**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

| | |
|---|---|
| COMMONWEALTH OF PENNSYLVANIA<br><br>Appellee<br><br>v.<br><br>MICHAEL BLACKWELL<br><br>Appellant | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br>No. 283 EDA 2016 |

Appeal from the Judgment of Sentence December 22, 2015
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): MC-51-CR-0036731-2014

BEFORE: STABILE, J., MOULTON, J., and MUSMANNO, J.

MEMORANDUM BY MOULTON, J.: **FILED JULY 26, 2017**

Michael Blackwell appeals, *pro se*, from the December 22, 2015 judgment of sentence entered in the Philadelphia County Court of Common Pleas following his bench trial conviction for indirect criminal contempt for violation of a protection from abuse ("PFA") order or agreement.[1] In a prior judgment order, we remanded this matter for the trial court to conduct a ***Grazier***[2] hearing because Blackwell had engaged in hybrid representation by filing, among other things, a *pro se* Pennsylvania Rule of Appellate Procedure 1925(b) statement while represented by Philip Andrew Smoker, Esquire. ***See Commonwealth v. Blackwell***, 283 EDA 2016, unpublished

---

[1] 23 Pa.C.S. § 6114.

[2] ***Commonwealth v. Grazier***, 713 A.2d 81 (Pa. 1998).

memorandum (Pa.Super. filed Mar. 24, 2017). On remand, the trial court held a hearing, concluded that Blackwell knowingly, intelligently, and voluntarily waived his right to counsel, discharged Attorney Smoker, and allowed Blackwell to proceed *pro se*. ***See*** Short Certificate, 4/11/17. The matter is now ripe for review. We affirm.

The trial court set forth the following factual and procedural history:

> On September 10, 2014, a [PFA] Order was entered against [Blackwell] prohibiting him from having any contact, direct or indirect, with Charmaine Prater. (See PFA 1409V7806.) [Blackwell] had been in a relationship with Prater for approximately three and a half years. (N.T., 12/22/15, p. 11, 6.) The Order provides, in pertinent part, that [Blackwell] "is prohibited from having any contact with plaintiff...either directly or indirectly, at any location..." and became effective immediately "until otherwise modified or terminated by this Court after notice and hearing." (See PFA 1409V7806, P3, 9.)
>
> On October 12, [2014], [Blackwell] was served with the PFA by Philadelphia Police Officer, Nannette Cheatum. (N.T. p.47, 4-5.) Prater testified that after being served with the PFA and despite being prohibited from doing so, [Blackwell] began contacting her by way of telephone. (N.T., 12/22/15, p. 13, 11-19.) Without being provoked to do so, [Blackwell] sent Prater a plethora of unsolicited text messages and called her cell phone numerous times. (N.T. p. 21, 23-25; p. 22, 1-5.) Prater testified to and presented proof that [Blackwell] sent her the following text messages, despite the PFA Order prohibiting him from doing so . . . . In addition to receiving unsolicited text messages, Prater testified that she also received uninvited telephone calls from the same phone number that [Blackwell] used to send the text messages from. (N.T. p. 20, 18-23---p. 21, 23-25 -p. 22, 1-5.)
>
> Prater, whom has known [Blackwell] since Junior High School, credibly testified that she was extremely familiar with Appellant's telephone number and voice as she had

> prior communications with Appellant over the course of their three and a half year relationship. (N.T. p. 10, 1-2, 8-9; p. 14, 19-25; p. 15, 1-8.)
>
> . . .
>
> On October 27, 2014, [Blackwell] was subsequently arrested and charged with two counts of Contempt for Violation of an Order or Agreement, 23 Pa. C.S. § 6114 and two counts of Harassment-Subject Other to Physical Contact, 18 Pa. C.S. § 2709.
>
> On December 22, 2015, [Blackwell] waived formal arraignment and ple[]d not guilty to the charges brought against him. [Blackwell] proceeded to a one-day bench trial, at the conclusion of which [Blackwell] was found the guilty of one count of Contempt for Violation of an Order or Agreement, 23 Pa. C.S. § 6114. The trial court immediately imposed a sentence of six months probation. [Blackwell] did not file a post-sentence motion.

Opinion, 6/9/16, at 3-5, 1-2 ("1925(a) Op."). On January 19, 2016, Blackwell timely filed a notice of appeal.

Blackwell raises[3] seven issues[4] on appeal:

---

[3] Preliminarily, we must discuss Blackwell's failure to comply with the Pennsylvania Rules of Appellate Procedure. Blackwell's brief fails to include a statement of jurisdiction, a statement of the scope and standard of review, a statement of the questions involved, or a summary of the argument. ***See*** Pa.R.A.P. 2114, 2116, 2117. The argument section of Blackwell's brief contains very little citation to relevant authority or matters in the record, fails to show where in the record Blackwell preserved these issues for appeal, and does not specify the appropriate relief for each issue. ***See*** Pa.R.A.P. 2119(b), (c), (e). "Although Pennsylvania courts endeavor to be fair to *pro se* litigants in light of the challenges they face conforming to practices with which attorneys are far more familiar, [we] nonetheless long have recognized that we must demand that *pro se* litigants comply substantially with our rules of procedure." ***Commonwealth v. Spuck***, 86 A.3d 870, 874 (Pa.Super. 2014) (internal citation omitted). Further, "'[t]his Court will not act as counsel' for an appellant who has not substantially

*(Footnote Continued Next Page)*

1. The [trial] court erred and abused its discretion as well as denied [Blackwell] due process because the [trial] court did not compel the [Commonwealth] to meet its burden of proof showing that the [trial] court had subject matter jurisdiction.

