, a/k/a  
GEORGE E. BAILEY**, late of Connellsville,  
Fayette County, PA <sup>(3)</sup>

*Executor:* Gregory E. Bailey  
1435 Spyglass Hill  
Greensburg, PA 15601  
c/o Fike, Cascio and Boose  
Scully Building  
124 North Center Avenue  
P.O. Box 431  
Somerset, PA 15501-0431  
*Attorney:* Lois W. Caton

**JOHN G. HALL, a/k/a JOHN GARY HALL**,  
late of North Union Township, Fayette County,  
PA <sup>(3)</sup>

*Executrix:* Rachelle F. Hall  
111 Runaround Road  
Dunbar, PA 15431  
c/o Dellarose Law Office, PLLC  
99 East Main Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Melinda Deal Dellarose

**GEORGE NOVAK, a/k/a GEORGE  
NOVAK, JR.**, late of North Union Township,  
Fayette County, PA <sup>(3)</sup>

*Executor:* David P. Novak  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**EMMALOU PLETCHER**, late of Springfield  
Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Roger Pletcher  
c/o 208 South Arch Street  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

**PATRICIA DOVONA REYNOLDS, a/k/a  
PATRICIA D. REYNOLDS**, late of Georges  
Township, Fayette County, PA <sup>(3)</sup>

*Administrator:* Dustin Reynolds  
c/o 9 Court Street  
Uniontown, Pa 15401  
*Attorney:* Vincent J. Roskovensky, II

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

*Executor:* Jon R. Paulovich  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**HOLLY L. SUNDIN**, late of Bullskin  
Township, Fayette County, PA <sup>(3)</sup>

*Administrator:* Ronald M. Sundin  
136 White Bridge Road  
Mt. Pleasant, PA 15666  
c/o Pribanic & Pribanic, LLC  
1735 Lincoln Way  
White Oak, PA 15131  
*Attorney:* Sherie P. Cannin

### Second Publication

**BENJAMIN AUGUSTINE**, late of Nicholson  
Township, Fayette County, PA <sup>(2)</sup>

*Executor:* Ben J. Augustine  
c/o 84 East Main Street  
Uniontown, PA 15401  
*Attorney:* Vincent M. Tiberi

**AGNES G. KROLIK**, late of Washington  
Township, Fayette County, PA <sup>(2)</sup>

*Co-Executors:* Andrew A. Krolik and  
Cheryl Ann Jenkins  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

**JAMES A. SILBAUGH III, a/k/a JAMES  
SILBAUGH**, late of Connellsville, Fayette  
County PA <sup>(2)</sup>

*Executrix:* Donna Silbaugh  
c/o Tremba, Kinney, Greiner, & Kerr  
120 South Third Street

Connellsville, PA 15425  
*Attorney:* John K. Greiner

111 Fallowfield Avenue  
Charleroi, PA 15022  
*Attorney:* Bradley M. Bassi

**First Publication**

**JOYCE L. BARTLEY**, late of Connellsville,  
Fayette County, PA (1)

*Executor:* James Gallagher  
c/o Casini & Geibig, LLC  
815B Memorial Boulevard  
Connellsville, Pa 15425  
*Attorney:* Jennifer M. Casini

**FLOYD M. DRYLIE**, late of Brownsville,  
Fayette County, PA (1)

*Personal Representative:* Anna M. Zooner  
315 High Street  
Brownsville, PA 15417  
c/o P.O. 488  
California, PA 15419  
*Attorney:* Lisa J. Buday

**LORETTA K. FRIEND**, late of Hopwood,  
Fayette County, PA (1)

*Executor:* Garry Lee Friend  
c/o 11 Pittsburgh Street  
Uniontown, PA 15401  
*Attorney:* Thomas W. Shaffer

**PATRICIA JARRETT, a/k/a PAT  
JARRETT, a/k/a PATRICIA A. JARRETT**,  
late of Smithfield, Nicholson Township, Fayette  
County, PA (1)

*Executor:* Richard A. Jarrett  
174 Boy Scout Road  
Masontown, PA 15461  
c/o 76 East Main Street  
Uniontown, PA 15401  
*Attorney:* Douglas S. Sholtis

**MARY AGNES SINCLAIR**, late of  
Perryopolis, Fayette County, PA (1)

*Co-Executrices:* Lenora Palonder  
P.O. Box 24  
301 Liberty Street  
Perryopolis, PA 15473  
Mary Beth Cope  
P.O. Box 6  
801 Circle Street  
Perryopolis, PA 15473  
c/o Bassi, Vreeland & Associates, P.C.  
P.O. Box 144

**TYLER SWENGLISH, a/k/a TYLER  
CHARLES SWENGLISH**, late of German  
Township, Fayette County, PA (1)

*Personal Representative:*  
Carl R. Swenglish  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**LEGAL NOTICES**

**To:** Jesse Jeffries

**In Re: P.L., minor child,  
born August 17, 2015**

A petition for involuntary termination of parental rights has been filed asking the court to put an end to all rights you have to your child, P.L., born August 17, 2015. The court has set a hearing to consider ending your rights to your child.

