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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

GEORGE E. BASINGER, late of Bullskin

Township, Fayette County, PA (3)

Personal Representative: Douglas E. Basinger

c/o 208 South Arch Street, Suite 2

P.O. Box 13

Connellsville, PA 15425

Attorney: Richard A. Husband

JOHN CHARLES BRANSON, a/k/a JOHN C. BRANSON, late of Bullskin Township,

Fayette County, PA (3)

Executrix: Tina M. Branson c/o Higinbotham Law Offices 68 South Beeson Boulevard Uniontown, PA 15401 Attorney: James Higinbotham

ROBERT W. CAHN, a/k/a ROBERT WILLIAM CAHN, late of Uniontown, Fayette

County, PA (3)

Executor: William M. Cahn c/o Higinbotham Law Offices 68 South Beeson Boulevard Uniontown, PA 15401 Attorney: James Higinbotham

BARBARA JANE CALLAGHAN, a/k/a BARBARA J. CALLAGHAN, late of

Uniontown, Fayette County, PA (3)

Personal Representative: Gina La Vonne Hayden c/o George & George 92 East Main Street Uniontown, PA 15401 Attorney: Joseph M. George

JOHN G. FELIX, SR., a/k/a JOHN G.

FELIX, late of Wharton Township, Fayette County, PA (3)

Personal Representative: Jerry Felix c/o Davis and Davis 107 East Main Street Uniontown, PA 15401 Attorney: Gary J. Frankhouser

REGINA FRANKS, late of Uniontown, Fayette County, PA (3)

Administrators: Ralph Franks and Patricia Gulino c/o 51 East South Street Uniontown, PA 15401 Attorney: Anthony Dedola

MOLLIE A. KOOSER, late of Springfield

Township, Fayette County, PA (3)

Personal Representatives: Candi L. Strunk

and Kelly A. Work

c/o Watson Mundorff, LLP

720 Vanderbilt Road Connellsville, PA 15425

Attorney: Timothy J. Witt

LARRY MARVIN PECK, late of Springfield

Township, Fayette County, PA (3)

Personal Representative:

Adam Montgomery Peck

c/o 208 South Arch Street, Suite 2

P.O. Box 13

Connellsville, Pa 15425

Attorney: Richard A. Husband

MARY SPIKER PLEWNIAK, a/k/a MARY LELLIAN PLEWNIAK, a/k/a MARY L. SPIKER, a/k/a MARY PLEWNIAK, late of

Washington Township, Fayette County, PA (3) Co-Executors: Jeremy Ortolona

219 Rolling Hill Farm Drive

West Newton, PA 15089

John Yetsconish, Jr.

23 Woodstone Drive

Greensburg, PA 15601

c/o 513 Schoonmaker Avenue

Monessen, PA 15062

Attorney: Timothy M. Maatta

GEORGE J. PUDISH, late of Fayette City,

Fayette County, PA (3)

Executrix: Georganna Shepler 107 Francis Road Perryopolis, PA 15473

ALEX JOSEPH SKUPNICK, JR., a/k/a ALEX SKUPNICK, a/k/a ALEX J.

SKUPNICK, late of Nicholson Township,

Fayette County, PA (3)

Personal Representative:

Lynn Ann Cottrell

c/o P.O. Box 622

Smithfield, PA 15478

Attorney: Charity Grimm Krupa

NORMAN C. SLIGER, late of Markleysburg,

Fayette County, PA (3)

Executrix: Kathy Shultz

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P.O. Box 245

Chalk Hill, PA 15421

Attorney: Charles C. Gentile

Second Publication

NANCY J. CLINGENPEEL, a/k/a NANCY JANE CLINGENPEEL, late of Perry

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Executrices: Joyce Mayermik, Cheryl Togni, and Luann Balentine

c/o 9 Court Street

Uniontown, Pa 15401

Attorney: Vincent J. Roskovensky, II

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County, PA (2)

Administratrix: Emily Dayton

1011 Race Street

Connellsville, PA 15425

c/o 319 Pittsburgh Street

Scottdale, PA 15683

Attorney: Kevin Henderson

ROGER LEE PETERSON, a/k/a ROGER L. PETERSON, late of Dunbar Township, Fayette County, PA (2)

Executrix: Nina Smith

c/o Zebley Mehalov & White, P.C.