2. Did the [trial] court err[] and abuse[] its discretion as well as den[y Blackwell] due process, by allowing insufficient ev[]idence to establish probable cause for the arrest of indirect criminal contempt and har[]as[s]ment on two separate occas[]ions, when thirteen (13) of the eighteen (18) of the alleged text messages submitted for probable cause, failed to indicate times and dates.

3. Did the [trial] court err[] and abuse[] its discretion as well as den[y Blackwell] due process, when [the trial] judge . . . who hears both PFA cases (common pleas court) and violations of PFA cases (municipal court) presided over and/or had knowledge and information of both [Blackwell's] PFA and criminal contempt, in v[io]lation of any and all governing conflict of interest statutes and laws.

*(Footnote Continued)* ———————————

complied with our rules." ***Id.*** (quoting ***Bombar v. W. Am. Ins. Co.***, 932 A.2d 78, 93 (Pa.Super. 2007)).

Based on Blackwell's failure to adhere to the Rules of Appellate Procedure, this Court has the right to quash or dismiss Blackwell's appeal pursuant to Rule 2101. ***See*** Pa.R.A.P. 2101 (noting that parties appearing before this Court "shall conform in all material respects with the requirements of these rules as nearly as the circumstances of the particular case will admit . . . and, if the defects are in the brief or reproduced record of the appellant and are substantial," we may quash or dismiss the appeal). However, "in the interest of justice we address the arguments that can reasonably be discerned from this defective brief." ***Commonwealth v. Lyons***, 833 A.2d 245, 252 (Pa.Super. 2003).

[4] Because Blackwell's brief does not contain a statement of questions involved, we have aggregated these issues from the headings in the argument section of his brief.

4. Did the [trial] court err[] and abuse[] its discretion as well as deny [Blackwell] due process, by arbitrarily and capriciously waiv[ing] [Blackwell's] right to a formal arraignment, when [Blackwell] "did not" knowingly and voluntarily waive this right, as at no time, did the court colloquy [Blackwell], either orally or in writing.

5. The [trial] court erred and abused its discretion as well as denied [Blackwell] due process, by failing to find the plaintiff in contempt for violating the mutual PFA as admitted to by the plaintiff and established by the record.

6. Throughout these proceedings, all documents from the court pertaining to MC-51-CR-0036731-2014, were captioned, "Municipal Court", conversely and [w]ithout [Blackwell's] knowledge or information, the court arbitrarily change[d] the [j]urisdiction of the court by sitting common pleas court officials [o]n the [b]ench of a [m]unicipal [c]ourt [p]roceedings.

7. As the right to effective [a]ssistance of [c]ounsel is well established [a]nd constitutionally protected, did the court [commit an] error of law by its failure [t]o assure the [a]ppellant competent legal counsel/attorney/lawyer [t]hroughout proceedings.

Blackwell's Br. at 2-6, 8-9.

In his first and sixth issues, Blackwell argues that the trial court lacked subject matter jurisdiction to hear this case. Blackwell asserts that he challenged the subject matter jurisdiction of the trial court by motion and, without explaining how the trial court lacks subject matter jurisdiction, asserts that the Commonwealth failed to prove that the trial court had subject matter jurisdiction.

"Subject matter jurisdiction relates to the competency of a court to hear and decide the type of controversy presented[,] . . . and is a matter of

substantive law." ***Commonwealth v. Bethea***, 828 A.2d 1066, 1074 (Pa. 2003). Such a "question is purely one of law, [for which] our standard of review is *de novo*, and our scope of review is plenary." ***Id.*** at 1071.

Blackwell's argument is without merit. It is well settled that a judge of the Court of Common Pleas has jurisdiction over the adjudication of indirect criminal contempt, regardless of whether a defendant's case has a municipal court docket number. ***See Commonwealth v. Burton***, 624 A.2d 138, 143 (Pa.Super. 1993) ("the Protection From Abuse Act provides specifically that its protection and violations thereof are to be, *unless the court is unavailable*, under the auspices of the *Court of Common Pleas*") (emphasis in original).

Next, Blackwell argues that the evidence was insufficient to establish probable cause for his arrest. Blackwell asserts that police lacked probable cause to arrest him because 13 of the 18 text messages that the victim showed to police "did not have a date or time attached[.]" Blackwell's Br. at 4. Although Blackwell's claim could be read as a challenge to the sufficiency of the evidence to convict him of indirect criminal contempt,[5] in the argument section of his brief Blackwell argues that the police lacked probable cause to arrest him. Because the proper vehicle "to test the

---

[5] To the extent that Blackwell argues that evidence was insufficient to convict, we conclude the claim lacks merit for the reasons stated in the thorough and well-reasoned opinion of the Honorable Michael Fanning, which we adopt and incorporate herein. ***See*** 1925(a) Op. at 6-9.

sufficiency of the Commonwealth's evidence pre-trial . . . . is a petition for a writ of *habeas corpus*," ***Commonwealth v. Marti***, 779 A.2d 1177, 1179 n.1 (Pa.Super. 2001), and Blackwell raises this claim for the first time on appeal,[6] we conclude that Blackwell has waived this argument. ***See*** Pa.R.A.P. 302; ***see also Commonwealth ex rel. Kress v. Rundle***, 228 A.2d 772 (Pa. 1967) (finding waiver of claims raised by *habeas corpus* petitioner for first time on appeal).

Next, Blackwell argues that the trial court erred and abused its discretion because the Honorable Holly F. Ford hears petitions for PFA orders and indirect criminal contempt cases for violations of PFA orders. Blackwell baldly asserts that he was denied due process because Judge Ford "had information and knowledge of both [Blackwell's] PFA case and [c]riminal [c]ases resulting from the PFA, and as such should have recused herself from [Blackwell's] cases[.]" Blackwell's Br. at 4.

