

**IN THE COURT OF COMMON PLEAS,  
DELAWARE COUNTY, PENNSYLVANIA**

**SUMMARY APPEALS**

**COMMONWEALTH OF PENNSYLVANIA  
(Borough of Marcus Hook)**

**v.**

**Terry Silva**

:  
:  
:  
:  
:  
:  
:  
:

**SA No. 823-2013**

**Mark Much, Esquire-- Attorney for Appellant Borough of Marcus Hook  
Terry E. Silva, Esquire - Defendant *Pro Se***

**DURHAM, J.**

**DATE:** 7/28/16

**OPINION**

Appellant Commonwealth of Pennsylvania, Borough of Marcus Hook (Borough) seeks review of the Trial Court's April 25, 2016 Order wherein the Trial Court granted in part and denied in part Appellee/Defendant Terry Silva (Ms. Silva)'s Motion for Suppression (Omnibus Pre-Trial Motion). The Trial Court, on April 25, 2016, ordered as follows:

1. Defendant's Motion for Suppression (Omnibus Pre-Trial Motion) is GRANTED ONLY as to 15A and 15B West Tenth Street and is DENIED ONLY as to 13 West Tenth Street and 15C West Tenth Street.
2. Defendant's Motion in Limine regarding Bar Questioning From Borough on Consent to Pennsylvania SPCA Warrants is DISMISSED as MOOT.

On May 24, 2016, the Borough filed a Notice of Appeal. The Trial Court, pursuant to Pa. R.A.P. 1925(b), ordered the Borough on May 26, 2016 to file a Concise Statement of Matters Complained of on Appeal. On June 16, 2016, the Borough filed the aforementioned Statement.

## **Factual History**

This matter involves non-traffic citations and criminal charges of Cruelty to Animals and having an Unlicensed Dog filed against Ms. Silva. The properties at issue are located at 13 and 15 West Tenth Street, Marcus Hook, Delaware County, Pennsylvania. (Notes of Testimony, "N.T." 07/30/15 at 38). Each twin-style property has three separate units: 13A, 13B, 13C, 15A, 15B, and 15C. *Id.*; *See* Exhibit D-4, 13-15. On February 22, 2013, the Borough cited, under Summary Appeal Number 869-2013, Ms. Silva for Cruelty to Animals and violating the Borough's Ordinance for having an Unlicensed Dog. *See* 18 Pa. C.S.A. §5511; LO §459 §§201A. In addition, the Commonwealth of Pennsylvania charged, under Summary Appeal Number 823-2013, Ms. Silva with Cruelty to Animals. *See* 18 Pa. C.S.A. §5511.

There were two search warrants issued in this matter: (1) the Borough's Administrative Warrant (Exhibit CS-2); and (2) the Pennsylvania SPCA Warrant (Exhibit CS-1). The Administrative Warrant sought authorization to search 13 and 15 West Tenth Street. *See* Exhibit CS-2. The Affiant of the Administrative Warrant was James Schilero, the Secretary of the Borough's Board of Health and also the Borough's Mayor. *See* Exhibit CS-2; Exhibit D-16 at 4.

In the Affidavit of Probable Cause for the Administrative Warrant, Mr. Schilero averred that since 2006, he has held the position of the Board of Health's Secretary. *See* Exhibit CS-2. Mr. Schilero further averred that over a three-year time period, the Borough received periodic complaints regarding Ms. Silva, the alleged owner and/or operator of Sixth Angel Shepard Rescue. *Id.* Mr. Schilero averred that he received information that 13-15 West Tenth Street was being used as a kennel that contained up to 30 dogs. *Id.*

Mr. Schilero averred that during the week of February 11, 2013, a confidential

informant (CI), later identified as John Quillen, told Mr. Schilero that a woman known as "Samantha" invited him to enter 15 West Tenth Street through the side door of 15A West Tenth Street. *Id.* Mr. Schilero further averred that once inside, CI (Mr. Quillen) allegedly saw dog feces on the floor and at least 30 dogs in the building's rooms and detected a very bad smell. *Id.* CI (Mr. Quillen) further alleged that the dogs were dirty, thin, and odorous. *Id.* Mr. Quillen is currently incarcerated for the crime of Terroristic Threats against Samantha Kenney, an employee of Kira Management, the owner of 13-15 West Tenth Street. (N.T. 03/02/16 at 4-6).

