

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

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 vs. : No. CR-14-2025  
 :  
 TONY AUSTIN ECKHART, :  
 Defendant :  
 :

Brian Gazo, Esquire Counsel for Commonwealth  
Brett Riegel, Esquire Counsel for Defendant

**MEMORANDUM OPINION**

Matika, J. - April 17, 2026

This Opinion is written in response to the Commonwealth filing an appeal to the Superior Court on the eve of jury selection claiming that a ruling the Court issued on its Motions in Limine substantially handicapped its prosecution of the Defendant, Tony Austin Eckhart (hereinafter "Eckhart"). Not only is the Commonwealth not substantially handicapped by our ruling, but its underlying claims are meritless. For the reasons stated herein, this Court requests the Appellate Court quash this appeal or alternatively, affirm our pre-trial ruling on the Motions in Limine.

**FACTUAL AND PROCEDURAL BACKGROUND**

On October 25, 2024, Eckhart was charged by Franklin Township Police with one count of Criminal Mischief (18 Pa.C.S.A.

§3304(a)(6)), a summary offense. These charges stemmed from an incident which allegedly occurred on or about September 12, 2024, when Eckhart was accused of smashing the windows out of a 2023 black Chevrolet Trailblazer (hereinafter "Trailblazer") which was registered solely in the name of his estranged wife, Torey Eckhart and possessed and used by only her at that time, but purchased during the marriage.

On February 4, 2025, Eckhart filed a petition for habeas corpus relief claiming that he could not be charged with criminal mischief for damaging property that was "marital property" in nature. After hearing, this Court had denied that motion on the basis that even though the vehicle was a marital asset, it was still "property of another", therefore, Eckhart could still be charged with criminal mischief<sup>1</sup>.

Thereafter, this case was set for trial on January 12, 2026 but continued to March 9, 2026. Prior thereto, the Commonwealth filed two separate Motions in Limine. The first motion, filed on February 27, 2026, requested that the Court "Preclude Defense from Introducing Issue of Whether 2023 Chevrolet Blazer Owned Exclusively by Torey Eckhart was Marital Property at Trial." This was set for a hearing on the morning of the trial, to wit March 9, 2026 at 9:00 A.M. On March 5, 2026, the Commonwealth filed its

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<sup>1</sup> A copy of our Order denying this relief is attached hereto for ease of reading as attachment "A".

second Motion in Limine where it sought to exclude the testimony of certain witnesses anticipated to be called by the defense at trial, namely Detective David Roberts, Divorce Master Debra A. Smith, Esquire, Jane Zellner, Esquire and Vincent Seaton, a Progressive Insurance employee. This was also set for hearing on March 9, 2026 at 9:00 A.M.

At the hearing, counsel for the Commonwealth proffered that it would be "substantially prejudiced" if the Court were to allow there to be reference to the vehicle as "marital property." Attorney Brian Gazo, who is prosecuting this case on behalf of the Commonwealth offered that it would be improper to allow that reference on three bases: 1) *res judicata*; 2) misstatement of the law; and 3) confusion to the jury.

Attorney Brett Riegel, counsel for the Defendant, countered that it is necessary to allow this vehicle to be referenced as marital property because it furthers the defense proposed by Eckhart, that being, one of mistake of fact in that since Eckhart understood the vehicle to be marital property, he believed he had the right to damage it. On this issue and based upon counsel's argument, the Court informed counsel that it intended to allow the use of the phrase "marital property" if it is part and parcel of the defense Eckhart intended to raise, however, that the Court also intended to give the jury a cautionary instruction that just because the vehicle may be marital property is not an exception to

the criminal mischief liability statute if the jury finds it is "property of another".

Additionally, at that hearing, counsel for both sides argued about what witnesses the Defendant may call and whether their testimony would be permitted, specifically as it relates to Detective David Roberts (hereinafter "Roberts"). Eckhart proffered that it would be his intent to call Roberts to testify about an open investigation into the victim taking money from a joint bank account, not so much as to the veracity of the merits of the investigation, but rather to corroborate any testimony presented by Eckhart that, if his wife can "thieve" money from a joint account, he can damage a marital asset, to wit, the Trailblazer. In other words, Attorney Riegel proffered that this testimony would "go to the reasonableness of the belief that which is marital property is marital property" and further to establish his client's mistake of fact defense.

After arguments on Roberts' testimony, this Court determined that at the pre-trial stage it would not make a ruling prohibiting Roberts from testifying, but rather would hold that decision in abeyance depending upon how the trial proceeded.