Blackwell has waived this claim as well. The issue of recusal is waived where the "appellant presents no evidence that he sought a recusal at any

---

[6] On October 1, 2015, Blackwell filed a *pro se* motion that included a motion to dismiss for failure to state a claim upon which relief can be granted. Even if we were to construe Blackwell's motion as a petition for a writ of *habeas corpus*, this motion did not preserve Blackwell's issue for appeal because he was counseled at that time. As such, Blackwell engaged in hybrid representation, and his *pro se* motion was a legal nullity. ***See Commonwealth v. Nischan***, 928 A.2d 349, 355 (Pa.Super. 2007) (concluding that defendant's *pro se* post-sentence motion, filed when defendant was represented by counsel, was "a nullity, having no legal effect").

time before the . . . verdict." ***Commonwealth v. Johnson***, 719 A.2d 778, 790 (Pa.Super. 1998). Further, even if Blackwell had filed an appropriate motion to recuse, the record shows that Judge Fanning presided over Blackwell's bench trial, not Judge Ford. Although Judge Ford presided over a motion *in limine* hearing, Blackwell fails to explain how this prejudiced him.

Next, Blackwell argues that the trial court abused its discretion and denied him due process by denying him a formal arraignment. Blackwell claims he never waived a formal arraignment. Blackwell's Br. at 5.

We conclude that Blackwell's claim is waived for failure to develop his argument under Rule 2119(a). ***See*** Pa.R.A.P. 2119(a); ***Commonwealth v. Hardy***, 918 A.2d 766, 771 (Pa.Super. 2007) ("When briefing the various issues that have been preserved, it is an appellant's duty to present arguments that are sufficiently developed for our review. . . . [W]hen defects in a brief impede our ability to conduct meaningful appellate review, we may . . . find certain issues to be waived"). Blackwell fails to cite any case law regarding the waiver of formal arraignment and provides no basis for relief or any indication as to what type of relief would be available. "This Court will not act as counsel and will not develop arguments on behalf of an appellant," ***Coulter v. Ramsden***, 94 A.3d 1080, 1088 (Pa.Super. 2014), and we make no exception here.

Next, Blackwell argues that the trial court erred and abused its discretion in failing to find the victim in contempt for violating a PFA order that directed her not to contact Blackwell. Blackwell asserts that the trial

court should have recognized that the victim "enticed [Blackwell] into a violation and then use[d] the police and the legal system to punish [him]." Blackwell's Br. at 7. Additionally, Blackwell asserts that the victim's actions show that he did not act with wrongful intent. We disagree.

While the trial court, out of an abundance of caution, appointed the victim Fifth Amendment counsel, the victim was neither charged with nor tried for indirect criminal contempt. "The district attorney," not the trial court, "is afforded the power to prosecute on behalf of the Commonwealth, and to decide whether and when to prosecute." ***Hearn v. Myers***, 699 A.2d 1265, 1267 (Pa.Super. 1997). Further, to the extent Blackwell argues he lacked the required intent because of the victim's conduct, this claim lacks merit. ***See*** 1925(a) Op. at 7; ***Commonwealth v. Brumbaugh***, 932 A.2d 108, 111 (Pa.Super. 2007) ("[W]rongful intent can be imputed by virtue of the substantial certainty that [one's actions will be] . . . in violation of the PFA [o]rder.").

Finally, Blackwell argues that he received ineffective assistance from the multiple trial counsel who represented him in this matter. However, we cannot reach this argument, as it is well settled that claims of ineffective assistance of counsel, except in rare circumstances,[7] must be raised in a Post Conviction Relief Act ("PCRA") petition. ***See Commonwealth v.***

---

[7] Blackwell does not argue that these circumstances apply.

***Harris***, 114 A.3d 1, 5 (Pa.Super. 2015) ("Our Supreme Court determined [in ***Commonwealth v. Holmes***, 79 A.3d 562 (Pa. 2013),] that, absent certain circumstances, 'claims of ineffective assistance of counsel are to be deferred to PCRA review; . . . such claims should not be reviewed upon direct appeal.'") (quoting ***Holmes***, 79 A.3d at 576). Therefore, we do not reach the merits of Blackwell's ineffectiveness claims.[8]

Judgment of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/26/2017

[8] Our decision does not preclude Blackwell from raising these claims in a timely PCRA petition.

**IN THE COURT OF COMMON PLEAS**
**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**
**DOMESTIC RELATIONS DIVISION**

| | | |
|---|---|---|
| Commonwealth of Pennsylvania | : | COURT OF COMMON PLEAS |
| | : | PHILADELPHIA COUNTY, PA |
| | : | Criminal Trial Division |
| | : | Docket No. MC-51-CR-0036731-2014 |
| Michael Blackwell, Appellant | : | NO. 283 EDA 2016 |



## OPINION

Michael Blackwell (hereinafter "Appellant") appeared before the Court of Common Pleas, Criminal Trial Division on December 22, 2015. Appellant was found guilty of indirect criminal contempt and was sentenced to a term of six (6) months reporting probation. This appeal followed.

## PROCEDURAL HISTORY

On October 15, 2015, the Honorable Maria McLaughlin entered a Temporary Protection from Abuse Order (hereinafter "PFA") against Appellant, which restricted him from any and all contact with Charmaine Prater. (*See* PFA 1409V7806.)

On October 27, 2014, Appellant was subsequently arrested and charged with two counts of Contempt for Violation of an Order or Agreement, 23 Pa. C.S. § 6114 and two counts of Harassment—Subject Other to Physical Contact, 18 Pa. C.S. § 2709.

