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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

BARRY J. FENCHAK, Plaintiff, vs. THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES AND MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN, Defendants.	Docket No. 2024-CV-1843-CI Type of Case: Civil Action – Equity Type of Pleading: Motion to Quash Subpoenas to Patrick Kraft, Anthony Lubrano, and Jay Paterno Filed on behalf of Defendants and Non-Party Patrick Kraft Counsel of Record for Defendants: **JONES DAY** Andrew R. Stanton, Esquire PA Attorney ID No. 93409 Susan E. Kessler, Esquire PA Attorney ID No. 322558 500 Grant Street, Suite 4500 Pittsburgh, Pa 15219.2514 Telephone: (412) 391-3939 Fax: (412) 394-7959 astanton@jonesday.com skessler@jonesday.com

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BARRY J. FENCHAK, Plaintiff, v. THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES, and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN, Defendants.	COURT OF COMMON PLEAS CENTRE COUNTY, PENNSYLVANIA CIVIL ACTION NO. 2024-CV-1843-CI

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MOTION TO QUASH SUBPOENAS TO PATRICK KRAFT, ANTHONY LUBRANO, AND JAY PATERNO

Pursuant to Pennsylvania Rule of Evidence 402 and Pennsylvania Rule of Civil Procedure 234.4(b), Defendants, The Pennsylvania State University ("Penn State" or the "University") Board of Trustees (the "Board") and Matthew Schuyler, in his official capacity as now former Chair of the Board (collectively with the Board, "Defendants"), together with Dr. Patrick Kraft, move the Court for an order quashing the subpoenas to Dr. Kraft, Anthony Lubrano, and Jay Paterno to appear and testify at the hearing scheduled on June 30, 2026 for Plaintiff's Petition to Sanction Defendants.[1] Defendants and Dr. Kraft state as follows in support of their Motion:

1. On July 16, 2024, Plaintiff initiated this lawsuit by filing his Initial Complaint.

2. On August 27, 2024, Plaintiff filed an Amended Complaint.

3. Count I of the Amended Complaint sought a declaration that Plaintiff was entitled to certain information under 15 Pa.C.S. § 5512(b), and Count II of the Amended Complaint sought an injunction against allegedly "retaliatory" acts, including removal from the Board. *See generally* Am. Compl. ¶¶ 123–69.

4. In October 2024, this Court entered a preliminary injunction precluding the Board from removing Plaintiff by vote or otherwise. *See* October 9, 2024 Op.

[1] Dr. Kraft has authorized undersigned counsel to file this Motion on his behalf; Trustees Lubrano and Paterno are represented by separate counsel.

and Order at 12. In May 2025, the Court dissolved that injunction. *See* May 16, 2025 Op. and Order at 3.

5. Meanwhile, on February 14, 2025, the Board and Plaintiff entered into a joint stipulation of confidentiality (so ordered by the Court on February 20, 2025), and the Board provided the information Plaintiff sought in Count I of his Amended Complaint, thereby mooting the claim. *See* Defs.' Mot. for Summ. J. ¶ 7; Pl.'s Resp. in Opp'n to Defs.' Mot. for Summ. J. ¶ 7.

6. On January 6, 2026, the Court granted summary judgment to Defendants and dismissed the Amended Complaint with prejudice. *See* Jan. 6, 2026 Op. and Order at 4. In response to Plaintiff's sole argument against summary judgment—that a genuine issue of material fact remained over his entitlement to attorney's fees under Section 5512 of the Nonprofit Corporation Law, which does not itself provide for attorney's fees but cross-references 42 Pa.C.S. § 2503(7), which permits an award of attorney's fees as sanctions for "dilatory, obdurate or vexatious conduct during the pendency of a matter"—this Court held that there was "no conduct during the pendency of the matter rising to the level of sanctionable conduct." *Id.*

7. On January 28, 2026, Plaintiff filed a Petition to Sanction Defendants. The Court scheduled argument on the Sanctions Petition for June 30, 2026.

8. Throughout the entire pendency of the litigation, Plaintiff did not serve

discovery on Defendants or any third party.

9. On March 11, 2026, more than two months after the Court dismissed the case with prejudice, Plaintiff wrote a letter to the Court requesting the issuance of two subpoenas to appear and testify and two subpoenas to produce documents. *See* Mar. 11, 2026 Letter from Marino Associates to the Prothonotary. That same day, Plaintiff's counsel informed Defendants' counsel via email that he would like to schedule depositions of Schuyler and non-party David Kleppinger and later purported to notice their depositions. *See* Defs.' Emergency Mot. for a Protective Order ¶¶ 7–9, 11; Pl.'s Answer to Defs.' Emergency Mot. for a Protective Order ¶¶ 7–9, 11.

10. On March 25, 2026, Defendants filed an Emergency Motion for a Protective Order and Stay of Discovery.

11. On April 9, 2026, this Court granted Defendant's Emergency Motion and entered a protective order prohibiting "the discovery sought by Plaintiff, and all other discovery in this matter." *See* April 9, 2026 Emergency Protective Order at 4.

12. Despite the Court's prohibition, Plaintiff issued three subpoenas to compel testimony at the June 30 hearing on the Sanctions Petition from Dr. Kraft, the University's Vice President for Intercollegiate Athletics, and two sitting Trustees, Anthony Lubrano and Jay Paterno.

13. Dr. Kraft's only involvement in this litigation is limited to an alleged

pre-litigation exchange with Plaintiff during a meeting on April 24, 2024. *See* Am. Compl. ¶¶ 90–95.

14. Plaintiff's counsel indicated at the June 4, 2026 conference that he intends to call Messrs. Lubrano and Paterno to testify about the Board's alleged "pattern and practice" of responding to Trustee information requests.

15. None of the subpoena recipients have been involved in the litigation and cannot offer testimony relevant to whether there was sanctionable conduct "during the pendency of [this] matter" under 42 Pa.C.S. § 2503(7).

16. All of this testimony pertains to pre-litigation conduct or conduct unrelated to the litigation and is therefore irrelevant and inadmissible. *See* Pa. R. Evid. 402.

17. In light of the irrelevance of the planned testimony, the subpoenas also impose "unreasonable annoyance, embarrassment, oppression, burden, or expense" on the subpoena recipients and on the University under Pa. R. Civ. P. 234.4(b).

WHEREFORE, for the reasons stated above and in the Brief in Support of this Motion, Defendants and Dr. Kraft respectfully request that the Court enter an order quashing the subpoenas to Patrick Kraft, Anthony Lubrano, and Jay Paterno in the form of the proposed order submitted with this Motion.

Dated: June 10, 2026

Respectfully Submitted,

JONES DAY

BY: */s/ Andrew R. Stanton*

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provision of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Defendants Board of Trustees of The Pennsylvania State University and Matthew Schuyler, and Non-Party Patrick Kraft

Signature: */s/ Andrew R. Stanton*
Name: Andrew R. Stanton

Attorney No. (if applicable): 93409

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following known counsel and parties of record this 10th day of June 2026, **via email**, as follows:

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DATE: June 10, 2026

STATEMENT OF CONFERENCE

In compliance with Local Rule 208.2(e), I certify that counsel for the Defendants attempted to confer with counsel for Plaintiff in a good faith effort to resolve the issues raised in this Motion without intervention of the Court.

BY: */s/ Andrew R. Stanton*

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BARRY J. FENCHAK, Plaintiff,	:	COURT OF COMMON PLEAS CENTRE COUNTY, PENNSYLVANIA
v.	:	CIVIL ACTION
THE PENNSYLVANIA STATE UNIVERSITY BOARD OF TRUSTEES, and MATTHEW SCHUYLER IN HIS OFFICIAL CAPACITY AS CHAIRMAN, Defendants.	:	NO. 2024-CV-1843-CI

BRIEF IN SUPPORT OF MOTION TO QUASH SUBPOENAS TO PATRICK KRAFT, ANTHONY LUBRANO, AND JAY PATERNO

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Pursuant to Pennsylvania Rule of Evidence 402 and Pennsylvania Rule of Civil Procedure 234.4(b), Defendants, The Pennsylvania State University ("Penn State" or the "University") Board of Trustees (the "Board") and Matthew Schuyler, in his official capacity as now former Chair of the Board (collectively with the Board, "Defendants"), together with Dr. Patrick Kraft, file this Brief in Support of the Motion to Quash Subpoenas to Dr. Kraft, Anthony Lubrano, and Jay Paterno at the hearing scheduled on June 30, 2026 for Plaintiff's Petition to Sanction Defendants.[1]

I. INTRODUCTION & BACKGROUND

This Court is by now familiar with the procedural history of this case, and it need not be repeated in full here. In sum, the parties conducted this litigation in an orderly, efficient, and professional manner until very recently, notwithstanding their strong differences of opinion on the merits.

Plaintiff filed a two-count Amended Complaint in August 2024. This Court entered a preliminary injunction precluding the Board from removing Plaintiff by vote or otherwise in October 2024, and dissolved that injunction in May 2025. In between, on February 14, 2025, the Board and Plaintiff entered into a joint stipulation of confidentiality (so ordered by the Court on February 20, 2025), and

[1] Dr. Kraft has authorized undersigned counsel to file this Motion on his behalf; Trustees Lubrano and Paterno are represented by separate counsel.

the Board provided the information Plaintiff sought in Count I of his Amended Complaint, thereby mooting that claim. On January 6, 2026, this Court granted Defendants' motion for summary judgment, ending the case. Between the filing of the original Complaint and the Court's summary judgment order, neither party served a single discovery request or noticed a single deposition. No extensions were sought, no deadlines were missed, and no motions were filed so much as hinting at the existence of any sanctionable litigation conduct.

Plaintiff, represented by new counsel, filed a post-judgment petition to sanction Defendants ("Sanctions Petition"), the substance of which does not make contact with the relevant facts or operative legal standard. To start, this Court has correctly recognized that litigation sanctions can only be awarded under 42 Pa.C.S. § 2503(7) for "dilatory, obdurate or vexatious conduct during the pendency of a matter." Jan. 6, 2026 Op. and Order ("Summary Judgment Order") at 3–4 (emphasis in original). Plaintiff's counsel has obdurately refused to acknowledge this standard, repeatedly invoking the Board's pre-litigation decision-making and alleged "patterns and practices" in the day-to-day administration of Board business as a basis for sanctions in this case. Indeed, Plaintiff's unflagging desire to take an irrelevant frolic and detour into pre-litigation conduct appears to be the sole focus of the subpoenas which Defendants now move to quash.

On summary judgment, the Court also held that "there appears to have been no conduct during the pendency of the matter rising to the level of sanctionable conduct." *Id.* Conceding that he had no factual support for a sanctions claim, Plaintiff sought post-judgment discovery in an attempt to find something. On April 9, 2026, the Court granted Defendants' Emergency Motion for Protective Order, concluding that Defendants had shown good cause and that "allowing discovery at this stage would be unreasonably annoying, embarrassing and/or burdensome to Defendants, in violation of Rule 4012(a)." April 9, 2026 Emergency Protective Order at 3–4. The Court explained:

> It would be unfair to Defendants, who reasonably believed this matter to be resolved, to re-open this matter and allow Plaintiff to conduct discovery on third parties to determine whether any sanctionable conduct took place during the pendency of this matter. Plaintiff had 18 months to conduct discovery to support his claims, and Plaintiff made the strategic decision not to do so. The Court agrees with Defendants that it is inappropriate for Plaintiff to have not conducted discovery and then, three months after all claims were dismissed with prejudice, to file a sanctions motion and ask for discovery to support that motion.

Id. at 4.

Undeterred, Plaintiff has now issued three subpoenas to compel testimony at the June 30 hearing on the Sanctions Petition, from Dr. Kraft, the University's Vice President for Intercollegiate Athletics, and two sitting Trustees, Anthony Lubrano and Jay Paterno. None of these individuals has anything admissible to say about the

conduct of the parties during the pendency of this litigation, because none of them were involved in it—in any way. *See* Pa. R. Evid. 402. Dr. Kraft's alleged involvement is limited to an alleged *pre-litigation* verbal exchange with Plaintiff regarding his request for information on the Elevate Contract, where Plaintiff claims Dr. Kraft assented to the request. *See* Am. Compl. ¶¶ 90–95. Assuming *arguendo* this allegation is true, it has zero relevance to the question before the Court because that alleged conversation happened *before* the litigation. And even if the Board's pre-litigation decision to refuse Plaintiff's records request were relevant here (it is not), Dr. Kraft is not on the Board and had no involvement in or responsibility for that decision. Trustees Paterno and Lubrano likewise had no involvement in the litigation, or even in the Board's pre-litigation decision-making. They simply have nothing to offer that bears on the only question this Court has to resolve, which is whether dilatory, obdurate, or vexatious conduct occurred during this litigation.

Due in large part to the clear irrelevancy of their testimony, requiring these third parties to attend the June 30, 2026 hearing also will impose "unreasonable annoyance, embarrassment, oppression, burden or expense" upon them and upon the University. Pa. R. Civ. P. 234.4(b). In addition, Dr. Kraft has a pre-planned family vacation that conflicts with the hearing.

II. STATEMENT OF QUESTION INVOLVED

Question Presented: Should the subpoenas to Dr. Kraft, Trustee Lubrano, and Trustee Paterno be quashed because their testimony is plainly irrelevant and the subpoenas impose unreasonable annoyance, embarrassment, oppression, burden, or expense?

Suggested Answer: Yes. Under Pennsylvania Rule of Evidence 402, "[e]vidence that is not relevant is not admissible." And under 42 Pa.C.S. § 2503(7), only conduct "during the pendency of a matter" can be the basis for sanctions. The three non-parties were not involved in the litigation and thus cannot testify about any litigation conduct. Due in part to the lack of relevant testimony, the burdens and expenses imposed by the subpoenas are unreasonable under Rule 234.4(b), particularly for Dr. Kraft, who has a pre-planned family vacation conflicting with the June 30 hearing date.

III. ARGUMENT

Pennsylvania Rule of Civil Procedure 234.4 permits "a party," "the person served" with the subpoena, or "any other person with sufficient interest" to move to quash. Pa. R. Civ. P. 234.4(b). "A trial court may . . . quash subpoenas where compliance would impose an undue burden or where the party seeking the testimony fails to establish its relevance or admissibility." *Commonwealth v. Wright*, 2026 WL 972960, at *11 (Pa. Super. Ct. Apr. 10, 2026). Under the Pennsylvania Rules of

Evidence, evidence is relevant if "it has any tendency to make a fact more or less probable" and "the fact is of consequence in determining the action." Pa. R. Evid. 401. It is black letter law, and commonsense, that "[e]vidence that is not relevant is not admissible." Pa. R. Evid. 402. Pennsylvania Rule of Civil Procedure 234.4 sets out the standard for a motion to quash a subpoena and provides that "the court may make an order to protect a party, witness or other person from unreasonable annoyance, embarrassment, oppression, burden or expense." Pa. R. Civ. P. 234.4(b).