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P.O. Box 2123

Uniontown, PA 15401

Attorney: Mark M. Mehalov

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Township, Fayette County, PA (2)

Executrix: Rita M. Ballone

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Carmichaels, PA 15320

c/o 823 Broad Avenue Belle Vernon, PA 15012

Attorney: Mark E. Ramsier

LOUIS E. ZITNEY, a/k/a LOUIS EUGENE ZITNEY, late of Franklin Township, Fayette

County, PA (2)

Co-Administrators:

Jennifer M. Casini, Esquire

Casini & Geibig, LLC

815B Memorial Boulevard

Connellsville, PA 15425

Vincent Roskovensky, II, Esquire

9 Court Street

Uniontown, PA 15401

First Publication

WILMA GRACE ANDERSON, late of

Uniontown, Fayette County, PA (1) Executrix: Linda Bowersox

c/o Adams Law Offices, PC

55 East Church Street, Suite 101

Uniontown, PA 15401 Attorney: Jason Adams

SAMUEL C. BROOKS, late of Connellsville,

Fayette County, PA (1)

Executrix: Susan M. Coleman

c/o Goodwin Como, P.C.

108 North Beeson Boulevard, Suite 400

Uniontown, PA 15401

Attorney: Benjamin Goodwin

ANNA M. DAVOLI, late of South Union

Township, Fayette County, PA (1)

Executrix: Mary Ann Cuteri

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55 East Church Street, Suite 101

Uniontown, PA 15401

Attorney: Jason Adams

GERALDINE M. HAMMERASH, late of

Perryopolis, Fayette County, PA (1)

Administratrix: Tracey Scott

c/o The Law & Mediation Offices of Deborah L. Lesko, P.C. 373 Vanadium Road Pittsburgh, PA 15243 Attorney: Deborah Lesko

EDWARD SAMUEL PROVANCE, a/k/a EDWARD S. PROVANCE, late of German

Township, Fayette County, PA (1)

Administratrix: Twila Johnston
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

LUKE STASH, late of South Connellsville, Fayette County, PA (1)

Personal Representatives: Damon Stash and Jenifer Stash c/o Rowan Law Office 890 Vanderbilt Road Connellsville, PA 15425 Attorney: Mark Rowan

JOHN F. SZUCH, JR., late of Brownsville, Fayette County, PA (1)

Administrator: Brianne Jacobs c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400 Uniontown, PA 15401
Attorney: Benjamin Goodwin

LYDIA LOUISE WALTERS, a/k/a LYDIA L. WALTERS, late of Menallen Township,

Fayette County, PA (1)

Co-Executrix: Judi Walters Morrow, Sandra L. Walters, and Patricia E. Walters Lenhart c/o Goodwin Como, P.C.

c/o Goodwin Como, P.C. 108 North Beeson Boulevard, Suite 400 Uniontown, PA 15401 Attorney: Benjamin Goodwin

CHARLES EDWARD ZISKA, late of

Uniontown, Fayette County, PA (1)

Executor: Paul E. Perry
c/o Adams Law Offices, P.C.
55 East Church Street, Suite 101
Uniontown, PA 15401

Attorney: Jason Adams

LEGAL NOTICES

Fictitious Name Registration

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on December 20, 2021 for Passionate Solutions at 241 Cottage Street New Salem, PA. The names and address of each individual interested in the business are Rebecca I Cain and John Potts both located at 241 Cottage Street New Salem, PA. This was filed in accordance with 54 PaC.S. 311.417

DISSOLUTION NOTICE

NOTICE IS HERBY GIVEN that the directors of the Fort Mason Historical Society, Inc., a Pennsylvania Non-Profit Corporation with an address of 548 N. Main Street, Masontown, PA 15461 have approved a proposal that the corporation voluntarily dissolve, and that the Board of Directors is now engaged a winding up and settling the affairs of the corporation under the provisions of § 197 5 of the Pennsylvania Business Corporation Law of 1988, as amended.

