

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, THURSDAY, MAY 14, 2020

An **ALM** Publication

Criminal Charges Reinstated—for the Third Time—Against Amtrak Engineer in Fatal 2015 Crash

By Max Mitchell

Of the Legal staff

Criminal Charges Reinstated—for the Third Time—Against Amtrak Engineer in Fatal 2015 Crash

Prominent attorneys **Thomas Kline of Kline & Specter**, Robert Mongeluzzi of Saltz, Mongeluzzi & Bendesky and Richard Sprague of Sprague & Sprague filed two private criminal complaints against the Amtrak engineer.

Emergency personnel work at the scene of a deadly Amtrak train derailment in Philadelphia on May 13, 2015. AP Photo/Patrick Semansky

For the third time in as many years, Brandon Bostian, the engineer at the helm during the fatal 2015 Amtrak crash in Philadelphia, is facing criminal charges in connection with the derailment, which left eight dead and dozens more injured.

On Thursday, the Pennsylvania Superior Court reinstated the manslaughter and reckless endangerment charges against Bostian. In a unanimous ruling by a three-judge panel, the judges determined that prosecutors had introduced enough evidence to support the charges, and that Philadelphia Court of Common Pleas Judge Barbara McDermott had improperly dismissed the case last year.

“Given his extensive training and experience and despite having 250 passengers aboard, [Bostian] consciously disregarded a substantial and unjustifiable risk of derailment,” Judge Victor Stabile wrote in the court’s 30-page opinion. Judges Correale Stevens and Megan McCarthy King joined Stabile’s ruling.

McDermott was the second Philadelphia judge to dismiss the charges against Bostian since they were introduced in May 2017.

Even before the charges were first filed, Bostian’s case had seen several unusual twists and turns.

In early 2017, the Philadelphia District Attorney’s Office initially decided not to bring charges against the engineer, who contended after the crash that he’d sped up through the so-called Frankford Curve in the Port Richmond neighborhood of Philadelphia after receiving reports that assailants had been throwing rocks at other passenger trains. He also said he’d thought he’d reached a high-speed zone.

However, following that decision, prominent attorneys Thomas Kline of Kline & Specter, Robert Mongeluzzi of Saltz, Mongeluzzi & Bendesky and Richard Sprague of Sprague & Sprague filed two private criminal complaints against the Amtrak engineer on behalf of the families, which led then-Municipal

Court President Judge Marsha Neifield to order the District Attorney’s Office to bring charges.

Local prosecutors ended up referring the case to the Pennsylvania Attorney General’s Office, which decided to bring charges against Bostian. However, in September 2017, Municipal Court Judge Thomas Gehret tossed the charges, finding there wasn’t enough evidence to show a crime had been committed.

The AG’s Office then appealed the case to the Court of Common Pleas, where Philadelphia Judge Kathryn Streeter Lewis reinstated the charges in February 2018.

The charges, however, failed to stick after Bostian’s counsel, Brian McMonagle of McMonagle Perri McHugh Mischak Davis, filed a motion for habeas corpus. As a result of the motion McDermott again dismissed the charges in July 2019, finding insufficient evidence.

Generally the concept of coordinate jurisdiction bars two judges from the same bench from overruling each other’s decisions. McDermott, however, based her ruling on an exception to that principle, which allows for another judge to rule on the same issue if the other judge’s ruling is “clearly erroneous,” Stabile said in the Superior Court’s decision.

As part of their appeal of McDermott's ruling, the AG's Office had argued that, not only had it presented enough evidence to prosecute Bostian, but McDermott had also violated the coordinate jurisdiction rule.

Stabile said that to make that determination, the frontline appeals court would need to examine whether the prosecutors had shown that Bostian possessed sufficient mens rea to withstand charges of recklessness or gross negligence. Noting case law from the Supreme Court, Stabile said the justices have never determined whether simply falling asleep on the wheel is enough to create a jury question for recklessness, but he noted there were other factors at play.

Specifically, Stabile noted that Bostian was an experienced engineer, and he'd passed rigorous training that included memorizing each portion of the track and the speed limits. Stabile also credited the prosecutors' argument that essentially his only job was to know the route and keep the proper speed.

According to Stabile, McDermott had noted some countervailing evidence about whether he knew he where the train was before the crash occurred, whether he'd been affected by reports that a nearby SEPTA train had been hit with rocks, or whether he was aware of the train's speed. But Stabile said those issues were best left to the jury.

"The prima facie evidence produced by the commonwealth can contradict each of these findings," he said. "At this stage of the proceedings, the commonwealth's evidence must be accepted as true. The weight and credibility of the evidence are not factors at this pretrial stage."

In an emailed statement, McMonagle said he "respectfully disagree[d]" with the Superior Court's holding that the lower court should not have taken into account the evidence

about Bostian receiving reports that passenger trains had been hit with stones just prior to accident.

"We believe it would have been unconscionable for the court below to refuse to consider this evidence in evaluating whether whether the commonwealth met its burden of proof," he said. "It is vitally important that we allow our judges to hear and consider admissible evidence at preliminary hearings in determining whether a citizen should be put on trial. This was an accident and not a crime, and we will appeal."

The AG's press office did not return a message seeking comment.