A. Any Testimony from Dr. Kraft, Trustee Lubrano, or Trustee Paterno is Irrelevant.

Plaintiff has identified the following litigation conduct—and nothing else—to support his request for sanctions: (i) filing preliminary objections on September 16, 2024, and later withdrawing them on February 21, 2025; (ii) moving for a protective order on January 6, 2025; and (iii) filing an answer on March 4, 2025. *See* Petition ¶¶ 55, 54, 57.[2]

[2] Where, as here, a petition to sanction "raise[s] issues that involved facts that were of record – filings made, assertions contained therein, disposition of prior cases and so on," there is no need for an evidentiary hearing. *Wade, Goldstein, Landau, & Abruzzo, P.C. v. Clark*, 2019 WL 5212435, at *4 (Pa. Super. Ct. Oct. 16, 2019) (quoting with approval the trial court's Rule 1925(a) opinion). While Defendants understand the Court will not deny the Sanctions Petition on the papers as it is entitled to do, that does not grant Plaintiff license to conduct discovery into plainly irrelevant issues during the course of an evidentiary hearing. *Cf. Thomas by Thomas v. Duquesne Light Co.*, 500 A.2d 1163, 1167 (Pa. Super. Ct. 1985).

Plaintiff has not even tried to tether the proffered testimony from these witnesses to any of the litigation conduct he has challenged. Where "a third party is to be put to considerable expense and inconvenience . . . to satisfy a litigant's evidentiary desires, . . . the court ought to be satisfied that the evidentiary value of the requested items is significant." *In re Graham's Est.*, 15 Pa. D. & C.3d 466, 469 (Pa. Ct. Com. Pls. July 29, 1980). These non-parties were not involved in the challenged litigation conduct identified in the Sanctions Petition, or, for that matter, in the litigation more broadly. Even by Plaintiff's own allegations, Dr. Kraft's involvement consisted of a discussion of the Elevate contract at a pre-litigation April 24, 2024 meeting and a verbal response during that meeting to Plaintiff's request for information. *See* Am. Compl. ¶¶ 90–95. As the Court recognized, sanctions under Section 2503(7) are expressly limited to "conduct during the pendency of [the] matter." Summary Judgment Order at 4 (quoting and citing 42 Pa.C.S. § 2503(7)). By the statute's plain text, testimony regarding pre-litigation conduct, including any interactions between Plaintiff and Dr. Kraft before the litigation was filed in July 2024, is categorically irrelevant. *Id.*; *see also Stevens v. Dep't of Transp.*, 309 A.3d 193, 206 (Pa. Commw. Ct. 2024) ("Attorneys' fees may be awarded under Section 2503 only for prohibited conduct that occurs during, but no[t] prior to, litigation.").

As for Trustees Lubrano and Paterno, the Initial and Amended Complaint do not mention them at all. Plaintiff's counsel indicated at the June 4, 2026 conference

that he intends to call Messrs. Paterno and Lubrano to testify about the Board's alleged "pattern and practice" of responding to Trustee information requests. This is doubly irrelevant, insofar as it pertains to pre-litigation conduct and conduct having nothing whatsoever to do with the subject matter of this now-dismissed litigation. *See id.*; *Wade, Goldstein, Landau, & Abruzzo, P.C.*, 2019 WL 5212435, at *4 ("Yet, the allegations in [the sanctions] petition are in sum a re-assertion of the claims and disputes that occurred prior to the filing of the instant case and are not a proper basis for an award of fees."); *McGarry v. Broadmoor Custom Homes, Inc.*, 563 A.2d 934, 935 (Pa. Super. Ct. 1989) ("The term 'pend[e]ncy of a matter' as used in 42 Pa.C.S.A. § 2503(7) refers to the pend[e]ncy of the matter in a court and not the pend[e]ncy of a matter in [a party's] office."). In short, these non-party Trustees' alleged perception of how the Board conducts business has no bearing on whether any litigation conduct in this matter warrants sanctions under Section 2503(7). Plaintiff has failed to meet the bare minimum relevance threshold for any of this testimony, and the subpoenas should accordingly be quashed. *See Sklaroff v. Twp. of Abington*, 2012 WL 8685274, at *8 (Pa. Commw. Ct. July 23, 2012) (affirming order quashing subpoenas because the trial court "[found] that the witnesses sought could not provide any relevant testimony at the bond hearing").

B. Requiring Dr. Kraft, Trustee Lubrano, or Trustee Paterno to Testify is Unreasonably Burdensome and Expensive.

In light of the obvious irrelevance of the planned testimony, the subpoenas also impose "unreasonable annoyance, embarrassment, oppression, burden or expense" under Pa. R. Civ. P. 234.4(b)—which is the exact same standard this Court applied when it analyzed and granted Defendants' Motion for a Protective Order under Pa. R. Civ. P. 4012(a) (allowing the Court to make an order to protect a person from "unreasonable annoyance, embarrassment, oppression, burden or expense"). As the Court already found, "[i]t would be unfair to Defendants, who reasonably believed this matter to be resolved, to re-open this matter and allow Plaintiff to conduct discovery on third parties to determine whether any sanctionable conduct took place during the pendency of this matter." April 9, 2026 Emergency Protective Order at 4. The fact that Plaintiff has subpoenaed these individuals to testify at a hearing changes the procedural posture, but not the analysis.

Dr. Kraft: Dr. Kraft is the Vice President for Penn State Intercollegiate Athletics with no involvement in the litigation. Additionally, Dr. Kraft has a pre-planned family vacation overlapping with the date of the hearing. Requiring him to appear and testify, when he has no relevant information and a significant personal conflict, is an unreasonable annoyance and burden. *See Wright*, 2026 WL 972960, at *12 (affirming order quashing subpoena due to hardship imposed on third party and because the testimony sought "was not relevant").

Anthony Lubrano: Trustee Lubrano has not been involved in the litigation, has not spoken with defense counsel, and has not participated in discovery. Neither the University nor Trustee Lubrano should be forced to incur the time and expense associated with his attendance when his testimony is irrelevant.

Jay Paterno: Like Trustee Lubrano, Trustee Paterno has also had no involvement in the litigation and thus no insight on any of the alleged bases for sanctions. There is no reason to require the University or Trustee Paterno to undertake the burden and expense associated with compelling him to attend and testify when Mr. Paterno had no involvement in the litigation and therefore has no relevant testimony to provide on the Sanctions Petition.

IV. CONCLUSION

For the reasons stated above, the Court should quash the subpoenas to Dr. Kraft, Trustee Lubrano, and Trustee Paterno.

DATE: June 10, 2026

Respectfully Submitted,

JONES DAY

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Submitted by: Defendants Board of Trustees of The Pennsylvania State University and Matthew Schuyler, and Non-Party Patrick Kraft

Signature: */s/ Andrew R. Stanton*
Name: Andrew R. Stanton

Attorney No. (if applicable): 93409

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following known counsel and parties of record this 10th day of June 2026, **via email**, as follows:

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DATE: June 10, 2026

Appendix to Brief in Support of Motion to Quash Subpoenas to Patrick Kraft, Anthony Lubrano, and Jay Paterno, Pursuant to Local Rule 210

2026 WL 972960
Unpublished Disposition
Only the Westlaw citation is currently available.
See Pa.R.A.P. 126(b) and Superior Court
O.P. § 65.37 (Non-Precedential Decisions)
NON-PRECEDENTIAL DECISION -
SEE SUPERIOR COURT O.P. 65.37
Superior Court of Pennsylvania.

COMMONWEALTH of Pennsylvania

v.

Kuami WRIGHT, Appellant

Commonwealth of Pennsylvania

v.

Kuami Ashanti Wright, Appellant

No. 1382 MDA 2024, No. 1383 MDA 2024

Filed: April 10, 2026

Appeal from the Judgment of Sentence Entered February 14, 2024, In the Court of Common Pleas of Dauphin County, Criminal Division, at No(s): CP-22-CR-0002719-2023, CP-22-CR-0005435-2021

BEFORE: DUBOW, J., BECK, J., and LANE, J.

Opinion

MEMORANDUM BY LANE, J.:

*1 Kuami Ashanti Wright ("Wright") appeals, *pro se*, from the judgments of sentence imposed following his jury convictions, across two trial dockets for aggravated assault,[1] firearms offenses, and related offenses. After careful review, we affirm.

These consolidated matters arise from two shootings in Harrisburg in July and August 2021. The trial court summarized the trial evidence in detail. ***See*** Trial Court Opinion, 12/19/24, at 3-15. We need not recount that summary in full and instead set forth only those facts necessary to resolve the issues on appeal.

In July 2021, police responded to a report of a male shot near 20th and Market Streets. The victim, Kyrelle Quinn ("Quinn"), sustained multiple gunshots to his abdomen and leg, and survived. Officers recovered shell casings at the scene and discovered a blood trail extending several blocks. Police also obtained Ring camera surveillance footage depicting an individual raising and firing a handgun at Quinn's vehicle. The shooter appeared to have long black hair, arm tattoos, athletic-style pants, a light blue shirt bearing the word "vibes" in bright yellow lettering, and bright yellow sneakers. The shooter also drove a black Nissan Versa.

Detective Brian Carriere ("Detective Carriere") later identified Wright as the shooter from the surveillance video of the incident. He then began monitoring Wright's social media activity. Detective Carriere compared the surveillance images with photographs from Wright's Facebook posts, which depicted Wright wearing clothing consistent with that worn by the shooter shown in the Quinn surveillance footage.

While investigating the Quinn shooting, police learned of a second shooting that occurred in August 2021 near South 16th and Zarker Streets. The victim, Richard Ellis ("Ellis"), sustained gunshots to both legs and survived. A witness directed police to the location from which the shooter fired, and officers recovered shell casings. Witness Evelyn McGhee ("McGhee") later identified Wright as the Ellis shooter through a photographic array. Detective Carriere recovered surveillance footage, which depicted the shooter wearing dark-colored sweatpants and driving a black Nissan Versa, similar to the vehicle observed in the Quinn shooting. Detective Carriere discovered additional social media posts depicting Wright wearing the same dark-colored sweatpants. Detective Carriere submitted ballistic evidence from both shootings for testing, which revealed that they were fired by the same firearm.

The Commonwealth charged Wright at two trial dockets, CP-22-CR-0005435-2021 ("Docket 5435") and CP-22-CR-0002719-2023 ("Docket 2719"), for the two shootings. In August 2023, the Commonwealth filed a notice of joinder seeking to consolidate the two dockets for trial. Wright moved for severance, to which the Commonwealth filed an answer. The trial court conducted a hearing and subsequently denied Wright's motion.

The case proceeded to a consolidated jury trial in December 2023. Prior to trial, Wright elected to proceed *pro se*, and the trial court appointed Jason Jefferis, Esquire ("Attorney Jefferis"), as standby counsel. Prior to opening statements, Wright asserted that the Commonwealth had not provided, in discovery, certain recorded prison calls, even though the

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Commonwealth had provided them to Wright's prior counsel one to two years earlier. The trial court addressed the issue on the record and ruled that the recordings were admissible, as the Commonwealth "had a responsibility to turn it over to [defense] counsel at the time. They've done that." N.T., 12/11/23, at 19.

*2 Next, outside the presence of the jury, the trial court advised Wright that, due to his *pro se* status, the court would not permit him to approach the bench for sidebar conferences. The trial court also noted that requiring sheriff's deputies to escort Wright to the bench for sidebar could undermine the presumption of innocence before the jury. The trial court then explained alternative procedures for discussions outside the jury's presence: (1) "allow [Attorney] Jefferis to come forward on [Wright's] behalf and participate, and [Attorney Jefferis] can report back[;]" or (2) "take a recess, have the jury leave, then have it on the record." ***Id.*** at 14. Wright did not object and the record reflects that the trial court followed both procedures on multiple occasions.

At trial, the Commonwealth presented evidence that police recovered shell casings from each crime scene. Firearms examiner Corporal David Turnbo ("Corporal Turnbo") testified that the same firearm fired the casings and bullets from both incidents.

Detective Ian Dawson ("Detective Dawson") testified that surveillance video from the Quinn shooting depicted a suspect with long black hair, wearing a blue "vibes" shirt and bright yellow sneakers, tattoos on the arms, and wearing athletic style pants. Social media posts showed Wright wearing similar clothing and displaying similar tattoos. Police later recovered bright yellow FILA sneakers during a search of a hotel room where they arrested Wright.

McGhee testified that she witnessed Wright shoot Ellis following a parking dispute. She later identified Wright as the shooter through a photographic array and at trial. At the conclusion of the first day of proceedings, outside the presence of the jury, the trial court inquired how much additional questioning Wright intended to conduct of McGhee. The court suggested that Wright consider overnight whether further questioning was necessary and advised that he could either continue his cross-examination the following day or proceed to the next witness. Wright resumed his cross-examination of McGhee the next morning and continued questioning her at length.

Detective Carriere testified that he obtained surveillance footage from the Ellis shooting, which indicated that the shooter operated the same vehicle in both shootings. He further testified that Wright wore certain clothing in photographs and videos that he posted on Facebook and TikTok. According to Detective Dawson, that clothing matched both the attire of the person who shot Quinn and images of Wright associated with the shooting. Additionally, still images derived from surveillance footage of the Ellis shooting depicted the shooter wearing dark-colored sweatpants consistent with those that Wright also wore in his social media posts.

On cross-examination, Wright questioned Detectives Dawson and Carriere regarding the still images the Commonwealth derived from Facebook and TikTok, as well as surveillance footage. Although Wright referenced a TikTok video during his cross-examination of both detectives, he neither moved to admit the video nor requested to publish it in its entirety.

On the second day of trial, the court heard argument on two witnesses' motions to quash Wright's subpoenas for them to testify. Saliently, Wright had subpoenaed, *inter alia*, vascular surgeon John Calaitges, M.D. ("Dr. Calaitges") to testify regarding Quinn's medical condition and treatment. When the trial court requested an offer of proof, Wright declined, stating, "I understand that the Commonwealth has a right to be here. I can't divulge those facts. I feel that I can't divulge those facts in the presence of the prosecution." N.T., 12/12/23, at 230. The Commonwealth offered to leave the courtroom, but the trial court noted that the courtroom was a public forum. The trial court then advised Wright that failure to make a proffer could result in waiver of the issue. Wright nevertheless declined to provide one.