On December 22, 2015, Appellant waived formal arraignment and plead not guilty to the charges brought against him. Appellant proceeded to a one-day bench trial, at the conclusion of which Appellant was found the guilty of one count of Contempt for Violation of an Order or

Agreement, 23 Pa. C.S. § 6114. The trial court immediately imposed a sentence of six months probation. Appellant did not file a post-sentence motion.

On January 19, 2016, Appellant filed a timely Notice of Appeal with the Court of Common Pleas. The trial court entered an Order directing Appellant to file a Concise Statement of Matters Complained of on Appeal ("Statement") pursuant to Pennsylvania Rules of Appellate Procedure 1925(b). *See* Letter dated 3/23/16. Appellant timely complied.

Appellant presents nine (9) issues altogether:

(1) "The Court erred and abused its discretion as well as denied defendant due process because the Court did not compel the Prosecution to meet its burden of proof showing that the Court had Subject Matter Jurisdiction."

(2) "The Court erred and abused its discretion as well as denied defendant due process, by allowing insufficient evidence to establish indirect criminal contempt, when thirteen (13) of the eighteen (18) alleged text messages submitted for probable cause, failed to indicate times and dates. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

(3) "The Court erred and abused its discretion as well as denied defendant due process, when Judge Holly F. Ford presided over and/or had knowledge and information of both the PFA order and the Criminal Contempt claims against defendant/proceedings, in violation of the conflict-of-interest statutes. Therefore, a judgement of acquittal must be entered on that conviction. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

(4) "The Court erred and abused its discretion as well as denied defendant due process, by arbitrarily and capriciously "waiving" defendants right to an Arraignment, when defendant did not knowingly and voluntarily waive this right, as the court failed to colloquy him, either orally or in writing. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

(5) "The Court erred and abused its discretion as well as denied defendant due process, by failing to find the plaintiff in contempt for violating the mutual PFA as admitted to and established by the instant record. Therefore a judgement of acquittal must be entered on that conviction." [*sic*]

(6) "The Court erred and abused its discretion as well as denied defendant due process, in failing to give due weight to the context and content of the alleged text messages, that should have demonstrated a lack of wrongful intent by defendant to violate the PFA." [*sic*]

(7) "The Court erred and abused its discretion as well as denied defendant due process, when the Court made an error of law, when the trail court failed to hold the plaintiff culpable and trail counsel ineffective when plaintiff provided false testimony under oath and trial counsel failed to object and refused to offer evidence in the recorded to refute plaintiff testimony. "Ineffective assistance of counsel/attorney/lawyer providing boilerplate representation." Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

(8) "Throughout these proceedings, all documents from the court pertaining to: MC-51-CR-0036731-2014, were captioned "Municipal Court", conversely, "Common Pleas Court" Officials presided over all matters without defendant receiving a colloquy either orally or in writing about the courts intention to the branch of the proceedings. The Court erred and abused its discretion as well as denied defendant due process. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

(9) "As the right to effective assistance of counsel is well established and constitutionally protected, did the court error of law by its failure to assure the defendant competent legal/counsel/attorney/lawyer throughout. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

*See* 1925(b) Statement.

## STATEMENT OF FACTS

On September 10, 2014, a Protection From Abuse (hereinafter "PFA") Order was entered against Appellant prohibiting him from having any contact, direct or indirect, with Charmaine Prater. (*See* PFA 1409V7806.) Appellant had been in a relationship with Prater for approximately three and a half years. (N.T., 12/22/15, p. 11, 6.) The Order provides, in pertinent part, that Appellant "is prohibited from having any contact with plaintiff...either directly or indirectly, at any location..." and became effective immediately "until otherwise modified or terminated by this Court after notice and hearing." (*See* PFA 1409V7806, P3, 9.)

On October 12, 2104, Appellant was served with the PFA by Philadelphia Police Officer, Nannette Cheatum. (N.T. p.47, 4-5.) Prater testified that after being served with the PFA and despite being prohibited from doing so, Appellant began contacting her by way of telephone.

(N.T., 12/22/15, p. 13, 11-19.) Without being provoked to do so, Appellant sent Prater a plethora of unsolicited text messages and called her cell phone numerous times. (N.T. p. 21, 23-25; p. 22, 1-5.) Prater testified to and presented proof that Appellant sent her the following text messages, despite the PFA Order prohibiting him from doing so:

> October 14, 2014 at 12:31 a.m. – "U had to do and u have to do what vindicates you, dont agree but understand, so deeply sadden that, things could not be worked out, luve always." [*sic*] (*see* C-2, p. 1.) (N.T. p. 15, 22-24.)
>
> October 16, 2014 at 8:02 a.m. – Appellant received an image of a flower. (N.T. p. 16, 13-15.) (*see* C-2, p. 2.)
>
> October 16, 2014 at 1:00 p.m. – "We need to talk please, not about whats going on or whats to come, u did what u had to do and it is what it is, it theres smething I want no part of." [*sic*] (N.T. p. 16, 20-25.) (*see* C-2, p. 3.)
>
> October 16, 2014 at 10:19 p.m. – "Please we need to talk, the PFA, the criminal charges, that's not yhe issue please." [*sic*] (N.T., p. 17, 19-20.) (*see* C-2, p. 3.)
>
> October 16, 2014 at 11:44 p.m. – "No, forget that pfa and charges, that's not it, im not looking to pursude or convince u against that, a bigger picture." [*sic*] (N.T. p. 18, 16-18.) (*see* C-2, p. 4.)
>
> October 16, 2014 at 11:48 p.m. – "Read it again, I need to share this information, with u somehow soon." [*sic*] (N.T. p. 18, 23-24.) (*see* C-2, p. 5.)
>
> October 16, 2014 at 11:52 p.m. – "Pick a restaurant and bring anybody u chose, or trust me on this one." [*sic*] (N.T. p. 19, 8-9.) (*see* C-2, p. 6.)
>
> October 17, 2014 at 12:04 a.m. – "How ever, I just need to let u know. What I know about all of this, its legitimate." [*sic*] (N.T. p. 19, 17-18.) (*see* C-2, p.7.)
>
> October 17, 2014 at 12:11 a.m. – "Shit, im violating the order by texting u, om not going to violate it to say Hi or cause further trouble, this is real." [*sic*] (N.T. p. 20, 7-10.) (*see* C-2, p.8.)

