

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

COMMONWEALTH OF PENNSYLVANIA :

:

:

Vs.

:

No. MD-174-2017

:

2012 MAZDA 323 SEDAN :

VIN JM1BL1VF8C1514566 :

Defendant :

Michael S. Greek, Esquire

Counsel for Commonwealth

Assistant District Attorney

Matthew Rapa, Esquire

Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - May 24 , 2019

This Memorandum Opinion, written and provided by this Trial Court pursuant to Pa. R.A.P. 1925 is in support of its Order of Court dated June 21, 2018 (the "June 21, 2018 Order") granting the Commonwealth's "Petition for Forfeiture and Condemnation" requiring a certain 2012 Mazda 323 Sedan bearing V.I.N. JM1BL1VF8C1514566 to be forfeited. This Opinion further requests the Appellate Court to affirm the June 21, 2018 Order for the reasons stated herein and in the attached June 21, 2018 Order with Findings of Fact and Conclusions of Law.

FACTUAL AND PROCEDURAL BACKGROUND

For purposes of brevity, this Court adopts the salient "Findings of Fact" contained in the June 21, 2018 Order. Most notably, this Court found that, the claimant, Irene Swiatek

(hereinafter "Swiatek"), Appellant herein, was not the legal owner of the subject vehicle and therefore, despite her claim of being an "innocent owner," the burden never shifted back to the Commonwealth to disprove otherwise. As a result, this Court concluded that Swiatek did not have right to contest and challenge the forfeiture and condemnation.¹

After issuing the June 21, 2018 Order, this Court learned that the Carbon County Clerk of Courts Office never docketed this order nor noticed any of the parties of the decision of the Court. This prompted counsel for Swiatek, Matthew Rapa, Esquire to file a "Motion for Reconsideration of Memorandum Opinion" on September 28, 2018.² The Court denied this motion by Order of Court dated March 7, 2019, a copy of which is also attached hereto.

Thereafter on March 29, 2019, Swiatek filed a Notice of Appeal. An Order issued by this Court on March 29, 2019 directed Swiatek to file her concise statement of facts complained of on appeal. She timely accomplished this on April 17, 2019. In this concise statement, Swiatek generally alleged that this Court erred in two ways, to wit: 1) that the Court "erred in finding that Irena Swiatek was not an 'innocent owner' pursuant to Sections

¹ The "Conclusions of Law" outlined in the June 21, 2018 Order are also incorporated herein by reference for brevity purposes.

² Swiatek filed this motion for reconsideration several months after the Court authored and dated its June 21, 2018 Order. Since the Clerk of Court's Office never filed the June 21, 2018 Order the timeliness of the motion for reconsideration was not an issue.

6801(a)(4)(ii) and 6802(j) of the Forfeiture Act" and 2) that the Court "erred and infringed upon Irena Swiatek's constitutional rights in granting the Commonwealth's forfeiture petition in violation of the eighth amendment."

LEGAL DISCUSSION

In the case *sub judice*, Swiatek raises two issues in her 1925(b) concise statement: 1) that the Court erred in not finding her to be the "innocent owner" of the subject vehicle; and 2) that the Court infringed upon some constitutional right of Swiatek.

A 1925(b) statement must be specific enough for the trial court to identify and address the issue or issues raised on appeal *Commonwealth v. Reeves*, 907 A.2d 1 (Pa. Super. 2006).

Further, "[I]f a Rule 1925(b) statement is too vague, the trial judge may find waiver and disregard any argument." See *Lineberger v. Wyeth*, 894 A.2d 141 (Pa. Super. 2006). As this court recently stated in *Lineberger*. When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review. When an appellant fails adequately to identify in a concise manner the issues sought to be pursued on appeal, the trial court is impeded in its preparation of a pertinent legal analysis. In other words, a Concise 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. While *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (Pa. 1998) and its progeny

generally have involved situations where an appellant completely fails to mention an issue in the Concise Statement, for the reasons set forth above we conclude that *Lord* should also apply to Concise Statements which are so vague as to prevent a court from identifying the issue to be raised on appeal. In the instant case, Appellant's Concise Statement was not specific enough for the trial court to identify and address the issue Appellant wished to raise on appeal. As such, the court did not address it. Because Appellant's vague Concise Statement has hampered appellate review, it is waived. *Id.* at 148(citing *Commonwealth v. Dowling*, 778 A.2d 683, 686-687 (Pa. Super. 2001)).