*3 Additionally, Wright did not dispute that Quinn had not executed a Health Insurance Portability and Accountability Act ("HIPAA") waiver or that compliance with the subpoena would impose an undue burden on the physician. In *lieu* of live testimony, the Commonwealth offered to stipulate to the authenticity of the relevant medical records. Following argument, the court granted the motions to quash the subpoenas and precluded the proposed testimony. Although the trial court indicated that Wright could revisit the matter at a later point, he did not renew the request.

The Commonwealth later presented Graham Lawrence, M.D. ("Dr. Lawrence"), who testified that Quinn suffered serious bodily injury that, if untreated, would have resulted in

death. On cross-examination, Wright attempted to question Dr. Lawrence regarding findings contained in Dr. Calaitges' report. The Commonwealth objected on the grounds that the inquiry exceeded the scope of direct examination. The trial court sustained the objection and explained that Dr. Lawrence could testify to his own observations and notes but could not opine as to the conclusions reached by another physician, particularly where neither doctor was qualified as a pathologist to render forensic determinations regarding entry and exit wounds.

The Commonwealth also introduced recorded prison calls placed by Wright after his arrest, including a call in which Wright asked Quinn whether he was a "cheese-eater." N.T., 12/13/23, at 453. He also testified based on his experience that the term "cheese-eater" is slang for a snitch. Wright did not object but later attempted to introduce an alternative meaning for the term, "cheese-eater," through defense witness Shavar Thompson ("Thompson"). Thompson acknowledged that the term referred to a snitch, although he testified that, in this context, it meant someone who makes a false report.

On cross-examination, the Commonwealth questioned Thompson regarding the definition of "cheese-eater" at www.urbandictionary.com, a website that set forth definitions of street slang. Wright objected to the Commonwealth's reliance on the website but acknowledged that "there are about 350 Urban Dictionaries ... [i]t's not universal in any way, shape, or form." N.T., 12/14/23, at 796-97. The trial court responded that "[t]he factfinders will decide what value, if any, will be given[,]" explaining that the website was a publicly available source. ***Id.*** Thereafter, the trial court permitted questioning regarding the website.

The Commonwealth also elicited testimony that Thompson and Wright knew each other and were incarcerated together while Wright awaited disposition of the instant charges. Wright did not object contemporaneously to this testimony and instead moved for a mistrial after Thompson had completed his testimony, which the trial court denied.

Wright testified on his own behalf and denied involvement in the shootings. He challenged the Commonwealth's identification evidence, disputing that he was the individual depicted in the surveillance footage and in images taken from his own social media accounts, despite evidence that those images originated from accounts attributed to him.

At the conclusion of trial, the jury found Wright guilty of all charges at both dockets: aggravated assault — attempts to cause serious bodily injury with extreme indifference; aggravated assault — attempts to cause or cause bodily injury with a deadly weapon; firearms not to be carried without a license; and recklessly endangering another person. Separately, Wright entered pleas of *nolo contendere* to two counts of person not to possess firearms. On February 14, 2024, the trial court imposed an aggregate sentence of fifty to one hundred years' imprisonment. Attorney Jefferis filed a timely post-sentence motion on behalf of Wright, which the trial court denied on April 11, 2024.

4** On July 24, 2024, Wright filed a *pro se* petition under the Post Conviction Relief Act[2] ("PCRA"), asserting that Attorney Jefferis had failed to file a direct appeal on his behalf. The court appointed Kristen Weisenberger, Esquire ("Attorney Weisenberger"), to represent Wright in the PCRA proceedings. Upon review, Attorney Weisenberger advised the trial court that Wright wished to proceed *pro se*. On August 19, 2024, the trial court conducted a ***Grazier[3] hearing, determined that Wright's waiver of counsel was knowing, voluntary, and intelligent, and thus granted his request to proceed *pro se*. The Commonwealth agreed to the reinstatement of Wright's direct appeal rights, which the trial court granted.

Wright then filed a *pro se* notice of appeal. Both Wright and the trial court have complied with Pa.R.A.P. 1925. Wright filed a lengthy Pa.R.A.P. 1925(b) concise statement identifying thirty-three alleged errors. However, Wright has filed a *pro se* appellate brief in which he presents twenty issues in his "Statement of Questions Presented" (verbatim):

I. Did the [trial] court err in not ensuring that all [sidebar] discussions were on the record?

II. Did the [trial] court err in allowing the Commonwealth to inform the jury that [Wright] was incarcerated at time of trial[?]

III. Did the [trial] court err in denying [Wright's] motion for severance?

IV. Did the [trial] court err in harshly reprimanding [Wright] in the presence of the jury?

V. Did [the trial] court err in allowing [the] Commonwealth to testify [*sic*] to heavily contested definitions from urban dictionary?

VI. Did the [trial] court err in allowing stand-by counsel to act for [Wright] on matters of importance?

VII. Did the [trial] court err in allowing the Commonwealth to use evidence not provided to [Wright] prior to trial?

VIII. Did the [trial] court err in denying [Wright's] motion for mistrial?

IX. Did the [trial] court err in granting [the] motion to quash [Wright's] subpoena of [Dr. Calaitges]?

X. Did the [trial] court err in stating that relevant experts were not qualified to identify entry and exit wounds?

XI. Did the [trial] court err in offering an opinion with regard to the perjury of [ ] McGhee?

XII. Did the [trial] court err in offering an opinion on a heavily contested definition from urban dictionary?

XIII. Did the [trial] court err in not allowing [Wright] to play a [T]iktok video?

XIV. Did the [trial] court err in allowing the Commonwealth to offer argument, answer questions and testify during the cross-examination of [Wright]?

XV. Did the [trial] court err in repeatedly interfering with[ ] the cross-examination of key Commonwealth witnesses?

XVI. Did the [trial] court err in [its] exercise of judicial notice?

XVII. Did the [trial] court err in sustaining an objection by the Commonwealth to [Wright's] asking a detective if he lied and allowing [C]ommonwealth to testify as to why detectives can lie?

XVIII. Did the [trial] court err in requiring [Wright] to disclose vital points of strategy during [the] hearing on motion to quash?

XIX. Did the [trial] court err in requiring [Wright] to "convince [the prosecutor]" that he should be allowed to continue cross examination?

XX. Did the [trial] court err where its overall displays of partiality, prejudice, bias, irrational rulings and rationale, actions and statements deprived [Wright] of a fair trial?

Wright's Brief at 3-4 (unnecessary capitalization omitted).[4]

***5** Initially, we note:

> As a prefatory matter, although this Court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant. Accordingly, a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of the Court. This Court may quash or dismiss an appeal if an appellant fails to conform with the requirements set forth in the Pennsylvania Rules of Appellate Procedure. [***See***] Pa.R.A.P. 2101.

Commonwealth v. Freeland, 106 A.3d 768, 776–77 (Pa. Super. 2014) (some citations omitted).

"[T]he Rules of Appellate Procedure state unequivocally that each question an appellant raises is to be supported by discussion and analysis of pertinent authority." ***Commonwealth v. Neafie***, 341 A.3d 813, 817 (Pa. Super. 2025) (some citations omitted); ***see also*** Pa.R.A.P. 2119(a). It is well-settled that "[w]hen issues are not properly raised and developed in briefs, [and] when the briefs are wholly inadequate to present specific issues for review, a court will not consider the merits thereof." ***Commonwealth v. Sanford***, 445 A.2d 149, 150 (Pa. Super. 1982) (citation omitted). Accordingly, where an appellant fails to provide any discussion of his issue on appeal, or case law supporting his right to relief, this Court will not address the issue on appeal. ***See id.***

Wright's *pro se* brief fails to comply with several Rules of Appellate Procedure. Notably, Wright fails to comply with: (1) Pa.R.A.P. 124(a)(3), which requires double-spaced text; (2) Pa.R.A.P. 2111(a), which sets forth the required order and contents of an appellate brief; (3) Pa.R.A.P. 2119(a), which requires that each argument be supported by discussion and citation to pertinent authority; and (4) Pa.R.A.P. 2119(c), which requires citation to the record, where Wright makes only passing references to portions of the record.

The excessive length and formatting defects of Wright's brief unnecessarily impede our review. Furthermore, Wright does not organize his argument by issues; instead, he jumps from claim to claim and discusses some claims, to varying degrees, across multiple pages. Wright's lack of meaningful discussion further amplifies these defects. ***See*** Pa.R.A.P. 2119(a); ***see also*** Wright's Brief at 11-58. As a result, Wright's argument consists largely of disorganized and undeveloped assertions. Further, several of Wright's twenty questions are

either duplicative or unsupported by developed argument and citation to authority.

We acknowledge that Wright proceeds *pro se* in this matter. However, "*pro se* status generally confers no special benefit upon an appellant. Accordingly, a *pro se* litigant must comply with the procedural rules set forth in the Pennsylvania Rules of the Court." ***Freeland***, 106 A.3d at 776–77. It is not the role of this Court to develop arguments on his behalf. Although these violations could warrant dismissal of the appeal, we decline to impose that sanction and instead address the issues that we can reasonably discern from Wright's brief.

6** Preliminarily, we observe that Wright fails to develop any meaningful argument with respect to issues XVI and XVIII, which allegedly challenge judicial notice and the trial court's requirement to disclose his defense strategy with regard to the motions to quash his witness subpoenas. Accordingly, Wright has waived those claims. ***See Pa.R.A.P. 2119(a); ***see also Sanford***, 445 A.2d at 150.

We address Wright's remaining claims as follows: (1) challenges to evidentiary rulings; (2) the denial of severance; (3) the granting of the motion to quash the subpoenas and the limitation of expert testimony; (4) limitations on cross-examination; (5) references to Wright's incarceration and the denial of a mistrial; (6) sidebar discussions not placed on the record; and (7) judicial bias and cumulative error.

In his first issue, Wright argues that the trial court abused its discretion in certain evidentiary rulings, including permitting testimony concerning slang terminology, admitting recorded prison calls allegedly not disclosed prior to trial, and limiting Wright's attempt to introduce a social media video during cross-examination.

It is well-settled:

> The admission of evidence is solely within the discretion of the trial court, and a trial court's evidentiary rulings will be reversed on appeal only upon an abuse of that discretion. An abuse of discretion will not be found based on a mere error of judgment, but rather occurs where the court has reached a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.

Commonwealth v. Woodard, 129 A.3d 480, 494 (Pa. 2015) (quotation marks and citations omitted).

A trial court also has discretion to control the mode and order of examining witnesses and presenting evidence

> so as to:
>
> (1) make the procedures effective for determining the truth; [and]
>
> (2) avoid wasting time[.]

Pa.R.E. 611(a)(1)-(2). In addition, "the trial court has broad discretion regarding both the scope and permissible limits of cross-examination." ***Commonwealth v. Rosser***, 135 A.3d 1077, 1087 (Pa. Super. 2016) (*en banc*) (quotation marks and citations omitted).

Evidence is relevant if it tends to make a fact more or less probable. ***See*** Pa.R.E. 401(a). Relevant evidence is generally admissible unless excluded by law, although the trial court may exclude evidence if its probative value is outweighed by the danger of unfair prejudice. ***See*** Pa.R.E. 402–403.

Pennsylvania Rule of Evidence 701 permits a lay witness to offer opinion testimony only when the opinion is:

> (a) rationally based on the witness's perception;
>
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
>
> (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Pa.R.E. 701(a)–(c). "[W]hen an officer is not qualified as an expert, the officer's lay opinion" as to meaning of slang or "street language" "is admissible only when the law enforcement officer is a participant in the conversation, has personal knowledge of the facts being related in the conversation, or observed the conversations as they occurred." ***Commonwealth v. Rose***, 172 A.3d 1121, 1131 (Pa. Super. 2017) (citation and emphasis omitted). In other words, lay testimony is "intended to describe something that jurors otherwise had not been able to experience for themselves, by drawing upon the sensory and experiential observations that the witness made firsthand." ***Id.***

***7** A court may take judicial notice only of "a fact that is not subject to reasonable dispute because it" is either generally known or capable of accurate and ready determination "from sources whose accuracy cannot reasonably be questioned." Pa.R.E. 201(b)(1)-(2).

The best evidence rule requires an original writing, recording, or photograph to prove its content unless otherwise provided by rule or statute. ***See*** Pa.R.E. 1002. In addition, the Commonwealth has mandatory discovery obligations in criminal cases, to generally "disclose ... requested items or information, provided they are material to the instant case." Pa.R.Crim.P. 573(B)(1). A defendant may establish a ***Brady***[5] discovery violation only where the defendant "show[s] that: (1) the evidence was suppressed by the State, either willfully or inadvertently; (2) the evidence at issue is favorable to the defendant; and (3) the evidence was material, meaning that prejudice must have ensued." ***Commonwealth v. Chambers***, 807 A.2d 872, 887 (Pa. 2002).

"If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time." Pa.R.E.106. "Issues not raised in the trial court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a).

The Confrontation Clause in the Sixth Amendment to the United States Constitution guarantees a defendant's "right to confront and cross-examine adverse witnesses." ***Rosser***, 135 A.3d at 1087; ***see also*** U.S. Const. amend. VI; ***see also*** Pa. Const., Art. I, § 9. However,

> the confrontation right is not absolute. It guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. Thus, trial courts retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant.

Commonwealth v. Rogers, 250 A.3d 1209, 1216 (Pa. 2021) (citations and quotation marks omitted).

We apply a two-part inquiry to determine whether a limitation on cross-examination violates the Confrontation Clause.

> First, we inquire whether the limitation prejudiced the examination of that particular witness. In other words, absent the limitation, would the jury have received a "significantly different impression" of the witness's credibility? Second, if there was error, we must determine whether it was harmless beyond a reasonable doubt; if so, reversal is not warranted.
>
> * * * *
>
> The right of confrontation, however, does not permit "fishing expeditions". The court may prohibit cross-examination on a particular subject "if the party is unable to lay a proper evidentiary framework." "Without such limits, unchecked cross-examination on a theory of bias may unfairly prejudice the opposing party's case and only bring forth 'marginally relevant' evidence." ...
>
> * * * *
>
> ... Therefore, ... the Sixth Amendment does not entitle the defendant to cross-examine a Commonwealth witness on a subject for which the defendant cannot provide a factual foundation.

Rosser, 135 A.3d at 1088-89 (citations omitted).

