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**ORDER DENYING PETITION FOR
ALLOWANCE OF APPEAL,
SUPREME COURT OF PENNSYLVANIA,
MIDDLE DISTRICT
(APRIL 8, 2026)**

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Respondent,

v.

URVE MAGGITT,

Petitioner.

No. 576 MAL 2025

Petition for Allowance of Appeal
from the Order of the Superior Court

ORDER

PER CURIAM

AND NOW, this 8th day of April, 2026, the
Petition for Allowance of Appeal is **DENIED**.

**OPINION,
SUPERIOR COURT OF PENNSYLVANIA
(SEPTEMBER 16, 2025)**

J-A18039-25

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT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

IN THE SUPERIOR COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

URVE MAGGITTI,

Appellant.

No. 2859 EDA 2024

Appeal from the Judgment of Sentence Entered
July 18, 2024 In the Court of Common Pleas of
Chester County Criminal Division at No(s):
CP-15-CR-0001735-2023

Before: OLSON, J., DUBOW, J., and BECK, J.

FILED SEPTEMBER 16, 2025

MEMORANDUM BY DUBOW, J.:

Appellant, Urve Maggitti, appeals from the July 18, 2024 judgment of sentence of one year of supervisory probation entered in the Chester County Court of Common Pleas following her conviction by a jury of

Unlawful Use of an Audio or Video Device in Court, 18 Pa.C.S. § 5103.1(a). She asserts that Section 5103.1 is unconstitutional and contends the trial court erred in denying her requests for the court's recusal, a continuance, and a jury instruction. We dismiss this appeal.

The facts and procedural history of this case are immaterial to our disposition as the counselled brief that Appellant has submitted to this Court fails to conform to the basic requirements of appellate advocacy. Appellant's brief does not include: (1) a copy of the order on appeal; (2) an accurate and complete statement of both the scope and standard of review; (3) a statement of questions involved; (4) a statement of the case; (5) a summary of the argument; and (6) a copy of her Rule 1925(b) statement. *See* Pa.R.A.P. 2111(a) (listing required contents for appellate briefs).¹ Moreover, in the argument section of her brief, Appellant fails to cite to the place in the record where she preserved her constitutional challenge in violation of Rule 2119. *See* Pa.R.A.P. 2119(c). In fact, in over more than 19 pages of "argument," Appellant referenced the record only three times, citing each time to "Transcript at 000686-000687." *See* Appellant's Brief at 29.

¹ Appellant has, however, included a section titled "Introduction." That section is argumentative in nature and does not contain a "statement of the form of action, followed by a brief procedural history of the case," or a "closely condensed chronological statement, in narrative form, of all the facts which are necessary to be known in order to determine the points in controversy, with an appropriate reference in each instance to the place in the record where the evidence substantiating the fact relied on may be found" in violation of Rule 2117. *See* Pa.R.A.P. 2117(a)(1), (a)(4), (b).

In light of the substantial briefing defects in Appellant's brief, we are unable to conduct meaningful appellate review. We, thus, dismiss this appeal.²

Appeal dismissed.

Judge Beck joins the memorandum.

Judge Olson concurs in result.

Judgment Entered.

/s/ Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/16/2025

² Even if Appellant's brief complied with our Rules of Appellate Procedure, she would not be entitled to relief as: (1) this Court recently held 18 Pa.C.S. § 5103.1(a) constitutional in *Commonwealth v. Leschinskie*, 329 A.3d 459 (Pa. Super. 2024); (2) Appellant did not preserve her recusal claim by raising it with specificity in her Pa.R.A.P. 1925(b) statement; (3) the trial court did not abuse its discretion in denying her eleventh hour request for a continuance to obtain counsel when the court had previously given her multiple opportunities to obtain counsel; and (4) Appellant did not preserve her jury instruction claim with specificity in her Rule 1925(b) statement.

**RULE 1925(a) OPINION, CHESTER COUNTY
COURT OF COMMON PLEAS
(FEBRUARY 4, 2025)**

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

URVE MAGGITTI,

Appellant.

No.: CP-15-CR-0001735-2023

2859 EDA 2024

Criminal Action

Before: John P. CAPUZZI, SR., Judge.

RULE 1925(a) OPINION

BY: CAPUZZI, SR., J.

February 4, 2025

Urve Maggitti (“Appellant”) appeals this court’s July 18, 2024 judgment of sentence. Appellant sets forth numerous errors in her Concise Statement of Errors Complained of on Appeal (“Concise Statement”): (1) the court erred in denying Appellant’s post trial motion for acquittal; (2) the court erred in denying Appellant’s discovery requests in violation of *Brady v. Maryland*, 373 U.S. 83, (S.Ct. 1963); (3) the court erred

in denying Appellant's request to continue trial to accommodate newly retained counsel in violation of her Sixth Amendment right to counsel; (4) the court erred in denying Appellant's motion to dismiss the charges pursuant to the doctrine of *de minimis* infraction; (5) the court erred in giving an erroneous jury instruction and denying Appellant's motion to modify or provide an additional jury instruction; (6) the court violated Appellant's Fourth Amendment and Fourteenth Amendment due process rights in denying Appellant's motion to suppress evidence as a result of an illegal search; (7) the court committed constitutional error in finding that 18 Pa.C.S. § 5103.1 ("Section 5103.1") is not, facially and/or as-applied, in violation of the First Amendment and Article 1, Section 7 of this Commonwealth's constitutional right to: expressive activity, freedom of speech, the right to petition, and the right to open courts; (8) the court committed constitutional error in finding Section 5.103.1 constitutional error in finding Section 5.103.1 was not unconstitutionally vague and did not provide overly broad official discretion in violation of the Fifth Amendment; and (9) the court erred in denying Appellant's requests for this jurist to recuse himself in violation of the Pennsylvania Code of Judicial Conduct 2.11. *See Concise Statement*, 11/18/2024.

For the reasons set forth below, we find no errors were made.

FACTUAL HISTORY

Appellant and her now ex-husband, Victor Maggitti, were parties in divorce proceedings before the Honorable Brett Binder of the Chester County Court of Common Pleas. *See Victor Maggitti v. Urva Maggitti*,

Chester Cty. C.C.P., Docket No. 2021-06762-DI. On May 4, 2022, Appellant presented herself to the Chester County Prothonotary (“Prothonotary”) and filed a document titled “Respondent’s Reply to ‘Response in Opposition to Defendant’s Motion to Correct the Transcript of Court Hearing of March 11, 2022’” (“Motion to Correct Transcript”). *See* Motion to Correct Transcript, 05/04/22, CW Exh. “C-1”. In her Motion to Correct Transcript, Appellant states that she hired a private stenographer to record the March 11, 2022 proceeding but because the court had its own official stenographer, Judge Binder prohibited Appellant’s stenographer from creating a separate record. Appellant goes on to state that she found numerous discrepancies when she compared the official transcript to her audio recording and was seeking leave to amend the official record to comport to her recordings. In support of her motion, Appellant admitted, under penalty of perjury, that she “personally recorded” the March 11, 2022 proceeding and attached a USB flash drive containing the audio recordings. *Id.* at p. 2 (Bates 52), par. 10, p. 14 (Bates 65), p. 15 (Bates 66).

On August 10, 2022, Appellant met with a member of the Prothonotary’s staff, Phyllis Bronson, and asked why the Motion to Correct Transcript had not been addressed by the court. After becoming aware of a possible illegal recording of court proceedings, Ms. Bronson sought guidance from Judge Binder’s chambers. She was directed to report Appellant’s activities to the District Attorney’s Office, and an investigation was commenced by the Chester County Detectives. As part of the investigation, Detective Steven Parkinson secured from the Prothonotary the original Motion to Correct Transcript and the attached USB flash drive.

On August 18, 2022, Detective Parkinson applied for a search warrant to review the recordings on the USB flash drive. The warrant was granted that same day.

The USB flash drive contained five separate recordings spanning over five hours. The recordings contained audio captured in the parking garage located across the street of the Chester County Justice Center (“Justice Center”), Appellant walking into the Justice Center, Appellant riding the elevator, Appellant conversing with her private stenographer, and eventually the discussions, legal arguments, and witness testimony presented during Appellant’s divorce proceeding before Judge Binder.

PROCEDURAL HISTORY

On February 1, 2023, Appellant was charged with one count of Unlawful Use of an Audio or Video Device in Court (18 Pa.C.S.A. § 5103.1(a)). A certified summons and fingerprint order¹ were issued and forwarded via first-class mail to Appellant on February 6, 2023.² The fingerprint order directed Appellant to

¹ Pursuant to 18 Pa.C.S.A. § 9112(b)(2)

Where defendants named in police complaints are proceeded against by summons, . . . the court of proper jurisdiction shall order the defendant to submit within five days of such order for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed

² Magisterial District Judge Marc Lieberman issued the February 6, 2023 orders but recused himself on February 28, 2023 due to a conflict. On March 1, 2023, this matter was transferred to Magisterial District Judge Martin Goch. Appellant filed several motions in an attempt to have the criminal complaint dismissed. No issues related to these motions are a part of this appeal.

contact the Chester County Detectives via phone to make an appointment to be fingerprinted. The summons is noted on the docket as accepted by Appellant, but the fingerprint order is noted as undeliverable on March 10, 2023.

A preliminary hearing scheduled for March 29, 2023 was continued at Appellant's request to April 12, 2023. On March 28, 2023, Appellant filed a *pro se* "Petition for Emergency Injunctive Relief to Stay the Preliminary Hearing" with the Supreme Court of Pennsylvania (40 MM 2023). Thereafter, the Magisterial Court requested a continuance of the April 12th hearing to April 24, 2023. Due to the unavailability of the Commonwealth's affiant on April 24th, the preliminary hearing was continued to May 24, 2023. Prior to the preliminary hearing taking place, the Supreme Court denied Appellant's Petition for Emergency Injunctive Relief on April 25, 2023.

