

# FAYETTE LEGAL JOURNAL

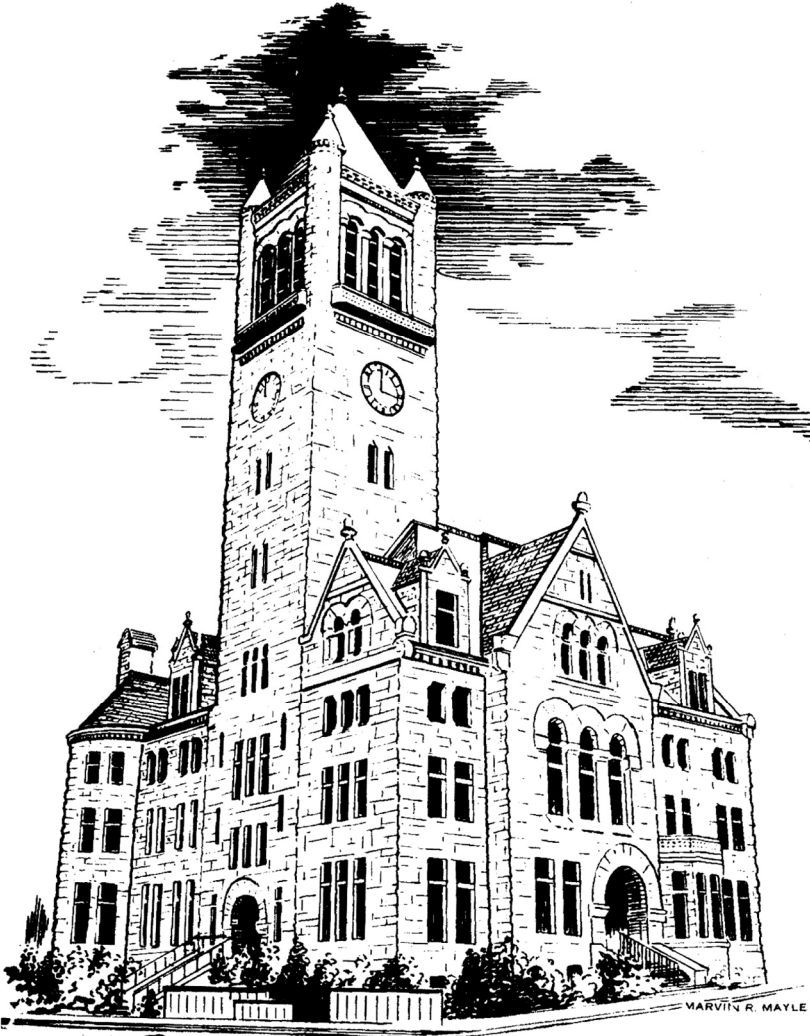
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## FAYETTE LEGAL JOURNAL

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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

**ALEXANDER BEZJAK, a/k/a ALEX BEZJAK**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Carl Bezbek  
17 Theodori Drive  
Uniontown, PA 15401  
c/o 76 East Main Street  
Uniontown, PA 15401  
*Attorney:* Douglas S. Sholtis

**MIKE CIAMPANELLI, a/k/a MIKE A. CIAMPANELLI**, late of Menallen, Fayette County, PA <sup>(3)</sup>

*Executrix:* Phyllis A. Ciampanelli  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**MARK T. DOORLEY, a/k/a MARK DOORLEY**, late of Uniontown, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Joseph Doorley  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Samuel J. Davis

**BETTY JANE DOWNS, a/k/a BETTY J. DOWNS, a/k/a BETTY DOWNS**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Karen Perri  
c/o 92 East Main Street, Suite 3  
Uniontown, PA 15401  
*Attorney:* Susan Ritz Harper

**DOROTHY B. GLEBES**, late of South Union Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Stanley Glebes  
c/o Dellarose Law Office, PLLC  
99 East Main Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Melinda Deal Dellarose

**HELEN KANAR**, late of Uniontown, Fayette County, PA <sup>(3)</sup>

*Executrix:* Mary Rushin  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**GERALDINE MCCANDLESS**, late of Connellsville, Fayette County, PA <sup>(3)</sup>

*Personal Representative:*  
Randall T. McCandless  
c/o Watson Mundorff, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**ROSEMARIE PERRY**, late of Fayette City, Fayette County, PA <sup>(3)</sup>

*Administrator:* Michael S. Perry, Jr.  
c/o 12 Fernwood Avenue  
Pittsburgh, PA 15228  
*Attorney:* Lorraine Smith

**DOROTHY A. TURNBULL, a/k/a DOROTHY ANN TURNBULL**, late of Perry Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Kathy Kelly  
310 Rehoboth Road  
Belle Vernon, PA 15012  
c/o 1202 West Main Street  
Monongahela, PA 15063  
*Attorney:* James W. Haines, Jr.