Wright contends the trial court abused its discretion by: (1) permitting testimony concerning the slang term "cheese-eater" and allowing the Commonwealth to reference an Urban Dictionary definition of that term; (2) admitting jail calls that Wright claims were not disclosed in discovery; and (3) limiting Wright's attempt to introduce a TikTok video during cross-examination of Commonwealth witnesses.

The trial court concluded that Wright's claims lacked merit and, in many instances, he waived his claims due to the excessive and imprecise nature of his Rule 1925(b) statement. ***See*** Trial Court Opinion, 12/19/24, at 15-17. With respect to the slang terminology, the court determined that reference to an Urban Dictionary definition was permissible and that it afforded Wright ample opportunity to cross-examine witnesses regarding the meaning of the term. ***See id.*** at 19-20. The court further rejected Wright's claim that the Commonwealth improperly introduced prison calls, concluding that the Commonwealth disclosed the recordings to standby counsel prior to trial and therefore did not commit a ***Brady*** violation. ***See id.*** at 22.

Upon review, we discern no abuse of discretion. ***See Woodard***, 129 A.3d at 494. First, Wright challenges the admission of testimony concerning the slang term "cheese-eater" and the Commonwealth's reference to an Urban Dictionary definition of that term. However, the record reflects that Detective Dawson testified regarding the meaning of the term based upon his experience and familiarity

with the conversation at issue. Such testimony falls within the scope of permissible lay opinion testimony rationally based on the witness's perception and helpful to the jury's understanding of the evidence. ***See*** Pa.R.E. 701(a)-(c); ***see also Rose***, 172 A.3d at 1131. Moreover, the trial court afforded Wright a full opportunity to cross-examine witnesses and to present his own interpretation of the term through his witness Thompson. Under these circumstances, Wright has failed to demonstrate that the trial court's rulings resulted in unfair prejudice or otherwise constituted an abuse of discretion. To the extent the court referenced an online source for slang terminology, any such reference does not warrant relief, as the meaning of the term was explored through witness testimony subject to cross-examination.

Second, Wright contends the Commonwealth improperly introduced recordings of prison calls that it did not disclose in discovery. The trial court rejected this claim, noting that the Commonwealth provided the recordings to Wright's standby counsel approximately two years prior to trial. ***See*** Trial Court Opinion, 12/19/24, at 22. Thus, the record does not support Wright's assertion that the Commonwealth withheld the evidence. In any event, Wright has failed to demonstrate prejudice, as he does not explain how earlier disclosure of the recordings would have altered his trial strategy or the outcome of the proceedings. ***See Chambers***, 807 A.2d at 887.

9** Wright also argues that the trial court improperly limited his attempt to introduce a TikTok video during cross-examination. The record reflects that the court exercised its discretion to regulate the mode and order of presenting evidence. ***See Pa.R.E. 611(a); ***see also Rosser***, 135 A.3d at 1087. Nevertheless, Wright retained a meaningful opportunity to cross-examine the witnesses regarding the relevant images and testimony presented by the Commonwealth. Because the Confrontation Clause guarantees only an opportunity for effective cross-examination — not cross-examination to whatever extent a defendant might wish — the trial court's limitations did not violate Wright's constitutional rights. ***See Rogers***, 250 A.3d at 1216.

To the extent Wright suggests that the trial court was required to admit the entirety of the TikTok video under the rule of completeness, he did not move to admit the video into evidence or establish that its admission was necessary to contextualize the portions of the evidence presented by the Commonwealth. ***See*** Pa.R.E. 106. Accordingly, no relief is due.

In his second issue, Wright challenges the trial court's denial of his motion for severance of the two criminal dockets. When reviewing the severance of charges,

> we begin with Pennsylvania Rules of Criminal Procedure 582 and 583, which govern the joinder and severance of offenses for trial. The decision to consolidate offenses in a single trial is within the trial court's sole discretion, which we will not reverse absent a determination that there was a clear injustice to the defendant or a manifest abuse of discretion....
>
> Rule 582 permits offenses charged in separate informations to be consolidated for trial if "the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion[.]" Pa.R.Crim.P. 582(A)(1)(a).[ ] The corresponding severance rule, Rule 583, authorizes a court to sever offenses (or defendants) for trial "if it appears that any party may be prejudiced by offenses or defendants being tried together." Pa.R.Crim.P. 583. With these rules in mind, [our Supreme] Court crafted the following test to determine whether joinder or severance of separately-charged offenses is proper: (1) "whether the evidence of each of the offenses would be admissible in a separate trial for the other;" (2) "whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and," (3) "if the answers to these inquiries are in the affirmative, whether the defendant will be unduly prejudiced by the consolidation of offenses." ...

Commonwealth v. Walker, 350 A.3d 54, 61 (Pa. 2026) (*citing, inter alia*, ***Commonwealth v. Lark***, 543 A.2d 491, 497 (Pa. 1988)).

In ***Commonwealth v. Walker***, 350 A.3d 54 (Pa. 2026), the Pennsylvania Supreme Court recently explained:

> [Pennsylvania Rule of Evidence] 404(b) precludes the admission of evidence of a person's other bad acts (including other crimes) for the purpose of demonstrating the person's bad character — in other words, the Commonwealth cannot present evidence of a defendant's other bad acts solely for the purpose of establishing the defendant's propensity to commit crimes (*i.e.*, because he did it once, he probably did it again). ***See*** Pa.R.E. 404(b)(1).
>
> However, subsection (b)(2) clarifies that other bad acts evidence may be admissible if it is offered for another

(legitimate) purpose. ***See*** Pa.R.E. 404(b)(2). Rule 404(b)(2) includes a non-exclusive list of other purposes, permitting other bad acts evidence when it tends to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." ***Id.*** In a criminal case, regardless of the proffered exception, other bad acts evidence is admissible "only if the probative value of the evidence outweighs its potential for unfair prejudice." Pa.R.E. 404(b)(2).[ ]

10** ***Id. at 61–62 (footnote omitted and paragraph break added).

The Pennsylvania Supreme Court recently held:

> When the admissibility of the defendant's other bad acts is premised upon the common plan, scheme, or design exception, the Commonwealth must establish either: (1) the offenses constitute "signature crimes" — that is, they are so unique and distinctive that they must have been committed by the same perpetrator — or; (2) the offenses were linked to achieve a common goal.[ ] ...

Id. at 75 (citation and footnote omitted).[6] "The signature crime, or *modus operandi*, exception is most relevant when the identity of the perpetrator is at issue." ***Id.*** at 73.

The Supreme Court then applied this rule to the issue of consolidating cases and concluded:

> [T]he consolidation of separate offenses for a joint trial is permitted if, *inter alia*, the evidence of each offense would be admissible in a trial for the others as an exception to the rule precluding propensity evidence. ***See*** Pa.R.Crim.P. 582(A)(1)(a); Pa.R.E. 404(b). When the admissibility of the defendant's other bad acts is premised upon the common plan, scheme, or design exception, the Commonwealth must establish either: (1) the offenses constitute "signature crimes" — that is, they are so unique and distinctive that they must have been committed by the same perpetrator — or; (2) the offenses were linked to achieve a common goal.[ ]

Id. (footnote omitted).

Wright contends that the trial court abused its discretion in denying severance because: (1) the two shootings were unrelated; (2) the evidence from each case would not have been admissible in a separate trial for the other; and (3) the joinder allowed the jury to cumulate inflammatory evidence and infer a criminal propensity.

The trial court determined that the cases "were properly joined for trial ... and could easily be considered by a jury without danger of confusion." Trial Court Opinion, 12/19/24, at 24.

Applying the ***Walker*** framework, we discern no abuse of discretion. ***See Walker***, 350 A.3d at 61; ***see also Woodard***, 129 A.3d at 494. Here, we analyze the Commonwealth's theory under Rule 404(b)(2)'s identity exception. The evidence from each shooting would have been admissible in a separate trial for the other to establish identity, a permissible purpose under Rule 404(b)(2), provided the offenses share sufficiently distinctive characteristics as required by ***Walker***. ***See Walker***, 350 A.3d at 61–62.

11** We recognize that this is a close case under ***Walker. There, our Supreme Court concluded that evidence of the defendant's involvement in multiple sexual assaults was inadmissible under Rule 404(b), even where DNA evidence linked the defendant to each offense, because the crimes lacked distinctive features establishing a common plan, scheme, or identity. ***See Walker***, 350 A.3d at 73–75.

This case, however, differs in a critical respect. Unlike ***Walker***, where the Commonwealth relied primarily on a single category of evidence — DNA — to connect otherwise factually dissimilar offenses, the Commonwealth here presented multiple, independent linking factors. The evidence established that the same firearm was used in both shootings, that the shooter in each incident operated the same color and model vehicle, and that the shooter's clothing was consistent across surveillance footage of both shootings and Wright's own social media posts.

While none of these factors, standing alone, may have established identity, their combination reflects a set of shared and distinctive characteristics supporting admissibility under the identity exception to Rule 404(b)(2). ***See Walker***, 350 A.3d at 73-75 (emphasizing the need for evidence that does more than suggest a defendant's criminal disposition). Taken together, the evidence — specifically, the use of the same firearm, the same vehicle, consistent clothing depicted in surveillance and social media, and the temporal proximity of the offenses — establishes a sufficiently distinctive pattern to support admission for purposes of identity rather than propensity. Additionally, both incidents involved targeted shootings in public settings in which the victims sustained non-fatal gunshot wounds to their lower extremities.

Moreover, the evidence was capable of separation by the jury. Each shooting involved distinct victims, locations, and investigative evidence, minimizing any risk of confusion.

Finally, Wright has not demonstrated undue prejudice. The mere fact that the evidence of multiple crimes may be damaging does not warrant severance where the evidence is otherwise admissible and the jury is capable of compartmentalizing it. Accordingly, the trial court did not abuse its discretion in denying Wright's motion to sever, and no relief is due.

In his third issue, Wright argues that the trial court erred in granting a motion to quash the subpoenas he issued to certain health care providers, and in limiting expert testimony regarding Quinn's injuries. "When reviewing a court's disposition of a motion to quash a subpoena, we grant great deference to the factual findings of the trial court. We will affirm the court's decision unless we find that the court abused its discretion or committed an error of law." ***Commonwealth v. Cook***, 865 A.2d 869, 876 (Pa. Super. 2004) (citation omitted). A trial court may also quash subpoenas where compliance would impose an undue burden or where the party seeking the testimony fails to establish its relevance or admissibility. ***See*** Pa.R.E. 401–403.

Likewise, "[w]hen reviewing a decision to admit or to exclude expert opinion testimony, we use an abuse-of-discretion standard." ***Commonwealth v. Pi Delta Psi, Inc.***, 211 A.3d 875, 881 (Pa. Super. 2019) (citation omitted). A trial court abuses its discretion only where "the trial court renders a judgment that is manifestly unreasonable, arbitrary or capricious; that fails to apply the law; or that is motivated by partiality, prejudice, bias or ill-will." ***Id.*** (citation omitted).

12** As noted above, a trial court possesses broad discretion to control the presentation of evidence and the examination of witnesses. ***See Pa.R.E. 611(a). "A party may claim error in a ruling to [limit] evidence only [if the] party informs the court of its substance by an offer of proof, unless the substance was apparent from the context." Pa.R.E. 103(a)(2). "An offer of proof must be sufficient to alert the trial judge to the purpose for which the evidence is being offered, and a trial court's [limiting] of evidence must be evaluated on appeal by a review of the contents of the offer at the time it was made." ***Commonwealth v. Newman***, 555 A.2d 151, 156 (Pa. Super. 1989) (citations omitted).[7] A failure to make an offer of proof results in waiver because, if an appellate court does not "know the substance of [the] statements, [it] cannot determine if the [trial] court erred in [limiting] the disputed testimony." ***Commonwealth v. Fisher***, 681 A.2d 130, 143 (Pa. 1996) (citation omitted).[8]

Wright argues that the trial court erred in granting the motion to quash filed by Dr. Calaitges, who assisted Dr. Lawrence in the operating room during Quinn's surgery. Wright contends that he timely issued the subpoena and that the physician's testimony was necessary to explain the conclusions in his medical report. Wright also argues that the trial court improperly required him to reveal aspects of his trial strategy when requesting an offer of proof and erred in denying his request to exclude the prosecutor and detectives from the hearing on the motion to quash.

In addition, Wright maintains that Dr. Calaitges' medical notes reflected that Quinn sustained an entry wound on the medial side of the leg and an exit wound laterally. Wright asserts that this conclusion demonstrated that the shooter had to have stood to Quinn's right, which he claims conflicted with the Commonwealth's surveillance video depicting the shooter standing to Quinn's left. Wright therefore maintains that Dr. Calaitges' testimony was critical to his defense.

Wright further asserts that the trial court improperly discounted Dr. Calaitges' conclusions and suggested that neither Dr. Calaitges nor the Commonwealth's expert, Dr. Lawrence, was qualified to determine entry and exit wounds. Wright claims that the trial court's remarks improperly discredited his defense and bolstered the Commonwealth's position before the jury.

The trial court rejected Wright's claim and concluded that it properly quashed the subpoena issued to Dr. Calaitges. The trial court explained that counsel for Dr. Calaitges asserted that compelling his testimony would raise significant patient privacy concerns under HIPAA and would create hardship by interfering with his patient-care obligations. ***See*** Trial Court Opinion, 12/19/24, at 29.

The trial court further found that Wright issued the subpoena shortly before trial, which created hardship for Dr. Calaitges. ***See id.*** at 30. In addition, the court determined that "requiring [Dr. Calaitges'] testimony would breach duties of patient confidentiality[,]" and was not relevant to whether Quinn suffered a serious bodily injury. ***Id.*** The trial court noted that the Commonwealth offered to stipulate to the authenticity of the relevant medical records, thereby allowing Wright to rely on the records without requiring the providers' testimony.

Based on these considerations, the trial court concluded that it properly granted the motion to quash. ***See id.***

***13** Finally, the trial court rejected Wright's claim regarding Dr. Lawrence's testimony. The court explained that Wright attempted to question Dr. Lawrence regarding the conclusions contained in the report of another physician, Dr. Calaitges. The trial court reasoned as follows:

> The Commonwealth objected to [Wright's] question to Dr. Lawrence regarding the report of Dr. Calaitges as beyond the scope of direct testimony. The [c]ourt stated its reasoning for limitation of the witness' testimony regarding the basis of the opinion of another physician. In response to the [c]ourt's explanation of its reasoning, [Wright] stated, "Oh, okay. Thank you, Your Honor[ ]. Therefore, Wright waived [this] claim of error.

Trial Court Opinion, 12/19/24, at 29 (citations omitted).