At the conclusion of the May 24, 2024 preliminary hearing, bail was set, and this matter was transferred to the Court of Common Pleas and assigned to the Honorable Analisa Sondergaard. On June 5, 2023, the court received notification that on May 16, 2023 Appellant had filed with the Supreme Court of Pennsylvania a *pro se* "Petition for Writ of Prohibition" against three Chester County Magistrate Judges (68 MM 2023). Appellant supplemented this filing on May 24, 2023 with a *pro se* "Emergency Application for Stay" of this criminal matter. On September 7, 2023, the Pennsylvania Supreme Court denied both the *pro se* Petition for Prohibition and the *pro se* Emergency Application for Stay.

On June 9, 2023, Appellant filed with the Commonwealth Court of Pennsylvania a *pro se* "Action for

Declaratory Judgment” and *pro se* “Application for Emergency for Stay [of] the Formal Arraignment” (267 MD 2023). On June 14, 2023, the Commonwealth Court denied Appellant’s emergency request for stay,³ but the request for declaratory judgment remained pending.

Appellant’s formal arraignment was held on June 15, 2023. At that time, Appellant refused to sign the Notice to Defendant attached to the Information. *See* Notice, 06/15/23, p. 1. That same day, Appellant filed a “*Pro Se* Verified Petition for Common Law Writ of *Habeas Corpus* and a “*Pro Se* Affidavit of Partial Recission”. Subsequently, Appellant filed a “*Pro Se* Request for Bill of Particulars”. On June 21, 2023, Judge Sondergaard recused herself and this jurist was assigned to this matter on July 20, 2023.

On June 28, 2023, Appellant filed with this court a *pro se* Motion to Stay this matter until the Commonwealth Court made its determination on her request for declaratory judgment. She also filed a *pro se* “Motion for Pre-Trial Discovery and Inspection”. On July 12, 2023, Appellant filed a *pro se* “Motion in *Limine* — To Suppress Evidence — To Quash Information”. Hearings to address Appellant’s motions were scheduled for August 23rd and 30th, 2023. However, on August 4, 2023, before the hearings could take place, Appellant filed a *pro se* “Motion to Compel” and a “*Pro Se* Supplemental Motion for Pretrial Discovery and Inspection”. On August 10, 2023, Appellant filed a “*Pro Se* Emergency Motion to Stay”.

³ Appellant filed for further review of her Emergency Motion for Stay. The Commonwealth Court denied Appellant’s request on July 24, 2023. *See* 267 MD 2023.

The Commonwealth filed a “Response to Defendant’s *Pro Se* Motions” on August 11, 2023.

On August 15, 2023, this court denied Appellant’s request to stay and ordered Appellant to complete a Waiver of Counsel Colloquy. Order, 08/15/23. On August 21, 2023, Appellant filed a *pro se* “Motion to Reconsider”, *pro se* “Motion for Clarification of Order-Waiver of Counsel Colloquy”, and *pro se* “Exception for the Record and Request for Findings of Fact and Conclusions of Law”. A hearing was held on August 23, 2023. At that time, Appellant objected to this court’s subject matter jurisdiction and continued to refuse to have her fingerprints processed. The court attempted to colloquy Appellant as to her right to legal counsel, but she demonstrated no interest. At the conclusion of the hearing, the Commonwealth was directed to provide Appellant with discovery within 24 hours, and the parties were notified that a Pretrial Conference would be scheduled for October 17, 2023. *Id.* at pp. 19-20, pp. 23-24, p. 26, II. 24-25, p. 27.

On October 13, 2023, prior to the October 17th Pretrial Conference taking place, Appellant filed a *pro se* motion to disqualify this jurist from presiding over this matter, and a *pro se* motion to stay this case pending: (1) the Commonwealth Court’s decision on her request for declaratory judgment (No. 267 MD 2023), and her complaint against numerous justices and judges, including this jurist, in Federal District Court (No. 2:23-cv-02273-JHS). At the Pretrial Conference, it was noted that Appellant had sued six of the Supreme Court of Pennsylvania justices, a Superior Court judge, a Commonwealth Court judge, and Chester

County Court of Common Pleas judges.⁴ This court found Appellant's motion to disqualify this jurist to lack articulable facts, to be an act of forum shopping, and a tactic to delay her trial. Appellant's request for disqualification was denied, as was her request for a stay. At the conclusion of the Pretrial Conference, the court scheduled Appellant's jury trial to begin on January 16, 2024. *See* N.T., 10/17/23, pp. 5, 7-8; Order, 10/17/23; Order, 10/18/23.

On December 6, 2023, the Commonwealth filed a Motion in *Limine* requesting that Appellant provide discovery pursuant to Pa.R.Crim.P. 573(c). it also requested that the court compel Appellant to be fingerprinted, as required by 18 Pa.C.S. § 9112(b)(2) ("Section 9112(b)(2)"). The court granted the Commonwealth's Motion in *Limine* on January 12, 2024. The Commonwealth filed its "Pretrial Statement" on December 16, 2023. Appellant did not file a pretrial statement.

During the period between December 19, 2023 and January 9, 2024, Appellant filed a plethora of repetitive *pro se* motions, including: mandatory judicial notices, verified private criminal complaints⁵, man-

⁴ Appellant confirmed she had sued: the Pa. Supreme Court justices (except Justice Daniel McCaffery), Superior Court President Judge *Emeritus* Jack Panella, Commonwealth Court Judge Renee Jubelirer, Chester County Court of Common Pleas judges: President Judge Hall, Judge Binder, and Judge Verwey. *See* N.T. 04/04/24, pp. 4-6; Motion for Stay, 04/15/24, p. 4, fn. 8.

⁵ The private complaints were filed against this jurist, Judge Binder, MDJ Goch, MDJ Lieberman, Chester County District Attorney Deborah Ryan, Chester County Assistant District Attorneys Daniel Roland and William Judge, and Chester County Detective Steven Parkinson.

datory judicial notices, “*Praecipe* for Determination to the Prothonotary” to disqualify Judge Binder, emergency motions requesting the reassignment of her case, an “Omnibus Pretrial Motion for Relief”, notices of appeal⁶ to the Commonwealth Court, an “Emergency Motion to Extend Time for Fingerprinting”, a “Notice to Strike Off Court Orders”, and a Motion for *Habeas Corpus* motion. In her filings, Appellant sought: (1) to have this case reassigned to another judge; (2) to have Judge Binder disqualified for his “criminal acts”; and (3) to have this court’s prior orders mandating she be fingerprinted vacated.

On January 9, 2024, Appellant was ordered to present herself to be fingerprinted on January 19, 2024 and the jury trial was continued until April 23, 2024 to allow Appellant to retain legal counsel. *See* Order, 01/09/24. On January 10, 2024, Appellant’s request to disqualify Judge Binder was denied. On January 12, 2024, Appellant’s request to have this jurist removed was denied. Also on January 12, 2024, the court granted Appellant’s request for discovery as follows:

1. The Commonwealth shall provide all discovery in accordance with Pa. R. Crim. P. 573(b) (1);
2. Permit the defendant to inspect and copy all written and recorded statements, other than those filed by the defendant; and

⁶ Appellant filed appeals to this court’s December 2023 and January 2024 orders. These appeals were stricken as interlocutory.

3. A copy of a report prepared by any expert who will testify at trial, as well as the expert's *curriculum vitae*, and copies of the results of any tests or experiments conducted by the expert.

See Order, 01/12/24, 3:04 PM.

The court also granted, in part, Appellant's "Omnibus Pretrial Motion for Relief" as follows:

1. The Commonwealth is to make available to the defendant all transcripts and audio recordings of any court proceeding;
2. The Commonwealth shall provide a copy of any documents or exhibits it may or will use at trial, including expert witness reports;
3. The Commonwealth shall submit an affidavit confirming that all discovery materials relevant to this criminal prosecution have been forwarded to the defendant;^[7]
4. The remainder of the discovery demands are DENIED.
5. Defendant is precluded from calling the following persons as witnesses at the time of trial:
 - a. Hillary J Moonay, Esquire;
 - b. Adam Tanker, Esquire;
 - c. Thomas A. Leonard, Esquire;
 - d. Nicholas J. Stevens, Esquire;

⁷ The Affidavit was filed by the Commonwealth on April 4, 2024.

- e. Lauren Remaley
 - f. Lynn Phipps;
 - g. Brian Gibbs;
 - h. Suzie Marker;
 - i. Melanie McAteer, Esquire; and
 - j. Bridget Galloway Owen
6. Defendant is prohibited from calling the following persons as witness at the time of trial:
- a. Magisterial District Judge Marc J. Lieberman;
 - b. Magisterial District Judge Martin Goch
 - c. President Judge John Hall
 - d. Assistant District Attorney William Judge
 - e. Judge Deborah Ryan
7. Proposed points-for-charge will be discussed on-the-record at the time of trial.
8. Defendant's Motion to Suppress/Quash Evidence is DENIED, as that which she seeks to suppress were the audio recordings she filed in the Office of the Prothonotary, thereby making them part of the record, as there was no Order to seal these;
9. Motion to Quash or Dismiss the Information is DENIED.

See Order, 01/12/25, 3:04 PM.

In response to this court's orders, Appellant filed notices of appeal on January 17, 2024 to the Commonwealth Court, and a "Motion to Strike Off Court Orders" on January 22, 2024. Defendant also requested that her reporting time for fingerprinting be extended due to a snowstorm. The court issued the following order on January 25, 2024:

Upon consideration of Defendant's Motion to Strike Off Court Orders, it is hereby ORDERED and DECREED as follows:

- A. The Court Order of January 10, 2024, regarding the Motion to Disqualify Bret M. Binder is DISMISSED as MOOT, as this matter is assigned to the undersigned;
- B. The Court Order to Release from Custody is DISMISSED as MOOT, as Defendant is not in custody;
- C. [Defendant's Challenge to] [t]he Court Order continuing trial in this matter to April 23, 2024, to allow Defendant to obtain private counsel is DENIED, as it was Defendant who requested the continuance to obtain counsel;
- D. The Motion to Strike the Court Order requiring defendant to report for fingerprinting by January 17, 2024, was replaced by Order dated January 23, 2024, due to the snowstorm which closed the courthouse on January 19, 2024. Defendant must now report for fingerprinting by January 26, 2024.

See Order, 01/25/24.