In addition to receiving unsolicited text messages, Prater testified that she also received uninvited telephone calls from the same phone number that Appellant used to send the text messages from. (N.T. p. 20, 18-23—p. 21, 23-25—p. 22, 1-5.)

Prater, whom has known Appellant since Junior High School, credibly testified that she was extremely familiar with Appellant's telephone number and voice as she had prior communications with Appellant over the course of their three and a half year relationship. (N.T. p. 10, 1-2, 8-9; p. 14, 19-25; p. 15, 1-8.)

## LEGAL ANALYSIS

### I. THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION OVER APPELLANT'S INDIRECT CRIMINAL CONTEMPT CHARGE.

Appellant first challenges subject matter jurisdiction. Subject matter jurisdiction relates to the competency of a court to hear and decide the type of controversy presented. *Commonwealth v. Bethea*, 828 A.2d 1066, 1074 (Pa.2003) (citation omitted). Appellant was charged with violations pursuant to the Crimes Code. Controversies arising out of violations of the Crimes Code are entrusted to the original jurisdiction of the Court of Common Pleas for resolution. *See* 18 Pa.C.S. § 102. Every jurist within that tier of the Unified Judicial System is competent to hear and decide a matter arising out of violations of the Crimes Code. Pa. Const. Art. 5, § 5 (establishing the jurisdiction of the courts of Common pleas within the Unified Judicial System).

On October 15, 2015, the Honorable Maria McLaughlin, sitting in her capacity as a Common Pleas Judge in Philadelphia County, entered a Temporary Protection from Abuse Order against Appellant, which restricted him from any and all contact with Prater. (*See* PFA 1409V7806.) Appellant was charged with violations pursuant to the Crimes Code after violating the PFA Order. Appellant appeared before the undersigned—a Court of Common Pleas Judge. Due to the nature of Appellant's charges, the case was given a Philadelphia Municipal Court docket number. Although the case was docketed as a Municipal Court matter, the undersigned was sitting in his capacity as a Common Pleas Judge and therefore had jurisdiction to find

Appellant guilty of one count of criminal contempt and sentence him to a term of six (6) months reporting probation. As such, Appellant's assertion that the Commonwealth failed to show the court has subject matter jurisdiction over Appellant's charges is without merit.

## II. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH THE NECESSARY ELEMENTS OF INDIRECT CRIMINAL CONTEMPT BEYOND A REASONABLE DOUBT.

Appellant challenges the sufficiency of the evidence against him.[1] It is well-settled that, "In reviewing the sufficiency of the evidence, the standard is whether the evidence presented at trial, and all reasonable inferences drawn therefrom, viewed in a light most favorable to the Commonwealth as the verdict winner, support the verdict beyond a reasonable doubt." *Commonwealth v. Patterson*, 91 A.3d 55, 66 (Pa. 2014) (citation omitted), cert. denied, *Patterson v. Pennsylvania*, 135 S. Ct. 1400 (2015). "The Commonwealth can meet its burden by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances." *Commonwealth v. Watley*, 81 A.3d 108, 113 (Pa. Super. 2013) (en banc) (internal quotation marks and citation omitted), appeal denied, 95 A.3d 277 (Pa. 2014). "[T]he trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to believe all, part or none of the evidence." *Id.*

Instantly, Appellant was convicted of indirect criminal contempt. "To establish indirect criminal contempt, the Commonwealth must prove: 1) the order was sufficiently definite, clear, and specific to the contemnor as to leave no doubt of the conduct prohibited; 2) the contemnor

[1] See issues #2 and #6, as set forth in Appellant's 1925(b) Statement.

had notice of the order; 3) the act constituting the violation must have been volitional; and 4) the contemnor must have acted with wrongful intent." *Commonwealth v. Walsh*, 36 A.3d 613, 619 (Pa. Super. 2012) (citation omitted). The scope of this opinion shall address only the element of wrongful intent, as Appellant contends the trial court improperly imputed the requisite element.

In *Brumbaugh*, the trial court found the defendant in contempt for violation of a PFA for accompanying the plaintiff (an ex-girlfriend) to a party after she called him. *Commonwealth v. Brumbaugh*, 932 A.2d 108 (Pa.Super. 2007). The defendant, knowing he was to have no contact with the plaintiff under the order, nevertheless went to the party with her. *Id.* The Superior Court affirmed the trial court's holding that the defendant's violation was willful, pointing out the fact that "[h]e was not drugged, forced, or threatened." *Id.* at 111. The court further articulated that the appellant's act was "clearly volitional, or knowingly made, and wrongful intent can be imputed by virtue of the substantial certainty that by choosing to accept the victim's invitation to travel with her in the same vehicle to a party, he would be in contact with her in violation of the PFA Order." *Id.*

It is undisputed that Appellant was served the PFA Order on October 12, 2014 which provided, that Appellant "is prohibited from having any contact with plaintiff [Prater]...either directly or indirectly, at any location." (PFA 1409V7806.) Prater, whom the Court found to be very credible, testified that after the entry of the PFA Order, Appellant contacted her repeatedly by way of text message and telephone calls. (N.T., 12/22/15, p. 13, 11-19.)