Douglas S. Sholtis, Esq. 76 E. Main Street Uniontown, PA 15401

NOTICE

NOTICE is hereby given pursuant to the provisions of Act 295 of December 16, 1982, P.L. 1309, that a Certificate was filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on or about March 21, 2022, to conduct a business in Fayette County, Pennsylvania, under the assumed or fictitious name of Balling Legal with the principal place of business at: 77 S. Morgantown St., Fairchance, PA 15436. The name or names and addresses of persons owning and interested are: Mariah Balling-Peck, 77 S. Morgantown St., Fairchance, PA 15436.

Fayette County
Court of Common Pleas
Number: 2150 OF 2021
Notice of Action in Mortgage Foreclosure

Reverse Mortgage Funding LLC, Plaintiff v. Suzanne Tate, Known Surviving Heir of Doralyn J. Oldland, Denise Briones, Known Surviving Heir of Doralyn J. Oldland, and Unknown Heirs of Doralyn J. Oldland, Defendants

TO: Unknown Heirs of Doralyn J. Oldland. Premises subject to foreclosure: 16 Trader Uniontown, Pennsylvania NOTICE: If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you. You should take this notice to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. 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. Pennsylvania Lawver Referral Service, Pennsylvania Bar Association, 100 South Street, P.O. Box 186, Harrisburg, Pennsylvania 17108, (800) 692-7375. McCabe, Weisberg & Conway, LLC, Attorneys for Plaintiff, 123 S. Broad St., Ste. 1400, Phila., PA 19109, 215-790-1010

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN
518 Madison Drive
Smithfield, PA 15478
724-322-6529
johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE <u>E&O INSURED</u> <u>WILL TRAVEL</u> <u>ACCEPTING NEW CLIENTS</u>

JUDICIAL OPINION

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

COMMONWEALTH OF PENNSYLVANIA.

:

v.

:

JACOB LEE CRUMP, : No. 2594 of 2019

Defendant. : Honorable President Judge John F. Wagner, Jr.

OPINION AND ORDER

Wagner, P.J. February 23, 2022

Before the Court is the Defendant's Omnibus Pretrial Motion Nunc Pro Tune in which the Defendant raises a Motion to Suppress Evidence Obtained from the Traffic Stop. As a result of the traffic stop, the Defendant was charged with Theft by Receiving Stolen Property, 18 Pa. C.S. § 3925(a); Person Not to Possess/Use/ Manufacture, Control, Sell Firearms, 18 Pa. C.S. § 6105(a)(l); and Firearms Not To Be Carried Without License, 18 Pa. C.S. § 6106(a)(l). After review of the testimony presented, the subsequent case law and arguments presented by counsel, it is the determination of the Court that the Defendant's motion is without merit and is therefore denied.

FACTUAL BACKGROUND

On September 19, 2019, at 2:30 A.M., Trooper Madden and Trooper Barney were on routine patrol when they observed a white Mazda operating on Mifflin Avenue near the Sunoco Station on Connellsville Street in the City of Uniontown, Fayette County, Pennsylvania. The Mazda had an inoperable passenger side brake light. When the traffic stop occurred at the Sunoco Station, both troopers testified to observing furtive movements by the passenger. They each testified that they observed the passenger dipping his right shoulder below seat level, which indicated to them that he was concealing something beneath the passenger seat. Trooper Madden detected the odor of marijuana when he was at the driver's door. Trooper Barney also detected the same odor. The occupants were asked to exit the vehicle and denied having any weapons in the vehicle. The Trooper testified that the area of Connellsville Street and Mifflin Avenue is known to be a high crime area, the stop was made at night, the passenger made furtive movements in the vehicle and appeared nervous; so, for officer safety, he conducted a search of the arm length area of the passenger side of the vehicle and not just because he had detected the odor of marijuana. Trooper Madden's testimony corroborated that of Trooper Barney., Trooper Barney searched the passenger and then he conducted a search of that part of the vehicle within the reach of the passenger of the vehicle. Under the front passenger seat, the Trooper located a 38 Smith and Wesson firearm, serial number CVC0482, revealed that the firearm had been stolen. Neither occupant of the vehicle had a license to carry a firearm. The search of the Defendant passenger's name and date of birth indicated that he had a prior felony conviction making him ineligible to possess a firearm and also had an out-of-state warrant for his arrest. The driver admitted that he did have some marijuana on his person. In his report, Trooper Madden did not specifically mention officer safety in his report. He did detail his observations of the actions of the occupants of the vehicle.