The hearing will be held in the Greene County Courthouse, 10 E. High Street, Waynesburg, PA 15370 on January 15, 2021, at 9:00 a.m. in the assigned courtroom before the Judge.

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 you being present.

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. Southwestern Pennsylvania Legal Aid, 63 S. Washington Street, Waynesburg, PA 15370; (724) 627-3127 or Lawyer Referral Service, 10 E. High Street, Waynesburg, PA; (724) 852-5237.

This notice given by Greene County Children and Youth Services, 150 Fort Jackson County Building, 19 South Washington Street, Waynesburg, PA 15370.

IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 CRIMINAL DIVISION  
 No. 478 MD 2020

**FAYETTE COUNTY CLERK OF COURTS  
 FEE BILL  
 Effective January 1, 2021**

**IN RE: CLERK OF COURTS FEE BILL**

**ORDER OF COURT**

AND NOW, this 2nd day of December, 2020, pursuant to 42 Pa.C.S. §1725.4(a)(2), the Fayette County Clerk of Courts' request to increase fees and charges effective January 1, 2021, is approved. The fees to be charged and collected by the Clerk of Courts in counties of the second class A and the third through eighth, or equivalent officer in home rule counties of the same class, shall be listed on the following Fee Bill.

The amount of any fee or charge increased pursuant to paragraph (1) of 42 PCS section 1725.4 may be increased every three years, provided that the amount of the increase may not be greater than the percentage of increase in the Consumer Price Index for Urban Workers for the immediate three years preceding the increase in the fee or charge.

In addition to any other fee authorized by law, an automation fee of not more than \$5.00 may be charged and collected by the Clerk of Courts of counties of the second class A and the third through eighth class, including home rule counties of the same class, for the initiation of any action or legal proceeding. The automation fee shall be deposited into a special Clerk of Courts automation fund established in each county. Monies in the special fund shall be used solely for the purpose of automation and continued automation update of the Office of the Clerk of Courts.

BY THE COURT:  
 WAGNER, P.J.

ATTEST:  
 Timothy Dye  
 Clerk of Courts

**Criminal Case Filings**

Felony, Misdemeanor	157.55
PFA Indirect Criminal Contempt	141.20
Non-Jury, Plea, ARD, PWOV	141.20
Summary	52.15
Out of County Courtesy Supervision	46.00
Summary Appeal	46.00

**Bail Bonds**

Percentage Cash Bail Administrative Fee 30% on amount paid	
Agent Qualifying Power of Attorney	53.20
Bail Piece (Application and Order)	16.85
Bail Forfeitures	29.15
Posting Property Bond	26.05

**Filings**

Appeals (Higher Court: state fee not included)	58.30
Issuance of Bench Warrants	19.40
Constable Bond/Oath/Card	22.50
Deputy Constable Appointment/Card	22.50
Expungement (Miscellaneous Cases)	53.20
ARD Motion and Expungement	68.55
Miscellaneous Matters	22.50
Municipal School Tax Report	18.40
Petitions/Motions generally (following dispositions)	22.50
Petitions for Parole/ Release etc.	22.50
Private Detective {Individual}	
Bond/License - 2 years	232.20
Private Detective (Corporate)	
Bond/License - 2 years	333.60
Revocation of ARD, PWOV, Probation/Parole	22.50
Roads (Including Certification)	22.50
Summary Appeal (Non-refundable filing fee)	46.55
Tax Collector Bond/Oath	22.50
Tax Collector Report	18.40

**Miscellaneous Fees**

Certification	10.00
Copies (per page)	.25
Clerk of Courts Automation Fee	5.00
Computer Printouts	1.00
Exemplification	22.50
Fax Fees (per page)	1.75
License Suspension/Reinstatement	22.50
Postage (per case)	15.25
Record Search	11.25
Subpoena (sign/seal)	5.60

**JUDICIAL OPINION**

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

COMMONWEALTH OF	:	
PENNSYLVANIA	:	
	:	
v.	:	
	:	
EDWARD JAMES FAZENBAKER,	:	No. 886 of 2020
Defendant.	:	Honorable Judge Steve P. Leskinen

**OPINION AND ORDER**

Leskinen, J.