Specifically, on October 14, 2014 at 12:31 a.m., Appellant sent Prater a text message stating, "U had to do and u have to do what vindicates you, don't agree but understand, so deeply sadden that, things could not be worked out, luve always." [*sic*] (See C-2, p.1.) (N.T. p. 15, 22-24.) Two days later (October 16, 2014) at 8:02 a.m., Prater received, via text message, an image

of a flower. (N.T. p. 16, 13-15.) (*see* C-2, p.2.) At 1:00 p.m., Appellant sent Prater a text message urging, "We need to talk please, not about whats going on or whats to come, u did what u had to do and it is what it is, it theres smething I want no part of." [*sic*] (N.T. p. 16, 20-25.) (*see* C-2, p. 3.) Then at 10:19 p.m., Appellant sent Prater a text message reiterating his request to speak with Prater. (N.T., p. 17, 19-20.) (*see* C-2, p. 3.) At 11:44 p.m., Appellant continued to send Prater unsolicited text messages. (N.T. p. 18, 16-18.) (*see* C-2, p.4.) At 11:48 p.m., Appellant insisted it was necessary to share "information" with Prater sometime soon. (N.T. p. 18, 23-24.) (*see* C-2, p. 5.) At 11:52 p.m., Appellant by way of text message, asked Prater to "Pick a restaurant and bring anybody u chose, or trust me on this one." [*sic*] (N.T. p. 19, 8-9.) (*see* C-2, p.6.) Appellant continued to send Prater text messages into next day (October 17, 2017). (N.T. p. 19, 17-18.) (*see* C-2, p. 7) At 12:04 a.m., Appellant sent Prater the following message: "... I just need to let u know. What I know about all of this, its legitimate." [*sic*] (N.T. p. 19, 17-18.) (*see* C-2, p. 7.)

The last text message Appellant sent Prater acknowledged that he was, in fact, violating the PFA Order by contacting Prater and further indicated that he would cease causing any "further trouble." (N.T. p. 20, 7-10.) (*see* C-2, p.8.) Appellant obviously understood the severity of his actions as he admitted to Prater, via text message, "... [T]his is real." [*sic*] (N.T. p. 20, 7-10.) (*see* C-2, p. 8.)

In addition to receiving unsolicited text messages, Prater testified that she also received uninvited telephone calls from the same phone number that Appellant used to send the text messages from. (N.T. p. 20, 18-23—p. 21, 23-25—p. 22, 1-5.) Prater is fifty-one years old and has known Appellant since Junior High School. Prater credibly testified that she and Appellant's relationship transpired into a "personal relationship" approximately three and a half years ago.

(N.T., p. 10. 1-4, 8-9.) As such, Prater is extremely familiar with Appellant's telephone number and voice as she had prior communications with Appellant over the course of their three and a half year relationship. (N.T. p. 10, 1-2, 8-9; p. 14, 19-25; p. 15, 1-8.)

Appellant, knowing that he was to have no contact with Prater under the PFA Order, nevertheless contacted her. Appellant's actions are clearly willful, Appellant's clear intent was to be in contact with her notwithstanding the PFA Order. As with the defendant in *Brumbaugh*, Appellant's acts were clearly volitional or knowingly made, and wrongful intent can be imputed by substantial certainty that by choosing to contact Prater, he would be in violation of the PFA Order.

As the factfinder, the trial court was free to believe all, part or none of Prater's testimony. Prater's credible testimony in addition to the unopposed evidence submitted by the Commonwealth identifying nine (9) text messages by date and time that Appellant sent to Prater, the undersigned concluded that the Commonwealth's evidence, and all reasonable inferences deducible therefrom, was sufficient to establish the elements of criminal contempt beyond a reasonable doubt.

## III. *THE TRIAL COURT DECLINES TO ADDRESS ISSUE #3 RAISED IN APPELLANT'S 1925(B) STATEMENT.*

Appellant raises an issue regarding matters that were handled by the Honorable Holly J. Ford. It is improper for the trial court to comment on the issues raised in Issue #3 of Appellant's 1925(b) Statement as these issues are not directed to the trial court, nor did this Court oversee the proceedings, if any, complained of.

## *IV. APPELLANT KNOWINGLY AND VOLUNTARILY WAIVED FORMAL ARRAIGNMENT.*

Appellant alleges his right to an arraignment was "arbitrarily and capriciously" waived.[2] It is noted that the trial court takes issue with Appellant's allegation, as Appellant fails to concisely state the issue he is complaining of in accordance with Rule 1925(b)(v)(ii) of the Pennsylvania Rules of Appellate Procedure. Specifically, Appellant does not identify how his right to an arraignment was "arbitrarily and capriciously" waived. In any event, the trial court will attempt to address Appellant's issue.

Pursuant to Pennsylvania Rules of Criminal Procedure, arraignment shall be in such form and manner as provided by local court rule. Pa. R. Crim. P. 571(a). Local rule 1004 provides: "Arraignment, if not waived by a defendant, shall take place immediately prior to trial." 234 Pa.Code Rule 1004. Due process of law does not require that any technical form of procedure be followed so long as the identity of the accused is definite, sufficient notice of the charges is given, and ample opportunity to plead afforded. *Commonwealth v. Paskings*, 290 A.2d 82, 84 (Pa. 1972). Unless an accused was prejudiced by an alleged defect in the arraignment procedure, there is no basis for granting relief. *Commonwealth v. Andrews*, 426 A.2d 1160, 1161 (Pa. Super 1981) (alleged improper arraignment procedure did not warrant dismissal of charges where there was no showing of prejudice).