**ROBERT L. WAGGETT**, late of Washington Township, Fayette County, PA <sup>(3)</sup>

*Executrix:* Renee Kurdilla  
205 Roosevelt Street  
Rostraver Township, PA 15012  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

**THOMAS ZEMO, a/k/a TOM ZEMO**, late of Menallen Township, Fayette County, PA (3)

*Executor:* Peter J. Daley II, Esquire  
c/o Peter J. Daley & Associates, P.C.  
33 Market Street, Suite 1  
Brownsville, PA 15417  
*Attorney:* Peter Daley II

## Second Publication

**IVAN E. MILLER**, late of Belle Vernon Borough, Fayette County, PA (2)

*Executrix:* Terri Miller  
121 Pennsylvania Boulevard  
Monessen, PA 15062  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

**JAY MITCHELL**, late of South Union Township, Fayette County, PA (2)

*Executor:* Jay R. Mitchell  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**RONALD PHILLIPS**, late of Brownsville, Fayette County, PA (2)

*Executrix:* Kathryn A. Phillips  
147 Prospect Street  
Brownsville, PA 15417  
c/o 257 Driftwood Road  
Brownsville, PA 15417  
*Attorney:* William Worthington

## First Publication

**JAMES BIELECKI**, late of Connellsville, Fayette County, PA (1)

*Administratrix:* Barbara S. Bielecki  
507 West Francis Street  
Connellsville, PA 15425  
c/o 111 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert R. Harper, Jr.,

**ELIZABETH BROOKS, a/k/a ELIZABETH C. BROOKS**, late of McClellandtown, Fayette County, PA (1)

*Personal Representative:*  
Bernadette Brooks  
828 Main Street  
McClellandtown, PA 15458  
c/o 50 East Main Street  
Blackstone Building  
Uniontown, PA 15401  
*Attorney:* Patrick McDaniel

**MARIE CLARK**, late of Uniontown, Fayette County, PA (1)

*Personal Representative:* Kathleen A. Ryan  
117 Carnation Street  
Uniontown, PA 15401  
c/o 50 East Main Street  
Blackstone Building  
Uniontown, PA 15401  
*Attorney:* Patrick McDaniel

**DOLORES J. GALAND, a/k/a DOLORES JEAN GALAND**, late of South Union Township, Fayette County, PA (1)

*Executor:* Anthony Scott Galand  
c/o 9 Court Street  
Uniontown, PA 15401  
*Attorney:* Vincent J. Roskovensky, II

**DOROTHY HAGERTY, a/k/a DOROTHY JANE HAGERTY**, late of South Union Township, Fayette County, PA (1)

*Executrix:* Linda Hagerty  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**ELIZABETH LEVADA LOWRY, a/k/a ELIZABETH L. LOWRY**, late of Nicholson Township, Fayette County, PA (1)

*Personal Representative:* Candace Lowry  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA  
*Attorney:* Jeremy J. Davis

---

**JOANN L. SMITH, a/k/a JOANN SMITH,**  
late of North Union Township, Fayette County,  
PA <sup>(1)</sup>

*Executrix:* Jennifer Millslagle  
c/o 9 Court Street  
Uniontown, PA 15401  
*Attorney:* Vincent J. Roskovensky, II

---

**TIMOTHY B. THEAKSTON,** late of Newell,  
Fayette County, PA <sup>(1)</sup>

*Administratrix:* Marissa Dreucci  
P.O. Box 164  
Newell, PA 15466

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**ELIZABETH S. URICK,** late of Redstone  
Township, Fayette County, PA <sup>(1)</sup>

*Executor:* Kevin Urick  
c/o Monaghan & Monaghan, L.L.P.  
57 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary D. Monaghan

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## LEGAL NOTICES

\*\*\* NO LEGAL NOTICES \*\*\*

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## JUDICIAL OPINION

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

Commonwealth of Pennsylvania :  
v. :  
Bruce Ferea, : No. 34 of 2021  
Defendant. : Honorable Judge Linda R. Cordaro

Cordaro, J.