After issuing on the record our decision on both of these Motions in Limine, counsel for the Commonwealth verbally stated, "that he was going to file an interlocutory appeal because he believe[d] that allowing evidence and testimony in about marital

property, [he] think[s] that it is going to substantially handicap the prosecution of this case." As a result, the jury trial was stayed in this matter.

Thereafter, this Court authored a written version of the order addressing the two Motions in Limine at issue here, a copy of which is annexed to the Opinion as attachment "B"<sup>2</sup>. Thereafter, the Commonwealth filed its original Notice of Appeal, along with forty-nine (49) minutes later, another document entitled "Commonwealth Interlocutory Appeal of the Trial Court's Denial of Its Motion In Limine To Preclude Defense From Introducing Issue Of Whether 2023 Chevrolet Blazer Was Marital Property At Trial." Due to a typographical error<sup>3</sup> in the case caption, Commonwealth filed an "Amended Notice of Appeal" at 3:59 P.M. followed by the filing at 4:00 P.M. of an exact copy of the document filed at 3:54 P.M.

Thereafter, on March 10, 2026, this Court directed the Commonwealth to file a Concise Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). On March 24, 2026, the Commonwealth filed its concise statement. While not concise but rather containing lengthy explanations<sup>4</sup>, the statement alleges three errors by the Court. In summary, those perceived errors are

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<sup>2</sup> Counsel for the Commonwealth, in violation of Pa.R.A.P. 904, failed to attach this Order from which he has taken this Appeal to either his original Notice of Appeal or amended Notice of Appeal.

<sup>3</sup> The original notice of appeal identifies the Defendant as "Tony Austin Rehrig."

<sup>4</sup> See Pa.R.A.P. 1925(b) (4) (i) and (iv).

that 1) the trial court erred in allowing a reference to the term "marital property" as it would confuse the jury as well as "allow the defense to misstate the law"; 2) the trial court erred because the reference to the term "marital property" is prohibited by the doctrine of *res judicata* because of this Court's pre-trial ruling on Defendant's Habeas Corpus petition; and 3) not immediately prohibiting the testimony of Detective Roberts on the basis of "non-relevance and highly prejudicial to the Commonwealth."

This Court will address each issue *seriatim*, however, this Court must first address the issue as to whether the Court's ruling resulted in substantially handicapping the Commonwealth in prosecuting this case against Eckhart.

## LEGAL DISCUSSION

### I. Appellate Jurisdiction

Pursuant to Pa.R.A.P. 311(d), "in a criminal case, under the circumstances provided by law, the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or **substantially handicap** the prosecution. (emphasis ours). Attached to its amended Notice of Appeal, is what appears to be the Commonwealth's contentions and beliefs as to how the trial court erred in two of its rulings set forth in its

concise statement.<sup>5</sup> In paragraph 7, it further states that "the Commonwealth would be substantially prejudiced if the Defendant is allowed to raise this issue at trial." In essence, the Commonwealth is arguing that it would be substantially handicapped if the Court would allow the Defendant to present certain testimony he may desire to present in his defense of these charges.

This exact issue was raised in *Commonwealth v. Minnich*, 4 A.3d 1063 (Pa. Super. 2010)<sup>6</sup>. In *Minnich*, the trial court denied a Commonwealth Motion in Limine to preclude certain defense evidence. In that case, the court stated:

" . . . we must first determine whether this Court has jurisdiction to decide it. In its Statement of Jurisdiction on page one of its appellate brief, the Commonwealth asserts that this Court has jurisdiction over this interlocutory appeal pursuant to Pa.R.A.P. 311(d) and Pa.R.A.P. 313(a). Rule 311(d) provides that in a criminal case "the Commonwealth may take an appeal as of right from an order that does not end the entire case where the Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution." Pa.R.A.P. 311(d). Although the Commonwealth included such a certification in its notice of appeal in this case, binding Supreme Court of Pennsylvania authority holds that application of Rule 311(d) is limited to circumstances in which "a pretrial ruling results in the suppression, preclusion or exclusion of Commonwealth evidence." *Commonwealth v. Shearer*, 584 Pa. 134, 141, 882 A.2d 462, 467 (2005) (quoting *Commonwealth v. Cosnek*, 575 Pa. 411, 420-21, 836 A.2d 871, 877 (2003) (emphasis added)). As both the *Cosnek* and *Shearer* opinions make clear, Rule 311(d) does not confer jurisdiction to consider an interlocutory

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<sup>5</sup> This document does not make reference to the Detective Roberts testimony issue.