The docket history reflects that on December 22, 2015, Appellant waived formal arraignment and plead not guilty to the charges brought against him. The matter subsequently proceeded to trial. Because Appellant waived formal arraignment, the trial court did not formally advise Appellant of the nature of the charges brought against him. No objection to the form or the sufficiency of the arraignment was voiced, perhaps, because it was waived.

---

[2] See Issue #4, as set forth in Appellant's 1925(b) Statement.

Assuming that the procedure employed by the trial court constituted some type of error, it was clearly harmless as every purpose of an arraignment was satisfied and no prejudice resulted to Appellant from the court's failure, if any, to follow the Rules of Criminal Procedure. Certainly, Appellant's identity as the accused and the charges against him unquestionably were known as a result of the preliminary arraignment which occurred on October 27, 2014 at 5:12 p.m. and subsequent legal proceedings thereafter. Likewise, Appellant was afforded ample opportunity to plead.

Despite being represented at all times, Appellant filed a variety of, *pro se*, motions including: a "Motion to Challenge Subject Matter Jurisdiction, four (4) "Motions to Dismiss," a "Motion to Dismiss for Lack of Subject Matter Jurisdiction," a "Motion to exclude Evidence," a "Motion to Exclude Evidence and Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted," a Motion to Dismiss Harassment Charges," a "Demand for Dismissal for Prosecution's Continued Failure to Show the Court's Jurisdiction in This Matter," and a "Judicial Notice Demand for Dismissal for Failure to State a Claim Upon Which Relief Can Be Granted." Under the circumstances, it can hardly be said that the identity of the accused was not fixed, or that Appellant was not fully informed of the nature of the charges pending against him.

Because Appellant was not prejudiced by an alleged defect, if any, in the arraignment procedure, and it is clear that all purposes of arraignment were satisfied, there is no basis for granting Appellant's relief.

## V. *THE TRIAL COURT DECLINES TO ADDRESS ISSUE #5 RAISED IN APPELLANT'S 1925(B) STATEMENT.*

Appellant avers, "The Court erred and abused its discretion as well as denied defendant due process, by failing to find the plaintiff in contempt for violating the mutual PFA as admitted

to and established by the instant record. Therefore a judgement of acquittal must be entered on that conviction." [*sic*] Here, Appellant raises an issue that this trial court did not oversee. Accordingly, this Court believes it is not appropriately suited to address said issue.

## VI. APPELLANT'S CLAIM OF INEFFECTIVENESS OF COUNSEL SHOULD NOT BE RAISED ON DIRECT APPEAL.

Our Supreme Court recently set forth a new general rule providing that parties "should wait to raise claims of ineffective assistance of trial counsel until collateral review." *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726,738 (2002). An exception to the general rule may be created when there has been a complete or constructive denial of counsel or that counsel has breached his or her duty of loyalty. *Id at 743.* Under those limited circumstances, this Court may then choose to create an exception to the general rule and review those claims on direct appeal.

In the instant matter, Appellant does not allege that there has been a complete or constructive denial of counsel or that counsel has breached his duty of loyalty. Since there is no issue raising such a question in this case, such a consideration is more appropriately left for collateral review.

Rather, Appellant contends the trial court failed to assure competent legal representation through the duration of legal proceedings. In light of the trial court's diligence to ensure Appellant was represented at all times, it can hardly be said that the court failed to ensure "competent" representation throughout. Appellant was represented by the Public Defender's Association of Philadelphia from the onset of his legal proceedings. The Public Defender appeared on Appellant's behalf on the trial dates of December 2, 014, February 24, 2015, June 4, 2015 and August 6, 2015. On August 6, 2015, the Public Defender was removed at Appellant's

request. At the next listing on September 1, 2015, court appointed attorney Erin Boyle, Esquire appeared on Appellant's behalf, but was removed on the same day. At the next trial date on September 29, 2015, court appointed attorney Michael Nix, Esquire, appeared on Appellant's behalf. On October 1, 2105, Attorney Nix was removed as there was a conflict between counsel and Appellant. On October 8, 2015, court appointed attorney Philip Andrew Smoker, Esquire appeared on Appellant's behalf and remained counsel of record for the remainder of the proceedings. To say that the trial court failed to assure competent legal representation through the duration of legal proceedings is unsupported as evidenced by the docket history and the Court's assistance in removing and appointing counsel at Appellant's request.

## VII. PURSUANT TO PA.R.A.P 1925(B)(4)(VII), APPELLANT'S REMAINING ISSUES ON APPEAL SHOULD BE WAIVED FOR FAILURE TO CONCISELY IDENTIFY EACH RULING OR ERROR WITH SUFFICIENT DETAIL.

The remainder of Appellant's claims should be waived pursuant to Pa.R.A.P. 1925 (b)(4)(ii).[3] Pennsylvania Rules of Appellate Procedure state an Appellant's 1925(b) statement "shall concisely identify each ruling or error that the Appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge." Pa.R.A.P. 1925 (b)(4)(ii). A 1925(b) statement, "which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no concise statement at all." *Commonwealth v. Dowling*, 788 A.2d 683, 686-687 (Pa. Super 2001). Issues not included in the statement, and/or not raised in accordance with Rule 1925(b)(4) are waived. Pa.R.A.P 1925(b)(4)(vii).

[3] See Issues #3, #7, and #8, as set forth in Appellant's 1925(b) Statement.

In the instant matter, Appellant's failure to set forth multiple issues that he sought to raise on appeal in a concise manner hindered the trial court's ability to prepare an opinion addressing the issues that Appellant sought to raise, thereby frustrating this Court's ability to engage in a thorough and effective appellate review process.