Before the Court is the Defendant's Omnibus Pretrial Motion in the Nature of a Motion to Suppress and a Petition for a Writ of Habeas Corpus. After careful review of the evidence and applicable law, the Court hereby denies the Motion.

**Factual Background**

The Defendant was charged with Possession of Firearm Prohibited {1}, Firearms Not to be Carried Without a License {2}, Driving Under the Influence: General Impairment {3}, Disregarding Traffic Lane {4}, and Driving at Safe Speed {5}. The Affidavit of Probable Cause, the MVR, the testimony given at the Preliminary Hearing on June 17th, 2020, and the testimony given at the Omnibus Pretrial Hearing on October 27th, 2020 attest to the following facts: On the evening of May 23rd, 2020, Trooper Ted Dillon and Trooper Anthony Svetz were dispatched to the scene of a single vehicle car crash at the intersection of Walnut Hill Rd. and Wiggins Ln. in South Union Township. Trooper Dillon testified that when he arrived at the scene, of the crash, he observed the Defendant's car wrecked against a guard rail. He approached the car and observed the Defendant sitting in the driver's seat with the driver's door open. Trooper Dillon approached the open driver's door and began talking to the Defendant. Trooper Dillon testified that he immediately smelled a strong odor of alcohol emanating from the Defendant's person and that the Defendant's eyes were bloodshot and glassy. Trooper Dillon and Trooper Svetz then helped the Defendant walk from the wrecked car to the area in front of their patrol unit, several feet away. The MVR shows that the Defendant exhibited confusion, difficulty balancing, and extremely slurred speech. The Defendant sat down on the front bumper of the patrol unit and, after several failed attempts, performed a preliminary breath test in which he blew a 0.157% BAC. The Defendant was taken into custody. Trooper Dillon asked the Defendant where the registration and insurance information were.

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{1} 18 Pa.C.S.A. § 6105(a)(1).  
 {2} 18 Pa.C.S.A. § 6106(a)(1).  
 {3} 75 Pa.C.S.A. § 3802(a)(1).  
 {4} 75 Pa.C.S.A. § 3309(1).  
 {5} 75 Pa.C.S.A. § 3361.

The Defendant told him that they were in his car. Trooper Dillon walked back to the drivers door of the Defendant's car to retrieve the registration and insurance information. It was at this time that Trooper Dillon observed a .38 caliber over-under style Derringer sitting on the front bench seat of the Defendant's car. The Defendant was taken to Uniontown Hospital, where he refused a blood draw.

The Defendant argues that the gun was found as the result of an unreasonable search under -the Fourth Amendment and must, therefore, be suppressed. The Defendant further argues that the Commonwealth has not established a Prima Facie case for Driving Under the Influence: General Impairment.

### **Legal Standard, Motion to Suppress**

Pennsylvania recognizes the public servant exception to the warrant requirement. The Pennsylvania Supreme Court recently ruled in *Com. v. Livingston* that:

[I]n order for a seizure to be justified under the public servant exception to the warrant requirement under the community caretaking doctrine, the officer must point to specific, objective, and articulable facts which would reasonably suggest to an experienced officer that assistance was needed; the police action must be independent from the detection, investigation, and acquisition of criminal evidence; and, based on a consideration of the surrounding circumstances, the action taken by police must be tailored to rendering assistance or mitigating the peril. Once assistance has been provided or the peril mitigated, further police action will be evaluated under traditional Fourth Amendment jurisprudence.

*Com. v. Livingstone*, 174A.3d 609,637 (2017).

Pennsylvania follows the plain view exception to the warrant rule: the plain view exception to the warrant rule is met if 1) police did not violate the Fourth Amendment during the course of their arrival at the location where they viewed the item in question; 2) the item was not obscured and could be seen plainly from that location; 3) the incriminating nature of the item was readily apparent; and 4) police had the lawful right to access the item. *Com v. Robert E. Luptak, Jr.*, 1481 WDA 2019, 2020 WL 6257039 (Pa.Super.2020). In determining whether the incriminating nature of an object is immediately apparent to the police officer, the Court looks to the totality of the circumstances. *Com. v. Whitlock*, 69 A.3d 635, 637 (Pa.Super.2013).

There is no justifiable search incident to arrest under the Pennsylvania Constitution save for the search of the person and the immediate area which the person occupies during his custody. *Com. v. White*, 669 A.2d 896, 902 (1995).

Evidence that inevitably would have been recovered by lawful means should not be suppressed despite the fact that its actual recovery was accomplished through illegal actions. *Com. v. Gonzalez*, 979 A.2d 879, 890 (Pa.Super.2009). The purpose of the inevitable discovery doctrine is to block setting aside convictions that would have been obtained without police misconduct. *Nix v. Williams*, 467 U.S. 431, 444 (1984).