Upon review, we discern no abuse of discretion. ***See Cook***, 865 A.2d at 876. First, the trial court acted within its discretion in quashing the subpoena issued to Dr. Calaitges. The trial court reasonably concluded that compelling the testimony of Dr. Calaitges would have raised patient privacy concerns and imposed hardship on his medical obligations. Moreover, the Commonwealth offered to stipulate to the authenticity of the relevant medical records, thereby allowing Wright to rely on those records without requiring the providers' live testimony. Under these circumstances, Wright has failed to demonstrate that the trial court's ruling was manifestly unreasonable or constituted an abuse of discretion. ***See Pi Delta Psi, Inc.***, 211 A.3d at 881.

Second, the record supports the trial court's reasoning that Wright waived his claim regarding the limitation of Dr. Lawrence's testimony. Because Wright failed to provide an offer of proof explaining the substance and relevance of the proposed testimony, we cannot determine whether the trial court erred in excluding the evidence, and he has waived this claim. ***See*** Pa.R.E. 103(a)(2); ***see also Fisher***, 681 A.2d at 143.

Further, when the Commonwealth objected to Wright's questioning of Dr. Lawrence regarding the conclusions of another physician, the trial court explained its ruling on the record. Wright responded, "Oh, okay. Thank you, Your Honor," and did not pursue the objection further. N.T., 12/12/23, at 262. Because Wright failed to preserve specific challenges to the trial court's rulings or articulate grounds for admissibility in response to the Commonwealth's objections, he was waived them for appellate review. ***See*** Pa.R.A.P. 302(a). To the extent the trial court excluded evidence, Wright also failed to present an offer of proof. ***See*** Pa.R.E. 103(a)(2). Accordingly, Wright's claims that the trial court erred in granting the motion to quash the subpoenas and limiting expert testimony do not merit relief.

In his fourth issue, Wright argues that the trial court improperly restricted his cross-examination of Commonwealth witnesses or otherwise interfered with the presentation of his defense. As noted above, a trial court possesses broad discretion to control the scope and extent of cross-examination, and we will not disturb the court's ruling absent an abuse of discretion. ***See Rosser***, 135 A.3d at 1087.

Specifically, Wright contends that the trial court: (1) repeatedly interfered with his cross-examination of Commonwealth witnesses, including Detective Dawson, Detective Carriere, and McGhee; (2) improperly raised objections on behalf of the Commonwealth; and (3) applied a double standard in limiting his questioning while permitting the Commonwealth to make argumentative statements during its cross-examination of him. Wright identifies several instances in which the trial court interrupted his questioning of these witnesses, including by limiting his attempts to elicit testimony, reframing or posing questions to witnesses, and sustaining or prompting objections — at times without any objection from the Commonwealth. He further asserts that the court restricted his efforts to challenge witness credibility, particularly during his cross-examinations of Detective Dawson, Detective Carriere, and McGhee.

14** Wright also raises a claim regarding the conduct of the prosecutor during his testimony. Wright asserts that "[t]he cross-examination of [him] amounted to little more than argument between [him] and the Commonwealth, and direct statements and attacks upon the former by the latter." Wright's Brief at 54. He further challenges the trial court's management of the proceedings, arguing that the trial court "did not in any of these exchanges (or at any point in the trial) correct the Commonwealth whether [he] objected or not." ***Id. at 55. Wright maintains that this conduct undermined his credibility before the jury and improperly restricted his ability to present his defense as a *pro se* litigant.

The trial court concluded that Wright waived these claims by failing to object to its rulings at trial. ***See*** Trial Court Opinion, 12/19/24 at 26-32. The court further determined that, even if preserved, no relief was due because it acted within its

discretion to control the examination of witnesses and the orderly presentation of evidence. In particular, the court noted that Wright was afforded wide latitude in cross-examining Detective Dawson, Detective Carriere, and McGhee and that any limitations imposed were intended to maintain relevance and prevent improper questioning.

Upon review, we discern no abuse of discretion. ***See Rosser***, 135 A.3d at 1087. To the extent Wright challenges the trial court's limitation of his cross-examination, the record reflects no contemporaneous objection to the rulings he now challenges. ***See*** Pa.R.A.P. 302(a). Accordingly, the claim is waived.

In his fifth issue, Wright claims that the trial court erred in permitting the Commonwealth to reference his incarceration during trial and in denying his request for a mistrial on that basis. Generally, the decision to grant a mistrial is within the sound discretion of the trial court, whose decision we will not reverse absent a manifest abuse of discretion. ***See Commonwealth v. Bryant***, 67 A.3d 716, 728 (Pa. 2013). "A mistrial is an extreme remedy that is required only where the challenged event deprived the accused of a fair and impartial trial." ***Id.*** (citation omitted).

Pennsylvania Rule of Criminal Procedure 605 provides that a defendant may move for a mistrial when an event prejudicial to him occurs. Pa.R.Crim.P. 605(B). Such a motion "shall be made when the event is disclosed." ***Id.***

"[T]here is no rule in Pennsylvania which prohibits reference to a defendant's incarceration awaiting trial or arrest for the crimes charged." ***Commonwealth v. Johnson***, 838 A.2d 663, 680 (Pa. 2003). Furthermore, a brief mention of a defendant's incarceration may not necessarily unduly prejudice the defendant. ***See Commonwealth v. Horne***, 89 A.3d 277, 288 (Pa. Super. 2014). The United States Supreme Court has observed that only a constant or repeated reminder of a defendant's incarceration status rises to the level of a mistrial because it may affect the jury's judgment and ultimately prejudice the defendant. ***See Estelle v. Williams***, 425 U.S. 501, 504-05 (1976).

Wright argues that at trial, the Commonwealth improperly referenced his incarcerated status. By way of background, we reiterate that, during its cross-examination of Thompson, the Commonwealth elicited testimony that Thompson was incarcerated and generally housed in the same facility as Wright. On appeal, Wright asserts that these references prejudiced the jury and created the impression that he had engaged in prior criminal conduct. Wright therefore contends that the trial court should have granted his request for a mistrial.

The trial court concluded that Wright did not have a basis for a mistrial. The court explained that Wright failed to make a timely objection to the Commonwealth's reference to his being incarcerated, and Wright did not request a mistrial until after Thompson had completed his testimony. ***See*** Trial Court Opinion, 12/19/24, at 18. The court further reasoned that the Commonwealth properly questioned Thompson regarding how he knew Wright in order to demonstrate potential bias and to challenge the witness's credibility. ***See id.*** In addition, the court determined that Wright suffered no prejudice because the jury had already heard recordings of Wright's prison calls and was therefore aware of his incarceration. ***See id.***

15** Upon review, we discern no abuse of discretion. ***See Bryant, 67 A.3d at 728. Wright did not object to the Commonwealth's question at the time the Commonwealth asked it and requested a mistrial only after Thompson had completed his testimony. ***See*** Pa.R.Crim.P. 605. Thus, he has waived this issue for our review.

Moreover, the record reflects that the challenged reference occurred in the context of Thompson's testimony explaining how he knew Wright and how investigators obtained recorded prison calls. Such testimony was relevant to the investigation, and the Commonwealth did not offer it to establish Wright's criminal propensity. Furthermore, because the jury had already heard recordings of Wright's prison calls, the brief reference to his incarceration did not deprive him of a fair trial. ***See Bryant***, 67 A.3d at 728. Accordingly, no relief is due on this claim.

In his sixth issue, Wright claims that the trial court erred by failing to place all sidebar discussions during trial on the record. "In court cases, after a defendant has been held for court, proceedings in open court shall be recorded." Pa.R.Crim.P. 115(A). "However, nothing in this rule prohibits the trial court from conducting off-the-record sidebar discussions." ***Commonwealth v. Montalvo***, 641 A.2d 1176, 1185 (Pa. Super. 1994).[9]

Wright contends that the trial court failed to place certain sidebar discussions on the record and that the absence of those discussions prevents meaningful appellate review. The trial

court rejected this claim, explaining that Wright "fail[ed] to state with sufficient specificity at what point in the trial the court failed to ensure that sidebar discussions [took] place on the record. Therefore, such claim is waived." Trial Court Opinion, 12/19/24, at 24.

Upon review, Wright has not identified any specific sidebar discussion the trial court improperly omitted from the record. He has thus waived this issue for our review. ***See*** Pa.R.A.P. 2119(a). Moreover, Wright has not demonstrated that any alleged omission from the record impairs meaningful appellate review or resulted in prejudice. Accordingly, no relief is due.

In his final issue, Wright argues that the trial court's conduct demonstrated bias, improperly interfered with his questioning of witnesses, and violated his right to represent himself. In support, Wright identifies numerous instances throughout the trial in which the court allegedly reprimanded him in the presence of the jury. He also cites several exchanges in which the trial court allegedly permitted the prosecutor to make argumentative statements during cross-examination.

Additionally, Wright points to specific comments by the trial court that he characterizes as demeaning or prejudicial, including remarks concerning his *pro se* status and his questioning techniques. He further asserts that the trial court improperly required standby counsel to act on his behalf during sidebar discussions and other proceedings, thereby infringing upon his right to self-representation.

However, despite these references, Wright fails to develop a coherent legal argument demonstrating that the trial court's conduct constituted reversible error. His discussion consists largely of lengthy narrative, conclusory allegations of bias, and scattered citations to the record, without meaningful analysis or application of governing legal principles. Accordingly, Wright has waived this claim. ***See*** Pa.R.A.P. 2119(a); ***see also Sanford***, 445 A.2d at 150.

***16** Although Wright characterizes the trial court's remarks as biased or prejudicial, he does not cite any place in the record where he lodged a timely and proper objection to the trial court's challenged remarks. **See** Pa.R.Crim.P. 605. He likewise fails to demonstrate prejudice beyond that inherent in the court's management of proceedings involving a *pro se* litigant. In any event, our review of the record reveals no conduct demonstrating partiality, prejudice, or bias on the part of the trial court that would warrant relief. Thus, no relief is due.

For all of the foregoing reasons, Wright is not entitled to relief.

Judgment of sentence affirmed.

All Citations

Slip Copy, 2026 WL 972960 (Table)

Footnotes

1 ***See*** 18 Pa.C.S.A. § 2702(a)(1), (4).

2 ***See*** 42 Pa.C.S.A. §§ 9541-9546.

3 ***See Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998).

4 We note that Wright filed an application in this Court to exceed the word limitations in his appellate brief. ***See*** Pa.R.A.P. 2135(a) (providing that "[a] principal brief shall not exceed 14,000 words"). This Court granted Wright's request and directed that his brief not exceed 18,000 words. In a footnote in his brief, Wright now asserts that this Court's order, limiting the size of his brief, forced him to exclude thirteen additional issues and that those issues are "available" to this Court "upon request." Wright's Brief at 4 n.1. However, issues not included in the brief and developed with argument are waived. ***See*** Pa.R.A.P. 2116(a) (requiring that the statement of questions involved concisely state the issues presented for review); 2119(a) (requiring that developed argument and citation to authority support each issue). Appellate briefing limitations do not relieve a litigant of the obligation to present and develop the issues raised on appeal, as compliance with the appellate rules governing briefing is mandatory, not a matter of mere stylistic preference. ***See Commonwealth v. Sexton***, 222 A.3d 405, 416 (Pa. Super. 2019) (citation omitted).

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5 ***See Brady v. Maryland***, 373 U.S. 83 (1963); ***see also Commonwealth v. Chambers***, 807 A.2d 872, 887 (Pa. 2002) (explaining that ***Brady*** held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution).

6 In so holding, the ***Walker*** Court abrogated the "logical connection" and "sufficient similarities" tests for determining whether evidence was admissible under the common scheme, plan, and design exception. ***Walker***, 350 A.3d at 54. Those tests had set forth

> a more general consideration as to whether the defendant's other bad acts share "sufficient similarities" with the offense on trial. In fact, a new test to determine "similarity" arose ... — courts were to consider "the elapsed time between the crimes, the geographical proximity of the crime scenes, and the manner in which the crimes were committed."

Id. at 64 (citation omitted).

7 We may rely on caselaw predating the enactment of the Pennsylvania Rules of Evidence to the extent the caselaw does not contradict the rules. ***See Commonwealth v. Aikens***, 990 A.2d 1181, 1185 n.2 (Pa. Super. 2010).

8 We note that ***Fisher*** held that victim-impact testimony was not admissible during the penalty phase in a capital case. ***Fisher***, 681 A.2d at 266-67. This rule was superseded by statute, as noted in ***Commonwealth v. Tedford***, 960 A.2d 1 (Pa. 2008). ***See Tedford***, 960 A.2d at 40 n.28. Nevertheless, this aspect of the law is not at issue in this appeal.

9 ***Montalvo*** addressed the predecessor rule, which was Pa.R.Crim.P. 9030(a), and was identical to the current Rule 115(A). ***See Montalvo***, 641 A.2d at 1185.

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NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37
Superior Court of Pennsylvania.

WADE, GOLDSTEIN, LANDAU, AND ABRUZZO, P.C.

v.

Timothy CLARK and Corinne Clark, Appellants

No. 1639 EDA 2018
|
Filed October 16, 2019

Appeal from the Judgment Entered July 26, 2018, in the Court of Common Pleas of Chester County Civil Division at No. 2013-06330

BEFORE: SHOGAN, J., MURRAY, J., AND FORD ELLIOTT, P.J.E.

MEMORANDUM BY FORD ELLIOTT, P.J.E.:

1** Timothy Clark ("Mr. Clark") and Corrine Clark ("Ms. Clark") appeal from the July 26, 2018 judgment entered in the Court of Common Pleas of Chester County. As discussed herein, Ms. Clark has no appeal before this court. Additionally, Wade, Goldstein, Landau & Abruzzo, P.C. ("Wade"), has filed a "motion for dismissal of appeal pursuant to a ***per curiam order filed October 30, 2018," based on substantial defects in Mr. Clark's brief. We deny Wade's motion for dismissal and affirm the judgment.

The underlying case reflects a lengthy litigation between all the parties involved in the issues surrounding this transaction. Wade was successful in the underlying action. The record reflects that on July 3, 2013, Wade commenced the underlying action against Mr. Clark; Matthew Arrison, Esq.; Great White Marketing, Inc. ("Great White"); John Ralston Woodruff, Esq.; and The Woodruff Law Firm (John Ralston Woodruff, Esq., and The Woodruff Law Firm collectively referred to as "Woodruff") by praecipe to issue writ of summons. In the praecipe, Wade identified the primary claim as "malicious prosecution." (Wade's praecipe to issue writ of summons, 7/3/13.) Thereafter, the proceedings were terminated with respect to Attorney Arrison. With leave of court, Wade filed a complaint, an amended complaint, and a second amended complaint. The second amended complaint contained four claims, including wrongful use of civil proceedings and abuse of process that allegedly stemmed from lawsuits filed by Woodruff on behalf of Mr. Clark and Great White, which was an entity owned by Mr. Clark, against Wade. The second amended complaint also included a count alleging fraudulent conveyance against Mr. Clark, Great White, Ms. Clark, and Woodruff. A protracted litigation ensued.