The Commonwealth Court issued a *Per Curium* Order on January 23, 2024 stating it lacked juris-

diction to rule on this court's order to have Appellant fingerprinted. *See* 55 CD 2024. On January 26, 2024, the day Appellant was to report for fingerprinting, she filed a "*Pro Se* Emergency Petition to Stay Fingerprinting Order". That petition was denied on January 26, 2024. On January 30, 2024, Appellant filed an "Emergency Petition to Stay Fingerprinting Order" with the Commonwealth Court, and an objection to the Commonwealth Court's *Per Curium* finding it lacked jurisdiction. in this court, Appellant filed a "Legal Notice and Appeal to Comply With Law".

During the period between February 2, 2024 and February 15, 2024, Appellant filed a slew of motions challenging this court's orders, requesting disqualification of this jurist, and seeking dismissal of this case. She also filed separate notices of appeal to the Superior Court challenging this court's interlocutory orders. These appeals were quashed. *See* Order, 05/10/24, Nos.431 EDA 2024 to 433 EDA 2024, 458 EDA to 461 EDA 2024, 491 EDA 2024 to 492 EDA 2024, 675 EDA 2024 to 681 EDA 2024,

On February 15, 2024, this court issued five orders denying Appellant's: (1) *pro se* Motion to Strike Off Orders; (2) *pro se* Motion for Stay pending her Commonwealth Court case and her appeals before the Superior Court; (3) *pro se* Motion to Disqualify this jurist; (4) *pro se* Motion to Dismiss Case; and (5) *pro se* "Amended" Motion to Disqualify this jurist.

During the period between February 16, 2024 and April 17, 2024, Appellant continued to challenge this court's interlocutory orders by filing *pro se*: notices of appeal to the Superior Court⁸, a second

⁸ These appeals were quashed on April 19, 2024 (*See* 842 EDA

demand for discovery, Notice of Removal to Federal Court, Exceptions and Objections for the Record, and Motion to Stay Trial. Appellant also renewed her requests to disqualify this jurist,⁹ and filed a *pro se* motion to quash and dismiss evidence for violation of her constitutional rights.

On April 19, 2024, prior to the jury trial beginning on April 23rd, Appellant filed a “*Pro Se* Emergency Motion for Continuance”. Appellant requested an additional 60 days due to legal counsel being retained days prior to trial. This request was denied on April 23, 2024. Defense counsel, Robert Barnes, Esquire,¹⁰ entered his appearance on behalf of Appellant and filed a counseled continuance motion on April 22, 2024 requesting additional time to prepare for trial. The counseled continuance request was also denied.

On April 24, 2024, after a two day jury trial, Appellant was found guilty of Section 5103.1(a), Unlawful Use of an Audio Recording Device. *See* Verdict Slip, 04/24/24. A Pre-Sentence Investigation (PSI) was ordered and completed. The Commonwealth filed its Memorandum in Aid of Sentencing on July 9, 2024. Appellant filed a counseled responsive Sentencing Memorandum on July 12, 2024. After considering the documents presented and arguments made by counsel, Appellant was sentenced on July 18, 2024 to one year of supervisory probation. On July 29, 2024, Appellant filed a counseled: Post-Sentence Motion for Acquittal,

2023 & 843 EDA 2024).

⁹ This request was denied by Order on April 4, 2024.

¹⁰ Appellant’s counsel was admitted *pro hac vice* immediately prior to trial.

a Motion to Clarify Sentence Imposed, and a Petition for Bail Pending Appeal.¹¹ On September 3, 2024, the court denied Appellant's request for bail and clarified the sentence imposed as follows:

Defendant shall hereafter be subject to Rules 1, 2, 8, 9, 10, 12, 13, 14, and 17 of Chester County's standard "Rules and Conditions Governing Probation . . ." Any failure by Defendant to abide by the aforesaid Rules may result in sanctions.

See Order, 09/03/24

On September 25, 2024, we denied Appellant's request for acquittal. Appellant did not argue that the evidence offered at trial was insufficient to sustain her conviction. Rather, she argued that the underlying statute, Section 5103.1(a), was constitutionally infirm. We found Defendant's constitutional arguments unavailing as Appellant failed to establish a facial or as-applied violation.

Appellant filed a counseled and timely Notice of Appeal to the Superior Court on October 22, 2024. We issued our Pa.R.A.P. Rule 1925(b) Order on October 29, 2024. Appellant filed a timely counseled Concise Statement on November 18, 2024.

¹¹ July 28, 2024 was a Sunday, and the post-sentence motion is found to be timely pursuant to 1 Pa.C.S.A. § 1908 (providing that when a statutory filing deadline falls on a Saturday, Sunday, or holiday, the deadline will be extended to the next business day).

ERRORS CLAIMED ON APPEAL

Appellant sets forth nine errors. We address them for ease of argument as follows:

(1) the court erred in denying Appellant's post trial motion for acquittal when it found:

- a. that Section 5103.1 is not, facially and/or as applied, in violation of the First Amendment and Article I, Section 7 of this Commonwealth's constitution; and
- b. that Section 5103.1 was not unconstitutionally vague and did not provide overly broad official discretion in violation of the Fifth Amendment.

(2) the court erred in denying Appellant's discovery requests in violation of *Brady v. Maryland*, 373 U.S. 83, (S.Ct. 1963);

(3) the court erred in denying Appellant's request to continue trial to accommodate newly retained counsel in violation of her Sixth Amendment right to counsel;

(4) the court erred in denying Appellant's motion to dismiss the charges pursuant to the doctrine of *de minimis* infraction;

(5) the court erred in giving an erroneous jury instruction and denying Appellant's motion to modify or provide an additional jury instruction;

(6) the court violated Appellant's Fourth Amendment and Fourteenth Amendment due process rights in denying Appellant's motion to suppress evidence as a result of an illegal search; and

(7) the court erred in denying Appellant's requests for this jurist to recuse himself in violation of the Pennsylvania Code of Judicial Conduct 2.11¹².

DISCUSSION

I. Appellant's Request for Acquittal

Appellant challenges this court's denial of her request for a finding of acquittal. After the Commonwealth rested and Appellant indicated she was not going to present any evidence, Appellant made an oral motion for acquittal arguing that: (1) Appellant's conduct was a *de minimis* infraction as defined in 18 Pa.C.S. § 312(a) ("Section 312(a)")¹³; and (2) that Section 5103.1(a) was constitutionally infirm as it violates freedom of speech and due process rights guaranteed by the First and Fifth Amendments of the United States Constitution and the "more robust protections" of this Commonwealth's constitution. The oral motion for acquittal was denied prior to closing arguments. (N.T., 04/24/24, pp. 27-30, 32, 1. 2).

On July 29, 2024, Appellant filed a written motion "respectfully request[ing] the granting of her Motion for Acquittal". See Post-Sentence Motion, 07/29/24, p. 1. Appellant's written motion claimed that:

[Section 5103.1(a)], facially and as applied, violate[d] the Constitution of the United

¹² Rule 2.11. requires a judge to "disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned". CJC, Rule 2.11, Disqualification.

¹³ This court addresses Appellant's *de minimis* infraction claim in Section "IV" of this Opinion.

States and the Constitution of Pennsylvania as follows:

- a. an unlawful prior restraint on expressive activity protected by the freedom of speech, press, association, expression, and petitioning the government for redress of grievances under the First Amendment to the United States Constitution and Article I of the Pennsylvania Constitution¹⁴;
- b. void for vagueness for delegating undue discretion in individual officers without meaningful safeguards or limiting standards in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I of the Pennsylvania Constitution¹⁵;
- c. criminalizes too much innocent conduct including constitutionally protected activity without any requisite showing of harm, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, of the Pennsylvania Constitution¹⁶;
- d. violates the right to petition for redress of grievances and the right to open access to the

¹⁴ Appellant does not identify what section of Article I is being invoked. We accept that Appellant is invoking Section 7 (Freedom of Press and Speech) as that is the section previously raised and most relevant.

¹⁵ *Id.*

¹⁶ *Id.*

courts as separately protected by the of the First Amendment to the United States Constitution and Article I of the Pennsylvania Constitution¹⁷.

See Post-Sentence Motion, 07/29/24, p. 3, par. 6.

A. Standard of Review

Appellant submits that Section 5103.1(a) violates her constitutional rights to free speech and due process. These claims present questions of law. As a result, the Superior Court's standard of review is *de novo* and the scope of review is plenary. *Commonwealth v. Berry*, 167 A.3d 100, 104 (Pa. Super. 2017) (citation omitted); *Commonwealth v. Papp*, 305 A.3d 62, 70 (Pa. Super. 2023).

B. First Amendment & Article I, Section 7 of the Pennsylvania Constitution Challenges to Section 5103.1(a) - Argument

Section 5103.1(a) of the Crimes Code defines the offense of Unlawful Use of an Audio or Video Device in Court as follows:

A person commits [this] offense if the person in any manner and for any purpose uses or operates a device to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a judicial facility or in an area adjacent to or immediately surrounding a judicial facility without the approval of the court or

¹⁷ *Id.*

presiding judicial officer or except as provided by rules of court.

18 Pa.C.S. § 5103.1(a). Section 5103.1(c) defines “judicial facility” as “a courtroom, hearing room or judicial chambers used by the court to conduct trials or hearings or any other court-related business or any other room made available to interview witnesses.” 18 Pa.C.S. § 5103.1(c).

Appellant submits that Section 5103.1(a) violates her constitutional right to free speech. This exact challenge was recently addressed by the Superior Court in *Commonwealth v. Leschinskie, Jr.* — A.3d — (2024), 2024 WL 5195378 (Pa.Super. Dec. 23, 2024), and we adopt its reasoning as our own:

Appellant asserts that private citizens have a constitutional right under the First Amendment and Article I, Section 7 to make their own audio or video recordings of court proceedings and that because Section 5103.1 bars such recordings it is unconstitutional. We do not agree. Although there is no case law specifically addressing Section 5103.1, the United States Supreme Court, this Court, and numerous other courts throughout the country have held that prohibiting audio and video recording of court proceedings does not violate the First Amendment.