DISCUSSION

The Defendant asserts that the evidence obtained during the traffic stop should be suppressed as the removal of the Defendant from the vehicle was a seizure unsupported by reasonable suspicion or probable cause, the search of the vehicle was unlawful as there was no probable cause nor exigent circumstances.

The Fourth Amendment of the United States Constitution protects citizens against unreasonable search and seizures. There are three basic types of encounters between police and citizens: a mere encounter, an investigative detention and an arrest. The three encounters have varying degree of evidence necessary to support the contact between the police and citizens. A mere encounter does not need any level of suspicion; an investigative detention must be supported by reasonable suspicion that a crime is or has been committed; and an arrest must be supported by probable cause. Commonwealth v. Hicks, 208 A.3d 916 (2019). All stoops of vehicle by the police using, sirens, overhead lights or oral directives, are seizures of the vehicle and its occupants and therefore must be justified by cause to believe that there has been a violation of the Motor Vehicle Code, that the occupants have committed a crime or that evidence of a crime will be located in the vehicle. Commonwealth v. Reppert, 814 A.2d 1196 (Pa. Super. 2002).

Under Article 1, § 8 of the Pennsylvania Constitution, the Court's have given citizens greater protection than is currently available under the Fourth Amendment of the United States Constitution. The Defendant cites to Commonwealth v. Alexander, 243 A.3d 177 (Pa. 2020), which reaffirmed that the Article 1, §8 of the Pennsylvania Constitution requires both a showing of probable cause and exigent circumstances to justify a warrantless search of a vehicle. Thus, overturning the automobile exception to the Fourth Amendment. The odor of marijuana alone is not sufficient to justify a warrantless search. Id.

With the filing of a motion to suppress evidence, the Commonwealth has the burden to establish by a preponderance of the evidence that the challenged evidence is admissible. Commonwealth v. Barr, 240 A.2d 1263 (Pa. Super. 2020). Probable cause as would support a search or seizure of a vehicle is a practical, nontechnical concept. Probable cause is a practical, fluid concept turning on the assessment of probabilities in particular factual contexts and not readily reduced to a set of legal rules. Commonwealth v. Moore, 263 A.3d 1193 (Pa. Super. 2021). Probable cause exists where the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent individual in believing that an offense was committed and that the defendant has committed it. Commonwealth v. Griffin, 24 A.3d 1037 (Pa. Super. 2011). In determining whether probable cause exists, the court must consider the totality of the circumstances as they appeared to the arresting officer. Id.

Exigent circumstances supporting a warrantless search arise where the need for prompt police action is imperative, either because evidence is likely to be destroyed or because there exists a threat of physical harm to police officers or others. Id. Pennsylvania courts have held that the defendant's furtive movements, nervousness, a nightime stop in a high crime area gave an officer sufficient reason to suspect that his safety was in danger as to authorize a warrantless search of the vehicle. Commonwealth v. Buchert, 68 A.3d 911 (Pa. Super. 2013).

The stop of the vehicle was for a motor vehicle violation observed by the Troopers. As they observed a violation of the motor vehicle code, there was probable cause for the stop of the vehicle. After the stop of the vehicle, the passenger's furtive movements raised the Troopers' concern prior to their approach to the vehicle. The odor of marijuana combined with the time of night, the high crime area and the nervousness of the occupants was sufficient to give the Troopers reasonable suspicion to conduct a Terry frisk of the occupants and the area within the vehicle that the passenger would return to after the frisk was completed.

The Defendant asserts that "after the fact justification" for a stop has been rejected by the Supreme Court. Commonwealth v. DeWitt, 608 A.2d 1030 (Pa. 1992). On review of the case, the Supreme Court rejected after the fact justification based on speculation. The Troopers in DeWitt did not have probable cause for the initial stop as no criminal activity was observed. The fact situation in DeWitt was not based on the direct observations of the officers but rather was based on speculation and theories advanced by the troopers as their reasons for the stop. Id. In DeWitt, the officers observed a vehicle stopped in a church parking lot at night. The interior lights were on but the headlights were off. The vehicle began to leave the church lot when the officers stopped the vehicle. Id. The officers observed no criminal activity prior to the stop of the vehicle. Id. They speculated that the operator of the vehicle would have driven against traffic on the wrong side of the road to arrive at its position. Id.