Appellant's second issue avers:

> "The Court erred and abused its discretion as well as denied defendant due process, by allowing insufficient evidence to establish indirect criminal contempt, when thirteen (13) of the eighteen (18) alleged text messages submitted for probable cause, failed to indicate times and dates. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

Here, Appellant alleges there were eighteen (18) text messages presented by the Commonwealth as evidence. Appellant asserts that thirteen (13) of the text messages were not identified by specific dates and times. Because Appellant fails to identify the text messages which he states were not identified by date and time, he has not concisely identified each ruling or error that the he intends to challenge with sufficient detail to identify all pertinent issues for the judge, in accordance with Pennsylvania Rule of Appellate Procedure 1925 (b)(4)(ii).

Assuming Appellant was more specific, his assertion is without merit as the trial court emphasizes that it only considered nine (9) text messages, all of which were identified by date and time and admitted as evidence as C-2, without objection, as they pertained exclusively to the contempt charge relating to docket number MC-51-CR-0036731-2014. (*Section II of this Opinion is incorporated herein by reference, regarding sufficiency of the evidence.*)

Because Appellant's second issue set forth in his 1925(b) Statement is not raised in accordance with Rule 1925(b)(4)(ii), it should be waived.

Appellant's third issue states:

> "The Court erred and abused its discretion as well as denied defendant due process, when Judge Holly F. Ford presided over and/or had knowledge and information of both the

> PFA order and the Criminal Contempt claims against defendant/proceedings, in violation of the conflict-of-interest statutes. Therefore, a judgement of acquittal must be entered on that conviction. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

Here, Appellant raises an issue regarding matters that were handled by Judge Holly J. Ford. It is improper for the trial court to comment on the issues raised in Issue three (3) of the Appellant's 1925(b) Statement because these issues are not directed to this Court nor did this Court oversee the proceedings, if any, complained of on appeal.

Furthermore, even if this Court were to address Appellant's issue, it cannot appropriately do so as Appellant fails to set forth the issues that he sought to raise on appeal in a sufficiently detailed manner. Appellant's claim that "... [J]udge Holly F. Ford presided over and/or had knowledge and information of both the PFA order and the Criminal Contempt claims against defendant/proceedings, in violation of the conflict-of-interest statutes," is too ambiguous to allow the court to identify the issues raised on appeal as Appellant fails to identify the "knowledge and information" that he asserts Honorable Holly J. Ford was aware of.

Since Appellant submits an issue not sufficiently specific enough to allow this Court to draft its Opinion required under 1925(a), the trial court cannot provide a basis for Appellant to determine the advisability of appealing that issue.

Appellant's seventh issue avers:

> "The Court erred and abused its discretion as well as denied defendant due process, when the Court made an error of law, when the trail court failed to hold the plaintiff culpable and trail counsel ineffective when plaintiff provided false testimony under oath and trial counsel failed to object and refused to offer evidence in the recorded to refute plaintiff testimony. "Ineffective assistance of counsel/attorney/lawyer providing boilerplate representation." Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

Again, Appellant fails to concisely identify each ruling or error that the he intends to challenge with sufficient detail to identify all pertinent issues for the judge. Appellant's statement

does not aid the trial court in focusing on the issue he plans to raise on appeal. Appellant alleges the trial court failed to "hold the plaintiff [Prater] culpable" for providing false testimony, but does not indicate what Prater's false testimony was. Appellant alleges the trial court failed to find trial counsel "ineffective" for failing to object but does not state what counsel failed to object to. Finally, the trial court is left to speculate what Appellant is inferring by quoting, "Ineffective assistance of counsel/attorney/lawyer providing boilerplate representation." Appellant's issue does nothing but frustrates this Court's ability to engage in a thorough and effective appellate review process. Because Appellant's third issue is not raised in accordance with Rule 1925(b)(4), it should be waived.

Appellants eighth issue states:

> "Throughout these proceedings, all documents from the court pertaining to: MC-51-CR-0036731-2014, were captioned "Municipal Court", conversely, "Common Pleas Court" Officials presided over all matters without defendant receiving a colloquy either orally or in writing about the courts intention to the branch of the proceedings. The Court erred and abused its discretion as well as denied defendant due process. Therefore, a judgement of acquittal must be entered on that conviction." [*sic*]

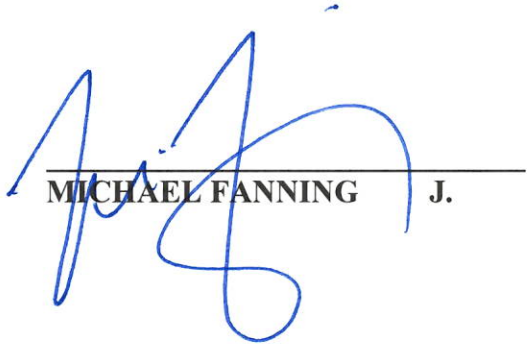
Here, Appellant's issue is vague. Appellant is not specific enough is identifying "the courts intention to the branch of the proceedings." Although not clearly articulated, the trial court believes this issue raises the same issues as were raised in Issue #1 of Appellant's 1925(b) Statement. Accordingly, Section I of this Opinion is incorporated herein by reference regarding jurisdiction. Because Appellant's third issue is not raised in accordance with Rule 1925(b)(4)(ii), it should be waived.

## CONCLUSION

There is no legal or factual basis for Appellant's appeal of the trial court's judgment. It is respectfully requested that the findings of the trial court be affirmed.

**BY THE COURT:**

**Dated: June 9, 2016**



**MICHAEL FANNING J.**