On March 4, 2015, a default judgment was entered against Woodruff. The litigation continued as against Mr. Clark, Ms. Clark, and Great White. On April 12, 2017, Woodruff filed a petition to strike/open default judgment, which the trial court subsequently denied. (Order of court, 6/14/17.) Woodruff then filed a motion for reconsideration. The trial court entered an order denying the motion for reconsideration on July 21, 2017. On July 25, 2017, however, the trial court entered an order stating that "in view of the Motion of [Woodruff] for Reconsideration of [Woodruff's] Petition to Strike/Open Default Judgment and/or for Indemnity or Contribution, it is hereby ordered that [the trial c]ourt's Second Final Administrative Conference Order dated June 15, 2017, is amended[.]" (Order of court, 7/25/17 (electronically signed).) The order then goes on to amend the conference schedule with respect to filing deadlines for submission of final expert reports. On August 2, 2017, Mr. Clark filed an answer to the "motion of John Woodruff to indemnify/contribution." (Mr. Clark's "answer by [Mr. Clark] to motion of John Woodruff to indemnify/contribution," 8/2/17 (full capitalization omitted).) The record reflects that the indemnification/contribution litigation between Mr. Clark and Woodruff ensued.

***2** On February 27, 2018, with leave of court, Wade filed a praecipe to partially discontinue, without prejudice, with respect to Mr. Clark, Ms. Clark, and Great White.[1] On March 12, 2018, Mr. Clark filed a "petition for sanctions and to tax fees as costs sur rule 2503(7) and (9)." On March 19, 2018, Ms. Clark filed a petition "for an award of counsel fees pursuant to 42 Pa.C.S.[A.] § 2503(7), (9)." On April 25, 2018, the trial court entered an order denying Mr. Clark's petition for sanctions and to tax fees as costs pursuant to 42 Pa.C.S.A. § 2503(7) and (9). Also on April 25, 2018, the trial court entered an order denying Ms. Clark's petition for an award of counsel fees pursuant to 42 Pa.C.S.A. § 2503(7) and (9).

The record reflects that on June 13, 2018, Mr. Clark and Ms. Clark filed one notice of appeal from "the Order of April 25, 2018 denying without a Hearing Petition for Sanctions and to

Tax as Fees and Costs rendered by the [trial court]." (Notice of appeal, 6/13/18.)[2] Attached to that notice of appeal is the trial court's April 25, 2018 order denying Mr. Clark's petition for sanctions. Therefore, because the trial court entered a separate order denying Ms. Clark's petition for counsel fees and Ms. Clark did not appeal from that order, Ms. Clark has no appeal before this court.

The record further reflects that the trial court ordered Mr. Clark to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Mr. Clark timely filed a Rule 1925(b) statement which contained 18 claims of error. (Mr. Clark's "statement of matters complained of sur Rule 1925(b)," 6/21/18 (full capitalization omitted).) The trial court filed a Rule 1925(a) opinion that briefly addressed "the issue that is woven throughout the [c]oncise [s]tatement" and incorporated the reasons for dismissal as set forth in the order that dismissed Mr. Clark's petition for sanctions. (Trial court opinion, 7/3/18 at 1-2.)

On June 20, 2018, this court entered an order directing Mr. Clark to show cause as to why the appeal should not be quashed for want of a final order. (***Per curiam*** order of court, 6/20/18.) Mr. Clark did not respond. On July 19, 2018, this court entered an order noting that a "[r]eview of this matter indicates that no judgment has been entered on the trial court docket as required by Pa.R.A.P. 301." (***Per curiam*** order, 7/19/18.) In accordance with this court's policy, the order then directed Mr. Clark to praecipe the trial court prothonotary to enter judgment. (***Id.***) The order further stated that upon compliance, the notice of appeal previously filed would be treated as filed after entry of judgment. (***Id.***) Mr. Clark complied by providing this court with an updated docket sheet showing that judgment was entered on July 26, 2018.

3** On October 9, 2018, Wade filed an application to dismiss Mr. Clark's appeal alleging, among other things, that Mr. Clark failed to file a timely brief and that Mr. Clark attempts to improperly broaden the scope of the appeal. (Wade's motion for dismissal of appeal, 10/9/18.) On October 30, 2018, this court denied Wade's application to dismiss without prejudice to raise the issue before the merits panel. (Per curiam*** order of court, 10/30/18.) On January 22, 2019, Wade filed a motion for dismissal of appeal pursuant to that ***per curiam*** order. (Wade's "motion for dismissal of appeal pursuant to ***per curiam*** order filed October 30, 2018" (full capitalization omitted).) In its motion for dismissal, Wade requests that we dismiss the appeal for Mr. Clark's various violations of the Pennsylvania Rules of Appellate Procedure.

Mr. Clark raises the following issues for our review:

1. Did the Court deny due process by denying the Petition for Sanctions for Fees under 42 Pa. C.S.[A.] 2503 summarily without permitting [Mr. Clark] to make a Record focused upon the issue of the Petition where the Court had prohibited any adverse deposition for the previous three years, and the opportunity to submit Briefs or make oral argument after the Court withdrew Rule to Show Cause mandating deposition ex parte[?]

2. Did the Court commit abuse of discretion by manifest unreasonableness by resolving all issues against [Mr. Clark and Ms. Clark], not analyzing the position of each [Mr. Clark and Ms. Clark] separately, without permitting either one to make a record upon their separate claims for abuse in litigation from 2014 forward including (1) not discontinuing the action in July 31, 2015 when the total value of both judgments upon a legal bill of about $13,000 was **$$54,785.20** [sic] upon happenstance (2) utter failure to provide reasoned grounds to initiate and continue the suit against [Ms.] Clark for conduct of her husband already reduced to judgment in 2013 (2) suing [Mr.] Clark in 2013 for contract damages, and fraud damages both of which were denied at trial in 2013 in the prior case and continuing the suit for tort damages without prevailing wholly on the prior claim (3) prolonging of the case for twenty-two months by filing false claims including that the case was "settled" unilaterally in 2016 for the purpose to avoid near impending trial (4) illicitly placing [Mr. Clarks'] lawyers on "witness" list in 2015 to slow down the proceedings and (5) falsely claiming [Mr. Clark's] lawyer should be disqualified by conflict not until late 2017 again at the cusp of trial rather than immediately in 2015 when it raised the issue casually within its Conference Memorandum by listing both lawyers as witnesses to avoid trial[?]

Mr. Clark's brief at 7 (emphasis in original).

At the outset, we note that even though Mr. Clark's counseled brief is largely incomprehensible and attempts to improperly broaden the scope of the appeal outside of the order appealed from, we decline Wade's request to dismiss on those bases. Instead, we will dispose of the issue that Mr. Clark raises before this court and that he raised with the trial court, which is that the trial court abused its discretion in denying Mr. Clark's motion for sanctions in the form of attorney's fees

because the trial court prohibited him from making a record to support the award.

In addressing a trial court's order awarding or denying counsel fees, our review is limited solely to determining whether the trial court abused its discretion. ***Thunberg v. Strause***, 682 A.2d 295, 299 (Pa. 1996). "An abuse of discretion occurs where the trial court 'reaches a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or is the result of partiality, prejudice, bias, or ill will.' " ***Brady v. Urbas***, 111 A.3d 1155, 1161 (Pa. 2015).

*4 Here, Mr. Clark requested counsel fees "for sanctions against [Wade]" under 42 Pa.C.S.A. 2503(7) and (9)[3] "for its dilatory, obdurate or vexatious conduct during the pendency of a matter and for its arbitrary, vexatious and bad faith conduct in commencing the matter." (Mr. Clark's "petition for sanctions and tax fees as costs sur Rule 2503(7) and (9)," 3/12/18 at 1 (emphasis omitted).) In denying Mr. Clark's request, the trial court explained that:

> [t]he court finds no need for the creation of an additional record or a hearing in order to evaluate the legal claims presented in this petition. First, the present petition more properly reads as a motion than a petition. The "petition" recounts the procedural history of this case, as well as the parties' prior dispute. Both of which, however, are already of record before the court. The petition simply restates the history of this case and concludes that based upon the record the court should find vexatious conduct (and the like) on the part of the [Wade]. Yet, the allegations in [Mr. Clark's] petition are in sum a re-assertion of the claims and disputes that occurred prior to the filing of the instant case and are not a proper basis for an award of fees. Furthermore, as the court has noted in past orders, it has been assigned this case for five (5) years in pre-trial administration and is quite familiar with the allegations and claims. The court has resolved numerous motions and petitions filed by the parties challenging one another's conduct and it has personally observed the parties' and their counsel's conduct during pre-trial conferences. Thus, in answering the question whether [Wade's] conduct during the litigation was suit [sic] was "dilatory, obdurate or vexatious" or whether the action was filed without "reason," the court concludes the answer is that it was not.
>
> Although [Wade's] claim may not have been a strong one in [Mr. Clark's] view, the record does not support an award of attorneys' fees. An award of counsel fees is intended as a sanction against those who seek to use legal avenues to harass other parties, or attempt to obtain a benefit to which they would not otherwise be legally entitled. The court finds that such was not the case here.

Order of court, 4/25/18 at 2 n.1. In its Rule 1925(a) opinion, the trial court further explained that:

> [a]s the court noted in its appealed from Order, [Mr. Clark] raised issues that involved facts that were of record – filings made, assertions contained therein, disposition of prior cases and so on. Although in cases where facts may be unclear or disputed an evidentiary hearing may be required, in this case the facts and challenged conduct was [sic] of record before the court. Thus, the court concluded that no additional evidentiary hearing was necessary.

Trial court opinion, 7/3/18 at 1-2 (citation omitted).

We have reviewed the extensive record in this case and discern no abuse of discretion.

Judgment affirmed. Motion for dismissal of appeal pursuant to ***per curiam*** order filed October 30, 2018 denied.

All Citations

Not Reported in Atl. Rptr., 2019 WL 5212435

Footnotes

1 In Wade's brief to this court, it explained that it decided to forego recovery against Mr. Clark, Ms. Clark, and Great White because Attorney Woodruff appeared capable of satisfying the judgment entered against him. (Wade's brief at 15.)

2 The record reflects that a second notice of appeal was filed on June 19, 2018, which stated that "Timothy Clark and Corrine Clark hereby appeals [sic] from the Order of April 25, 2018 denying without Hearing Petition for Sanctions and to Tax as Fees as Costs rendered by the Honorable Mark Tunnel." (Notice of appeal, 6/19/18 (full capitalization omitted).) No order was attached to the June 19, 2018 notice of appeal. We note, however, that because Ms. Clark filed a petition "for award of counsel fees pursuant to 42 Pa.C.S.[A.] § 2503(7), (9)" and the trial court entered a separate order specifically

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denying Ms. Clark's petition, it is clear that the notice of appeal filed on June 19, 2018 is not from the order denying Ms. Clark's petition.

3 Section 2503(7) permits an award of counsel fees as a sanction "for dilatory, obdurate or vexatious conduct during the pendency of a matter." 42 Pa.C.S.A. § 2503(7). Section 2503(9) permits an award of counsel fees where "the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith." ***Id.*** at § 2503(9).

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THIS IS AN UNREPORTED PANEL DECISION OF THE COMMONWEALTH COURT. AS SUCH, IT MAY BE CITED FOR ITS PERSUASIVE VALUE, BUT NOT AS BINDING PRECEDENT. SEE SECTION 414 OF THE COMMONWEALTH COURT'S INTERNAL OPERATING PROCEDURES.

Commonwealth Court of Pennsylvania.

Robert B. SKLAROFF, M.D., Appellant

v.

TOWNSHIP OF ABINGTON and Baederwood Limited Partnership.

Nos. 1442 C.D.2011, 219 C.D.2012, 220 C.D.2012.

Submitted May 25, 2012.

Decided July 23, 2012.

MEMORANDUM OPINION

PER CURIAM.

*1 In these consolidated appeals,[1] Robert B. Sklaroff, M.D., appeals from three Orders of the Court of Common Pleas of Montgomery County (trial court). At Docket No. 1442 C.D.2011, Sklaroff is appealing the trial court's Order of July 26, 2011 (Dismissal Order) quashing and dismissing Sklaroff's procedural challenge to Ordinance Nos.2000 and 2006 of the Township of Abington (Township). At Docket No. 219 C.D.2012, Sklaroff is appealing the trial court's Order of January 27, 2012 (Subpoena Order) quashing several subpoenas issued by Sklaroff. At Docket No. 220 C.D.2012, Sklaroff is appealing a second trial court Order of January 27, 2012 (Bond Order) finding that Sklaroff's land use appeal at Docket No. 1442 C.D.2011, is frivolous and ordering Sklaroff to post a bond in the amount of $200,000 within ten days in order to proceed further with this appeal. Also before this Court for disposition is Baederwood Limited Partnership's (Intervenor) "Application to Quash Appeal" seeking to quash Sklaroff's appeal of the Dismissal Order to this Court, at Docket No. 1442 C.D.2011, based on Sklaroff's failure to post the $200,000 bond within the required ten-day time period.[2]

The factual and extensive procedural history of these appeals is as follows. Ordinance Nos.2000 and 2006, known as the "Fairway Transit District" or "FTD" Ordinances, were adopted by the Township on January 6, 2011. Ordinance No.2000 created a new Fairway Transit District, and Ordinance No.2006 rezoned three parcels of land comprising the Baederwood Shopping Center (Shopping Center) to the newly created Fairway Transit District. The Shopping Center is owned by Intervenor. The Township enacted the FTD Ordinances in response to a substantive validity challenge alleging spot zoning filed by Intervenor with respect to the zoning of one of the Shopping Center parcels. (August 31, 2011 Trial Ct. Op. at 1; July 12, 2011 Hr'g Tr. at 5, R.R. at 1129.)