<sup>6</sup> Reversed on different grounds based upon the right to appeal under Pa.R.A.P. 313.

appeal from an order filed by the Commonwealth to preclude the introduction of defense evidence. *Id.* at 141, 882 A.2d at 467; *Cosnek*, 575 Pa. at 420-21, 836 A.2d at 877. Because the order at issue here denies a motion *in limine* filed by the Commonwealth to preclude the introduction of defense evidence, section 311(d) does not confer us with jurisdiction over the Commonwealth's appeal." At 1066-1067.

Similarly, in the case *sub judice*, the appellate court does not have jurisdiction over the Commonwealth's appeal and should quash the same<sup>7</sup>.

## **II. Matter Complained of on Appeal**

Assuming *arguendo* that the Appellate Court accepts jurisdiction over this case, this Court now addresses the three (3) matters complained of by the Commonwealth.

### **1. Confusion/Misstatement of the Law**

The Commonwealth claims that the Court erred when it ruled that it would allow the Trailblazer to be called "marital property" during the trial arguing that it would be confusing to the jury to do so, if it was also considered to be "property of another", an element of the criminal mischief charge that the Commonwealth must prove. Additionally, the Commonwealth alleges that our ruling is further erroneous because by accepting the Defendant's argument on this issue, this Court is otherwise accepting a "misstatement of the law."

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<sup>7</sup> See also *Commonwealth v. Brister*, 16 A.3d 530 (Pa. Super. 2011) N.3, which reads, "at any rate, Rule 311(d) only applies to the exclusion of Commonwealth evidence, not the introduction of defense evidence."

### A. Confusion

The Commonwealth claims in its concise statement that "should the trial court allow the phrase of marital property to be referenced at trial, only to turn around and instruct the jury that it is irrelevant that it is marital property . . . would only serve to further confuse the jury." The Commonwealth seems to suggest that calling the vehicle, "property of another" in its case in chief should be the only label that should be placed upon this Trailblazer, because by allowing the defense to then call it "marital property" would confuse them. The Commonwealth further argues that the Trailblazer cannot be called both the separate property of another (belonging to the victim, Torey Eckhart) and marital property (where both the Defendant and Torey Eckhart have a marital interest in the Trailblazer). Interestingly, the Commonwealth, in its brief in opposition to that underlying habeas issue cited to the case of *Commonwealth v. Mescall*, 592 A.3d 687 (Pa. Super. 1991), which stands for the proposition that despite an item being marital property, it could still be the subject of theft. **"The statutory language is clear that the issue of whether appellant can have an interest in this property is irrelevant.** He can still be found liable for infringing on his wife's interests in the property." *Id* at 691. (Emphasis ours). This emphasized sentence is significant as it was applicable there as much as it is here on the concept that both the appellant there and the

Defendant here had/have a marital interest in the item in question and that it was marital property. It being marital property becomes irrelevant however, as to the issue of whether it could also be labeled "property of another", that which another person had an interest in. While on its face it may appear to be a confusing concept, this Court advised counsel that while it would allow the Defendant to refer to it as marital property in order to establish his "mistaken of fact defense"<sup>8</sup>, this Court intended to give a cautionary instruction to the jury when it came time for them to determine if the Commonwealth established beyond a reasonable doubt, that the element of "property of another" was met. As noted in the transcript<sup>9</sup> as well as this Court's Order of March 9, 2026, it was our intent to "instruct the jury that there is no marital property exception to criminal mischief liability and is otherwise irrelevant if the Commonwealth establishes that the vehicle is the 'property of another', in this case, Torey Eckhart." By giving this instruction, it eliminates any confusion as to how

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<sup>8</sup> Defendant proffered at the Motion in Limine hearing that he believed that he had a right to damage this property as he had a marital interest in the same, setting the stage for a mistake of fact offense. The language intended to be used in instructing the jury on mistake of fact reads essentially as follows:

"Mistake as to matter of fact for which there is a reasonable explanation or excuse is a defense if it negates the intent or recklessness required to establish an element of the crime. Thus, you must consider the evidence tending to show that the defendant was reasonably mistaken concerning the facts along with the other evidence in determining whether the Commonwealth has proven the required intent or recklessness beyond a reasonable doubt." Pa.S.S.J.I. Crim No. 8.304(2) (Fourth Edition, 2024).