In this case, the Troopers observed the white Mazda with an inoperable passenger side brake light, which is a violation of the Motor Vehicle Code. There was probable cause for the initial stop based on this violation. One Trooper identified an odor of marijuana as they approached the vehicle. They observed the Defendant make furtive movements and lower his shoulder as if placing something on the floor. The occupants were frisked for officer safety. Then one Trooper looked under the passenger side seat where he observed a firearm. Although the Trooper did not include in his report all the reasons for the search, the Court takes judicial notice that the area of the stop is in fact a high crime area, it was the middle of the night and the furtive movements of the passenger would cause concern in any reasonable person in the same situation. The Troopers statements that more than the odor of marijuana prompted their detention and search of the vehicle are credible. Their observations were detailed in the report but their conclusion was not specifically stated.

The Court concludes that the Troopers' statements that the area is a high crime area to be factual. The movements of the passenger, the nature of the area, the time of the stop, as well as the odor of marijuana, were sufficient to warrant a reasonable officer to believe that a potential threat of physical harm to his and his partner's safety existed, if there was a weapon within the passenger's area of control upon his re-entering the vehicle. The Troopers testified credibly as to the reasons for the search although Trooper Madden did not document his conclusions in his report.

For the above stated reasons, the Defendant's Motion is hereby DENIED.

BY THE COURT: WAGNER, P.J.

ATTEST: Clerk of Courts

LOCAL RULE CRIMINAL PROCEDURE

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

IN RE: ATTORNEYS -

WITHDRAWAL OF

APPEARANCE

.

NO. CP-26-AD-0000003-2022

ORDER

AND NOW, this 16th day of March, 2022, pursuant to Pennsylvania Rule of Judicial Administration 103(d), it is hereby ordered that Fayette County Criminal Rule 120(B), Attorneys – Withdrawal of Appearance is adopted as attached hereto.

The Clerk of Courts is directed as follows:

- (1) Two copies and CD-ROM of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.
- (2) One copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.
- (3) One copy of the Local Rule shall be sent to the Fayette County Law Library and the Editor of the Fayette Legal Journal.

The Administrative Office of Fayette County Courts is directed as follows:

- (1) Publish a copy of the Local Rule on the website of the Administrative Office of Fayette County Courts.
- (2) Thereafter, compile the Local Rule within the complete set of local rules no later than 30 days following the publication in the Pennsylvania Bulletin.

The adoption of the above listed Local Rule shall become effective thirty (30) days after publication in the Pennsylvania Bulletin.

BY THE COURT, JOHN F. WAGNER, JR., PRESIDENT JUDGE

ATTEST: CLERK OF COURTS

LOCAL RULE CRIMINAL PROCEDURE

RULE 120(B) ATTORNEYS – WITHDRAWAL OF APPEARANCE

A motion to withdrawal an attorney's appearance shall include (1) the name, address, and telephone number of the defendant; (2) the date of birth of the defendant and the last four numbers of his or her Social Security Number; (3) if the defendant is incarcerated, the name of the facility and his or her inmate identification number; (4) a list of prior counsel who represented the defendant in the case; and (5) a list of co-defendants and the name of any other defendant who is charged in the same incident, including the name(s) of counsel for any other defendant identified. If the appointment of new counsel is required to continue the case, the motion to withdraw should include a request for appointment of new counsel.

LUNCH & LEARN SERIES

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

- Date: Wednesday, April 20th from 12:00 p.m. to 1:00 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topics: Class Actions and the Local Practitioner
- Presenter: William "Trip" Radcliffe, Esquire

CLE Credit

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

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2016

• No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 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, April 18th.

Join us for an evening of camaraderie with your colleagues as we honor the retirement of President Judge John F. Wagner, Jr. at the

127th ANNUAL FAYETTE COUNTY BAR ASSOCIATION



FRIDAY 2022

5:30 COCKTAIL RECEPTION 6:30 STEAKHOUSE & SEAFOOD BUFFET

NEMACOLIN WOODLANDS RESORT 1001 LAFAYETTE DRIVE FARMINGTON, PA 15437

KINDLY REPLY BY FRIDAY, APRIL 15TH

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