On February 3, 2011, Sklaroff filed a "Petition for Review of Township Ordinance Adjudication" (Petition for Review) in the trial court against the Township pursuant to the Pennsylvania Municipalities Planning Code[3] (MPC) challenging the procedural validity of the Township's FTD Ordinances. Sklaroff served only the Township with the Petition for Review and, thus, did not comply with the MPC.[4] On March 18, 2011, the Township filed preliminary objections to Sklaroff's Petition for Review. On March 31, 2011, Sklaroff filed with the trial court an 832 page "Mandamus–Petition for Review of Township Ordinance Adjudication" against the Township, which was also served only upon the Township. On June 6, 2011, the Township filed a "Motion to Strike Mandamus–Petition for Review of Municipal Ordinance Adjudication or in the Alternative Seeking Leave of Court to Allow the Filing of a Responsive Pleading Nunc Pro Tunc." Sklaroff filed a reply thereto. On June 15, 2011, the trial court conducted a pre-trial conference and, at the conclusion of a private discussion with the parties, the trial court dictated on the record a summary of Sklaroff's actions against the Township and an order memorializing the parties' agreement with respect to those actions. (June 15, 2011 Tr. of Order of Court.) The trial court determined that Sklaroff's actions against the Township consisted of two parts: (1) a substantive validity challenge to the Township's FTD Ordinances that was required to be heard by the Township's zoning hearing board pursuant to the MPC;[5] and (2) a procedural challenge to the enactment of the Township's FTD Ordinances that was required to be heard by the trial court.[6]

Accordingly, pursuant to the parties' agreement, the trial court ordered as follows:

> *2 One: This case is stayed in part and remanded in part.
>
> Two: Forthwith, the applicant shall file with the [T]ownship on the appropriate [T]ownship forms a substantive challenge to the validity of the ordinances in question.
>
> Three: The [T]ownship shall accept the filing and shall not contest the right or timeliness of the filing. By right, I mean standing or timeliness of the filing.
>
> Four: The substantive challenge shall be heard by the Zoning Hearing Board of Abington Township....
>
> Five: Upon the completion of testimony presented in that matter before the zoning hearing board, the zoning hearing board shall comply with the requirements of the [MPC] to render a decision, including findings of fact and conclusions of law, which may be appealed by any aggrieved party.
>
> Six: The remaining portion of this case which constitutes, in this Court's opinion, a procedural challenge to the enactment of the ordinance[s] shall be heard by this Court in the future.
>
> Seven: Within 45 days of today's date, the applicant shall file an amended procedural challenge to this Court in conformity with the Rules of Court and the requirements of the [MPC] setting forth with specificity in separate numbered paragraphs each and every procedural deficiency complained of.
>
> Eight: The [T]ownship shall respond to that in accordance with the rules. However, the determination of that issue shall be stayed until such time as the decision of the zoning hearing board becomes final and unappealable in the substantive challenge or that decision comes before this Court for consideration.
>
> Nine: There shall be no additional fees in terms of filing charged by the [T]ownship with respect to the substantive challenge, the respondent having paid a filing fee to be before this Court. However, any costs that are normally associated with that may be charged.

(June 15, 2011 Tr. of Order of Court at 8–10.)

In accordance with the trial court's Order, Sklaroff filed a "Procedural Petition for Review of Township Ordinance Adjudication" (Procedural Petition) against the Township, which was served only on the Township on June 20, 2011. On June 27, 2011, Intervenor filed a Notice of Intervention and, on June 29, 2011, filed a separate "Motion to Quash Procedural Challenge and Alternative Request for the Imposition of a Bond" (Intervenor's Motion to Quash). Therein, Intervenor stated that it was the legal landowner of the property directly affected by Sklaroff's procedural challenge and that Sklaroff lacked standing pursuant to Section 1002 .1–A(c) of the MPC, 53 P.S. § 11002.1–A(c),[7] to challenge the procedural validity of the FTD Ordinances. (Intervenor's Motion to Quash at 1–5, R.R. at 986–90.) On July 1, 2011, Sklaroff filed a reply to Intervenor's Motion to Quash. On July 5, 2011, Sklaroff filed a "Motion to Quash Intervenor's Motion to Quash" on the basis, *inter alia,* that Intervenor's Notice of Intervention was filed more than 30 days after Sklaroff filed his initial procedural challenge on March 31, 2011; therefore, Intervenor could not intervene as a matter of right. (Sklaroff's Motion to Quash at 17, R .R. at 1031.) On July 5, 2011, the Township filed a "Motion to Strike Sklaroff's Procedural Petition" asserting that Sklaroff lacked standing and the Procedural Petition failed to conform with the trial court's June 15, 2011 Order. (Township's Motion to Strike at 1–6, R.R. at 1068–73.) Sklaroff filed a reply to the Township's Motion to Strike on July 7, 2011.

*3 On July 12, 2011, the trial court heard arguments on Intervenor's Motion to Quash and its request for the imposition of a bond in the event the trial court denied the Motion to Quash.[8] Intervenor and the Township argued that Sklaroff lacked standing pursuant to the MPC to procedurally challenge the FTD Ordinances because he was not an aggrieved party. Sklaroff argued that: (1) he was granted standing pursuant to paragraph three of the trial court's June 15, 2011 Order; therefore, Intervenor and the Township could not challenge his standing; (2) Intervenor lost the opportunity to challenge Sklaroff's standing by failing to participate in the June 15, 2011 proceeding before the trial court; and (3) although he lived over a mile away from the Shopping Center, he and the citizenry traversed the roadways/intersection near the rezoned Shopping Center every day.

After hearing the parties' arguments, the trial court determined that it would first determine the issue of whether Sklaroff had standing to procedurally challenge the enactment of the FTD Ordinances. (July 12, 2011 Hr'g Tr. at 47–48, R.R. at 1171–72.) By Order of July 26, 2011, the trial court quashed and dismissed Sklaroff's Procedural Petition. In an opinion in support of its Order, the trial court held that Sklaroff lacked

standing to challenge the FTD Ordinances because: (1) his property was not close enough in proximity to the challenged zoning area; and (2) he failed to allege a substantive property right that the FTD Ordinances would directly affect. (August 31, 2011 Trial Ct. Op. at 4.) This appeal followed.

Thereafter, Intervenor filed with the trial court a "Petition to Require Posting of Bond as a Condition of Proceeding with Appeal to the Commonwealth Court" (Petition to Post Bond) pursuant to Section 1003–A(d) of the MPC.[9] An evidentiary hearing before the trial court on Intervenor's Petition to Post Bond was scheduled for January 27, 2012. Sklaroff then served 14 subpoenas in connection with the scheduled hearing. In response, the Township filed a "Motion to Quash Subpoenas." By Order of January 19, 2012, the trial court stayed the subpoenas pending disposition of the Township's Motion to Quash Subpoenas and scheduled a hearing on the motion for January 27, 2012. Following the joint January 27, 2012 hearing on Intervenor's Petition to Post Bond and the Township's Motion to Quash Subpoenas, the trial court entered two separate orders: (1) the Bond Order finding that Sklaroff's land use appeal of the Dismissal Order at Docket No. 1442 C.D.2011 is frivolous and ordering Sklaroff to post a bond in the amount of $200,000 within ten days; and (2) the Subpoena Order quashing the subpoenas issued by Sklaroff. Sklaroff appealed both the Bond Order and Subpoena Order to this Court. In an opinion filed in support of its Orders, the trial court stated that: (1) it "properly exercised its discretion in requiring" Sklaroff to post a bond; (2) Intervenor established at the January 27, 2012 "hearing that [it] would incur considerable financial loss as a result of the delay caused by the outstanding [a]ppeal"; and (3) as a matter of law, Sklaroff's appeal to this Court at Docket No. 1442 C.D.2011 is frivolous. (April 11, 2012 Trial Ct. Op. at 2.) The trial court noted further that it properly quashed Sklaroff's subpoenas because the court "[found] that the witnesses sought could not provide any relevant testimony at the bond hearing." (April 11, 2012 Trial Ct. Op. at 2 n.2.)

*4 Following his appeals from the trial court's Bond Order and Subpoena Order, Sklaroff filed an "Application for Stay" and an "Application for Consolidation" with this Court on February 8, 2012. By Order of February 29, 2012, we granted, in part, and denied, in part, Sklaroff's Application for Consolidation and consolidated his appeal at this Court's Docket No. 1442 C.D.2011 with his appeals of the Bond Order (Docket No. 220 C.D.2012) and the Subpoena Order (Docket No. 219 C.D.2012). We further denied his Application for Stay of his appeal at this Court's Docket No. 1442 C .D.2011 pending our disposition of his appeals from the trial court's Bond Order and Subpoena Order.

On February 16, 2012, Intervenor filed the "Application to Quash Appeal" (Application to Quash 1442 C.D.2011) currently before this Court for disposition. On February 21, 2012, Sklaroff filed a "Response to Application to Quash Appeal[s]" (Response).

Before we address Intervenor's Application to Quash 1442 C.D.2011, we will first address Sklaroff's appeal of the trial court's Bond Order at Docket No. 220 C.D.2012 and determine if the trial court abused its discretion by finding that Sklaroff's appeal at Docket No. 1442 C.D.2011 is frivolous.[10] It is well established that

> [u]nder Section 1003–A(d) of the MPC, a party seeking to have a trial court direct the posting of an appeal bond must demonstrate that the appeal is frivolous. In evaluating whether a trial court correctly concluded that an appeal is frivolous, this Court must consider the merits of the appeal. *In re Kuzmiak,* 845 A.2d 961 (Pa.Cmwlth.2004). This Court has opined that the mere novelty of an issue is not a sufficient basis from which to determine whether an issue has merit. *[In re] Appeal of Langmaid Lane Homeowners Association,* [ ]465 A.2d 72, 76 ([Pa.Cmwlth.] 1983). Rather, a court may conclude that an issue is frivolous when there is no reasoned interpretation that might support an appellant's position, and, therefore, the appellant had no reasonable chance of success. *Id.*
>
> *Newtown Square East, L.P. v. National Realty Corporation,* 38 A .3d 1018, 1030 (Pa.Cmwlth.2011) (footnote omitted).

At Docket No. 1442 C.D.2011, Sklaroff is appealing the trial court's July 26, 2011 Dismissal Order quashing and dismissing his procedural challenge to the FTD Ordinances because Sklaroff lacked standing.[11] Sklaroff argues that he does not lack standing for two primary reasons, which we shall address separately. First, Sklaroff contends that he was granted standing in paragraph three of the trial court's June 15, 2011 Order. However, a review of the complete text of the trial court's Order, as set forth herein, reveals that Sklaroff misunderstands this provision of the Order. Paragraph three provides, "The *[T]ownship* shall accept the filing and shall not contest the right or timeliness of the filing. By right, I mean standing or timeliness of the filing." (June 15, 2011 Tr. of Order of Court at 8, ¶ Three (emphasis added).) In this paragraph, the trial court is referring to the filing of Sklaroff's substantive challenge with the *Township,* and not the filing of

the procedural challenge with the trial court. *See* Paragraphs Two–Six of Trial Court's June 15, 2011 Order (June 15, 2011 Tr. of Order of Court at 8–9). Thus, paragraph three does not apply to the present case.

***5** Second, Sklaroff argues that he does not lack standing because he has a direct, substantial, and immediate interest in whether the Fairway Transit District is ultimately effectuated. As noted herein, Section 1002.1–A(c) of the MPC provides that "[a]ppeals under this section shall only be permitted by an aggrieved person who can establish that reliance on the validity of the challenged decision resulted or could result in a use of property that directly affects such person's substantive property rights." 53 P.S. § 11002.1–A(c). This Court recently stated:

> To establish "aggrieved" status for purposes of standing, a party must have a substantial, direct, and immediate interest in the claim sought to be litigated. *Laughman v. Zoning Hearing Board of Newberry Township,* 964 A.2d 19[, 22] (Pa.Cmwlth.2008). In order to have a substantial interest, there must be some discernible adverse affect to some interest other than the abstract interest of all citizens in having others comply with the law. *Pilchesky v. Doherty,* 941 A.2d 95[, 99] (Pa.Cmwlth.2008). The interest must be immediate and not a remote consequence of the judgment. *Id.* A person has standing where he has suffered or will suffer "injury in fact" and the interest he seeks to protect is arguably within the zone of interest sought to be protected or regulated by the statute or constitutional guarantee in question. *William Penn Parking Garage, Inc. v. City of Pittsburgh,* 464 Pa. 168, [199 n.23,] 346 A .2d 269[, 284 n.23] (1975).... An objector who is located in close proximity to the land involved in a zoning application normally has standing to contest the application. *Active Amusement Co. v. Zoning Board of Adjustment,* [ ] 479 A.2d 697[, 700] ([Pa.Cmwlth.] 1984).

In Re: Appeal of Broad Mountain Development Company, LLC, 17 A .3d 434, 440 (Pa.Cmwlth.), *petition for allowance of appeal denied,* Pa. ——, 24 A.3d 864 (2011).[12] A property owner who asserts no interest in the zoning challenge other than the interest common to all citizens does not have standing. *Spahn v. Zoning Board of Adjustment,* 922 A.2d 24, 31 (Pa.Cmwlth.2007).

Based on our precedent interpreting the MPC and standing and the evidence presented to the trial court, the trial court properly determined that Sklaroff lacked standing to challenge the enactment of the FTD Ordinances on procedural grounds. When Sklaroff was questioned by the trial court as to his position on standing during the July 12, 2011 proceedings regarding Intervenor's Motion to Quash, Sklaroff responded as follows:

> MR. SKLAROFF: The standing issue goes to the gravamen of the case because the key issue is the communication of cars and emergency vehicles between an entity like a police station and a hospital and people on the other side of the road or tracks, like me. **Therefore, it is not just me traversing the intersection. It is everybody.** Not only that, but this [is] very well documented in the literature, which we can discuss some other time.
>
> ***6** ....
>
> **This is not about me. It is about the citizenry.**
>
> THE COURT: Do you think under the law you have standing?
>
> MR. SKLAROFF: Absolutely....
>
> THE COURT: Well, what relationship do you have with the area that is subject to the rezoning ordinance that you're challenging?
>
> MR. SKLAROFF: I live proximate to and use the area. And more importantly—
>
> THE COURT: But you live over a mile away.
>
> MR. SKLAROFF: Right but I use the intersection every day. I used it today.
>
> ....
>
> MR. SKLAROFF: ... [M]y standing goes right to the heart of a major problem I had, that is the emergency vehicular movement ... And the police power has to be exerted in order to protect the health and welfare of the citizenry. And that means being specifically included in both the ordinance and in the statute as well as cited in the case law, the fact that emergency vehicles have to be able to traverse that system; meaning, that intersection, that choke point; meaning, police and ambulance.
>
> When I have my heart attack, I want to make sure they get there as quickly as they can to get me over to the hospital.

(July 12, 2011 Hr'g Tr. at 34–36, 43–44, R.R. at 1158–60, 1167–68.)