In *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978), . . . the United States Supreme Court specifically held that there is no constitutional right to record live witness testimony in a trial. *Id.* at 610, 98 S.Ct. 1306. This Court, in

Commonwealth v. Davis, 431 Pa.Super. 42, 635 A.2d 1062 (1993), addressed and rejected a First Amendment challenge to a judicial order prohibiting videotaping of court proceedings, holding that prohibiting such recording was a reasonable time, place, and manner restriction. *Id.* at 1065-70. The federal courts have also repeatedly held that prohibitions on recording court proceedings do not violate the First Amendment. *E.g.*, *Conway v. United States*, 852 F.2d 187, 188 (6th Cir. 1988); *United States v. Edwards*, 785 F.2d 1293, 1295-96 (5th Cir. 1986); *United States v. Yonkers Board of Education*, 747 F.2d 111, 112-14 (2d Cir. 1984); *United States v. Hastings*, 695 F.2d 1278, 1282-84 (11th Cir. 1983); *Shavlik v. Snohomish County Superior Court*, 2019 WL 2616631, at *7 (W.D. Wash. June 26, 2019); *McKay v. Federspiel*, 22 F.Supp.3d 731, 734-36 (E.D. Mich. 2014), *affd on other ground*, *McKay v. Federspiel*, 823 F.3d 862 (6th Cir. 2016); *United States v. Missouri*, 205 F.R.D. 183, 184-86 (E.D. Va. 2002).

Nothing in Section 5103.1 or the nature of Appellant's recording makes these precedents inapplicable. Section 5103.1 is content neutral, as it prohibits recording "for any purpose." 18 Pa.C.S. § 5103.1(a). Although no issues of privacy of jurors or harm to the defendant were present here, as the proceeding was Appellant's own trial and it was a non-jury summary trial, that does not make the reasons for prohibiting recording irrele-

vant. The portion of the proceeding that Appellant recorded was a witness's testimony, not Appellant's own actions or testimony. The courts, including this Court in *Davis*, have specifically recognized the potential impact on witnesses as an important reason for prohibiting recording. *Davis*, 635

A.2d at 1068; *Yonkers Board of Education*, 747 F.2d at 114; *Hastings*, 695 F.2d at 1283-84.

Leschinski at *3.

In this case, Appellant's divorce hearing proceeded without a jury, the recording was made by Appellant, a litigant to her own hearing, and the recording captured her ex-husband's sworn witness testimony. See CW Exh. "C-6", Audio File #190103_091414, Time 1:22:00. Accordingly, like the *Leschinski* court, we find no reason to expand Appellant's freedom of speech right to include the recording of judicial proceedings.

Appellant goes on to submit that, if her First Amendment right cannot be expanded, she is entitled to more "robust" protections under Article I, Section 7 of the Pennsylvania Constitution. (N.T., 04/24/24, p. 28, II. 15-18). We disagree, as the *Leschinskie* explained:

Article I, Section 7, . . . does not provide broader protection than the First Amendment for all claims alleging an unconstitutional restriction on speech. *Oberholzer [v. Galapo*, 322 A.3d 153, 176 (Pa. 2024)].

Article I, Section 7 is co-extensive with the First Amendment where content-neutral

restrictions related to judicial proceedings are challenged. *S.B. v. S.S.*, 664 Pa. 1, 243 A.3d 90, 112-13 (2020) (Article I, Section 7 is co-extensive with First Amendment with respect to constitutionality of gag order in child custody case); *see also Oberholzer*, 322 A.3d at 176 (citing the upholding of a ban on taking of pictures in courthouse in *In re Mack*, 386 Pa. 251, 126 A.2d 679 (1956), as an example of where Article I, Section 7 is co-extensive with the First Amendment). Because Section 5103.1 of the Crimes Code is a content-neutral regulation of behavior in court proceedings, Article I, Section 7 does not provide any broader protection than the First Amendment. Moreover, there is no basis to conclude that our Supreme Court would view Article I, Section 7 as creating a right to record court proceedings, as it has promulgated court rules, Rule 112 of the Rules of Criminal Procedure and Rule 1910 of the Rules of Judicial Administration, that specifically prohibit the recording of such proceedings. Pa.R.Crim.P. 112(A), (C); Pa.R.J.A. 1910.

Leschinskie at *4.

We agree with the Superior Court's legal analysis and conclusion that Article I, Section 7 gives no greater protections than the First Amendment. For the reasons set forth above, we find no error in denying Appellant's application for acquittal based on freedom of speech grounds.

**C. Fourteenth Amendment Challenge to
Section 5103.1(a) Argument**

Appellant also argues that Section 5103.1(a) is overly broad and vague, in violation of her due process right under the Fourteenth Amendment. The *Leschinskie* court examined this claim and found that:

[a] statute can be held unconstitutional due to overbreadth only if it restricts a substantial amount of constitutionally protected conduct in comparison to the conduct that it permissibly prohibits. *Commonwealth v. Davidson*, 595 Pa. 1, 938 A.2d 198, 208 (2007); *Commonwealth v. Hendrickson*, 555 Pa. 277, 724 A.2d 315, 317-18 (1999). In addition, an overbreadth challenge is weaker where the statute prohibits conduct rather than pure speech. *Hendrickson*, 724 A.2d at 318; [*Commonwealth v.*] *Papp*, 305 A.3d [62,] 74 [(Pa. Super. 2023)].

Section 5103.1 prohibits conduct, “us[ing] or operat[ing] a device to capture, record, transmit or broadcast,” not pure speech, and does not prohibit a substantial amount of protected activity in comparison to the conduct that it legitimately bars. The fact that it applies regardless of whether court is in session does not make its restrictions overbroad, as the need to protect witnesses exists when they are at court before and after the court is in session. Although the statute applies to areas “adjacent to or immediately surrounding a judicial facility,” that does not restrict a substantial amount of conduct outside the court proceeding, as Section

5103.1 narrowly defines “judicial facility” as the courtroom itself, a hearing room, a judicial chambers, and a room where witnesses are being interviewed, not the entire building that houses the court. 18 Pa.C.S. § 5103.1(c). The prohibition on recording is thus limited to the rooms where judicial proceedings occur or witnesses are located and to persons going to and coming from such rooms.

. . .

Section 5103.1 only prohibits recording “without the approval of the court or presiding judicial officer or except as provided by rules of court.” 18 Pa.C.S. § 5103.1(a). Both the Rules of Judicial Administration and the Rules of Criminal Procedure specifically permit judges to authorize the recording of such ceremonial proceedings. Pa.R.J.A. 1910(B)(2); Pa.R.Crim.P. 112(B)

Appellant’s constitutional challenge to his conviction fails.

Leschinskie at *5.

We accept the well-reasoned legal analysis by the *Leschinskie* court and find Section 5103.1(a) does not violate the 14th Amendment right to due process. Thus, we find no error in denying Appellant’s request for acquittal.

D. Fifth Amendment Challenge to Section 5103.1(a) Argument

Appellant makes a generic claim that Section 5103.1(a) violates her Fifth Amendment right to due

process. This court is unclear as to how Appellant has not been provided due process. We find Appellant's claim is too vague to allow this court to identify the issues raised on appeal and this constitutional challenge is deemed waived. See *Commonwealth v. McGhee*, 230 A.3d 1277, 1281 n.3 (Pa. Super. 2020) ("When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review [A] Concise Statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no Concise Statement at all.").

II. Brady Violation

A. Standard of Review

A *Brady* violation claim of error "presents a question of law, for which [the appellate] standard of review is *de novo* and [the] scope of review is plenary." *Commonwealth v. Bagnall*, 235 A.3d 1075, 1084 (Pa. 2020).

B. Brady Violation - Argument

Appellant claims that the prosecution committed a *Brady* violation by withholding discovery. In order to establish a *Brady* violation, Appellant must show that: "(1) evidence was suppressed by the Commonwealth, either willfully or inadvertently; (2) the evidence was favorable to the defendant; and (3) the evidence was material, in that its omission resulted in prejudice to the defendant." *Commonwealth v. Lambert*, 884 A.2d 848, 854 (Pa. 2005) (emphasis added); However, "[t]he mere possibility that an item of undisclosed information might have helped the defense or might have affected the outcome of the trial does not establish

materiality in the constitutional sense.” *Commonwealth v. McGill*, 832 A.2d 1014, 1019 (Pa. 2004) (quoting *U.S. v. Agurs*, 427 U.S. 97, 109-10, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976)).

Appellant cannot meet the first necessary prong of her burden to show a *Brady* violation. Appellant has failed to identify what favorable evidence was suppressed or withheld by the Commonwealth. As a result, we find this claim is waived. *See Commonwealth v. Yandamuri*, 159 A.3d 503, 527 (Pa. 2017) (*Brady* claim waived by failure to identify the particular evidence the prosecution withheld). However, if the reviewing court does not find this claim waived, we submit there is no favorable evidence in this case. This matter began with Appellant’s own voluntary filing of her *pro se* Motion to Correct Transcript wherein she admitted, under penalty of perjury, that she recorded her divorce proceeding before Judge Binder. Moreover, Appellant provided proof of her illegal act by attaching the USB flash drive containing the recordings she made of her divorce proceedings, including the sworn witness testimony by her ex-husband. (CW Exhs. “C-1”, “C-6”). That is all the evidence in this case,¹⁸ and none of it is favorable to Appellant.

For the reasons stated above, we find Appellant’s *Brady* claim is waived and/or holds no merit. Accordingly, we find no error.

¹⁸ Appellant was provided all documentation related to this case, and instructed on how to obtain the Commonwealth’s copies of her recordings. (N.T., 10/17/23, p. 8, I. 18 — p. 10).

III. Denial of Continuance Request for Newly Retained Counsel

A. Standard of Review

The grant or denial of a defendant's request for continuance of a criminal trial is within the sound discretion of the trial court and will be reversed only upon a showing of an abuse of discretion¹⁹. *Commonwealth v. Ross*, 350 A.2d 836, 837 n. 2 (Pa. 1976).

B. Denial of Continuance Request Argument

Appellant submits that this court violated her Sixth Amendment right to counsel when it denied her continuance request to allow newly retained counsel additional time to prepare for trial. We disagree.