August 5, 2021

### OPINION

#### SUMMARY

Before the Court is Defendant's. Omnibus Pretrial Motion. For the following reasons, the Motion is granted.

#### BACKGROUND

In September of 2020, Defendant was operating a pontoon boat on the Monongahela River. A female passenger had her legs hanging over the railing and outside of the passenger carrying area. A Waterways Conservation Officer noticed the female and stopped the boat for a safety violation. The Officer then asked Defendant to show him all of the required safety equipment. The only item that did not meet the requirements was the fire extinguisher.

During the stop, the Officer noticed an odor of alcohol coming from Defendant. The Officer also observed the Defendant had a slight swing. When asked what time he thought it was, Defendant was about two hours off. Based on these observations, the Officer believed Defendant may have been intoxicated.

The Officer conducted field sobriety tests that are designed for the operator of a watercraft. All of the tests showed signs of intoxication by Defendant. The Officer then performed a Preliminary Breath Test on Defendant, the results of which showed Defendant having a Blood Alcohol Content of 0.10.

At this point, the Officer arrested Defendant and placed him in the patrol boat with another Waterways Conservation Officer. Defendant agreed to a chemical blood test. During the transport, the patrol boat's engine failed, which delayed Defendant's blood test for approximately three hours. While on the patrol boat waiting for help, Defendant made several remarks that the Officer believed to be threatening, such as "I will hunt you down."

Defendant was eventually transported for a chemical blood test. The results showed a 0.076 blood alcohol content. After Defendant was released, he told the arresting Officer to "watch your fuckin' back."

In spite of Defendant's chemical blood test result being lower than the legal limit of 0.08, the Officer charged Defendant with Boating Under the Influence (30 Pa.C.S.A. § 5502(a)(1)). Defendant was also charged with Reckless Operation of a Watercraft (30 Pa.C.S.A. § 5501(a)), three counts of Harassment (18 Pa.C.S.A. § 2709(a)(4), and two boating violations (30 Pa.C.S.A. § 5123(a) and (a)(5)).

On April 7, 2021, Defendant filed an Omnibus Pretrial Motion challenging the legality of the stop, as well as challenging that the Commonwealth failed to present a prima facie case for all counts.

This Court held a Hearing on the matter on June 23, 2021, at which time no testimony was presented. Instead, the parties submitted the Preliminary Hearing Transcript for this Court to review.

### DISCUSSION

Defendant's Omnibus Pretrial Motion first challenges the legality of the stop of Defendant's watercraft. Based on the testimony presented by the Commonwealth at the Preliminary Hearing, this Court agrees that the stop of Defendant's watercraft was without probable cause, and therefore unconstitutional.

The arresting Waterways Conservation Officer testified at the Preliminary Hearing that he witnessed Defendant's pontoon boat pass him on the Monongahela River. At that time, the Officer witnessed ' a female passenger "sitting upon the railing area of the pontoon boat." Preliminary Hearing Transcript at 8. The Officer later testified that the passenger was "sitting outside the railing area of the pontoon boat," Id. at 9, or that she was "sitting over the railing," Id. at 22. In the Affidavit of Probable Cause, the Officer stated that "[a] female passenger was observed sitting on the railing of the pontoon boat with her legs hanging completely outside the passenger carrying area." Affidavit of Probable Cause, Page 1 of 3. The Officer also testified at the Preliminary Hearing that Defendant's boat was not going fast or speeding. Preliminary Hearing Transcript at 23.

In order to constitutionally stop a vehicle for a non-investigative detention, an officer must be able to articulate specific facts that would constitute probable cause that the driver violated the [Fish and Boat Code]. *Commw. v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. Ct. 2010) (citing *Commw. v. Gleason*, 785 A.2d 983,989 (Pa. 2001)); see also, *Commw. v. Rachau*, 670 A2d 731 (Pa. Commw. Ct. 1996) ("[A]nalogous principles apply to violations of the Fish and Boat Code [and the Motor Vehicle Code].") Here, the arresting Officer testified that the sole purpose for him initiating the stop was because a passenger on the watercraft that Defendant was operating was sitting on the railing and had her legs outside of the main seating area.