"The Rule 1925(b) statement must be detailed enough so that the judge can write a Rule 1925(a) opinion, but not so lengthy that it does not met the goal of narrowing down the issues previously raised to the few that are likely to be presented to the appellate court without giving the trial judge volumes to plow through." *Reeves, supra* at 3.

It is somewhat difficult for this Court to ascertain specifically how it erred in not finding Swiatek to be the innocent owner³ and "how" it erred in violating "what" constitutional right⁴

³ Any range of specific errors would be raised relative to an "innocent owner defense" such as credibility of witnesses, admissibility of evidence, sufficiency of evidence, and weight of evidence, among others.

⁴ Any number of constitutional rights are in play here as are errors that could be raised in Swiatek's appeal affecting those rights, none of which are specified herein.

of Swiatek. It is the obligation of Swiatek to provide enough specificity in her 1925(b) concise statement to allow the Court to hone in on the specific issues it must address in this opinion as opposed to engaging in conjecture and assuming to know what Swiatek's argument with the Court's decision truly is in this case. "When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review." *Commonwealth v. Dowling*, 778 A.2d 683, 686 (Pa. Super. 2001).

For these reasons alone, we believe this appeal should be quashed.

Notwithstanding the above rationale espoused by this Court for quashing of the appeal, the Court will nonetheless attempt to address, through assumption, what it believes Swiatek may be arguing is error.

As this Court has noted in its June 21, 2018 Order, we concluded that Swiatek's daughter, Nicole Kwasniak (hereinafter "Kwasniak") was the "legal owner" of the vehicle in question. The testimony presented indicated that Swiatek was an "over the road" truck driver who was not home for meaningful stretches of time. Kwasniak took care of her mother's home and in consideration thereof, Swiatek purchased the subject vehicle for her. Kwasniak was the primary user of that vehicle.

Additionally, there was an incident that occurred in Lansford in April, 2016 involving that same vehicle. In that incident,⁵ Swiatek admitted to Officer Jason Helmer that she purchased it for Kwasniak, despite holding title to that vehicle. Kwasniak was the individual who exercised "dominion and control" over that vehicle. (See *Commonwealth v. One 1988 Suzuki Samari*, 589 A.2d 770 (Pa. Super. 1991))

Further, the facts established that Kwasniak was exercising dominion and control over the vehicle on the date she was arrested and found in possession of 38.2 grams of methamphetamine while in that vehicle. That information, coupled with a text message⁶ found by the arresting officer, Tyler Meek, established that this vehicle, on the date in question, was a "conveyance used or intended to be used to transport or in any manner facilitate the transportation of a controlled substance." Since the Commonwealth's evidence established the fact that Kwasniak, and not Swiatek, was the true "legal owner" of the subject vehicle, the burden does not shift back to the Commonwealth to disprove the innocent owner defense raised by Swiatek.

⁵ Helmer was called to investigate the fact that Kwasniak had possession of the vehicle on the date in question, but based upon the information known to him, Helmer refused to file criminal charges against Kwasniak.

⁶ This text message read, "Do you have a ball," a slang term for a quantity of a controlled substance.

As to any constitutional right which Swiatek claims this Court erred in not finding was violated, this Court will assume she is referencing the 8th Amendment and specifically the excessive fine clause of that amendment.⁷ If correct in this assumption, the Court does not see error in not finding or even addressing this alleged violation for two reasons: 1) It is not necessary to address this claim as this Court determined that Swiatek was not an innocent owner,⁸ and 2) Swiatek never presented any testimony to support her claim that the taking of this vehicle, assuming she was an innocent owner, violated the excessive fine clause.

CONCLUSION

For the reasons stated herein, this Court asks ask the Appellate Court to quash the appeal or in the alternative, affirm this Court's June 21, 2018 Order.

BY THE COURT:


Joseph J. Matika, J.

⁷ Swiatek fleetingly mentioned this issue in a letter brief dated March 20, 2018 and filed March 22, 2018 but raised it in greater detail in her motion for reconsideration.

⁸ See footnote 2 of the March 7, 2019 Order of Court for further explanation.

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

COMMONWEALTH OF PENNSYLVANIA :
:
vs. : No. MD-174-2017
:
2012 MAZDA 323 SEDAN :
VI JM1BL1VF8C1514566 :
Defendant :

ORDER OF COURT

AND NOW, this ~~21st~~ day of June, 2018, upon consideration of the "Petition for Condemnation and Forfeiture" filed by the Commonwealth, the "Answer to Petition for Forfeiture and Condemnation" filed by Irena Swiatek¹ and after hearing thereon and review of the letter brief of the Defendant, the Court makes the following:

FINDINGS OF FACT

1. The Defendant, Nicole Kwasniak (hereinafter "Kwasniak") was charged with various violations of "The Controlled Substance, Drug, Device, and Cosmetic Act" § 35 P.S. § 780-101 et. seq. namely, Possession with Intent to Deliver a

¹ Irena Swiatek (hereinafter "Swiatek") has intervened in this case claiming to be the registered and title owner of the subject vehicle and thus the legal owner thereof and accordingly, is claiming that the vehicle should not be condemned and forfeited based upon an "innocent owner" defense.

FILED
JUN 21 A 9:40
CARBON COUNTY
CLERK OF COURTS

Controlled Substance,² Simple Possession,³ and Possession of Drug Paraphernalia,⁴ as well as a violation of the Vehicle Code, Driving Under the Influence of a Controlled Substance ⁵ for an incident alleged to have occurred in April 20, 2017 in Mahoning Township, Carbon County, Pennsylvania.

2. At the time of the stop by Mahoning Township Police Officer Tyler Meek, Kwasniak was driving a 2012 Mazda 323 Sedan VIN JM1BL1VF8C1514566.
3. Located inside this vehicle and on the person of Kwasniak was 38.2 grams of crystal methamphetamine packaged in plastic baggies.
4. In addition, Officer Meek located a cell phone with a text that read, "Do you have a ball."⁶
5. Swiatek is the titled and registered owner of the subject vehicle having purchased it in 2012.
6. Swiatek, a truck driver by profession, was on the road on April 20, 2017.
7. Swiatek also owns a Mitsubishi vehicle.

² 35 P.S. §780-113(a) (30)

³ 35.P.S. §780-113(a) (16)

⁴ 35.P.S. §780-113(a) (32)

⁵ 75 Pa.C.S.A. §3802(d) (2)

⁶ A "ball" is drug slang for a quantity of a controlled substance.

8. Swaitek has given permission for Kwasniak to use the Mazda because she (Kwasniak) takes care of Swiatek's house when she is away with work.
9. Lansford Police Officer, Jason Helmer, was involved in an incident with Kwasniak and Swiatek in April, 2016 during which Swiatek told Officer Helmer that Kwasniak had taken Swiatek's vehicle. Swiatek also stated that she purchased the vehicle in question for Kwasniak, that Kwasniak had permission to operate the vehicle and that the vehicle was registered to Swiatek. Accordingly, Helmer refused to pursue criminal charges against Kwasniak for unauthorized use or theft.⁷

CONCLUSIONS OF LAW

1. The Commonwealth has the initial burden of presenting evidence to prove by a preponderance of the evidence that the property it seeks to condemn and seek forfeiture of is in fact subject to forfeiture. *Commonwealth v. One 1985 Cadillac Seville*, 538 A.2d 71, 74 (Pa. Super. Ct. 1988); 42 Pa.C.S.A. §5802(J)(1).
2. The Commonwealth must establish, pursuant to 42 Pa.C.S.A. § 5802, that the vehicle subject to forfeiture here is a

⁷ Officer Helmer did not testify at the hearing, however, there was a stipulation entered into by counsel in which they agreed that if Helmer were called to testify, he would testify consistent with a certain "highlighted" portion of a Lansford Police Department Call Summary Report, admitted as Commonwealth Exhibit 1.

conveyance used or intended to be used to transport or in any manner facilitate the transportation of, in this case, controlled substances.

3. Once this burden is sustained, the burden then shifts to the Claimant, in this case Swiatek, to show that: 1) she is the legal owner of the property; and 2) she lawfully acquired that property (42 Pa.C.S.A. 5805(J)(2)).
4. Should the Claimant succeed in sustaining her burden as set forth in subsection (J)(2), the burden shifts back to the Commonwealth to establish, by clear and convincing evidence that the property was "unlawfully used, possessed or other subject to forfeiture." (42 Pa.C.S.A. §5802(J)(3)).
5. If the Commonwealth meets its burden pursuant to paragraph (3) but the Claimant raises the "innocent owner" defense, the burden remains with the Commonwealth to establish by clear and convincing evidence that: 1) the property was unlawfully used or possessed by the claimant; or 2) if the property was unlawfully used or possessed by someone other than the Claimant, the Commonwealth must show that, the "other person" did so with the Claimant's knowledge and consent.
6. The Commonwealth has established that the 2012 Mazda 323 Sedan is subject to forfeiture as it was unlawfully used by Kwasniak to transport controlled substances.