<sup>9</sup> N.T. 3/9/26 at 52.

the Trailblazer would be called marital property and property of another at the same time. The use of those phrases have specific meaning to separate and distinct concepts, those being the Defendant's mistake of fact defense and the Commonwealth's proof on one of the elements of criminal mischief, respectively.

**B. Misstatement of Law**

Also, in this first matter complained of, the Commonwealth claims that it was error to allow the use of the term marital property because it accepted the defense's explanation as to why the Trailblazer should be marital property, an explanation which the Commonwealth claims is a misstatement of law, that being that the Defendant had an interest in the vehicle as proffered by counsel. This vehicle was purchased after the parties' separation in 2023 however, the evidence would show that they then reconciled until a final separation in 2024. Thus, the Trailblazer was marital property subject to equitable distribution in the final divorce. In support of this proffer and understanding of the law, Eckhart cites to *Wellner v. Wellner*, 699 A.2d 1278 (Pa. Super. 1997).

In *Wellner*, the parties initially separated in 1979, however, the evidence suggested that, by their actions, they reconciled until final separation in 1992. The court held that for equitable distribution purposes, the final separation in 1992 was controlling. Similarly here, if the evidence establishes that the parties separated in 2023, the Trailblazer was purchased after

the initial separation but the parties reconciled until final separation in 2024, that vehicle could be subject to equitable distribution<sup>10</sup> thus, the Defendant did not misstate the law insofar as the Trailblazer being a marital asset subject to distribution.<sup>11</sup>

## **2. Res Judicata**

The Commonwealth next argues that the Court erred by denying its motion in limine, for a third time, because the doctrine of “*res judicata*” prohibit calling the Trailblazer marital property. The doctrine of *res judicata* bars the relitigating of issues that were raised and decided in a previous proceeding however, it is not applicable to this issue on appeal.

Defendant filed a petition for habeas corpus relief. After a hearing on that petition, this Court ruled that the Commonwealth established a *prima facie* case against the Defendant on both the criminal mischief and harassment charges. In so ruling, this Court determined that the evidence established that the element of “property of another” was met. In order for *res judicata* to apply our ruling would have had to establish that the Trailblazer was not marital property. In fact, this Court determined just the

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<sup>10</sup> Eckhart also proffered that after the reconciliation, he made the payments on that vehicle and paid the insurance. This would be further support that the vehicle was marital property.

<sup>11</sup> The Court is also mindful of the fact that at the underlying habeas corpus hearing, divorce counsel for the victim testified that she listed the Trailblazer as a marital asset and the Hearing Officer ordered it distributed to Torey Eckhart in her report and recommendation to the Court, a report and recommendation incorporated, but not merged into the divorce decree.

opposite stating, "while the testimony and evidence do establish that the Chevy Trailblazer was a marital asset at the time it was damaged by the Defendant it is still "property of another."

As a result, no ruling was ever made finding that the Chevy Trailblazer was solely the property of another, to wit, Torey Eckhart, nor did we ever rule, nor can it even be implied, that the Trailblazer was not marital property. Further, our ruling only addressed the finding of a *prima facie* case against the Defendant.

### **3. Detective Roberts' Testimony**

Lastly, the Commonwealth argues that the Court erred by "holding in abeyance" a decision on whether Detective David Roberts could testify at trial. The Commonwealth's argument refers to the fact that it would be prejudiced by allowing Detective Roberts to testify to non-relevant information pertained to a complaint that this Defendant make into conduct of the victim that may be tantamount to a criminal investigation into the victim removing monies from a joint bank account.

Counsel for Eckhart proffered that if called to testify, Detective Roberts would be asked questions pertaining to the Defendant inquiring into those monies with the belief that if he is charged with damaging marital property, why then would the police not be able to charge the wife, Torey Eckhart with thieving marital property. Further, the Defendant argued that reasonableness in his mind and his thought process *vis-à-vis* a

mistake of fact defense could be corroborated by Roberts' testimony.

The following colloquy took place at the end of the argument on Roberts being allowed to testify:

"The Court: Again, I may not allow it to happen that way, but I have to think that one through if and when the time comes. That is why I don't want to make a decision here. A lot of what Attorney Zellner and a lot of what Detective Roberts may be able to testify to hinges upon what else is testified to first.

Mr. Riegel: Sure, or connection after depending upon the Court's decision.

Mr. Gazo: All right."<sup>12</sup>

In the end, no adverse ruling was rendered against the Commonwealth<sup>13</sup>. Further, it appeared at that time that the Commonwealth was accepting of those comments. Thus, no substantial hardship is present from a ruling that is not adverse to the Commonwealth at this point.