The right to counsel is not absolute. *Commonwealth v. Robinson*, 592-93 & n. 13, 364 A.2d 665, 674 & n. 13 (Pa. 1976). “[T]he right of the accused to choose his own counsel . . . must be weighed against[,] and may be reasonably restricted by the state’s interest in the swift and efficient administration of criminal justice.” *Id.* at 674 (internal quotations omitted). The Sixth Amendment does not protect a defendant’s unreasonable actions that result in “clog[ing] the

¹⁹ “An abuse of discretion is not merely an error of judgment. *Mielcuszny v. Rosol*, 317 Pa. 91, 93-94, 176 A. 236, 237 (1934). Rather, discretion is abused when “the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or as shown by the evidence or the record . . .” *Commonwealth v. Chambers*, 546 Pa. 370, 387, 685 A.2d 96, 104 (1996) (quoting *Mielcuszny*, 317 Pa. at 93-94, 176 A. at 236).” *Commonwealth v. Randolph*, 873 A.2d 1277, 1281 (Pa. 2005) (quoting *Commonwealth v. McAleer*, 748 A.2d 670, 673 (Pa. 2000)).

machinery of justice or hamper[ing] and delaying] the state's efforts to effectively administer justice." *Commonwealth v. Baines*, 389 A.2d 68, 70 (Pa. 1978). In *States v. Gonzalez—Lopez*, 548 U.S. 140, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006), the United States Supreme Court recognized that the trial court has "wide latitude in balancing the right to counsel of choice against the needs of fairness . . . and against the demands of its calendar." *Id.* at 152, 126 S.Ct. 2557 (internal citations omitted).²⁰

The record in this case reflects Appellant's unrelenting focus on obstructing, delaying, and "clogging" the progression of this case. The court made numerous attempts to direct Appellant through the proper procedures without success. The court attempted to colloquy Appellant as to her right to an attorney on August 23, 2023, but she was insistent that this court did not have subject matter jurisdiction and refused to accept the offer of standby counsel, stating that any such appointment would be against her will, "and [the court] has no right to do that. And if that [standby] counsel does not resign voluntarily, he is going to be dismissed immediately by [her]". (N.T., 08/23/23, pp. 8-20; *Pro Se* Motion for Clarification of Order, 08/22/23, p. 3, par. 14).

²⁰ See also *Morris v. Slappy*, 461 U.S. 1, 11, 103 S.Ct. 1610, 75 L.Ed.2d 610 (1983) ("Trial judges necessarily require a great deal of latitude in scheduling trials. Not the least of their problems is that of assembling the witnesses, lawyers, and jurors at the same place at the same time, and this burden counsels against continuances except for compelling reasons.).

On October 17, 2023, the parties²¹ attended the Pretrial Conference to discuss the upcoming jury trial scheduled to begin on January 16, 2024. (N.T., 10/17/23, p. 8, II. 3-5). Appellant continued to be obstructive and refused to answer the court's questions related to her waiver of legal counsel.²² The next day, the court issued the following order:

AND NOW, to wit, this 18th day of October, 2023, upon consideration of the [appellant] declining to execute the waiver of counsel colloquy or answer inquiries by the court, notwithstanding the court order dated August 15, 2023, and predicated upon the numerous court filings by the [appellant] in a self-represented capacity, as well as her interactions with the court, it is ORDERED and DECREED that the court hereby finds that [the appellant] has knowingly, intelligently and voluntarily elected to decline court-appointed counsel and will proceed as a self-represented party.

(Order, 10/18/23).²³

On January 9, 2024, a week prior to Appellant's January 16th jury trial, the court held a hearing to address the Commonwealth's Motion in *Limine*. (N.T., 01/09/24, p. 3, II. 7-9). At that time, the court again sought to confirm that Appellant was representing

²¹ Appellant continued to represent herself.

²² N.T., 10/17/23, pp. 2-8.

²³ Appellant filed objections to this order, arguing that this court lacked subject matter jurisdiction. (*See Pro Se Exception/Objection for the Record*, 10/23/23).

herself at trial. Appellant responded that she was representing herself “[o]nly because [the court] violated [her] Sixth Amendment right by refusing to stay the case. [She did] not know yet if [she needed] an attorney or not, because [she had] stated on the record numerous times that the court is moving without jurisdiction.” *Id.* at II. 12-18. The court accepted Appellant’s statement as an oral request for continuance to retain legal counsel and continued the jury trial for three and a half months, to April 23, 2024. See Order, 01/09/24. Appellant was also ordered to retain legal counsel and have counsel appear at the February 13, 2024 Status Conference. Appellant understood her obligation to retain legal counsel, stating, “I certainly hope that will be the case.” (N.T., 01/09/24, p. 31, II. 14-25; Order, 01/09/24).

In response to the court’s accommodation in continuing the jury trial to allow Appellant time to retain legal counsel, Appellant filed a flurry of *pro se* notices of appeal to the Commonwealth Court seeking to have this court’s prior orders reversed, including the January 9th Order directing her to obtain legal counsel and have counsel be present for the Status Conference. As a result, the February 13, 2024 Status Conference was continued by the court to March 5, 2024.

On March 4, 2024, Appellant filed a *pro se* “Request For Stay Alternatively Request for Continuance and Renewal Motion to Disqualify Hon. John P. Capuzzi, Sr,” Although Appellant set forth numerous reasons in support of her request for a stay/continuance of the upcoming March 5th Status Conference, additional time to retain counsel was not raised. See Request for Stay/Continuance, 03/04/24, p. 2, pars. 1, 2(a)-(h). The

court denied Appellant's request for continuance/stay on March 4, 2024. *See* Order, 03/04/24.

On March 5, 2024, the court conducted the Status Conference and endeavored to confirm whether Appellant had retained legal counsel. (N.T., 03/05/24, p. 11, II. 11-14, p. 12, II. 23-24). Appellant continued to emphasize that this court lacked subject matter jurisdiction, and stated that she "[did] not see any reason why [she] should expend any money on [retaining legal] counsel— . . . —while the underlying [jurisdictional] issue [was still being] deliberated at the Commonwealth Court." *Id.* at p. 13, II. 1-11; *see also* N.T., 04/04/24, p. 9, II. 20-25; p. 13, II. 14-16. Near the end of the March 5th Status Conference, the court discussed with Appellant what would occur during trial. *Id.* at p. 31, I. 15 — p. 53, I. 10. Appellant was also clearly notified that the jury trial would proceed in 49 days, on April 23, 2024. *Id.* at p. 37, I. 15 — p. 38, I. 8.

On April 4, 2024, the court again inquired as to whether Appellant had retained legal counsel. Appellant stated that she was still "searching". (N.T., 04/04/24, p. 3, II. 10-15, p. 14, II. 14-23). On April 10, 2024, the parties met to discuss *voir dire* and the jury charges. Appellant continued to represent herself. During the meeting, the court gave Appellant instructions on how trial would be conducted. We note that Appellant did not request a continuance for additional time to retain legal counsel. (N.T., 04/04/24, p. 22, II. 21-24; N.T., 04/10/24).

In furtherance of her objections to the jury trial proceeding, between April 5, 2024 and April 19, 2024, Appellant filed two *pro se* objections to the record, a *pro se* Notice of Removal to Federal Court, a *pro se*

Motion for Stay, and a *pro se* Emergency Motion for Continuance²⁴. We found Appellant's behavior to this point to be significantly obstructive and disruptive and denied her requests for relief.²⁵

On April 22, 2023, Mr. Barnes, filed an Entry of Appearance, a Motion to be Admitted *Pro Hoc Vice*²⁶, and a Motion for Continuance to allow time to prepare. Prior to trial commencing, Mr. Barns acknowledged

²⁴ Appellant stated in her Emergency Motion for Continuance that:

1. [t]he Court knows that Uwe Maggitti is NOT *pro se* voluntarily.
2. Urve Maggitti has now found an attorney, who is going to handle the criminal matter case No. CP-15-CR-0001735-2023.
3. Urve Maggitti is formally requesting a Continuance for 60-days to provide time for the attorney to familiarize with the case and prepare proper defense for the trial.
4. [t]he Continuance is needed because Trial is set to start on Tuesday April 23, 2024.

(Emergency Motion for Continuance, 04/19/24, p. 2, pars. 1-4).

²⁵ "On April 19, 2024, the Court Administrator notified the parties, via electronic mail, as follows: Upon review, Judge Capuzzi has denied the Emergency Motion for Continuance filed by Ms. Maggitti on this date. A written order shall follow. Jury selection/trial shall commence on Tuesday, April 23rd, at 9:30 a.m. Jury selection shall take place in Courtroom No. 1, and the trial itself, once the jury has been seated, shall take place in Courtroom No. 17. Please prepare accordingly." See Order, 04/23/24.

²⁶ The three day waiting period was waived and the court granted Mr. Barnes's *pro hoc vice* motion immediately prior to trial. (N.T., 04/23/24, p. 3, I. 14 — p. 4, I. 10).

that his continuance request had been denied, and trial proceeded on April 23, 2024 as scheduled. (N.T., 04/23/24, p. 6, II. 7-9).

In making our determination to deny Appellant's last minute continuance request, we not only considered Appellant's past unreasonable behavior that caused numerous delays, but also the following factors: (1) the low level of severity of Appellant's charge; (2) the simple nature of the case; (3) the extremely low volume of evidence required to be reviewed by Mr. Barnes; (4) the Commonwealth's objection to any additional continuances; and (5) Mr. Barnes's extensive litigation experience as verified in his request for admission *pro hoc vice*.²⁷

We find no abuse of discretion and no error in denying Appellant's continuance requests, especially when Appellant chose not to retain legal counsel until the last-minute, even when she had been warned by this court, on more than one occasion, that legal counsel had to be retained and prepared to proceed to trial by April 23, 2024. *See Commonwealth v. McCool*, 457 A.2d 1312, 1312-1315 (Pa.Super. 1983) (finding no

²⁷ In the Verified Statement attached to the Motion for Admission *Pro Hoc Vice* Motion, Mr. Barnes states that he is admitted to practice in California, where his principal place of business is located, Tennessee, Wisconsin, the U.S. District Court for the Eastern District of Wisconsin, Southern District of California, Central District of California, Northern District of California, Northern District of Florida, D.C. District Court, First Circuit Court of Appeals, Fifth Circuit Court of Appeals, Seventh Circuit Court of Appeals, Ninth Circuit Court of Appeals, Tenth Circuit Court of Appeals, Eleventh Circuit Court of Appeals, and the U.S. Tax Court. *See* Motion for Admission *Pro Hoc Vice*, 04/22/24, Verified Statement.

abuse of discretion where defendant made no efforts to retain counsel until the night before trial); *Commonwealth v. Andrews*, 422 A.2d 855, 860 (Pa.Super. 1980) (where defendant had previously been warned on two occasions that the trial would commence on a certain date and that private counsel needed to enter his appearance by that date).

IV. *De Minimis* Infraction

A. Standard of Review

When examining whether it was error to refuse to find a *de minimis* infraction, the standard of review is whether the court abused its discretion²⁸. *Commonwealth v. Rosario*, 679 A.2d 756, 760 (Pa. 1996); *see also Commonwealth v. Matty*, 619 A.2d 1383 (Pa.Super.1993).

B. *De Minimis* Infraction - Argument

Appellant argues that the intent of the legislature in enacting Section 5103.1(a) was to protect jurors and witnesses from intimidation and threats of defamation. As there is no nexus between Appellant's recordings and the harm Section 5103.1(a) seeks to prevent, it was error for this court not to find Appellant's infraction was *de minimis* as permitted by Section 312(a). We disagree.

Section 312(a) sets forth three circumstances when the courts may find a *de minimis* infraction:

- (a) General rule.—The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense

²⁸ See fn. 19, *supra*.

and the nature of the attendant circumstances, it finds that the conduct of the defendant:

- (1) was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
- (2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- (3) presents such other extenuations that it cannot reasonably be regarded as envisaged by the General Assembly or other authority in forbidding the offense.

18 Pa.C.S.A. § 312(a).

The courts have held that the “legislature enacted [Section] 312 to apply to situations in which there was no harm done to either the victim or society. [However], it is incumbent upon the trial court not to dismiss criminal conduct that is injurious to the victim or to society.” *Commonwealth v. Moses*, 504 A.2d 330, 332 (Pa.Super. 1986) (emphasis added).

We are guided by the legal analysis and conclusions made by the *Leschinskie* court as to whether a hidden recording of court proceedings injures a victim or society. In *Leschinskie*, the defendant recorded testimony on his cell phone during his summary trial. The recording was discovered when a witness heard his own voice coming from the defendant’s phone. The

defendant did not refute he recorded his summary proceedings and was found guilty of violating Section 5103.1(a) after a one day jury trial. On appeal, the Superior Court determined that:

Although no issues of privacy of jurors or harm to the defendant were present here, as the proceeding was Appellant's own trial and it was a non-jury summary trial, that does not make the reasons for prohibiting recording irrelevant. The portion of the proceeding that Appellant recorded was a witness's testimony, not Appellant's own actions or testimony. The courts, including this Court in [*Commonwealth v.*] *Davis*, [635 A.2d 1062 (Pa.Super. 1993)] have specifically recognized the potential impact on witnesses as an important reason for prohibiting recording. *Davis*, 635 A.2d at 1068; *Yonkers Board of Education*, 747 F.2d [111, 114 (2d Cir. 1984)]; *Hastings*, 695 F.2d [1278,] 1283-84 [11th Cir. 1983)].

Leschinskie, supra at *4.

The facts considered, by the *Leschinskie* court to be significant in their determination that the defendant's recording was not de *minimis*, are also found in this case. Both the defendant's summary hearing and Appellant's divorce hearing proceeded without a jury, and both the defendant and Appellant: (1) were parties in their own litigation; (2) were the ones who made and admitted to making the recordings without notice; and (3) recorded sworn witness testimony²⁹. It

²⁹ Appellant's recording preserved the entire testimony given by her former husband, Victor Maggitti, during the divorce hearing. See CW Exh, "C-6", Audio File #190103_091414, Time 1:22:00.

must also be especially noted that at the conclusion of Appellant's divorce hearing, Judge Binder stated that certain statements were to be stricken from the record, and others were being made off the record. These stricken and off the record statements were recorded by Appellant. (*See* CW Exhibit "C-6", Audio File #190103_091414Time 1:52:23). Having an alternate version of court proceedings can only lead to confusion and misinterpretations of the record.

Appellant's conduct in recording court proceedings, her conversation with her stenographer in the hallway immediately outside Judge Binder's courtroom, and side conversations in the courtroom, without notice to those individuals is unacceptable. Artificial intelligence ("AI") technology now allows audio recordings to be selectively edited and manipulated with ease and shared across the Internet in a matter of seconds. It is dangerous for our society to have oral communications recorded without notice; this cannot be overstated.³⁰ This specific danger is forestalled by Section 5103.1(a). Section 5103.1(a) ensures that participants in court proceeding are secure in the knowledge that their voices are not being recorded for future use, no matter what that use may be.

We find no abuse of discretion or error in determining that Appellant's infraction was not *de minimis*.

³⁰ It is general knowledge that voice cloning is a type of technology that is readily available. An individual with criminal intent can create a digital replica of a person's voice by capturing their speech patterns, accent, and breathing from short audio samples. An artificial intelligence voice generator can perfectly mimic a person's speech and have the copied voice say anything at any time to perpetuate scams over the phone.

V. Jury Instruction

A. Standard of Review

When considering errors related to jury instructions, the standard of review is an abuse of discretion³¹ or error of law. Jury instructions must be read as a whole in order to determine whether the omission was fair or prejudicial. “A new trial is required on account of an erroneous jury instruction only if the instruction under review contained fundamental error, misled, or confused the jury.” *Commonwealth v. Fletcher*, 986 A.2d 759, 792 (Pa. 2009) (citations and internal quotation marks omitted). “The trial court has broad discretion in phrasing its instructions and may choose its own wording so long as the law is clearly, adequately, and accurately presented to the jury for its consideration.” *Commonwealth v. Baker*, 24 A.3d 1006, 1022 (Pa. Super. 2011), *affirmed*, 78 A.3d 1044 (Pa. 2013) (citations and quotation marks omitted).

B. Jury Instruction - Argument

Appellant submits that this court gave an “erroneous jury instruction” and erred in denying Appellant’s request to “modify or provide an additional jury instruction”. (Concise Statement, 11/18/24, p. 1, par. 5). Appellant fails to identify or provide any description of what “jury instruction” was erroneous, or what jury instruction was not modified or provided to the jury. Appellant’s generic claims are too vague to allow the court to identify the issues raised on appeal, and we find that these claims are waived. *See McGhee*, *supra* at 1281 n.3. For purposes of completeness, if

³¹ See fn. 19, *supra*.

waiver is not found by the reviewing court, we discuss below Mr. Burns's objections to the jury instructions.

At the Charge Conference, Mr. Barnes requested clarification be given to the jury that they need to find, beyond a reasonable doubt, that each element of the charge against Appellant needed to be knowingly, intentionally, or recklessly committed. The court explained that the charge that would be given to the jury already conveyed the appropriate burden, as follows:

COURT: Unlawful use of an audio device in court.

The defendant has been charged with one count of unlawful use of an audio or video device in court. A person commits this offense if the person in any manner or for any purpose uses or operates a device to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a judicial facility or in an area adjacent to or immediately surrounded a judicial facility without the approval of the court or presiding judicial officer or as, except provided by the Rules of Court.

In order to find the defendant guilty of this offense, you must find that the Commonwealth has proven the following elements beyond a reasonable doubt. First, Defendant knowingly or intentionally or recklessly used or operated a device in order to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person while within a judicial facility or in an area adjacent to or immediately surrounding a judicial facility.

Second, Defendant did not have the approval of the court or presiding judicial officer to use or operate the device for this purpose within this area. And third, Defendant's acts were not otherwise authorized by Rule of Court.

With regard to the first element, a person acts intentionally with respect to a material element of an offense if the element involves the nature of her conduct or result thereof, it is her conscious object to engage in conduct of that nature or to cause such result, and if the element involves the intended circumstances, she is aware of the existence of such circumstances or she believes or hopes that they exist.

A person acts knowingly with respect to a material element of an offense when if the element involves the nature of her conduct or the intended circumstances, she is aware that her conduct is of that nature or that such circumstances exist, and if the element involves a result of her conduct, she is aware that is practically certain that this conduct will cause such a result.

A person acts recklessly with respect to a material element of an offense when she consciously disregards a substantial, unjustifiable risk that the material element exists or will result from her conduct. The risk must be of such a nature and degree that considering the nature and intent of the actor's conduct and the circumstances known to her, its disregard involves a gross deviation from the standard of conduct that a reason-

able person would observe in the actor's situation.

As used in this section, the term, "judicial facility," means a courtroom, hearing room or a judicial chambers used by the court to conduct trials or hearings or any other court-related business or any other room made available to interview witnesses. And ladies and gentlemen, there's the three sections.

So when you look at the elements, you look at intentional and then whether those elements are satisfied under the intentional part. You would look at whether they were satisfied under the knowing part. Then you would go back and look at them under the reckless part. So you have to look at them all three individually in those ways.

(N.T., 04/24/24, p. 64, I. 13 — p. 67, I. 4) (emphasis added).

The charge was further clarified by the court:

Court: I just want to make clear to you when we're doing it, it's knowingly or intentionally or recklessly.

Id. at p. 78, II. 6-8.

We find that the charge, as given in its totality, was correct and free of error.

Mr. Burns also requested to have two additional charges given to the jury. First, he requested that the jury be given a theory of defense: that "the [appellant] is not guilty of an unlawful use of an audio device in court, if the [appellant] did not know the use of an

audio device violated the Rules of Court.”. *Id.* at p. 9, II. 12-15. This court declined to give this instruction. We concluded that an ignorance or mistake charge was more appropriate for the facts in this case, and gave the jury the following instruction:

Court: Ignorance or mistake. One of the material elements of the crime of unlawful use of video or audio device that the Commonwealth must prove beyond a reasonable doubt is that the [appellant] intentionally, knowingly or recklessly used a video or audio device to record a court proceeding in a courtroom without the permission of the court.

The [appellant] claims that this element has not been proven beyond a reasonable doubt because at the time of the alleged offense, she was reasonably ignorant or mistaken concerning the facts that she was not able to record. Ignorance or mistake as to a matter of fact for which there is a reasonable explanation or excuse is a defense if it negates the intentional, knowingly or reckless elements required to establish the element of the crime. Thus, you must consider the evidence tending to show the [appellant] was reasonably ignorant or mistaken concerning the facts along with the other evidence in determining whether The Commonwealth has proven the required intent, knowledge or recklessness beyond a reasonable doubt.

In a case where the issue of mistake or ignorance of fact is raised, you must decide whether there was such a mistake or lack of awareness of fact, whether that mistake or

ignorance was reasonable under the circumstances, and whether that mistake or ignorance shows that one of the elements of the crime charged was not proved beyond a reasonable doubt. To overcome this defense, the prosecution must prove beyond a reasonable doubt one of the following: That the [appellant] did not have that mistaken belief or that the [appellant] was not ignorant of the fact; that the mistake and belief or the ignorance of the fact was not reasonable; or that the mistake or ignorance of fact did not prevent or eliminate the required element of intent, knowledge or recklessness.

(N.T., 04/24/24, p. 70, 1. 7 — p. 71, 1. 19).

The second charge that Mr. Burns requested to be added was a justification charge: that “the [appellant] is not guilty of unlawful use of an audio device in court if the harm or evil sought to be avoided by the [appellant]’s conduct is greater than that sought to be prevented by the law”. *Id.* at p. 9, II. 16-20. This language is contained in Section 312(a)(2) as one of the categories to be considered when determining whether an infraction is *de minimis*. We found Mr. Burns’s instruction inappropriate. Section 312(a) directs the court to make the determination of whether an infraction is *de minimis*. *See* Section 312(a)(2).³²

³² *See* Section 312(a) states:

- (a) General rule.—The court shall dismiss a prosecution . . . if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the conduct of the defendant:

For the reasons set forth above, we find no abuse of discretion or error in not giving Appellant's proposed jury instructions.

V. Suppression of Evidence

A. Standard of Review

In a challenge to the denial of a suppression request, the appellate court is limited to determining whether the record supports the trial court's factual findings, and whether the legal conclusions drawn from those facts are correct. *Yandamuri*, supra at 516. The reviewing court must accept the lower court's findings of fact and credibility determinations that are supported by the record. *Commonwealth v. Cooley*, 118 A.3d 370, 373 (Pa. 2015). The lower court's legal conclusions are not binding and are reviewed *de novo*. *In re L.J.*, 79 A.3d 1073, 1080 n.6 (Pa. 2013). The scope of review is limited to the suppression hearing record and excludes evidence elicited at trial. *Id.* at 1085.

B. Suppression of Evidence - Argument

i. Fourth Amendment

Appellant submits that the Commonwealth violated her Fourth Amendment rights by seizing her divorce action filing³³ from the Prothonotary without a

...

- (2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction . . .

18 Pa.C.S.A. § 312(a)(2) (emphasis added)

³³ See "*Pro Se* Motion to Quash and Dismiss Evidence", 03/05/24.

search warrant.³⁴ We agree that the Fourth Amendment protects Appellant from unreasonable searches and seizures, and that evidence obtained from an unreasonable search or seizure is inadmissible at trial. *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). However, this protection is limited to a legitimate expectation of privacy. The United States Supreme Court has set forth a two-fold requirement for individuals asserting Fourth Amendment search and seizure protection:

[F]irst that a person have exhibited an actual (subjective) expectation of privacy and second, that the expectation be one that society is prepared to recognize as “reasonable”.

Id. at 361, 88 S.Ct. at 516, 19 L.Ed.2d at 588.

The first requirement is satisfied when an individual exhibits a desire to preserve something as private. *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 2580, 61 L.Ed.2d 220, 226 (1979). To satisfy the second requirement, the individual’s expectation of privacy must be justifiable under the circumstances. *Id.* In *Smith*, the United States Supreme Court explained: “This Court consistently has held

³⁴ The courts have found that it is the Commonwealth’s initial burden to present evidence a defendant lacked any protected privacy interest. The defendant’s burden of persuasion to show an expectation of privacy does not arise until after the Commonwealth has met its burden. *See Commonwealth v. Enimpah*, 106 A.3d 695, 700-702 (Pa. 2014); Pa.R.Crim.P. 581(H) (providing Commonwealth bears burden to present evidence that defendant’s constitutional rights were not infringed). We find that the Commonwealth met its initial burden challenging Appellant’s expectation of privacy. *See* N.T., 03/05/24, p. 5, II. 17-19.

that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties.” *Id.* at 743-44, 99 S.Ct. at 2582, 61 L.Ed.2d at 229.

The relevant uncontradicted facts related to Appellant’s filing are as follows:

- (1) Appellant voluntarily filed a *pro se* Motion to Correct Transcript with the Prothonotary in the Family Court Division of Chester County. (N.T., 03/05/24, pp. 3-7.
- (2) Appellant attached a copy of the recordings she made in Judge Binder’s courtroom to her motion. *Id.*

Appellant voluntarily presented her motion, along with the USB flash drive, to a third party, the Prothonotary. Appellant also did not request that her filing be marked confidential as required by the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania (“Public Access Policy”), when private information is filed with the prothonotary.³⁵ There are a few exceptions to filings being open to the public, but Appellant’s Motion to Correct Transcript is not within those exceptions. *See* Public Access Policy, General Policy, Sections 2.0(A), 3.0., 7.0, 8.0. Consequently, although Appellant states she had a subjective expectation of privacy in her filing, her act in handing it over to the Prothonotary, a public governmental

³⁵ The Chester County Rules of Judicial Administration (“C.C.R.J.A.”) also govern what documents filed with the Family Court Division of the Prothonotary are open to the public. Pursuant to C.C.R.J.A. Rule 5105, documents and attached exhibits are open to the public for inspection in accordance with the Public Access Policy.

entity, contradicts that belief. Appellant also cannot show her expectation of privacy is one that is recognized as reasonable by society. The Public Access Policy is a regulation set by “society, and it does not protect Appellant’s filing from public access.

For the reasons stated above, we find no error. Appellant held no expectation of privacy in her filing, and a search warrant was not constitutionally required prior to the Commonwealth securing³⁶ her filing.

ii. Fourteenth Amendment

Appellant submits that her Fourteenth Amendment right to due process was violated. Absent any further specificity as to the manner in which Appellant’s due process right was violated, we find this generic statement too broad, vague, and waived. *See Commonwealth v. Dowling*, 778 A.2d 683, 686-87 (Pa. Super. 2001) (A Concise Statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no Concise Statement at all).

VI. Judicial Recusal

A. Standard of Review

[Appellate courts] review a trial court’s decision to deny a motion to recuse for an abuse of discretion^[37]. Indeed, [their] review of a trial court’s denial of a motion to recuse is

³⁶ We further find that securing Appellant’s filing was necessary to avoid the risk of tampering with the evidence by the public or Appellant.

³⁷ *See* fn. 19, *supra*.

exceptionally deferential. [Appellate courts] extend extreme deference to a trial court's decision not to recuse. [They] recognize that . . . trial judges are honorable, fair and competent, and although . . . an abuse of discretion standard [is employed], [appellate courts] do so recognizing that the judge himself is best qualified to gauge his ability to preside impartially. Hence, a trial judge should grant the motion to recuse only if a doubt exists as to his or her ability to preside impartially or if impartiality can be reasonably questioned.

V.L.-P. v. S.R.D., 288 A.3d 502 (Pa.Super. 2023), citing *Interest of D.R.*, 216 A.3d 286, 292 (Pa.Super. 2019), *affirmed*, 232 A.3d 547 (Pa. 2020).

B. Judicial Recusal – Argument

Appellant has the burden to:

produce evidence establishing bias, prejudice or unfairness which raises a substantial doubt as to [this] jurist's ability to preside impartially. As a general rule, a motion for recusal is initially directed to and decided by the jurist whose impartiality is being challenged. In considering a recusal request, [this] jurist must first make a conscientious determination of his . . . ability to assess the case in an impartial manner . . . [This] jurist must then consider whether his . . . continued involvement in the [appellant's] case create[d] an appearance of impropriety and/or . . . tend[ed] to undermine public confidence in the judiciary. This is a personal and unreviewable decision that only [this] jurist can make.

Commonwealth v. Abu-Jamal, 720 A.2d 79, 89 (Pa. 1998) (citations omitted); *Commonwealth v. Tedford*, 960 A.2d 1, 55-56 (Pa. 2008).

On April 4, 2004, the court requested that Appellant set forth on the record the specific reasons supporting her request for this jurist's recusal.

COURT: Now I would like you to articulate very succinctly every reason you think I need to disqualify myself from this case.

...

APPELLANT: ... The reason why I sued you specifically was, before I even sued you the Commonwealth issued an order for fingerprinting, and issued an order—and petitioned you for the order, and to have the attorney colloquy.

And your order stated—... —that I have to sign the colloquy that I do not want an attorney. And there were questions in there that pertain to—and I'm quoting it from the memory, so don't quote me word for word as far as you said particularized, don't quote me on the actual statute—where it asks questions that I voluntarily sign it, that I understand essential elements of the crime that I'm accused of. All of these things are incorrect.

And ordering somebody to sign a document that states that I voluntarily signed this document is an oxymoron. Order given—and if you have to comply with an order, it's no longer voluntary, number one.

Number two, I have never said that I would love to or want to, or whatever, proceed pro se. I have from the very beginning challenged the whole procedure . . . And in my case it is a deliberate derailing.

. . .

COURT: Now. But I'm asking you—

APPELLANT: Yes.

COURT: —specifically as to me.

APPELLANT: Yeah, you're right. Correct. So, I'm sorry. I'm a little long-winded.

You ordered me to sign that colloquy. You could not order . . .

COURT: And I withdrew that later.

APPELLANT: Later you did, potentially

And I have from the very beginning said, let the due process run its course

But I have not been afforded the due process to run the course where the declaratory judgment will come back. I have been put into this position where I have even been in prison. Now I have fingerprints forever on the record. Even if the Pennsylvania, by some miracle—which I don't think is going to happen in a state court, by the way—if by some miracle it would happen that the case will go away, overturn, or whatever, or dismiss, whatever the case should be, my fingerprints will forever be in an FBI record, forever

So I have already been damaged by the state by unconstitutional order. You say that it is statutory. As a judge, something that's statutory is one thing. As a judge, it's your duty to know how to read law, and you know that even legislature can pass unstatutory—I mean, unconstitutional statutes.

... That is violating every Pennsylvania citizen's rights. I am among them.

So I sued you because—the declaratory judgment, first. And, by the way, the Pennsylvania Constitution, which specifically applies to the judiciary, the Title—I mean, Article 5—Title V, Article 17, says that judge has to comply with all of the canons of the judicial — the governed judicial actions. And one of those canons specifically says that the judge is obligated—obligated, mandated, to recuse himself it's not—it's not up to debate, it's obligated — to recuse himself from any matter where there is some kind of a personal involvement, whether monetarily or legally. I forget exact words, but in your case applies both.

...

And they actually put you in a place, I believe, that you don't know anything, the corruption that is local in this court. Why do you think all the judges in total recused themselves? Because they could see what was happening. So they brought somebody outside that would be the fall guy.

COURT: Well, let me ask you this: So your basis for asking me to disqualify myself is that, one, you have a declaratory judgment claiming that this process is unconstitutional?

APPELLANT: At the moment, yes.

COURT: Okay.

APPELLANT: Without due process. No, not unconstitutional. Unconstitutionally applied laws and the process has been violating my due process rights, specifically.

COURT: Okay. And then the fact is that I ordered you fingerprinted?

APPELLANT: Yes.

COURT: Okay. I'm just here making sure the record is clear.

APPELLANT: And also ordered the colloquy, to sign the—that I —

COURT: Which I rescinded after I colloquied you in court.

. . .

APPELLANT: You just wanted me to sign the colloquy—

COURT: Colloquy.

APPELLANT: Right.

COURT: But you didn't, and then I asked you questions and you articulated your ability to go through the law. And I advised you that you're held to the same standard as the

attorneys when we come to court and we have the case at trial.

APPELLANT: Yeah. You said that, yes.

COURT: Okay. I just want to make sure you understand that.

APPELLANT: Yes.

(N.T., 04/04/24, p. 6, 1.14 — p. 15, I. 13).

The two main reasons articulated by Appellant for this jurist's recusal, besides refusing to dismiss her case for lack of jurisdiction, are: (1) ordering her to be fingerprinted; and (2) having been named in a myriad of suits with other judges, attorneys, and court staff. This court found Appellant's reasons for recusal to be entirely without merit.

First, Appellant was notified of her charges by summons, and pursuant to 18 Pa.C.S.A. § 9112(b)(2)³⁸ ("Section 9112(b)(2)"), Appellant is required to be fingerprinted. This court's order to have Appellant fingerprinted was not an abuse of discretion but a statutory mandate.

Second, the suits brought by Appellant against numerous justices and judges, including this jurist, were brought to remove us from adjudicating Appellant's case as a result of her believing she is more knowledgeable about the law than the judiciary of this Commonwealth. Appellant's suits were frivolous and eventually dismissed. Additionally, Appellant suffered no prejudice in having this jurist preside over her trial

³⁸ See fn. 1.

since the jury she and Mr. Burns picked functioned as the factfinder.

At no time during the prosecution of this case did this jurist question his ability to assess Appellant's case in an impartial manner. The record reflects that nothing has occurred to create an appearance of impropriety and/or would tend to undermine public confidence in the judiciary. Appellant's case was disposed of without partiality, prejudice, bias, or ill-will, and we find no error.

CONCLUSION

For the reasons set forth above, we respectfully ask that Superior Court DISMISS Appellant's appeal and AFFIRM our July 18, 2024 Judgment of Sentence.

BY THE COURT:

/s/ John P. Capuzzi, Sr., J.

**SENTENCING ORDER, CHESTER COUNTY
COURT OF COMMON PLEAS
(JULY 18, 2024)**

**CHESTER COUNTY COURT OF COMMON PLEAS
COURT SUMMARY**

Maggitti, Urve

Berwyn, PA 19312

Aliases: Urve Maggitti

DOB: 10/13/1967

Sex: Female

Eyes: Unknown

Hair: Unknown or Completely Bald

Race: Unknown/Unreported

Closed

Chester

CP-15-CR-0001735-2023

Proc Status: Appeal Decided

DC No: OTN:R 427716-2

Arrest Dt:

Disp Date: 04/24/2024

Disp Judge: Capuzzi, John P. Sr.

Def Atty: Geyer, Bradford L. - (PR)

App.61a

Seq No:	1
Statute:	18 § 5103.1 §§ A
Grade:	M2
Description:	Unlawful Use of An Audio or Video Device in Court
Disposition:	Guilty
Sentence Dt.:	07/18/2024
Sentence Type:	Probation
Program Period:	1 Year
Sentence Length:	Min: 1 Year(s) Max: 1 Year(s)

**OPINION*, U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT
(MARCH 20, 2025)**

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

COMMONWEALTH OF PENNSYLVANIA

v.

URVE MAGGITT,

Appellant.

No. 24-1702

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Criminal No. 2:24-cr-00144-001)
District Judge: Hon. Nitza I. Quiñones Alejandro
Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
February 3, 2025

Before: RESTREPO, MONTGOMERY-REEVES,
SCIRICA, Circuit Judges.w

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

OPINION

RESTREPO, *Circuit Judge*

Appellant Urve Maggitti appeals the District Court’s remand of her state court criminal proceeding to the Pennsylvania Court of Common Pleas, Chester County. For the reasons that follow, we will affirm.

I¹

On June 15, 2023, Maggitti was arraigned in the Chester County Court of Common Pleas and charged with one count of Unlawful Use of an Audio or Video Device in Court under 18 Pa. Cons. Stat. § 5103.1. On April 10, 2024, she filed a notice of removal in the Eastern District of Pennsylvania seeking to remove her pending state criminal case to federal court under 28 U.S.C. §§ 1455, 1446, 1443. The District Court remanded on April 16, and Maggitti timely appealed.

II

We begin with whether the District Court’s remand order is reviewable. Generally, remand orders are “not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable.” 28 U.S.C. § 1447(d). Because Maggitti asserted, at least in part, that removal was proper under § 1443, the entire remand order is reviewable on appeal. *See BP P.L.C. v. Mayor & City Council of Balt.*, 141 S. Ct. 1532, 1538

¹ Since we write primarily for parties already familiar with this case, we include only those facts necessary to reach our conclusion.

(2021) (noting that a party's reliance on § 1443 for removal permits review of the "whole" remand order). We exercise plenary review over the underlying legal basis for remand. *See Lazorko v. Pa. Hosp.*, 237 F.3d 242, 247 (3d Cir. 2000).

III

Under 28 U.S.C. § 1455, state criminal defendants can remove certain prosecutions to federal court. Among other requirements, defendants must file a notice of removal "not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time." § 1455(b)(1).

The District Court remanded Maggitti's state criminal proceedings because she missed the 30-day deadline, provided no reason for the delay in her notice of removal, and failed to seek leave to file an untimely notice. Thus her attempt at removal under § 1455 was futile. And because she sought removal of a criminal prosecution, not a civil action, Maggitti's citing of 28 U.S.C. § 1446 and our case law interpreting that removal statute in the civil context is unavailing. We find no error in the District Court's decision to remand, so we will affirm.

**ORDER, U.S. DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA
(APRIL 16, 2024)**

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

COMMONWEALTH OF PENNSYLVANIA,

v.

URVE MAGGITT,

Defendant.

Criminal Action

No. 24-0144

Before: Nitza I. QUIÑONES ALEJANDRO, Judge.

ORDER

AND NOW, this 16th day of April 2024, upon consideration of Defendant's notice of removal, (Doc. 1), it is hereby ORDERED that this matter is REMANDED to the Pennsylvania Court of Common Pleas, Chester County, the court from where it originated, pursuant to 28 U. S.C. § 1455(b)(4).¹

¹ A review of the underlying notice of removal, exhibits, and publicly available court documents reveals that Defendant Urve Maggitti ("Defendant"), a defendant in a criminal proceeding in the Pennsylvania Court of Common Pleas, Chester County, seeks to remove her state court criminal action to this court pursuant

It is further ORDERED that all outstanding motions are DENIED, as moot.

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro
Judge, United States District Court

to 28 U.S.C. § 1455. Section 1455(b)(1) requires such removal of state criminal proceedings to be removed “not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.” *Id.* at § 1455(b)(1). According to the exhibits attached to the notice of removal and confirmed by a review of publicly available court filings, Defendant was arraigned on June 15, 2023—more than thirty days prior to her removal. Having failed to set forth any reasons for the delay, the notice of removal is untimely. 28 U.S.C. § 1455(b)(1). Accordingly, this matter is remanded to the Pennsylvania Court of Common Pleas, Chester County.

RELEVANT STATUTORY PROVISION

18 Pa.C.S. § 5103.1

§ 5103.1. Unlawful use of an audio or video device in court.

(a) Offense defined.—A person commits an offense if the person in any manner and for any purpose uses or operates a device to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a judicial facility or in an area adjacent to or immediately surrounding a judicial facility without the approval of the court or presiding judicial officer or except as provided by rules of court.

(b) Grading.—

- (1) An offense under this section shall constitute a misdemeanor of the second degree.
- (2) A second or subsequent offense shall constitute a misdemeanor of the first degree.

(c) Definition.—As used in this section, the term “judicial facility” means a courtroom, hearing room or judicial chambers used by the court to conduct trials or hearings or any other court-related business or any other room made available to interview witnesses. The term does not include the Pennsylvania State Capitol Building except for that portion of the Pennsylvania State Capitol Building designated by the Court Administrator of Pennsylvania, under the authority of the Supreme Court, as a judicial facility.

(Oct. 24, 2018, P.L.658, No.94, eff. 60 days)

2018 Amendment. Act 94 added section 5103.1.