On February 21, 2013, Mr. Quillen wrote a letter to George Windsor, the Borough's Code Enforcement Office, and gave it to him. *See* C-Quillen 1 of Exhibit D-16. The February 21, 2013 letter states, in relevant part, as follows:

At 8:00pm the girl that lives there (Sam) ask me if I can come over to fix the brokin [sic] pipe in the back bathroom on the side of 15A. So, I said yes so I whent [sic] over on the side door of 15A and went in it. Smell real bad and what I saw was dog crap and pee on the floor. When you walk in and the dogs was barking. So I fix the pipe in the bathroom and it was dirty and it smell and dog hair and pee on the floor. I ask Sam which room do you what me to start and said the one on your right were you came in. There was 2 dogs in that room and smell and the room had poop and pee on the floor and two dog bowels [sic] on the floor. [T]he dogs was outside for at least 3 mins when Sam mop and clean the room and the dogs came back in. ... Some of the dogs are skinny and one is in a cage on the first floor. Sec. floor to start them and Sam said they will bit [sic] you. I said ok the dog is in the cages had poop-pee in they're cage what they lay in all day and night and 2 dogs that run around they are Sam personal dogs and they smell. ... Sam said her boss teri office smell to [sic] and they have mice in the building – the building smells real bad. ... total of dogs I saw around 30 dogs in cage and room.

*Id.* Mr. Quillen wrote a second letter to Mr. Windsor. *See* C-Quillen 2 of Exhibit D-16.

The second letter states, in relevant part, as follows:

George, this is true information about thir [sic] address Kira mangement [sic] inc. 15-A-B 13B its at least 30 dogs in that Building and there is a girl stay there all the time and heard her name is Sam. [T]here is 12 dogs on the first floor on the side of 15 A and there is six dogs in cages and two dog runing [sic] around on the sec floor. [T]he ones on the sec floor they bite and the building and the [sic] you smells bad it might make you throw up. [T]he dogs don't even

get a bath. [T]hat's how bad it is inside. So please can you do something about it. Thank you your inside guy I'm done.

*Id.*

Ms. Silva testified that Kira Management has always owned 13 and 15 West Tenth Street and that the units are leased to various tenants. (N.T. 10/01/15 at 82-83, 90; 03/02/16 at 8). Ms. Silva further testified that at this time, the only unit she occupied was 15A West Tenth Street and stored files in 15B West Tenth Street and in the basement of 15 West Tenth Street. (N.T. 10/01/15 at 88; 03/02/16 at 10-11, 40). Since 2011, Ms. Silva has leased her office in 15A from Kira Management and uses the office on a part time basis. (N.T. 03/02/16 at 9, 11). In 2010, Ms. Silva leased 15B from Kira Management. *Id.* at 9. Ms. Silva pays rent to Ms. Kenney, a Kira Management employee. *Id.* Ms. Silva was an officer in Kira Management, but has not been an officer for a number of years. (N.T. 10/01/15 at 82-83, 90; 03/02/16 at 8). Although Ms. Silva's stock in Kira Management was bought out in 2005, the Government website still reflects her as an officer. (N.T. 10/01/15 at 83-84).

Regarding 13 West Tenth Street, Ms. Silva testified that she could not recall the last time she had been inside this property prior to February 2013. (N.T. 10/01/15 at 80). Ms. Silva did not occupy 13C or 15C. *Id.* at 79; (N.T. 03/02/16 at 40). The units in 13 West Tenth Street were occupied by other tenants. (N.T. 10/01/15 at 80-81; 03/02/16 at 10-11).

The Magisterial District Judge issued the Administrative Warrant on February 22, 2013 at 2:45PM. *See* CS-2. Ms. Silva testified in this matter on October 1, 2015 and March 2, 2016. Ms. Silva, a licensed attorney in Pennsylvania, was at the Delaware County Court House on the afternoon of February 22<sup>nd</sup> when she received a phone call from Mr. Schilero. (N.T. 10/01/15 at 73). As a result of her conversation with Mr. Schilero, Ms. Silva went to her office at 15A West Tenth Street. *Id.* at 74.

Ms. Silva further testified that she had a key to 15A and that her office's rear door was unlocked, and therefore, Mr. Schilero was able to walk into 15C. (N.T. 03/02/16 at 15). Ms. Silva further testified that she told everyone standing on the stoop outside of 15C not to enter 15A, her office, because she had an aggressive dog inside. (N.T. 10/01/15 at 74; 03/02/16 at 13, 40, 41).

Ms. