ALD-079 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2637

HASAN SHAREEF,
Appellant

v.

BRIAN PALKO, Officer; WILLIAM T. FULLERTON, Judge;
TIMOTHY F. MCCUNE, Judge; THOMAS DOERR, Judge;
TERRY L. SCHULTZ, District Attorney;
MARK LOPE, District Attorney; CHUCK M. NEDZ, Lawyer;
CINGOLANI, Lawyer; and ANDREW O. STIFFLER, Lawyer

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civ. No. 2:19-cv-01330)
District Judge: Honorable J. Nicholas Ranjan

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2), or for
Possible Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
January 28, 2021
Before: MCKEE, GREENAWAY, JR. and BIBAS, Circuit Judges

(Opinion filed: March 16, 2021)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Hasan Shareef is serving a prison sentence as a result of convictions for violating Pennsylvania's drug and gun laws. Proceeding pro se and in forma pauperis, Shareef filed in the District Court a civil rights action against the officer who arrested him, two assistant district attorneys that prosecuted him, three judges that handled aspects of his criminal case, and three defense attorneys that represented him at various junctures. Shareef raised claims of false arrest, false imprisonment, and malicious prosecution.[1]

The Magistrate Judge screened Shareef's complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(a) and then issued a report recommending that the complaint be dismissed sua sponte. The Magistrate Judge concluded that the judges and prosecutors are absolutely immune from civil liability and—in the case of the judges—suit altogether. The Magistrate Judge next concluded that Shareef lacked a cognizable claim against the defense attorneys because none appeared to have acted "under color of state law," a required feature of conduct potentially redressable under 42 U.S.C. § 1983. The Magistrate Judge also concluded—based on Shareef's allegations, as confirmed by judicially noticeable court records—that because Shareef was arrested in 2016 but did not file suit until 2019, his claim against the arresting officer fell outside the applicable two-year statute of limitations and was thus untimely. Finally, the Magistrate Judge concluded that none of the foregoing defects could be remedied through an amended pleading.

[1] Shareef's complaint overlapped to some degree with an earlier, separately filed pleading that is the subject of his appeal at C.A. No. 20-1863.

Over Shareef's objections, the District Court adopted the Magistrate Judge's report and recommendation and dismissed the complaint. This appeal followed.

We have jurisdiction under 28 U.S.C. § 1291. Our standard of review is effectively de novo across the board. See Dooley v. Wetzel, 957 F.3d 366, 373 (3d Cir. 2020) (providing that a district court's sua sponte dismissal for failure to state a claim, under § 1915A(b)(1) or § 1915(e)(2)(B)(ii), is reviewed de novo); U.S. ex. rel. Schumann v. AstraZeneca Pharms. L.P., 769 F.3d 837, 849 (3d Cir. 2014) (reviewing district court's denial of leave to amend for abuse of discretion, but reviewing de novo its determination that amendment would be futile); Figueroa v. Blackburn, 208 F.3d 435, 439 (3d Cir. 2000) (explaining that whether absolute immunity applies is a question of law that is reviewed de novo).

Shareef's arguments on appeal are disjointed at best. From what we can discern, however, he is generally asking for a trial on several claims, many of which were not raised below. See, e.g., Doc. 11 at 1 ("I lost my [criminal] trial because [a corrections officer] took all my lay work [and] denied me access to courts"). While several of the newly asserted claims might be appropriate for a post-conviction proceeding, see, e.g., Doc. 11 at 3 (seemingly arguing that Shareef was denied the right to self-representation); Doc. 11 at 6 (seemingly arguing that Shareef is in possession of new exculpatory evidence), they are not appropriate for a civil rights action such as this one. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Furthermore, to the extent that success on any of Shareef's civil-law damages claims would necessarily undermine his criminal

convictions or sentence, they may not proceed unless and until he has invalidated the convictions or sentence. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994).

Ultimately, we conclude that there was no error by the District Court. Based on the nature of the claims Shareef raised below, the judges and prosecutors he sued are immune from civil liability. See Burns v. Reed, 500 U.S. 478, 486 (1991); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). In addition, Shareef does not have a viable civil rights claim against his former defense attorneys. See Polk County v. Dodson, 454 U.S. 312, 325 (1981); Black v. Bayer, 672 F.2d 309, 320 (3d Cir. 1982), abrogated on other grounds by D.R. v. Middle Bucks Area Vocational Tech. Sch., 972 F.2d 1364, 1368 n.7 (3d Cir. 1992). It was permissible, moreover, for the District Court to dismiss sua sponte Shareef's facially untimely claim against the arresting officer. See Jones v. Bock, 549 U.S. 199, 215 (2007); Fogle v. Pierson, 435 F.3d 1252, 1258 (10th Cir. 2006); see also Bethel v. Jendoco Constr. Corp., 570 F.2d 1168, 1174 (3d Cir. 1978).[2] Finally, the District Court did not abuse its discretion or otherwise err in dismissing the complaint without providing Shareef an opportunity to amend, because amendment would have indeed been futile. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

Accordingly, for the reasons given above, the judgment of the District Court is affirmed. See 3d Cir. L.A.R. 27.4 (2011); 3d Cir. I.O.P. 10.6 (2018).

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[2] It was also permissible for the District Court to take judicial notice, at the screening stage, of certain facts germane to its timeliness analysis. See Fed. R. Evid. 201(c)-(d) (allowing a judge to take judicial notice of a fact an "at any stage of the proceeding").

ALD-079

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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HASAN SHAREEF,
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v.

BRIAN PALKO, Officer; WILLIAM T. FULLERTON, Judge;
TIMOTHY F. MCCUNE, Judge; THOMAS DOERR, Judge;
TERRY L. SCHULTZ, District Attorney;
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On Appeal from the United States District Court
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Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2), or for
Possible Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
January 28, 2021
Before: MCKEE, GREENAWAY, JR. and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2), or for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on January 28, 2021. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered July 16, 2020, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: March 16, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HASAN SHAREEF, Plaintiff, vs. BRIAN PALKO, *et al.*, Defendants.	2:19-cv-1330 Hon. J. Nicholas Ranjan Magistrate Judge Lisa Pupo Lenihan

MEMORANDUM ORDER

This is a *pro se* prisoner civil rights action filed by Plaintiff Hasan Shareef pursuant to 42 U.S.C. § 1983. The complaint was referred to Magistrate Judge Lisa Pupo Lenihan for proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court applicable to Magistrate Judges.

Currently before the Court is a Report & Recommendation filed by Judge Lenihan on June 17, 2020, recommending that Mr. Shareef's complaint be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii) and 28 U.S.C. § 1915A(1) and (2). [ECF 13]. Mr. Shareef was notified that, pursuant to 28 U.S.C. § 636(b)(1)(C), objections to the Report & Recommendation were due by July 6, 2020, and he filed timely Objections on that date. [ECF 14]. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must now make a *de novo* determination of those portions of the Report & Recommendation to which objections were made. The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the

magistrate judge. The Court may also recommit the matter to the magistrate judge with instructions.

In his objections, Mr. Shareef appears to expound upon many of the same allegations that he made in his complaint. Those allegations were aptly summarized by Judge Lenihan as suggesting "that he was not brought in front of the same magistrate judge who issued the warrant for his arrest, that the magistrate judge was not neutral and detached, that he was subject to a malicious prosecution by the Butler County District Attorney's Office, that he was subject to a false arrest and/or imprisonment, and that he complained about all of this to his defense attorneys who failed to take any action." [ECF 13, p. 4 (citing ECF 5, pp. 2-3)]. What Mr. Shareef's objections do not provide, however, is any basis for rejecting Judge Lenihan's well-reasoned conclusion that his claims are barred by the insurmountable combination of Eleventh Amendment immunity, judicial immunity, prosecutorial immunity, the limitation of Section 1983 to acts "under color of state law," and the statute of limitations.

Thus, upon *de novo* review of the Report & Recommendation and Mr. Shareef's objections thereto, the following order is now entered.

AND NOW, this 13th day of July, 2020, it is ORDERED that the Report & Recommendation [ECF 13] is adopted as the Opinion of the Court.

IT IS FURTHER ORDERED that Mr. Shareef's complaint [ECF 5] is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and (iii) and 28 U.S.C. 1915A(1) and (2). The Court finds that amendment of Mr. Shareef's claims would be futile and so this dismissal is WITH PREJUDICE.

IT IS FURTHER ORDERED that, upon entry of final judgment by the Court, the Clerk of Court mark this case CLOSED.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Mr. Shareef has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

DATE: July 13, 2020

/s/ J. Nicholas Ranjan
United States District Judge

Cc: Hasan Shareef
NU-0779
SCI Forest
P.O. Box 307
Marienville, PA 16239

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMON WEALTH OF PENNSYLVANIA : C.A. NO.: 1714-2016

VS.

HASAN SHAREEF

10 DAY POST SENTENCE MOTIONS

AND NOW COMES the Defendant, Hasan Shareef, by and through his attorneys, CINGOLANI & CINGOLANI, per Armand R. Cingolani, III, files the following: 10 Day Post Sentence Motions

1. Pursuant to Pa. Crim. Pro. Rule 720 a written post sentence motion shall be filed no later than 10 days after imposition of sentence. The Defendant was sentenced on December 20, 2018.

2. The Defendant requests a motion for Judgment of Acquittal or a Motion for a New Trial or a Motion to Modify Sentence.

3. Several Omnibus Motions for the Defendant were filed prior to appointed counsel of Armand R.Cingolani III. His prior counsels at the time filed but they were denied, as untimely filed. This is not the Defendant's fault as he had counsel and counsel knew the rules and Defendant should not be prejudged by the counsel's failure to file. If Defendant had an Omnibus hearing he would have been able to timely object to several issues and probably had the charges dismissesd.

3

4. Defendant intended to object to the fact that District Justice William O'Donnell signed the warrant but the District Justice did not hear the case. The magistrate issuing the warrant or signing the case must hear the case. Under Pa.Crim. Pro.Rule 117, the President Judge must guarantee sufficient issuing authorities to provide services to the Defendant, to ensure service of warrants and preliminary arraignments and bail. The Defendant was denied a hearing before the impartial Magistrate William O'Donnell who set his case, but he was forced to have his case heard before District Judge William Fullerton although the jurisdiction was probably with Kevin O'Donnell. This error violates the rules as William O'Donnell issued the case and the address of the property to be searched was East Jefferson St, which should be in the city of Butler. All of these irregularities violate Pa. Crim. Pro. Rule 130. B.T. Fullerton should have been the issuing Magistrate but he was not.

5. Although Pa. Crim. Pro.Rule 130 seems to say any authority can hear a case it should be heard in the jurisdiction where it occurred by that magistrate. This is confirmed by Pa.Crim. Pro. Rule 131 whereby proceedings should be heard in the jurisdiction where they occurred. Therefore the charges should be thrown out for violating the rules.

6. No warrant was issued to arrest the Defendant in the house where he was arrested. The police broke into the house without knocking and bounded up the stairs to the attic. There was no reason to go up to the attic to search and seize the Defendant as he was just present and not a threat.

7. While it is true that Defendant broke a tiny window in the attic and cut his hand, supposedly in a peculiar claim of escape (although the window appears to be too small to enable a grown man to escape) that is not a probable cause to arrest him as escaping or running away are not grounds to justify an arrest.

8. No warrant was issued to arrest the Defendant in the first place so there is a prima facie violation of Pa.Crim. Pro. Rule 205, contents of a search warrant.

9. The police violated Pa. Crim. Pro. Rule 207 manner of entry in premises. They just burst in without giving the Defendant a chance to enter the door. This violated his citizenship rights under the 4th and 5th Amendments so the charges must be dismissed.

10. Pa.Crim. Pro. Rule 513 was violated because there was no arrest with a prior warrant based in probable cause.

11. The Defendant was denied his rights to have an Omnibus Pretrial hearing under Pa.Crim. Pro. Rule 581. The Defendant was denied a hearing because his counsel at the time did not file timely for a hearing, but that is ineffective assistance of counsel and while his counsel may be punished, this denial wrongfully prejudices the Defendant who requested an Omnibus Motion from all counsels. If the evidence has been suppressed, then the charges would have been dismissed and the Defendant could not be convicted at trial. An Omnibus hearing would have shown the Defendant could not be connected to the evidence against him, that the weapons and drugs were not his and that the police improperly searched his closed bags and containers without a warrant in violations of his rights.

12. The Defendant was denied a timely trial having been held in jail in an excess of a year pursuant to Pa.Crim. Pro. Rule 600. The charges should have been dismissed.

13. Under Pa.Crim. Pro. Rule 606 the Defendant challenges the sufficiency of the evidence by to motion for acquittal by this paragraph within 10 days of the trial.

14. The evidence, improperly obtained, was not in any case sufficient to convict the Defendant. The fact that guns and drugs were in the vicinity of Defendant in a home use by many criminals does not prove that the Defendant owned or controlled the drugs and weapons by mere presence with guns and drugs is not sufficient to prove the Defendant owned or controlled the weapons.

15. Under Pa.Crim. Pro. Rule 607 the Defendant challenges the weight of the evidence and requests a new trial. Neither the testimony of the officers nor the lab report

conclusively lead the jury to conclude the Defendant had ownership or possession or control of guns and drugs. The lab report did not prove the guns and drugs were his. The testimony of the officers just bolstered the belief that because guns and drugs were present in a room with Defendant that they must be his guns and drugs. This is a Post Hoc Propter Hoc argument, an assumption that the conclusion proves the premises which are not justified or proven true. The officers merely restated their beliefs.

16. The Defendant was denied his paperwork to prepare for trial because it was sequestered by the jail. He therefore could not properly prepare for trial because he was denied access to his case notes. As a result his winning plans turned into the defeat.

17. The Defendant was denied a fair trial because the jury discriminated against on the basis of his race. For example a juror declared his fear of Defendant and expressed fear that Defendant would hunt him down.

18. The Defendant was denied the opportunity by the Court to ask questions of the experts and the police.

19. The Court and the prosecutor objected to questions the Defendant wished to ask and the Court refused to let the Defendant ask the questions his own way. The Defendant was denied the opportunity to present competent evidence. Competent evidence was excluded.

20. The Defendant had prepared questions for the witnesses and the police and the District Attorney but since the papers were locked up the Defendant could not reconstruct his case. And so he was denied the right to participate in his trial.

21. The Court did not properly instruct jury on what constitutes constructive possession.

22. Evidence was not considered at trial by lawyer or Judge McCune that Captain Moore and Warden Conspired and took the Defendants legal law work needed to defend himself in trial in violation of Defendants Eighth and Fourteenth Amendment Rights.

23. Outside range of professional competence evidence was excluded.

24. Defendant's Counsel, committed misconduct in that evidence was admitted without proper defense or objection.

25. False arrest not going in front of Magistrate District Judge who issue warrant. .

26. Admitting incompetent evidence and excluding competence evidence errors in Admission.

27. Defense counsel failed to subpoena Warden and Captain Moore in pretrial hearing and then again at trial to submit to cross examination about why they withheld or destroyed Defendant's evidence and trial preparation notes. Defendant believes they deliberately withheld or destroyed his trial papers.

28. Defendant objects that the court and defense counsel did not properly instruct jury about witness testimony lab reports and admissibility of evidence.

29. Counsel did not put motion as evidence for jury.

30. Need evidentiary hearing see if this true.

31. Prior counsel Cuebas did not put motion suppress the gun.

32. Pokice Maliciously and without probable cause procured criminal complaint against Defendant in violation of his fourth and fifth Amendment right against illegal search and seizure.

33. Conviction was by fraud or pejury or other undue means

34. Defendant's counsel erred in failing to demurrer to the charges at trial and therefore demurrers in this post-trial motions.

35. The Defendant complains counsel did not argue the error complained of by appellant were prejudicial of his substantial rights to receive a fair and impartial trial because the verdict was palpably against evidence. Further counsel failed in not putting in due process hearing, and untimely filing for motion of suppression evidence and failing to file Motion to Reconsider Denial of Prior Motions.

WHEREFORE, the relief respectfully requested is reversal of the charges and a new trial.

Respectfully Submitted,

Armand R. Cingolani III

IN THE COURT OF COMMON PLEAS OF BUTLER COUNTY, PENNSYLVANIA

COMMONWEALTH	)	CRIMINAL DIVISION
vs	)	
Hasan Shareef	)	CP-10-CR-0001714-2016 CP-10-CR-0000592-2018

RESPONSE TO MOTION FOR RETURN OF PROPERTY

AND NOW comes the County of Butler and Butler County Prison, by and through their counsel, Julie M. Graham, Esquire, Solicitor for the County of Butler, and in support of the within Response to Motion for Return of Property, avers as follows:

1. On September 25, 2018, Attorney Armand R. Cingolani, III, attorney for Inmate Hasan Shareef, filed a Motion for Return of Property.

2. A hearing was held on Defendant's Motion on November 1, 2018. The Movant, Hasan Shareef, did not serve a copy of the Motion for Return of Property on the Butler County Prison (the "Prison"), nor did he notify the Prison of the hearing scheduled on or about November 1, 2018.

3. By Order of Court dated November 1, 2018, the Prison was directed to respond to the allegations made in the Motion for Return of Property within 30 days of the Order of Court.

4. On August 14, 2018, immediately prior to inmate Hasan Shareef's move from the Allegheny County Jail to the Prison six Prison employees were exposed to an unknown substance, resulting in those six employees being transferred to Butler Memorial Hospital for treatment. The Prison was placed on lockdown status pending an investigation. During the investigation, the unknown substance was discovered to be K2, a

synthetic cannabinoid. While the exposure method remains unknown it is believed that this substance was infiltrated into the Prison via inmate mail or personal effects.

5. On August 20, 2018, inmate Hasan Shareef was transported to the Prison from the Allegheny County Jail. Captain Clyde Moore and Corrections Officer Mark Bowman processed inmate Hasan Shareef into the facility and started to search his property. While searching inmate Hasan Shareef's property, both employees reported "they began to experience burning and irritated skin and burning eyes." These symptoms were similar to the symptoms the six prior employees experienced on August 14, 2018 when they were transported to Butler Memorial Hospital.

6. Captain Clyde Moore sealed the property in a secure black garbage bag and placed the sealed property bag in his secure office for when inmate Hasan Shareef would be released from the Prison. Captain Moore's and Correction Officer Bowman's symptoms subsided to where medical treatment was not required. At that time, Captain Moore explained to inmate Hasan Shareef his property was deemed bio-hazard and to contact his attorney to send in any legal work to the facility. The incident reports of Captain Moore and Correction Officer Bowman on this issue are attached hereto, incorporated herein and marked Exhibits A and B, respectively.

7. On August 29, 2018 the Pennsylvania Department of Corrections ("DOC") placed the entire state prison system on an extended lockdown to combat the numerous number of DOC employees becoming sick while being exposed to an "unknown substance." Multiple policy changes were enacted for the DOC varying from inmate mail being sent off site and photocopied, legal mail opening practices, etc.

8. During the week of September 16-20, Warden DeMore spoke with inmate Hasan Shareef about his property. The Warden explained to inmate

Shareef that there were concerns his property was contaminated and was deemed bio-hazard but was stored on-site for when he was released from the Prison custody. Warden, Joe DeMore, reaffirmed that Captain Moore told inmate Hasan Shareef to have his attorney send any pertinent legal mail to the facility. Warden DeMore explained in detail that the jail could have sent his bagged up property out to be tested for K2 which would result in all his property being deemed bio-hazard and consequently could be destroyed by the haz-mat team/testing agency. Inmate Hasan Shareef thanked Warden DeMore for not sending his property out to be tested and said he understood.

9. A letter was sent to the Prison on October 3, 2018 from inmate Hasan Shareef's attorney, Armand Cingolani, regarding inmate Hasan Shareef's property. On October 4, 2018 at approximately 1155 hours, Deputy Warden Beau Sneddon ("D.W. Sneddon") spoke to Attorney Cingolani on the telephone about inmate Hasan Shareef's property. Attorney Cingolani indicated he was "under the impression inmate Hasan Shareef's property was destroyed or lost." D.W. Sneddon offered Attorney Cingolani the option of having inmate Hasan Shareef sign a release of property form and that Attorney Cingolani could take possession of his client's property. Attorney Cingolani refused this option. Copies of the two Prison Incident Reports filed by D.W. Sneddon documenting this issue are attached hereto, incorporated herein and marked Exhibits C and D, respectively.

10. Based on the above information and difficulties of identifying synthetic cannabinoids on property, paperwork, etc. with the naked eye as well as detection tools, the Prison administration made the decision to mark inmate Hasan Shareef's property as bio-hazard and to have it securely stored and returned to the inmate upon his release from Prison custody. The Prison administration has made every effort to communicate with inmate Hasan Shareef and his attorney to get any needed copies of legal material back in his hands through his attorney as well as having inmate

Hasan Shareef sign a property form releasing his property to his attorney Armand Cingolani. Safety is paramount and the Prison Administration's decision was based solely on keeping all the employees and inmates of the Prison safe by not re-opening inmate Hasan Shareef's property risking contamination to any employees or inmates.

11. In light of the safety issues and risks associated with the return of the Inmate's property, the Prison Administration intends to hold his property in a safe and secure location unless or until the time of his release and/or transfer at which point it will be returned to him following appropriate safety protocols.

12. Alternatively, the Prison Administration's previously made proposal that the inmate execute an authorization for release of this property to his attorney or other designee remains open.

13. The Prison has broad discretion in establishing policies and procedures relative to the handling of inmate property to preserve and protect the safety of inmates and correctional officers. The course of action identified herein is within the guidelines established by the Pennsylvania Supreme Court in, O'Toole v. Pennsylvania Department of Corrections, --- A.3d.--- (2018), 2018 W.L. 4998392.

By: _____

Julie M. Graham
Butler County Solicitor
124 West Diamond Street
P.O. Box 1208
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PA I.D. No. 36483

2018 PA Super 27 183 A3d 1009

Date: November 20, 2018

BUTLER COUNTY PRISON
INCIDENT REPORT

Reporting Officer MOORE, CLYDE

Incident DateTime: 08/20/2018 17:00

Location Type PROCESSING

Location of the Incident:

Incident Type INFORMATIONAL

Inmates Involved

Inmate #	Name
031505	SHAREEF JR, HASAN AL

Employees Involved

Name
SCUILLO, MICHAEL
BOWMAN, MARK
KENGERSKI, JEFFREY

Narrative

On 8/20/2018, Butler County Prison received 5 new commitments from Allegheny County Jail. As we do for all commitments, all property was placed into separate plastic bins, as to not mix up any inmates property. As the Sheriffs Deputies were taking the transport gear off the new commitments, Hasan Shareef began asking about his paperwork, and property. Inmate Shareef has been in our facility in the past, and knows he is to receive his property after it has been properly searched. Inmate Shareef continued to inquire about his property during the duration of his time in processing. As I began looking thru the property belonging to inmate Shareef, my right arm, and both eyes began to burn, and become irritated. I instructed Officer Mike Scuillo to dawn a protective mask, and gloves, and place the property into a garbage bag, and tie the bag shut. I then went to my office, and called Sgt Jeff Kengerski, and asked him to bring the decontamination wipes from medical to my office. I relayed all information to Sgt Kengerski concerning the property. Property was left in my office.

The following day, as I spoke to Officer Mark Bowman, he relayed that he too had a reaction to said property. Due to two Officers having reactions to this property, it was deemed a bio-hazard. inmate Shareef was informed of this, and was instructed to contact his Attorney, and have all his legal work sent to the facility.

Inmate file
w3rda

OFFICER NAME PRINT: Clyde Moore DATE: 8-29-18

OFFICER NAME SIGN: [signature] TIME: 0919

ADMINISTRATION: [signature] DATE AND TIME: 9/18/18 2300

EXHIBIT
A

BUTLER COUNTY PRISON
INCIDENT REPORT

Incident DateTime: 08/20/2018 13:45

Reporting Officer BOWMAN, MARK

Location Type PROCESSING

Location of the Incident: PROCESSING

Incident Type INFORMATIONAL

Inmates Involved

Inmate #	Name
031505	SHAREEF JR, HASAN AL

Employees Involved

Name

Narrative

On the above date and approximate time Inmate Hasan Ali Shareef was committed to the BCP. This officer had been organizing Inmate Shareef's property to keep it from getting misplaced. Shortly after his property was handled this officer had received small red bumps all over my left hand . This officer had no other symptoms , and after washing my hands the irritation was gone. This officer didn't realize this to be an issue until I spoke with Capt. Clyde Moore on 8/21/2018 and he was commenting on having similar symptoms after handling Inmate Shareef's property. No further incident to report.

Respectfully Submitted,

C/O Mark Bowman

OFFICER NAME PRINT: M. L. Bowman DATE: 8-23-18

OFFICER NAME SIGN: [signature] TIME: 8:15 AM

ADMINISTRATION: _____ DATE AND TIME: _____

EXHIBIT B

BUTLER COUNTY PRISON
INCIDENT REPORT

Incident DateTime: 10/04/2018 11:55

Reporting Officer SNEDDON, BEAU

Location Type

Location of the Incident:

Incident Type

Inmates Involved		Employees Involved
Inmate #	Name	Name
031505	SHAREEF Jr, HASAN ALI	

Narrative

On Thursday, October 4, 2018 at approximately 1155hrs., I received a return phone call from Inmate Hasan SHAREEF's attorney, Armand CINGALONI in reference to some of Inmate SHAREEF's property. I explained to CINGALONI that I was calling in reference to some court paperwork that the Warden had recently received in which CINGALONI was petitioning the courts requesting that the prison return property that had been taken from Inmate SHAREEF. I advised CINGALONI that the property in question had been sealed up after two officers who were searching the property began to experience burning and irritated skin and burning eyes. I told CINGALONI that BCP as well as numerous other correctional facilities throughout Pennsylvania have been experiencing similar incidents recently. I advised CINGALONI that BCP staff would not be re-opening the bags of property in question. I advised CINGALONI that if Inmate SHAREEF was willing to sign a release of property form, CINGALONI could respond to the prison and take possession Inmate SHAREEF's property, otherwise the property would be stored as is and returned to SHAREEF upon his release from BCP. CINGALONI responded that he was under the impression that the property had been destroyed or lost and expressed that he had no interest in taking possession of the property.

Beau Sneddon
Deputy Warden of Operations

INMATE
WARDEN
SECURITY

OFFICER NAME PRINT: Beau Sneddon DATE: 10-4-18

OFFICER NAME SIGN: TIME: 1510

ADMINISTRATION: DATE AND TIME: 10-4-18

EXHIBIT C

BUTLER COUNTY PRISON
INCIDENT REPORT

Incident DateTime: 10/04/2018 09:15

Reporting Officer SNEDDON, BEAU

Location Type BUTLER COUNTY PRISON

Location of the Incident:

Incident Type

Inmates Involved

Inmate #	Name
031505	SHAREEF JR, HASAN AL

Employees Involved

Name

Narrative

On Thursday, October 4, 2018 at approximately 0915 I attempted to contact Attorney Armand Cingolani in regards to some motions to the court in reference to property belonging to Inmate Hasan SHAREEF. I was advised by the female that answered the phone and did not identify herself that Cingolani was not in the office. The female took my contact information and stated that she would have Cingolani call me back.

Beau Sneddon
Deputy Warden of Operations

INMATE
WARDEN
SECURITY

OFFICER NAME PRINT: Beau Sneddon DATE: 10-4-18

OFFICER NAME SIGN: TIME: 0930

ADMINISTRATION: DATE AND TIME: 10-4-18

EXHIBIT
D

VERIFICATION

I, the undersigned, state that I am the Warden of the Butler County Prison; that the attached Response to Motion for Return of Property is based upon facts which I have personal knowledge of and that the facts set forth in the foregoing are true and correct to best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Joe DeMore, Warden, Butler County Prison

CERTIFICATE OF SERVICE

I, Julie M. Graham, hereby certify that I served a true and correct copy of the foregoing Praecipe for Entry of Appearance in the above-captioned matter by First Class, U.S. Mail to the following on this 20th day of November, 2018:

Armand R. Cingolani, III, Esquire
Cingolani & Cingolani
300 North McKean Street
Butler, PA 16001

Richard A. Goldinger, Esquire
Butler County District Attorney
Third Floor, County Government Center
124 West Diamond Street
P.O. Box 1208
Butler, PA 16003

Julie M. Graham,
Butler County Solicitor

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

CONSTITUENT SERVICES
16th Floor Strawberry Square
Harrisburg, PA. 17120
717-787-3391

December 28, 2018

Hasan Shareef
Butler County Prison
202 S. Washington Street
Butler, PA 16001

Dear Mr. Shareef,

Thank you for contacting the Office of Attorney General Josh Shapiro. We received your letter regarding your complaint against the ~~Allegheny~~ BUTLER County Police Department.

Under Pennsylvania law, the Attorney General cannot give you legal advice or represent you in any personal matter. You may want to consider consulting a private lawyer about this issue. If you do not already have a lawyer, you can contact the Pennsylvania Bar Association's Lawyer Referral Service at 717-238-6807 or toll-free at 1-800-692-7375. They can also assist you if you need a lawyer but cannot afford to pay for one. For additional information, you can visit their website at http://www.pabar.org/site/Public/lrsblurb.

Sincerely,

Stephen St.Vincent
Director of Policy and Planning

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

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
HASAN SHAREEF	:	
Appellant	:	No. 815 WDA 2019

Appeal from the Judgment of Sentence Entered December 20, 2018
In the Court of Common Pleas of Butler County Criminal Division at
No(s): CP-10-CR-0001714-2016

BEFORE: KUNSELMAN, J., KING, J., and COLINS, J.*

MEMORANDUM BY COLINS, J.: **FILED JULY 23, 2020**

Appellant, Hasan Shareef, appeals from the judgment of sentence following his conviction of possession with intent to deliver a controlled substance ("PWID") and persons not to possess a firearm.[1] We affirm.

On May 27, 2016, Trooper Brian Palko of the Pennsylvania State Police executed a search warrant at a three-story residential duplex on East Jefferson Street in Butler, Pennsylvania, related to Trooper Palko's investigation of a burglary of a boat rental business. When Trooper Palko knocked on the door of the residence to announce the presence of the officers, the unlatched front door swung open. Trooper Palko and the troopers who accompanied him then

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* Retired Senior Judge assigned to the Superior Court.

[1] 35 P.S. § 780-113(a)(30); 18 Pa.C.S. § 6105(a)(1).

conducted a protective sweep of the first floor of the residence but did not find anyone present.

While clearing the first floor, Trooper Palko heard glass breaking from the upper floors of the residence and requested that the individual who was responsible for the noise come downstairs. When no one came down, Trooper Palko ascended the steps to the third floor and found Appellant emerging from a cubby hole with bloody hands from the broken glass. While sweeping the upstairs area, Trooper Palko observed a handgun in plain view on a ledge, another handgun sticking out of an open black leather bag behind a couch, and a glassine bag commonly used in drug trafficking. No one else aside from Appellant was discovered at the residence.

After securing Appellant, Trooper Palko applied for a second search warrant related to potential drug activity at the residence. From the black leather bag where the handgun was found, the troopers recovered multiple bags of cocaine and heroin, suboxone strips, various pills, drug paraphernalia, and approximately $6,000 in cash. Trooper Palko later obtained a search warrant to collect a saliva sample from Appellant for DNA testing, and genetic material from the two firearms recovered in the residence was determined to match Appellant's DNA.

Appellant was charged with persons not to possess a firearm, three counts of PWID, and other drug charges. Appellant filed an omnibus pre-trial motion, which sought the suppression of the evidence retrieved from the East Jefferson Street duplex. On September 21, 2017, the trial court denied this

motion as untimely. Appellant's court-appointed counsel then filed an application to withdraw, which the trial court granted, and Appellant retained substitute counsel. Appellant's new counsel then filed motions for leave to file pre-trial motions and to sever the firearms charge from the remaining charges. The trial court granted both motions. Appellant's counsel filed a suppression motion, which the trial court denied via memorandum opinion and order on February 7, 2018.

On October 22, 2018, Appellant was found guilty of the firearms offense after a one-day jury trial. On December 4, 2018, Appellant pleaded guilty to one count of PWID and the remaining charges were withdrawn. On December 20, 2018, Appellant was sentenced to an aggregate 54-to-108-month term of incarceration. Appellant then filed the instant appeal.[2]

On appeal, Appellant raises three issues: (1) whether the search and seizure of the separate attic room of the East Jefferson Street residence was

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[2] Appellant first filed a timely post-sentence motion on December 27, 2019. When the trial court failed to rule on the post-sentence motion within 120 days as required by Pa.R.Crim.P. 720(B)(3)(a) and the clerk of courts did not issue an order denying the motion by operation of law as required by Pa.R.Crim.P. 720(B)(3)(c), Appellant filed a notice of appeal on May 30, 2019. Because Appellant's untimely appeal followed a breakdown in the court system as a result of the clerk of court's failure to notify him of the denial of his post-sentence motion by operation of law, we will consider his appeal as timely filed. ***Commonwealth v. Braykovich***, 664 A.2d 133, 138 (Pa. Super. 1995). Appellant filed a concise statement of matters complained of on appeal on June 13, 2019. The trial court filed its Pa.R.A.P. 1925(a) opinion on July 29, 2019.

proper in the absence of a warrant; (2) whether sufficient evidence was presented that Appellant possessed the firearms found at the residence; and (3) whether Appellant was denied due process by virtue of the fact that the trial court did not order the jail where Appellant was being held to return certain legal papers to him in advance of trial.[3]

We first review Appellant's claim that the trial court erred in denying his suppression motion. Our standard of review of a trial court's ruling on a suppression motion is "whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct." ***Commonwealth v. Duke***, 208 A.3d 465, 469 (Pa. Super. 2019) (citation omitted). We are bound by the facts found by the trial court so long as they are supported by the record, but we review its legal conclusions *de novo*. ***Commonwealth v. Kane***, 210 A.3d 324, 329 (Pa. Super. 2019). The trial court has sole authority as fact-finder to pass on the credibility of witnesses and the weight to be given to their testimony. ***Duke***, 208 A.3d at 470. "Our scope of review is limited to the record developed at the suppression hearing, considering the evidence presented by the Commonwealth as the prevailing

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[3] Appellant's brief does not contain a statement of the questions involved in his appeal as required by the Rules of Appellate Procedure. Pa.R.A.P. 2111(a)(4); Pa.R.A.P. 2116(a). However, because this defect in the brief does not impede our ability to discern and address the three issues Appellant seeks to raise, we decline to find waiver on this basis. ***Werner v. Werner***, 149 A.3d 338, 341 (Pa. Super. 2016). We have summarized the appellate issues from the summary of the argument section of his brief and the headings within the argument section of the brief. ***See*** Appellant's Brief at 3-4, 10-11.

party and any uncontradicted evidence presented by the defendant." ***Kane***, 210 A.3d at 329 (citation and brackets omitted).

On appeal, Appellant challenges the initial search warrant issued for the search of the East Jefferson Street residence, contending that it only related to the items taken during the burglary of the boat rental business and did not state that the officers could search the attic room where he was found. Appellant thus contends that the warrant did not state with sufficient particularity the places to be searched and the items to be seized. Appellant further argues that the firearms seized in the residence were not in plain view but in fact in closed luggage. Appellant additionally contends that the Pennsylvania State Police troopers' entry into the residence violated the knock and announce rule set forth in Pennsylvania Rule of Criminal Procedure 207. Finally, Appellant argues that the troopers impermissibly obtained a buccal DNA sample from him via a search warrant because "DNA is a sacred bodily fluid" and may only be collected with the individual's consent. Appellant's Brief at 10.

Initially, we observe that, while Appellant filed a broad suppression motion asserting various grounds for relief, the motion did not argue that the search warrant for Appellant's buccal DNA sample was constitutionally impermissible because DNA is a sacred bodily fluid. It is well-established that issues not first presented to the trial court are waived on appeal. Pa. R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."). Even issues of constitutional dimension are

waived if they are not preserved in the trial court. ***Commonwealth v. Cline***, 177 A.3d 922, 927 (Pa. Super. 2017). "The appellate rules direct that an issue must be raised in the trial court in order to provide that court with the opportunity to consider the issue, rule upon it correctly, and obviate the need for appeal." ***Gustine Uniontown Associates, Ltd. v. Anthony Crane Rental, Inc.***, 892 A.2d 830, 835 (Pa. Super. 2006). Because Appellant did not present his appellate challenge to the DNA warrant to the trial court, that issue is waived.

Next, we conclude that Appellant waived his challenge based upon the particularity requirement of the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution because he did not raise these issues in his concise statement of errors complained of on appeal. It is axiomatic that issues not included in an appellant's concise statement are waived for purposes of appeal. ***See*** Pa.R.A.P. 1925(b)(4)(vii) ("Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived."); ***Commonwealth v. Proctor***, 156 A.3d 261, 267 (Pa. Super. 2017) ("[I]t is well-settled that issues that are not set forth in an appellant's statement of matters complained of on appeal are deemed waived." (citation, quotation marks, and brackets omitted)).

Furthermore, we are prevented from conducting a meaningful review of Appellant's remaining suppression issues as a result of the fact that no transcript of the suppression hearing appears in the certified record. "The

fundamental tool for appellate review is the official record of the events that occurred in the trial court." ***Commonwealth v. Preston***, 904 A.2d 1, 6 (Pa. Super. 2006) (*en banc*). The certified record consists of "original papers and exhibits filed in the lower court, paper copies of legal papers filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court." Pa.R.A.P. 1921. "[A]n appellate court is limited to considering only the materials in the certified record when resolving an issue." ***Preston***, 904 A.2d at 6; ***see also In the Interest of G.E.W.***, ___ A.3d ___, 2020 PA Super 133, *7 (filed June 8, 2020). In Pennsylvania, we place the responsibility of ensuring that the record on appeal is complete "squarely upon the appellant and not upon the appellate courts." ***Preston***, 904 A.2d at 7.

With regard to transcripts, our Rules of Appellate Procedure require an appellant to order and pay for any transcript necessary for resolution of the issues appellant raises on appeal. Pa.R.A.P. 1911(a). When an appellant fails to adhere to the appellate rules and order all necessary transcripts, "any claims that cannot be resolved in the absence of the necessary transcript or transcripts must be deemed waived for the purpose of appellate review." ***Preston***, 904 A.2d at 7 (citation omitted); ***see also G.E.W.***, 2020 PA Super 133, *7.

In the present matter, a hearing was scheduled on Appellant's suppression motion for February 5, 2018, and the trial court issued its memorandum opinion and order denying the suppression motion on February

7, 2018. In its memorandum and order, the trial court solely addressed Appellant's argument that the affidavit of probable cause accompanying the initial search warrant did not establish probable cause that items taken from the burglary of the boat rental business could be found in the East Jefferson Street residence. Memorandum Opinion, 2/17/18, at unnumbered pages 1, 3.[4]

Following the trial court's ruling, Appellant filed a *pro se* motion to dismiss his privately retained counsel on February 14, 2018; the trial court ultimately permitted counsel's withdrawal on March 6, 2018. On February 23, 2018, Appellant filed a *pro se* handwritten request for a transcript for the "oral arguments" heard on his suppression hearing on February 5, 2018. Docket No. 54. The Butler County Clerk of Courts responded to Appellant by letter of that same date explaining that in accordance with a new local rule, all transcript requests must be made through the filing of a "Request for Transcripts" form. Docket No. 55. Neither Appellant nor his later appointed

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[4] We further observe that the trial court did not cite any testimony or evidence presented at the hearing in its memorandum opinion denying the suppression motion. Although it is impossible to determine definitively without the transcript, it appears that Appellant solely raised a facial challenge to the affidavit of probable cause accompanying the initial search warrant at the February 5, 2018 hearing, an issue distinct from any of the arguments he presents on appeal. In such a case, Appellant's appellate suppression issues would be waived for the purposes of appeal. ***Commonwealth v. Leaner***, 202 A.3d 749, 765 n.3 (Pa. Super. 2019) (holding that an issue raised in a pre-trial motion but abandoned at a subsequent hearing is waived on appeal).

trial counsel requested a transcript of the February 5, 2018 proceedings, and the transcript for that hearing was not entered on the docket.

In sum, our review of the record reveals that Appellant did not order a transcript of the February 5, 2018 suppression hearing and that this transcript is not contained in the certified appellate record. While Appellant did submit a handwritten request for the transcript, the clerk of courts promptly responded to Appellant that his request was not proper under the local rules and informed him where to locate the appropriate form to request a transcript. Furthermore, although Appellant submitted the request while he was in the process of discharging his privately retained attorney, new counsel was appointed for Appellant, his counsel submitted the proper request form for the transcripts of later proceedings in this case, and these transcripts were noted on the docket and included in the certified record. Therefore, Appellant has not demonstrated that the absence of the suppression hearing transcript is attributable to a breakdown in the judicial process. ***Preston***, 904 A.2d at 8 ("An appellant should not be denied appellate review if the failure to transmit the entire record was caused by an 'extraordinary breakdown in the judicial process.'" (citation omitted)).

Appellant's remaining suppression arguments that the troopers did not comply with the knock and announce rule and did not discover the firearms in plain view each require consideration of the factual record developed at the suppression hearing as to which the Commonwealth had the burden of production and persuasion. ***See*** Pa.R.Crim.P. 581(H), Comment; ***see also***

Commonwealth v. Enimpah, 106 A.3d 695, 701 (Pa. 2014); ***Commonwealth v. Frederick***, 124 A.3d 748, 755 (Pa. Super. 2015) (Commonwealth bears the burden of proving at the suppression hearing that it complied with the knock and announce rule or that the circumstances satisfied an exception to the rule). The absence of the testimony and evidentiary record established at the suppression hearing testimony, therefore, precludes our meaningful review of these arguments. ***G.E.W.***, 2020 PA Super 133, *7; ***Preston***, 904 A.2d at 7. Accordingly, in the absence of the suppression transcript, these issues are waived.

In his second appellate issue, Appellant argues that there was "no proof" that he owned the firearms found at the East Jefferson Street residence. Appellant's Brief at 10. Appellant contends that his genetic material only was present on the firearms as a result of blood splatter from the cuts on his hands after he attempted to escape through a window. Appellant asserts that, even if the genetic material was not from his blood and his fingerprints were present on the firearms, such evidence was insufficient to show ownership because "[t]ouch alone is not ownership." ***Id.***

While Appellant does not frame this issue as a challenge to the sufficiency of the evidence for his persons not to possess a firearm conviction,

we analyze it under that framework.[5] We have explained our standard of review with respect to a sufficiency of the evidence argument as follows:

> [w]hen reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, were sufficient to prove every element of the offense beyond a reasonable doubt. The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. It is within the province of the fact-finder to determine the weight to be accorded to each witness's testimony and to believe all, part, or none of the evidence. The Commonwealth may sustain its burden of proving every element of the crime by means of wholly circumstantial evidence. As an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder.

Commonwealth v. Hill, 210 A.3d 1104, 1112 (Pa. Super. 2019) (citations, quotation marks, and brackets omitted).

To sustain a conviction of persons not to possess a firearm under Section 6105(a) of the Crimes Code, the Commonwealth must prove that "the individual (1) possessed, used, controlled, sold, transferred, or manufactured a firearm (or obtained a license to do any of the foregoing activities); and (2)

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[5] We note that Appellant preserved the sufficiency of the evidence claim by raising the issue in his concise statement of matters complained of on appeal. Pa.R.A.P. 1925(b) Statement, 6/13/19, ¶15. The trial court found this issue to be waived because the concise statement did not state with specificity the element or elements upon which the evidence was allegedly insufficient. Trial Court Opinion, 7/29/19, at 3; ***see, e.g.***, ***Commonwealth v. Ellison***, 213 A.3d 312, 320–21 (Pa. Super. 2019). While we agree with the trial court that Appellant's concise statement is not a model of clarity, a fair reading of the statement makes clear that the crux of Appellant's issue is that he did not believe that the Commonwealth had shown that he owned or possessed the firearms found in the East Jefferson Street residence. Thus, we decline to find waiver on this ground.

has been convicted of a specific type of offense" enumerated in the statute. ***Commonwealth v. Greenlee***, 212 A.3d 1038, 1045 (Pa. Super. 2019) (emphasis omitted). Here, Appellant does not contest that he had previous disqualifying convictions but rather he argues that the Commonwealth did not prove the first element related to his possessory interest in the firearms.

In cases where a defendant is not found in actual possession of a prohibited item, the Commonwealth must establish that the defendant had constructive possession of the item to support a conviction. ***Commonwealth v. McClellan***, 178 A.3d 874, 878 (Pa. Super. 2018) (concluding that conviction under Section 6105(a) supported by constructive possession of firearm); ***Commonwealth v. Harvard***, 64 A.3d 690, 699-700 (Pa. Super. 2013) (same). Constructive possession is defined as "conscious dominion" of an object, meaning that the defendant has "the power to control the contraband and the intent to exercise that control." ***Commonwealth v. Parrish***, 191 A.3d 31, 36 (Pa. Super. 2018) (citation omitted); ***see also McClellan***, 178 A.3d at 878. "As with any other element of a crime, constructive possession may be proven by circumstantial evidence," and the requisite knowledge of the item's whereabouts and intent to exercise control over the item may be inferred from the totality of the circumstances. ***McClellan***, 178 A.3d at 878 (citation omitted).

In this case, after hearing glass breaking upstairs, Trooper Palko and his fellow troopers went up to the third floor of the East Jefferson Street residence, which Trooper Palko described as an "open," attic-like living space. N.T.,

10/22/18, at 32-33, 35. The troopers located Appellant coming out of a "cubby hole" area of the third floor with a cut on his hand after apparently attempting to escape through a window. ***Id.*** at 32-33. The troopers also found two handguns in the third floor living space: a Bond Arms Defender derringer found on a ledge by the top of the stairs and an Intratec Tec-22 pistol discovered a few feet away protruding from a black leather bag behind a couch. ***Id.*** Appellant was the only individual located on the third floor, or indeed in the entire residence. ***Id.*** at 33.

After collecting the firearms, Trooper Palko sent them to a Pennsylvania State Police crime laboratory. ***Id.*** at 37, 40. Trooper Palko testified that he did not observe any blood on the handguns while packaging them for testing. ***Id.*** at 49. A forensic serologist at the laboratory testified at trial that she took swabs for "touch DNA" from the two handguns and did not detect blood at any of the sampled areas. ***Id.*** at 56-58. A scientist in the forensic DNA division of the laboratory testified that DNA from two individuals was detected from the swab of the grip of the Tec-22 pistol, but only one of the individuals contributed enough DNA to be suitable for analysis. ***Id.*** at 70. DNA from three individuals was obtained from the swab of the grip of the Bond Arms Defender, but there was only sufficient DNA from one of the individuals for testing. ***Id.*** at 71. Upon comparison of Appellant's DNA obtained from a buccal swab, Appellant's DNA was determined to match the DNA profiles of

the suitable samples obtained from the grips of the two handguns to an extremely high degree of probability.[6] ***Id.*** at 72-76.

We conclude that the evidence at trial was sufficient to show Appellant's constructive possession of the firearms found at the East Jefferson Street residence. Appellant was found in the same third-floor living area of the house as the handguns, and Appellant's DNA was detected on the grips of both guns. ***Compare McClellan***, 178 A.3d at 879 (sufficient evidence to find constructive possession of gun found in shared basement common area of home shared with family when DNA samples from the gun's grip and magazine showed that the gun was substantially more likely to have been touched by the defendant as opposed to the family members with which he lived). While Appellant asserts that his DNA found its way onto the guns from blood splatter after he broke a window, both Trooper Palko and the serologist denied observing blood on the guns. Furthermore, Appellant's DNA was the only genetic material of sufficient quantity to allow for testing, further bolstering the finding that he was the possessor of the guns. Even to the extent Appellant could not be said to have exclusive access to the third-floor living area where the firearms were discovered, the evidence presented was sufficient to show that Appellant had joint constructive possession of the two handguns. ***See id.*** at 878-79 (noting

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[6] The forensic DNA scientist testified that the probability of randomly selecting an unrelated individual exhibiting the same DNA profile as Appellant was at least one in 45 sextillion with respect to the sample from the Bond Arms Defender and at least one in 190 septillion with respect to the sample from the Tec-22 pistol. N.T., 10/22/18, at 74-76.

that the fact that another individual may have control and access to contraband does not negate the defendant's constructive possession). Appellant's second appellate issue thus merits no relief.

Finally, Appellant argues that his conviction must be vacated because the trial court denied him due process of law when it failed to order the return of his legal materials that had been seized by Butler County Prison authorities prior to trial based upon the suspicion that they were laced with fentanyl or other controlled substances. Appellant claims that his inability to reference his cases, handwritten notes, and "exculpatory evidence" prevented him from mounting an effective defense at trial. Appellant's Brief at 11.

Both the Fourteenth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution provide a criminal defendant with due process of law. ***See Commonwealth v. Turner***, 80 A.3d 754, 763 (Pa. 2013) (stating that the two constitutional provisions are coextensive). "While not capable of an exact definition, the basic elements of procedural due process are adequate notice, the opportunity to be heard, and the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the case." ***Id.*** at 764. Due process is "flexible and calls for such procedural protections as the particular situation demands." ***Commonwealth v. McClelland***, 165 A.3d 19, 29 (Pa. Super. 2017) (citation omitted).

A review of the record reveals that on September 21, 2018, approximately one month prior to trial, Appellant submitted to the trial court

a *pro se* motion seeking the return of his legal papers taken by the Butler County Prison. As Appellant was represented by counsel, the clerk of courts forwarded Appellant's *pro se* filing to his trial counsel, and Appellant's counsel filed a motion for the return of property on September 25, 2018. The trial court ordered a hearing for October 31, 2018. At Appellant's October 22, 2018 trial, Appellant complained that he could not present an effective defense without his "law work," however the trial court deferred any ruling on the motion for return of property until after the October 31st hearing. N.T., 10/22/18, at 3-5, 10. On November 26, 2018, after the hearing and the trial court's receipt of a written submission from the Butler County Prison, the trial court entered an order permitting the return of Appellant's property to his attorney or another designee provided that he execute an authorization to that effect.

Upon review, we do not discern a violation of Appellant's due process rights. The trial court considered Appellant's motion for the return of his property, provided Appellant with an opportunity to be heard regarding the actions of the Butler County Prison, and rendered a decision on the motion that was largely in Appellant's favor. While Appellant maintains that he needed his legal work at trial in order to effectively defend himself, Appellant did not seek a continuance of his trial based upon the unavailability of his legal papers. Furthermore, Appellant was represented by counsel at trial and his counsel did not represent to the trial court that his lack of access to Appellant's

legal papers would hinder his defense of Appellant.[7] While Appellant asserts that he had exculpatory evidence among his seized property, at no point has he described to the trial court or to this Court the nature of this allegedly exculpatory evidence. Therefore, Appellant's due process claim warrants no relief.[8]

Judgment of sentence affirmed.

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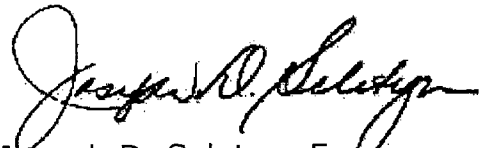
[7] We observe that Appellant did fire his trial counsel during trial after the Commonwealth rested, and Appellant was then permitted to personally examine Trooper Palko regarding the search of the East Jefferson Street residence and the seizure of Appellant and the firearms. N.T., 10/22/18, at 101-14. Appellant's trial counsel then resumed representation of Appellant and delivered the closing statement. Appellant has not explained in this appeal how he would have more effectively mounted his own defense had he been in possession of his legal papers during his trial.

[8] Finally, we note that, to the extent Appellant directly challenges the Butler County Prison's action in taking away his legal papers, Appellant's remedy is not through an appeal of his judgment of sentence but rather through a civil action against the appropriate correctional authorities. Furthermore, while Appellant appears to call into question the adequacy of his trial counsel's performance with respect to the motion seeking the return of his property, ineffective assistance of counsel claims are not cognizable on direct appeal except pursuant to limited exceptions not applicable here. ***Commonwealth v. Hopkins***, ___ A.3d ___, 2020 PA Super 25, *11-12 (filed February 7, 2020).

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2020

IN THE SUPERIOR COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 815 WDA 2019

COMMONWEALTH OF PENNSYLVANIA,
Appellee,

v.

HASAN SHAREEF,
Appellant

BRIEF FOR APPELLEE

Appeal from the December 20, 2020 Order of Sentence entered at CP-10-CR-1714-2016 by the Honorable Timothy F. McCune of the Court of Common Pleas of Butler County.

Gregory J. Simatic
Deputy Attorney General
Appeals and Legal Services Section
Attorney I.D. 201019
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COUNTERSTATEMENT OF THE QUESTIONS INVOLVED

I. DID THE STATE POLICE IMPROPERLY SEARCH THE AREA WHERE APPELLANT WAS FOUND DURING THE EXECUTION OF A SEARCH WARRANT?

[Answered in the negative below.]

II. WAS APPELLANT'S CONVICTION SUPPORTED BY INSUFFICIENT EVIDENCE OR AGAINST THE WEIGHT OF THE EVIDENCE?

[Answered in the negative below.]

III. WAS THE APPELLANT DENIED DUE PROCESS BY THE BUTLER COUNTY JAIL'S HANDLING OF HIS PURPORTED LEGAL PAPERWORK?

[Answered in the negative below.]

TABLE OF AUTHORITIES

COUNTERSTATEMENT OF THE CASE

On May 27, 2016, Trooper Brian Palko of the Pennsylvania State Police was investigating a burglary of a boat rental business in the course of his professional duties. N.T. 10/22/2018 p. 30, 44. The investigation led to apartment number 2 at 1004 East Jefferson Street in the city of Butler. Id. Trooper Palko obtained a search warrant for that residence in order to seek evidence related to the burglary. Id. p. 31. He had also been informed that there may be an individual there who was selling drugs. Id. p. 45. While knocking on the door and announcing their presence, the unlatched door swung open and the troopers entered to clear the residence of any occupants. Id. p. 31-32. Trooper Palko then heard glass breaking on the floor above. Id. p. 32. The individual responsible for the breaking glass declined to come down, so Trooper Palko had to go up the stairs. Id. Upon doing so, he saw a firearm in plain view on a ledge at the top of the steps and discovered Appellant Shareef emerging from a "cubby hole" with bloody hands. Id. p. 32-33. Shareef was the only person found in either the attic or the residence as a whole. Id. p. 33; 35. In the course of checking the attic for other people, Trooper Palko observed part of another gun sticking out of a black leather bag behind a couch and a glassine heroin bag. Id.

After securing Shareef, Trooper Palko applied for another search warrant in order to be properly authorized to search and seize the residence for evidence associated with drug activity. Id. p. 39.

Upon checking Shareef's criminal history, Trooper Palko found that he had an extensive criminal record. Id. p. 41-42. Trooper Palko subsequently submitted the two guns to the State Police Greensburg Crime Laboratory for DNA testing. Id. p. 37. This testing preliminarily linked DNA found on certain portions of the weapons to Shareef, so a search warrant for a sample of Shareef's DNA for further comparison was obtained. Id. p. 42-43. When the weapons were swabbed for DNA, no blood was observed in any of the sampling locations. Id. p. 56-58. Through scientific testing, the DNA found on the weapons was matched to the appellant. Id. p. 73-76

As a result of this incident, Shareef was charged with possession with intent to deliver[1] and possession of a firearm by a prohibited person.[2] After several rounds of pretrial litigation and numerous firings of defense counsel by the Appellant, he eventually pled guilty to the drug charge and went to trial on the gun charge. For the purposes of this prosecution, the Commonwealth relied on three felony drug convictions from Franklin County and certified copies thereof to

[1] 35 P.S. §780-113(a)(30)
[2] 18 Pa.C.S.A. §6105(a)(1)

establish that Shareef was, in fact, prohibited from possessing a firearm. Id. p. 81-82. Shareef was convicted by a jury on October 22, 2018 after a one day trial. Post sentence motions followed on December 27, 2018 and a hearing was scheduled for January 9, 2019. The post-sentence motions were denied by operation of law on July 30, 2019, by which point this appeal had already been filed. The Commonwealth was represented by the Butler County District Attorney's Office through the filing of the Appellant's brief in the instant matter. Upon the filing of a federal lawsuit against the District Attorney's Office by Shareef, the case was referred to the Office of Attorney General pursuant to the conflict of interest provision of the Commonwealth Attorneys Act ("Act"), 71 P.S. § 732–205.

SUMMARY OF THE ARGUMENT

Appellant Shareef has failed to put forth, much less properly develop, cogent arguments and/or legal analysis in support of any of his claims. The argument section of his brief instead consists of a scattershot laundry list of grievances and unsubstantiated allegations against every entity involved in his arrest, prosecution, and conviction, none of which are legitimized by citation to the extant record. His lack of proper compliance with Pa.R.A.P. 2119 renders meaningful appellate review effectively impossible.

To the extent that Shareef's appellate claims can be deciphered, it is evident that the State Police followed proper procedure in both preliminarily detaining him and in observing incriminating items in plain view in the attic. Where weapons were found in Shareef's vicinity with his DNA on them, his conviction was neither supported by insufficient evidence nor against the weight of the evidence. With respect to Shareef's claim that he was impermissibly deprived of his own legal research when these materials were seized by the Butler County Jail, as noted by the lower court in its Pa.R.A.P. 1925(a) Opinion, this issue was rendered moot by the jail's rebuffed offer to return these materials to defense counsel prior to trial.

ARGUMENT

I. THE STATE POLICE ACTED PROPERLY IN THEIR ENTRY INTO AND SEARCH OF THE ATTIC WHERE APPELLANT AND HIS CONTRABAND WERE FOUND.

As best as can be determined from the argument section of his brief, Shareef first contends that he was entitled to suppression of the evidence gleaned by the police when they initially entered the attic where he was found and pursuant to the second warrant subsequently and derivatively obtained for drugs and guns in the attic. He makes a number of conclusory statements about the purported facts of the case, but does not even bother to attempt to substantiate these via citation to the record. Where he does cite to the record, he does so, in large part, in a potentially misleading way. The Commonwealth would specifically call the Court's attention to Pages 9 and 10 of Appellant's brief, wherein he recites a list of twelve hypothetical statements that Appellant attempted, unsuccessfully, to elicit from Trooper Palko during that limited portion of the trial when Shareef was acting *pro se*. Although Shareef does preface this recitation with the disclaimer that "In his artful questions Appellant tries to get the trooper to admit:" the Commonwealth would suggest that listing what Shareef apparently hoped the Trooper would say in such a way that it could at least appear at first glance that the Trooper had actually said these things or that they were, in fact, true comes dangerously close to making a deliberate misrepresentation to the Court. As every jury is instructed, questions

are not evidence, and to present them, at least ambiguously, as such is disingenuous, particularly when what the Appellant's subjective, and frankly delusional, hopes of the Trooper might admit were completely irrelevant to the record that actually exists.

Furthermore, although Shareef cites various cases for general legal principles relating to search and seizure, he makes no attempt to apply them to, or analyze them in, the context of his case. While a person convicted of a crime is guaranteed the right to direct appeal under Article V, Section 9, of the Pennsylvania Constitution, where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived. Commonwealth v. Walter, 966 A.2d 560, 566 (Pa. 2009); Commonwealth v. Steele, 961 A.2d 786, 799 n. 12 (Pa. 2008); Commonwealth v. Puksar, 951 A.2d 267, 293–94 (Pa. 2008). See also Pa.R.A.P. 2119(a) (each point treated in an argument must be "followed by such discussion and citation of authorities as are deemed pertinent"). It is not the obligation of an appellate Court to formulate Appellant's arguments for him. Commonwealth v. Wright, 961 A.2d 119, 135 (Pa. 2008); Commonwealth v. Thomas, 717 A.2d 468, 482–83 (Pa. 1998). Failure to cite relevant legal authority constitutes waiver of the claim on appeal. Eichman v. McKeon, 824 A.2d 305, 319 (Pa. Super. 2003). The Commonwealth therefore submits that this claim's

Lom Clause 729 A.2d 588
Larson 554 Pa 472

inadequate development and citation to the record should cause it to be deemed to have been waived. Gibbs 76 F.3d 773 & 680 F.2d 438

Even if this issue had been put forth properly, it would still entitle Shareef to no relief. As discussed above, the trial record establishes that, upon making entry to the premises via an unlocked door pursuant to a validly issued search warrant, the State Police heard breaking glass upstairs. At that point, they were wholly justified in making a protective sweep of the premises. See Commonwealth v. Taylor, 771 A.2d 1261, 1267 (Pa. 2001)("A protective sweep is 'a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.' "). Trooper Palko's description of his entry into the attic and his actions therein was entirely consistent with a valid protective sweep. While performing this justified sweep, Trooper Palko observed firearms and drug-related items in plain view. Under the plain view doctrine, warrantless seizure of property is permissible where a law enforcement officer is lawfully in a position to view an item and the item's incriminating nature is immediately apparent. Commonwealth v. Zhahir, 751 A.2d 1153, 1160 (Pa. 2000). The plain view doctrine applies to analyses under both the United States and Pennsylvania Constitutions. Commonwealth v. Jones, 988 A.2d 649, 656 (Pa. 2010). A police officer has probable cause to believe that an object is incriminating where the facts available to the officer would warrant a man of reasonable caution in the belief that

certain items may be contraband or stolen property or useful as evidence of a crime. Commonwealth v. Wright, 99 A.3d 565, 569 (Pa. Super. 2014). Having been told that drug sales were going on at this residence and having personally observed drug paraphernalia, Trooper Palko could quite reasonably believe that firearms, although perfectly legal in other contexts, were illegal in this particular one and that further investigation was therefore necessary. His subsequent securing of the dwelling, on the basis of this probable cause, in order to prevent the destruction or removal of evidence while a search warrant was being sought was not itself an unreasonable seizure of either the dwelling or its contents. Commonwealth v. Bostick, 958 A.2d 543, 559 (Pa. Super. 2008); Commonwealth v. Gillespie, 821 A.2d 1221, 1227 n. 2 (Pa. 2003) (quoting Segura v. United States, 468 U.S. 796, 810 (1984)).

II. APPELLANT'S CONVICTION WAS SUPPORTED BY SUFFICIENT EVIDENCE AND WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

Shareef next argues that "There is no proof Appellant owned the guns found in the same location." He does not bother to specify whether he is framing this as a weight or sufficiency of the evidence claim. This entire section of his argument is three sentences long and cites no authority aside from the section number of the statute he was convicted of violating. He undertakes no meaningful analysis of either the evidence of record or the applicable authority. When an appellant cites no authority supporting an argument, this Court is inclined to believe there is none. See Pa. R.A.P. 2119(a) and (b) (requiring an appellant to discuss and cite pertinent authorities); Commonwealth v. Antidormi, 84 A.3d 736, 754 (Pa. Super. 2014) (finding issue waived because the appellant "cited no legal authorities nor developed any meaningful analysis"). Because Appellant has failed to develop his argument or cite pertinent authority, this claim should be deemed waived.

If Shareef intends this argument, such as it is, to make out a sufficiency of the evidence claim, he has substantively failed to do so. The standard applied in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. Commonwealth v. Reed, 216 A.3d 1114, 1119 (Pa. Super.

2019). In applying the above test, a reviewing Court may not weigh the evidence and substitute its judgment for the fact-finder. Id. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Id. Finally, the jury, while assessing the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence. See id. In light of the trial record described above, the Commonwealth clearly put forth sufficient evidence to support Shareef's conviction where he was found in close proximity to two firearms upon which his DNA was found and he indisputably had prior felony drug convictions.

Even if Shareef had put forth some semblance of a cognizable argument in support of a weight of the evidence claim, he would still be entitled to no relief. Although Shareef does not bother to note where he preserved this issue for review, he did advance a weight of the evidence claim in paragraph 15 of his post sentence motion, in compliance with Pa.R.Crim.P. 607. Nevertheless, the weight of the evidence is a matter exclusively for the finder of fact, who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. Commonwealth v. Baker, 201 A.3d 791, 799 (Pa. Super. 2018) (quoting Commonwealth v. Gonzalez, 109 A.3d 711, 723 (Pa. Super. 2015)). To successfully challenge the weight of the evidence, a defendant must prove the

evidence is so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Commonwealth v. Windslowe, 158 A.3d 698, 712 (Pa. Super. 2017).

As our Supreme Court explained in Commonwealth v. Clay, 64 A.3d 1049 (Pa. 2013), a motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. Id. at 1054-55 (citing Commonwealth v. Widmer, 744 A.2d 745, 751-52 (Pa. 2000); Commonwealth v. Brown, 648 A.2d 1177, 1189 (Pa. 1994)). "[T]he role of the trial judge is to determine that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.' " Clay at 1055 (quoting Widmer, 744 A.2d at 752).

The Court in Clay further instructed:

> An appellate court's standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court:
>
> > Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Brown, 648 A.2d at 1189. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. Commonwealth v. Farquharson, 354 A.2d 545 (Pa. 1976). One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the

> evidence and that a new trial should be granted in the interest of justice.
>
> Id. at 1055 (quoting Widmer, 744 A.2d at 753).

As discussed above, the evidence produced at trial was more than adequate to preclude a shock to the conscience of the court and the lower court therefore did not abuse its discretion in rejecting this claim.

III. APPELLANT WAS NOT DENIED DUE PROCESS BY THE BUTLER COUNTY JAIL'S HANDLING OF HIS BOX OF CONTAMINATED PAPERWORK.

Shareef's third and final claim, to the extent that it can be deciphered, is that the lower court erred in declining to order the Butler County Jail to return his "multipage, handwritten, jumble of cases from a pot pourri of jurisdictions[3]" that he mischaracterizes as somehow constituting evidence. He claims that these items were seized because they were allegedly tainted with some type of illicit substance and the Butler County Jail refused to return them to him. He cites nothing in the record to substantiate that this was, in fact, the case. He cites only to two exchanges where the trial court told him that the issue of what had happened to his paperwork at the jail had already been dealt with and was not a proper area of

[3] Appellant's Brief p. 11.

inquiry at trial with unrelated witnesses. As the trial court noted in its Pa.R.A.P. 1925(a) Opinion, the Butler County solicitor informed trial counsel prior to trial that the property at issue could be turned over to counsel if Shareef signed a release. Apparently Counsel did not wish to take the jail up on this offer. The lower court therefore properly deemed the issue moot. Shareef cites no authority to support the proposition that this finding of mootness was erroneous or that he is entitled to any other type of relief. Where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived. Commonwealth v. Walter, 966 A.2d at 566.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court affirm Hasan Shareef's conviction and sentence.

Respectfully submitted,

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February 25, 2020

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving two copies of the foregoing BRIEF FOR APPELLEE upon the person and in the manner indicated below:

Service by first class mail to:

Armand R. Cingolani, III, Esq.
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(Counsel for Appellant)

/s/ Gregory J. Simatic
(Counsel for the Commonwealth)

Date: February 25, 2020

In The Superior Court of Pennsylvania

WESTERN DISTRICT

SUPERIOR COURT DOCKET NO.: 815 WDA 2019
TRIAL COURT DOCKET No: CP-10-CR-0001714-2016

COMMONWEALTH OF PENNSYLVANIA

Appellee

VS

HASAN SHAREEF

Appellant

APPELLANT'S BRIEF AND REPRODUCED RECORD

Appeal from the Order of Court dated December 20, 2018

in the Court of Common Pleas of Butler County, Pennsylvania

Armand R. Cingolani, III, Esquire
Supreme Court I.D. No. 72767
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SUMMARY OF THE ARGUMENT

The Appellant was searched and seized in his own separate location without a warrant.

The Appellant was convicted in error when the Court and Jury concluded that he possessed weapons Appellant claims he did not own, in his space, merely because his genetics were on the surface.

The Appellant lost his trial because the Court and his counsel failed to ensure the jail either returned his cases/ evidence or required reconstruction of his cases/ evidence.

ARGUMENT

From the moment Hasan Shareef heard the police knocking on the door of the apartment house nothing has happened as he thought it should. As far as he was concerned he never should have been arrested, charged, tried and convicted. He still can't understand how he ended up in the wrong place and at the wrong time. When the police came to the door the Appellant was inexplicably in the attic. He never explained why he was there. When the police started knocking on the door, even though he claims he was doing nothing wrong, he tried to break open the tiny attic window to get out of the house and escape by racing off the roof. He maintained the story the police did not knock and announce, but rushed in and rushed up the steps and detained him before he could escape. Escape is neither evidence nor proof of guilt or criminality. Commonwealth v. Phillips, Pa.Superior Court, 1427 WDA 2014. When he was captured, he was covered in blood, he advises, as a result from glass cuts. Some blood got on the guns and other objects. The spray of blood did not cause him to be the owner of the surprising array of gunnery and contraband which did not belong to him and for which he had no knowledge or explanation about how these inculpatory objects appeared coincidentally in the same location as he was embarrassed to be found.

ISSUE ONE: Whether a warrant was required to search and seize this particular person and the baggage in his separate attic room.

The Appellant claimed the police just broke in. He claimed he did not hear them knock and announce. The police must knock and announce. Wilson v. Arkansas, 514 U.S. 927 (1995),

but see, Hudson v. Michigan, 547 U.S. 586 (2006). It was permissible for the police to wait a few seconds after knocking before entering to execute the search warrant.

Correlation in time and place of Appellant with contraband is not enough circumstance to establish proof of guilt beyond a reasonable doubt that he was a felon not to be in possession of a gun.

Further, Appellant argues that he was not aware of guns and drugs and money in the same location as he was. He did not see it. The police fabricated these facts and lied. While there may have been guns and drugs and money in the attic with him, these things were not in plain sight but hidden in closed baggage. Sometimes it's his baggage; sometimes the baggage must belong to an unknown stranger. It depends. The police just fabricated the visuals that they saw these things sticking out of bags. Then, because his blood somehow got splattered on these objects, the police falsely concluded they must be his possessions, especially the guns and drugs. The Appellant avers the Court erred in failing to properly instruct the jury on what constitutes constructive possession. The Court should have instructed the jury that the police had to prove he actually owned the money, drugs and guns.

Worse, the police detained him and searched his separate attic room without a warrant and without his consent. May be they had a warrant to search the rest of the house, but they did not have a warrant to search and enter this attic room. In the Ybarra v. Illinois, 444 U.S. 85 (1979) it was not permissible to search a person on the premises of an authorized search but in Michigan v. Summers, 452 U.S. 692 (1981) a limited intrusion on a detained person on site was permissible. See also, U.S. v. Banks, 540 U.S. 31 (2003) which defines the proper exigency time to enter to avoid a drug dealer disposing of his contraband.

Search and seizure of a person at in a residence is per se unreasonable. Coolidge v. New Hampshire, 403 U.S. 443(1971).

The Appellant challenges the sufficiency of the warrant as to him in the attic because when the PSP applied for the warrant it was to search for fruits of the burglary committed by the two boys. Therefore the warrant failed to comply the particularity requirement of the Fourth Amendment so the search of his attic location must be unconstitutional. Massachusetts v. Sheppard, 468 U.S. 981, 988 n.5 (1984).

This is a story about how things that you don't even know are happening off stage can leap from the background and grab you up without you even realizing until it is too late. The story began when the Appellant, Hasan Shareef, a man with felony convictions, was granted permission to stay at a three story house at the edge of town by Sarah Snodgrass, soon to be deceased. Sarah has also granted two other men, both coincidentally named Christopher with surnames of Anthony and Snyder, permission to stay at the same apartment house she was renting from a landlord who was probably completely unaware of her generosity. The two Christophers imagine they are both smarter than they are and better burglars that later events would actually indicate. Anyway, these two started rolling the snowball downhill when they burglarized Crescent Bay Marine to steal boat motors and then tried to sell the fruits of their crime to West Penn Marine sales. The sales desk agent at West Penn was suspicious and called the police.

After interrogation, the two Christophers revealed they were staying at Sarah Snodgrass' rental apartment at 1004 E. Jefferson Street, Butler PA. The PSP obtain a warrant to search the house to find missing parts at the place. Snyder advised a character named "Red" used the attic

and sells drugs from there, according to the probable cause statement in incident report involving the two Christophers, Pa. 160 240358 on 5/27/2016. Two warrants were obtained to search 1004 E. Jefferson Street, Apt. 2 and a 2009 Chevrolet Silverado driven by the two Christophers but owned by Sarah Snodgrass. These warrants were approved by the on call Magistrate William S. O'Donnell. The Appellant will later claim he was denied due process by not being brought before Magistrate William S. O'Donnell and by claiming the warrant is a fraud with a forged signature. The Magistrate William S. O'Donnell swears he signed the warrant.

PSP advised Butler City Police will assist as this is a known drug house with a reputation for being a place where drug addicts regularly overdose.

When they tried to enter a locked house, Appellant Hasan Shareef tried to escape out a tiny window in the attic. His attempt failed but he was injured and was bleeding. The authorities observed the Appellant is in the location and possession of an entire dealer's panoply of guns, drugs and money. The PSP obtain a warrant Pa -16- 248429 to secure legal search rights in this interesting presentation of contraband. The money found under Pa. warrant 16 248429 on Hasan Shareef was buy money from a drug deal in Clarion.

In incident Pa 17-203053 in April 18, 2016 PSP related that the guns found with Hasan Shareef were taken from a residence at 339 Dick Rd. Franklin Twp. Butler County Pa. being the Intratec-22 and the Bond Arms Defender. These guns had been stolen from the family by their friend Christopher Anthony. The police believe Anthony was a runner for Hasan Shareef. In yet another incident Pa. - 18- 200009 Amanda Brommer admitted she bought the Texas Defender along with 4 other guns for Hasan Shareef.

The Defendant interrupted the District Attorney's opening to fire his own counsel. (T.24)

PSP Trooper Palko explained he went to 1004 E. Jefferson with a warrant, in order to investigate items taking in the burglary would be found at the residence as the burglars reported they stayed there. (T.30-31-) In clearing the house he heard glass breaking above him. When he ascended the flight of stairs in plain view he saw a gun and the Appellant. (T.32)

Once the Appellant was in custody they saw a gun sticking out of a black bag, and a glassine bag of heroin in plain view. (T.33) They secured a warrant and they found more drugs, guns and $2,570 in currency wrapped in rubber band. They found another gun behind a couch. (T.36, T.39)

On cross examination, PSP Palko revealed he was investigating a burglary of boat motors and he was after two boys with the first name of Christopher. (T.44) It was by chance that the Appellant was caught up in their investigation when they searched the residence. (T.45-46)

After indicating the presence of others on the property Counsel elucidated the fact that neither the gun is titled and therefore not title owned by the Appellant. (T.49)

The officer observed that the Appellant was bloody and injured in trying to escape from a small black window. (T.49)

The Appellant verbally denied ownership of the guns as well (T.50)

On direct examination the blood expert Biondi, admitted there was no blood on the Band Arms Defender or the other gun nor were there finger prints. (T.51-59)

The DNA expert Kukosky testified DNA from three individuals showed up on the weapon. (T.71) one sample from Appellant showed up on the TEC pistol (p.74)

The expert Kukosky admitted on cross examination that his examination does not prove ownership or how long someone touched a gun nor does he know how DNA got on the gun (T.-77-78) Appellant advises DNA or fingerprints alone do not prove ownership or possession. A being may touch another's property to see what it is or to satisfy curiosity.

The ADA introduced the Appellants prior convictions for possession with intent to deliver into the record (T.81- 82) To prove a felon may not possess or own weapons the prosecution must prove the Appellant had a certified record of prior felony convictions.

The Appellant fired his counsel. (T. 98-101)

The Appellant holds that his room was searched without his consent and PSP Palko averred he could search the room because he had a warrant. (T.105)

The Appellant disagrees with the witness version of his events, so he posed his questions to contradict and discredit the trooper's testimony. In his artful questions Appellant tries to get the trooper to admit:

He had no consent to search the attic. (T.105)

That the search was unrelated to guns and drugs. (T.105)

That neither warrant was adequate to search and seize either guns, money or drugs. (T.105)

That there was no warrant for DNA. (T.106)

That trooper planted DNA on guns. (T.106)

That the cell phone was not Appellant's. (T.106)

ISSUE THREE: Appellant was denied due process because the jail withheld or destroyed his papers full of legal cases which Appellant claims is exculpatory evidence and the Court erred in not requiring the jail to provide the papers to Appellant for trial.

Finally, the Appellant avers a manifest injustice occurred because the warden and the jail destroyed or withheld his evidence which, because he did not have this evidence to exculpate himself at trial, through their either willful destruction of his evidence or their refusal to provide his evidence for use at trial which caused him to lose the trial because he could not produce the evidence at trial. The Court refused to allow Appellant to have his papers/ evidence given to him by the DOC & jail. (T.87, T.100) As a result he was denied due process.

The Appellant lost his evidence because he took it with him when he had Court in another County and was released. He decided to avoid the current trial by checking into a rehabilitation facility in Pittsburgh and was later picked up and detained in Allegheny County. When he was returned to Butler County his papers were checked by D.O.C. employees. Inspection caused the examiners to get dizzy and ill as they were laced with some drug such as fentanyl so the papers were quarantined and were therefore not available for him so they said.

The evidence Appellant relief upon was his multipage, handwritten, jumble of cases from a pot pourri of jurisdictions. Appellant looks upon his magical lists of cases as if they are essential to abolishing his legal woes. He believes cases are evidence. Appellant holds that counsel was ineffective in not obtaining the paperwork containing his cases, if withheld by the warden, or in not reconstructing them if they were destroyed by the warden.

Appellant required counsel to demand a hearing for release of his papers. Appellant thought counsel should require the warden and his deputies to testify. Appellant believed if they

were forced to testify they would admit they maliciously withheld Appellant's papers/ evidence just to frustrate his defense.

Appellant in a Pro-Se brief asserted "My lawyer Cingolani never called warden down Bowman or any other CO who said this was true. I lost my trial because CO took all my law work, denied access to court, and violated my right to due process." Appellant related jail personal took his law work, legal notes and research saying it was contraband because employees of the DOC began to experience burning and irritated skin and burning of the eyes so the warden refused to give back to Appellant's papers and another deputy said the papers were destroyed. Still, it is in the domain of the Superior Court to determine whether counsel erred in not calling the warden or deputy to testify at a hearing as to why they quarantined or destroyed Appellant's trial papers. Did counsel's failure to call the warden and his deputy to testify cause the trial court to not require the Appellant to have his papers at trial, and since he did not have his papers he could not prove his innocence or rebut the Commonwealth's evidence with his case law and therefore lost his case through no fault of Appellant's own and solely at the fault of Appellant's counsel? Appellant urges the Court to accept his personal version of the "for want of a nail in a horseshoe", due to his counsel's ineffectiveness the shoe was lost, the horse slipped, the knight fell and the kingdom was lost" proverb to prove Appellant deserves a remand.

Appellant requests a new trial and new counsel because he was denied due process where the D.O.C. withheld his papers of legal cases which he calls evidence. Appellant urges this Court to hold the lower Court erred in refusing to order the jail to give Appellant his papers for his defense.

That Police dogs sniffed false positives for drugs. (T.107)

That the house was surrounded searching for another person. (T.108)

That he was in handcuff custody too long. (T.109)

That seeing him flee is not a crime. (T.109, 111)

That there was nothing on him when he fled. (T.111)

The Appellant asserted his frustration and the magnitude of the harm he suffered because property was destroyed in jail because it was alleged to be covered with fentanyl dust and so he was denied the opportunity to produce exculpatory evidence and argument. (T.115)

The Court erred in allowing the PSP to obtain his DNA and to allow the PSP and forensics people to check the strange weapon for DNA without his permission of consent. DNA is a sacred bodily fluid which can only be obtained by penetrating his mouth or flesh.

ISSUE TWO: There is no proof Appellant owned the guns found in the same location.

Since blood splattered on these objects, that does not prove the Appellant, a felon Possessed a weapon in violation of 18 Pa. C.S.A. §6105. Even if his fingerprints or DNA was found on any weapon that is not sufficient to prove he actually possessed or owned the weapons. Touch alone is not ownership.

CONCLUSION

WHEREFORE, given the proceeding arguments, the relief requested is reversal of the verdict of the jury and a remand for a new trial.

Respectfully submitted,

Armand R. Cingolani, III

Attorney for Appellant