The Pennsylvania Fish & Boat Commission is authorized by statute to "promulgate ... rules and regulations as it deems appropriate to provide for the operation and navigation of boats ... " 30 Pa.C.S.A § 5123(a). In the Pennsylvania Boating Handbook, published, by the Pennsylvania Fish & Boat Commission, under the subsection titled "Boat Operation Requirements," it states:

In Pennsylvania, it is illegal to ... [o]perate a pontoon boat at any speed while a person is riding outside the passenger carrying area.

Pennsylvania Boating Handbook, Page 40. {1}

Based on the testimony of the arresting Officer at the Preliminary Hearing, this Court cannot find that the Officer articulated specific facts that would constitute reasonable suspicion that Defendant was in violation of the Fish and Boat Code when the Officer stopped Defendant's watercraft. The rule in the Pennsylvania Boating Handbook clearly applies when a person is "riding outside the passenger carrying area."

However, here the Officer testified that the female passenger was sitting on the railing with only her legs outside of the passenger carrying area. For the passenger to only have her legs outside the seating area is a stretch to constitute "riding outside the passenger carrying area."

The Commonwealth also failed to adduce testimony as to the length of time the passenger had her legs on the other side of the railing. If it was only for a moment, it would hardly constitute "riding outside the passenger carrying area."

For these reasons, this Court finds that the Commonwealth failed to adduce sufficient testimony that Defendant was in violation of any laws or regulations and that the stop of Defendant's watercraft was therefore unconstitutional. As a result, all subsequent evidence and statements made after the initial stop shall be suppressed. {2}

CONCLUSION

As a result of the foregoing analysis, Defendant's Motion is granted. The evidence in this case shall be suppressed, and Counts 1-7 shall be dismissed.

ORDER

AND NOW, this 5th day of August, 2021, in consideration of Defendant's Omnibus Pretrial Motion and after a Hearing on the matter where the Preliminary Hearing Transcript was submitted, it is hereby ORDERED and DIRECTED that the Motion is GRANTED. For further details, see this Court's accompanying Opinion. Any evidence collected as a result of the stop shall be suppressed, and Counts 1-7 shall be dismissed.

BY THE COURT:  
Linda R. Cordaro, Judge

ATTEST:  
Clerk of Courts

{1} <https://www.fishandboat.com/Boat/BoatingRegulations/Documents/BoatingHandbook.pdf>

{2} In his Omnibus Pretrial Motion, Defendant also raised a prima facie challenge to the charge of Operating a Boat Under the Influence of Alcohol when his chemical blood test showed a BAC result of 0.076 - lower than the proscribed level of 0.08. Because this Court finds that the initial stop of Defendant's watercraft was unconstitutional, this Court will not address the merits of Defendant's second issue at this time.



## **WARMAN ABSTRACT & RESEARCH LLC**

**JOHN F. WARMAN**

**518 Madison Drive**

**Smithfield, PA 15478**

**724-322-6529**

**johnfranciswarman@gmail.com**

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# FCBA BENCH BAR CONFERENCE

**Bench Bar Conference**  
**Wednesday, October 13, 2021**  
The Historic Summit Inn

## AGENDA

8:30 **Meet the Sponsors & Breakfast Buffet**

9:00 **Your Toughest Client – What Makes Them So Difficult! And Success – Working and Living in ‘The Zone’**

Presenter: Douglas Leonard, Esquire of Douglas Leonard Consulting  
1.5 Ethics credits

10:30 **Break**

10:45 **Trial Tactics and Panel Discussion with the Judges of the Fayette County Court of Common Pleas**

Trial Tactics led by Judge Nancy D. Vernon

Panel Discussion/Questions & Answers led by Judge Linda R. Cordaro

Panelists: President Judge John F. Wagner, Jr., Judge Steve P. Leskinen, and Judge Joseph M. George, Jr.

1.5 Substantive credits

12:30 **Lunch Buffet**

### Panel Discussion/Questions & Answers

The Judges of the Fayette Court of Common Pleas are accepting questions for the panel Q&A discussion. Questions may cover trial tactics, local practice and procedure, or general legal questions, but should not inquire about cases pending or adjudicated before the Court. Questions are due by Wednesday, October 6th. To submit a question for consideration, please follow the link in your email invitation or email to [cindy@fcbar.org](mailto:cindy@fcbar.org).

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