7. Holding title to an automobile, in and of itself does not prove legal ownership for purposes of the Forfeiture Act; that requires the exercising of "dominion and control" over that vehicle. *Commonwealth v. One 1988 Suzuki Samari*, 589 A.2d 770 (Pa. Super. Ct. 1991); *In Re: One 1988 Toyota Corolla (Blue Two-Door Sedan) Pa. License TPV 291*, 675 A.2d 1290 (Commw. Ct. 1996).
8. In as much as Swiatek purchased the vehicle for Kwasniak and gave Kwasniak permission to drive it and did so in exchange for taking care of her (Swiatek's) house while she was on the road driving truck, Swiatek has not established that she is the legal owner of the vehicle in question and it was Kwasniak who exercised dominion and control over that Mazda.
9. Since Swiatek has failed to meet her burden in establishing that she is the legal owner of the vehicle, the burden does not shift back to the Commonwealth to disprove the innocent owner defense of Swiatek as Swiatek does not have standing to raise that defense.
10. As a result, the 2012 Mazda 323 Sedan VIN JM1BL1VF8C1514566 shall be forfeited to the Commonwealth pursuant to the Forfeiture Act, 42 Pa.C.S. §6801 et seq. and accordingly, this Court enters the following Order:

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

COMMONWEALTH OF PENNSYLVANIA :
:
vs. : No. MD-174-2017
:
2012 MAZDA 323 SEDAN :
VI JM1BL1VF8C1514566 :
Defendant :

ORDER OF COURT

AND NOW, this 21st day of June, 2018, upon consideration of the Commonwealth's "Petition for Forfeiture and Condemnation" the answer filed by Claimant, Irene Swiatek, and after hearing held thereon, it is ORDERED and DECREED that said Petition is GRANTED and the 2012 Mazda 323 Sedan bearing vehicle identification number JM1BL1VF9C1514566 shall be forfeited to the Commonwealth of Pennsylvania.

IT IS FURTHER ORDERED and DECREED that all rights, titles or interest in the property described hereinabove, except that vested in the Office of the Attorney General, Commonwealth of Pennsylvania, is declared null and void and that said property be used or disposed in accordance with law.

BY THE COURT:


Joseph J. Matika, Judge

FILED
2018 JUN 21 A 9 40
CARBON COUNTY
CLERK

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

COMMONWEALTH OF PENNSYLVANIA :
:
vs. : No. MD-174-2017
:
2012 MAZDA 323 SEDAN, :
:
Defendant :

ORDER OF COURT

AND NOW, this 7TH day of March, 2019, upon consideration of the "Motion for Reconsideration of Memorandum Opinion" filed¹ by Irena Swiatek, the legal memorandum filed in support thereof, and after argument thereon, it is hereby ORDERED and DECREED that said Motion is DENIED.²

BY THE COURT:


Joseph J. Matika, Judge

¹ This Court issued its Memorandum Opinion in this matter on June 21, 2018. Swiatek's Counsel claimed that he never received a copy of that opinion from the Carbon County Clerk of Court's Office. A review of the docket entries in this case support that claim therefore, this Court will treat Swiatek's Motion for Reconsideration filed on September 28, 2018 as one also seeking Nunc Pro Tunc Relief.

² Swiatek first claims that this Court erred in finding that she was not an innocent owner of the vehicle subject to this forfeiture. For the reasons stated in the Findings of Facts & Conclusions of Law outlined in the June 21, 2018 Order of Court, This Court still finds no error in that ruling. Swiatek next claims in her motion for reconsideration that the Court failed to conduct a proper analysis of various factors outlined in *Commonwealth v. 1987 Chevrolet*, 160 A.3d 153 (2017), relative to the excessive fines clause of the Eighth Amendment. Our review of the applicable law would suggest that a consideration of a claim that a forfeiture violates the excessive fine clause does not apply to a third party, Swiatek, whom the Court found was not the "innocent owner" of the vehicle in question. In other words, Swiatek does not have standing to raise this argument.

SCANNED