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Sklaroff's concession that he lives over a mile away from the zoning area being challenged in his Procedural Petition supports the trial court's determination that Sklaroff lacked standing because his property is not in close proximity to the challenged zoning area. The MPC and our prior cases do not support Sklaroff's contention that he has standing because his personal health and safety are akin to a "property" interest that is not predicated on his residing any particular distance from the Fairway Transit District. There are specific statutory and judicial requirements that must be met in order for a property owner to have standing to challenge a zoning decision. A party must be aggrieved to have standing, *see* Section 1002.1–A(c) of the MPC; as such, standing cannot be "intuitively justified" as Sklaroff contends. (Sklaroff Br. at 23.) In addition, Sklaroff's statements to the trial court reflect that he asserted an interest common to all citizens rather than a substantial, direct, and immediate interest in the enactment of the FTD Ordinances that is particular to him. Finally, Sklaroff's concern that emergency vehicles will not be able to traverse the resulting congested intersection near the rezoned Fairway Transit District in the event he has a heart attack is considered speculative under the law, and a concern of "remote consequences." *See Laughman,* 964 A.2d at 23 (holding that increase in traffic on road passing property owner's rental properties, which were 8/10 and two miles from the challenged zoning area, was not a "direct injury" as "all citizens share concerns regarding traffic and safety" and that "[a]ny concern that the increase in traffic might lead to accidents is merely a concern of " 'remote consequences.' ").

***7** Accordingly, the trial court did not abuse its discretion when it found that Sklaroff's appeal to this Court at Docket No. 1442 C.D.2011 is frivolous as a matter of law. There is no reasoned interpretation that might support Sklaroff's position that he had standing to procedurally challenge the FTD Ordinances; therefore, Sklaroff has no reasonable chance of success. Thus, the trial court's January 27, 2012 Bond Order is affirmed.

We now turn to Intervenor's Application to Quash 1442 C.D.2011. Intervenor argues that Sklaroff's appeal should be quashed because Sklaroff did not post the bond within ten days, or by February 6, 2012, as ordered by the trial court on January 27, 2012. In his response, Sklaroff admits that he did not post the bond as ordered by the trial court; however, Sklaroff contends that a timely motion for reconsideration of the Bond Order that he had filed with the trial court constituted a motion to "stay" the imposition of the bond. Sklaroff states further that he "would be ***happy*** to file a bond immediately were this to be mandated by this Court, pending resolution of the case, but it is [his] understanding that a "Stay" appeal serves to "stay" the urgency of filing a bond." (Sklaroff's Response at 3 (emphasis in original).) Unfortunately, Sklaroff's understanding is not correct.[13]

The trial court's Bond Order ordered that Sklaroff post the $200,000 bond within ten days, or by February 6, 2012. Sklaroff failed to do as ordered and further failed to file a timely motion for stay of the trial court's Bond Order. Instead, Sklaroff filed a "Motion to Reconsider and Response to Rule–to–Show–Cause why Motion to Quash Subpoenas should not be Granted" wherein he: (1) only takes issue with the trial court's rulings; (2) does not allege any reason why the imposition of the bond should be stayed; and (3) does not request, either specifically or indirectly, that the trial court stay the Bond Order.[14] Moreover, Sklaroff's filing of an "Application for Stay" with this Court, requesting that we stay his appeal at Docket No. 1442 C.D.2011 pending the disposition of his appeals from the Bond Order and Subpoena Order, did not result in an automatic stay of the trial court's Bond Order.[15] In short, Sklaroff has not offered an acceptable explanation as to why he did not post the bond within ten days as ordered by the trial court on January 27, 2012.

This Court may grant a party's motion to quash due to the appealing party's failure to post a bond imposed by a valid bond order of a trial court pursuant to Section 1003–A(d) of the MPC. *See PPM Atlantic Renewable v. Fayette County Zoning Hearing Board,* 22 A.3d 253 (Pa.Cmwlth.2011)[16] (where appellant failed to appeal trial court's bond order, our Court granted applicant's motion to quash for failure to post the appeal bond); *Takacs v. Indian Lake Borough Zoning Hearing Board,* 18 A.3d 354, 356 (Pa.Cmwlth.2011) (after determining that bond order was valid, this Court granted developer's motion to quash the appeal due to appellant's failure to post the appeal bond). Accordingly, we grant Intervenor's Application to Quash and quash Sklaroff's appeal at Docket No. 1442 C.D.2011 for failure to post the appeal bond.

***8** Finally, we turn to Sklaroff's appeal of the trial court's January 27, 2012 Subpoena Order.[17] Sklaroff contends that the trial court's Subpoena Order was unjustified and unprecedented. Sklaroff states that he served ten Township Commissioners and four professionals (two attorneys involved in this litigation, an attorney consultant, and a land-planner) to attend the January 27, 2012 hearing before the trial

court on Intervenor's Petition to Post Bond. Sklaroff does not explain in his brief as to what these individuals would have specifically testified to at the January 27, 2012 hearing.

As stated previously herein, the trial court quashed Sklaroff's subpoenas because the court "[found] that the witnesses sought could not provide any relevant testimony at the bond hearing." (April 11, 2012 Trial Ct. Op. at 2 n.2.) A review of a sampling of the subpoenas served by Sklaroff shows that each witness was being subpoenaed to attend the January 27, 2012 hearing and to testify on behalf of the "truth." (Certified Record, Township Ex. T–1.) The subpoenas further directed the witnesses to bring with them "any and all personal/professional records regarding communication between yourself and any and all representatives of Brandolini during 2011."[18] (Certified Record, Township Ex. T–1.) During the January 27, 2012 hearing, the trial court asked Sklaroff two times why the witnesses were potentially relevant as to whether or not Sklaroff's appeal to this Court was frivolous. (January 27, 2012 Hr'g Tr. at 23–24, S.R.R. at 108b–09b.) In response to the trial court's inquiries, Sklaroff stated, *inter alia,* that the witnesses could "flesh out" the criteria required to prove standing, and that the witnesses would review and discuss certain "data and legitimatize the veracity of the submissions of evidence which [Sklaroff could not] do right now." (January 27, 2012 Hr'g Tr. at 23–26, S.R.R. at 108b–11b.) Accordingly, we conclude that the trial court did not abuse its discretion by finding that the witnesses could not provide any relevant testimony at the bond hearing. Therefore, the trial court's January 27, 2012 Subpoena Order is affirmed.

For the foregoing reasons, we affirm the trial court's Subpoena Order and Bond Order, grant Intervenor's Application to Quash Sklaroff's Appeal, and quash Sklaroff's appeal at Docket No. 1442 C.D.2011.

ORDER

NOW, June 23, 2012, it is hereby **ORDERED** as follows:

1. The January 27, 2012 Bond Order of the Court of Common Pleas of Montgomery County, entered in the above-captioned matter, is **AFFIRMED.**

2. The January 27, 2012 Subpoena Order of the Court of Common Pleas of Montgomery County, entered in the above-captioned matter, is **AFFIRMED.**

3. The Application to Quash Appeal at Docket No. 1442 C.D.2011 is **GRANTED** and the appeal is **QUASHED.**

All Citations

Not Reported in A.3d, 2012 WL 8685274

Footnotes

1 These appeals were consolidated by this Court on February 29, 2012.

2 By Order of February 29, 2012, this Court directed that Intervenor's "Application to Quash Appeal" be listed with the merits of these consolidated appeals.

3 Act of July 31, 1968, P.L. 805, *as amended,* 53 P.S. §§ 10101–11202.

4 Pursuant to Section 1003–A(c) of the MPC, added by Section 101 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 11003–A(c), a person, who is not the landowner, filing an appeal with the trial court that alleges procedural defects in the process of an enactment of an ordinance, must serve the landowner with a copy of the land use appeal notice within seven days after the land use appeal is filed. In this matter, it is undisputed that Sklaroff did not serve Intervenor, as the owner of the affected property, with any of the filings he made with the trial court and, thus, did not comply with Section 1003–A(c) of the MPC.

5 *See* Section 916.1 of the MPC, added by Section 99 of the Act of December 21, 1988, P.L. 1329, *as amended,* 53 P.S. § 10916 .1. Section 916.1(a) provides that a substantive validity challenge to an ordinance must be filed with either the zoning hearing board or the governing body of a municipality. *Id.*

6 *See* Section 1002–A of the MPC, added by Section 101 of the Act of December 21, 1988, P.L. 1329, *as amended,* 53 P.S. § 11002–A. Section 1002–A(b) provides that procedural challenges to the validity of a land use ordinance must be raised by an appeal directed to the trial court. *Id.*

7 Added by Section 5 of the Act of July 4, 2008, P.L. 319. Section 1002.1–A governs "appeals challenging the validity of a land use decision on the basis of a defect in procedures prescribed by statute or ordinance." 53 P.S. § 11002.1–A. Section 1002.1–A(c) provides:

> Appeals under this section shall only be permitted by an aggrieved person who can establish that reliance on the validity of the challenged decision resulted or could result in a use of property that directly affects such person's substantive property rights.

Id.

8 Intervenor's Motion to Quash and its request for the imposition of a bond were the only two matters scheduled to be heard by the trial court on July 12, 2011. (July 12, 2011 Hr'g Tr. at 2–3, R.R. at 1126–27.) However, the Township orally joined in Intervenor's Motion to Quash without objection. As such, the Township presented its own arguments, and joined in the arguments by Intervenor, in support of the entrance of an order by the trial court quashing Sklaroff's Procedural Petition. (July 12, 2011 Hr'g Tr. at 23–29, R .R. at 1147–53.)

9 Added by Section 101 of the Act of December 21, 1988, P.L. 1329, 53 P.S. § 11003–A(d). Section 1003–A(d) provides as follows:

> The filing of an appeal in court under this section shall not stay the action appealed from, but the appellants may petition the court having jurisdiction of land use appeals for a stay. If the appellants are persons who are seeking to prevent a use or development of the land of another, whether or not a stay is sought by them, the landowner whose use or development is in question may petition the court to order the appellants to post bond as a condition to proceeding with the appeal. After the petition for posting a bond is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the landowners to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous, it shall grant the petition for posting a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee, but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question of the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the respondent to the petition for posting a bond to post a bond shall be interlocutory. If an appeal is taken by a respondent to the petition for posting a bond from an order of the court dismissing a land use appeal for refusal to post a bond, such responding party, upon motion of petitioner and, after hearing in the court having jurisdiction of land use appeals, shall be liable for all reasonable costs, expenses and attorney fees incurred by petitioner.

Id.

10 In *C.A.N.D.L.E. v. Board of Commissioners of Fayette County,* 502 A.2d 742, 744 (Pa.Cmwlth.1985), this Court determined that it would be more equitable to review whether the imposition of an appeal bond was valid before addressing whether the appeal should be quashed due to failure to post the required bond. "Our review of a trial court's imposition of an appeal bond is limited to determining whether the trial court abused its discretion." *Takacs v. Indian Lake Borough Zoning Hearing Board,* 18 A.3d 354, 358 n.3 (Pa.Cmwlth.2011).

11 A decision to grant or deny a motion to quash by the trial court in a zoning matter is a question of law. *Spahn v. Zoning Board of Adjustment,* 922 A.2d 24, 27 n.6 (Pa.Cmwlth.2007).

12 *See Society Created to Reduce Urban Blight (SCRUB) v. Zoning Hearing Board of Adjustment of the City of Philadelphia,* 951 A.2d 398, 404 (Pa.Cmwlth.2008) ("[A]bsent an assertion of a particular harm, standing has been denied to a protestant with no property interest in the immediate vicinity.") An owner whose property is located one-half mile or more away from the challenged zoning area has been deemed not close enough in proximity to confer standing upon the property owner. *Id.* (holding that three property owners did not have standing to challenge a sign where their properties

were located approximately 1.2 miles, 5 miles, and 8 miles, respectively, away from the sign's location and the owners acknowledged that the challenged sign was not visible from their properties); *In Re: Appeal of Farmland Industries, Inc.*, 531 A.2d 79, 83 (Pa.Cmwlth.1987) (concluding that a corporate property owner did not have standing to oppose grant of variance to competitor to erect a sign where the corporate property was located one-half mile away).

13 We point out that a pro se litigant must, to some extent, assume the risk that his lack of legal training will prove to be his undoing. *Vann v. Unemployment Compensation Board of Review,* 508 Pa. 139, 148, 494 A.2d 1081, 1086 (1985).

14 The trial court's docket entries show that Sklaroff's Motion for Reconsideration of the Bond Order was denied on February 21, 2012.

15 We note that in his "Response to Application to Strike Appellant's Motion for Stay" filed with this Court on February 21, 2012, Sklaroff attached a document entitled " 'Motion to Reconsider' and 'Motion to Stay' [Filed 'Nunc Pro Tunc']" that Sklaroff allegedly filed with the trial court on or about February 17, 2012. In that document, Sklaroff states that he filed a motion for stay of the Bond Order with the trial court which was fashioned as a "Motion to Reconsider and Response to Rule–to–Show–Cause why Motion to Quash Subpoenas should not be Granted," and that in this Court his motion for stay was fashioned as "Brief in Support of Application/Motion for Stay" docketed at 1442 C.D.2011. However, the trial court's docket entries do not reflect the filing of the aforementioned document and, by Order of April 24, 2012, this Court struck Sklaroff's "Brief in Support of Application/Motion for Stay" filed on April 19, 2012, as there was no outstanding application or motion for stay for disposition by this Court.

16 *Petition for allowance of appeal granted,* —— Pa. ——, 41 A.3d 854 (2012).

17 "It has been previously stated that '[w]hether a subpoena shall be enforced rests in the judicial discretion of the court.' " *In re Semeraro,* 511 Pa. 584, 587, 515 A.2d 880, 882 (1986) (quoting *Pennsylvania Crime Commission v. Nacrelli,* 5 Pa.Commonwealth Ct. 551, 577 (1972)). Courts "will not disturb a discretionary ruling of a lower court unless the record demonstrates an abuse of the court's discretion." *Id.* at 587, 515 A.2d at 882. "So long as there is evidence which supports the lower court's decision, it will be affirmed. We may not substitute our judgment of the evidence for that of the lower court." *Id.*

18 Brandolini Companies is the developer of the property affected by the FTD Ordinances. Intervenor presented Frederick Snow, President of Brandolini Companies, as a witness during the January 27, 2012 hearing on Intervenor's Petition to Post Bond. Mr. Snow testified as to the effects of Sklaroff's appeal on the development of the subject property. (January 27, 2012 Hr'g Tr. at 65–113, S.R.R. at 150b–98b.)

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