#### **CONCLUSION**

For the reasons stated herein, this Court requests the Appellate Court to quash the appeal for want of jurisdiction under Pa.R.A.P. 311(d) or, in the alternative, affirm our pre-trial

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<sup>12</sup> N.T. 3/9/26 p 51.

<sup>13</sup> See 2(ii) on the March 9, 2026 Order attached hereto as attachment "B".

rulings as the Commonwealth has failed to establish either a substantial hardship or that the Court's pre-trial rulings were in error.

**BY THE COURT:**

/s/ Judge Joseph J. Matika  
**Joseph J. Matika, J.**



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that a crime has been committed and that the defendant is the perpetrator of that crime. Commonwealth v. Barnes, 14 A.3d 128, 130 (Pa. Super. 2011). The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt at this stage of the proceedings. Commonwealth v. Jackson, 809 A.2d 411, 416-17 (Pa. Super. 2002).

Defendant has filed a habeas corpus motion challenging the sufficiency of the evidence presented by the Commonwealth on the charge of criminal mischief. Specifically, Defendant asserts that the Commonwealth has failed to produce sufficient evidence to establish a *prima facie* case against him on this charge.

Defendant contends that the Commonwealth cannot establish a *prima facie* case against him on this criminal mischief charge as the item in question, a Chevy Trailblazer, is a marital asset of which he has an interest in and therefore, the element of "property of another" is not met. While the testimony and evidence does establish that the Chevy Trailblazer was a marital asset at the time it was damaged by the Defendant, it is still "property of another".

Commonwealth cited to the case of Commonwealth v. Mescall, 592 A.2d 687 (Pa. Super. 1991) which stood for the proposition that despite an item being marital property, it can still be the subject of a theft and the defendant could be convicted accordingly. "The statutory language is clear that the issue of whether appellant can have an interest in this property is irrelevant. He can still be found liable for infringing on his wife's interests in this property." Id. at 691.

Defendant contends that under the criminal mischief statute, unlike the theft statute in Mescall, there is no definition of "property of another." While this may be true, 18 Pa.C.S.A. § 1903(a) reads,

Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning or definition.

In 18 Pa.C.S.A. § 3901, "property of another is defined as:

[I]ncludes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

Unlike the Defendant, we see no discernable reason with this definition would not be applicable on the charge of criminal mischief under the Statutory Construction Act. Further, in Commonwealth v. Zambelli, 695 A.2d 848 (Pa. Super. 1997) the court held that, "[A] person is guilty of criminal mischief in Pennsylvania if he 'intentionally or recklessly tampers with tangible property of another so as to endanger person or property.'" 18 Pa.C.S.A. § 3304(a)(2).

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All that is required under § 3304(a)(2) regarding the owner is that the property belong to another person." Id at 850.

Further, the statute involved does not distinguish between types of ownership, such as marital property, but only refers to damaged property belonging to "another". Lastly, no where does it have to be property of one person to the exclusion of all others; in fact " . . . the Pennsylvania statute only requires that the property belong to another." Id.



2. As to the Second Motion in Limine,

- i) On the issue of referencing the vehicle as "marital property", the Motion is **DENIED**<sup>2</sup>;
- ii) On the issue of prohibiting Detective Roberts from testifying, the Court holds its ruling in abeyance pending the evidence presented at trial;
- iii) On the issue of prohibiting Hearing Officer Debra Smith from testifying, the Motion is **GRANTED**;
- iv) On the issue of prohibiting Jane Zellner from testifying, the Court holds its ruling in abeyance pending the evidence presented at trial;
- v) On this issue of a representative from Progressive Insurance testifying, the Motion is **GRANTED**.

**BY THE COURT:**

/s/ Judge Joseph J. Matika  
**Joseph J. Matika, Judge**

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present a mistake of fact defense. In that defense, counsel argued that the Defendant reasonably believed he had the right to damage the vehicle in question because he had an interest in it as it was "marital property." While allowing the vehicle in question to be called marital property for purposes of this defense throughout the trial, this Court also informed counsel that it intended to instruct the jury that there is no marital property exception to criminal mischief liability and is otherwise irrelevant if the Commonwealth establishes that the vehicle is the "property of owner", in this case, Torey Eckhart. [See *Commonwealth v. Mescall*, 592 A.2d 687 (Pa. Super 1991)].

<sup>2</sup> See footnote 1.