### **Legal Standard, Habeas Corpus**

To grant a petition for a Writ of Habeas Corpus, the Court must decide that the Commonwealth did not establish a prima facie case. *Com. v. James*, 863 A.2d 1179, 1182 (Pa.Super.2004). To establish a prima facie case, the Commonwealth must show sufficient probable cause that the Defendant committed the offense. *Id.* The evidence should be such that, if presented at trial and accepted as true, the Court would be warranted in allowing the case to go to the jury. *Id.* Evidence is viewed in the light most favorable to the Commonwealth, an all 'reasonable inferences based on that evidence which could support a guilty verdict are considered. *Com. v. Packard*, 767 A.2d 1068, 1071 (Pa.Super.2001). The Commonwealth is not required to prove guilt beyond a reasonable doubt.

75 Pa.C.S.A. § 3802(a)(1) states:

An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

### **Conclusions of Law**

According to Trooper Dillon's testimony at the Preliminary Hearing, Trooper Dillon returned to the Defendant's vehicle to retrieve the Defendant's registration and insurance information. Trooper Dillon's actions were independent from the detection, investigation, and acquisition of criminal evidence. Considering the surrounding circumstances, this Court finds that Trooper Dillon's actions were tailored to rendering assistance in connection with the car crash and therefore fell within the public servant exception to the warrant requirement. However, despite the fact that Trooper Dillon's arrival at the driver's door fell within the public servant exception, and despite the fact that the gun could be plainly seen from that location, the incriminating nature of the gun was not readily apparent: at the time that Trooper Dillon saw the gun, he did not know that the Defendant was a person prohibited from possessing a firearm or that the Defendant did not have a license to carry one.

Nor was the search justifiable as a search of the immediate area the Defendant occupied incident to arrest. When the Defendant was taken into custody, he was several feet away from his vehicle, sitting on the front bumper of Trooper Dillon's patrol unit. In *Com. v. Bozeman*, the Pennsylvania Superior Court ruled that a search of a defendant's vehicle made after the defendant had been taken into custody and placed in a patrol unit several feet away was not justifiable as a search of the immediate area the defendant occupied incident to arrest because the defendant was "far removed" from his vehicle at the time the search was conducted. *Com. v. Bozeman*, 205 A.3d 1264, 1277 (Pa.Super.2019).

However, this Court finds that the firearm can be brought in under the inevitable discovery doctrine. In *Com. v. Bailey*, the Pennsylvania Superior Court ruled that a firearm found during a search of the center console of a defendant's vehicle, for which there was no voluntary consent, and during which the defendant was already in custody sever-



al feet away, was nevertheless not subject to suppression: "Because the police would have been able to tow Bailey's car pursuant to his arrest and because the police conduct routine inventory searches whenever a car is towed, and an inventory search includes looking into obvious storage places such as the center console, we must agree that the gun would have inevitably been discovered absent police error or misconduct. *Com. v. Bailey*, 986 A.2d 860, 863 (Pa.Super.2009). In the present case, the gun was not even within a center console: rather, it was openly sitting on the front bench seat of the Defendant's vehicle and would have been discovered by whomever opened the driver's door next, or even looked into the driver's side window. Allowing suppression of the firearm in this case would set aside a conviction that would have been obtained absent police misconduct and would, therefore, frustrate the very purpose of the inevitable discovery doctrine.

With respect to the Habeas Corpus issue, this Court finds that the Commonwealth has established a prima facie case for the charge of Driving Under the Influence: General Impairment. Trooper Dillon testified that when he approached the Defendant, he immediately smelled a strong odor of alcohol emanating from the Defendant's person and that the Defendant's eyes were bloodshot and glassy. The MVR shows that the Defendant exhibited confusion, difficulty balancing, and extremely slurred speech. The Defendant blew a 0.157% BAC. Furthermore, all of these observations were made in the presence of the Defendant's wrecked vehicle. This Court therefore finds that the Commonwealth has shown sufficient probable cause that the Defendant drove, operated, or was in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that he was rendered incapable of safely driving, operating, or being in actual physical control of the movement of the vehicle. If this evidence was presented at trial and accepted as true, the Court would be warranted in allowing the case to go to the jury.

WHEREFORE, the Court issues the following Order:

### **ORDER**

AND NOW, this 24th day of November, 2020, upon consideration of the Defendant's Omnibus Pretrial Motion in the nature of a Motion to Suppress and a Petition for a Writ of Habeas Corpus, it is hereby ORDERED and DIRECTED that it is DENIED.

BY THE COURT:  
LESKINEN, JUDGE

ATTEST:  
Clerk of Courts

# **WARMAN ABSTRACT & RESEARCH LLC**

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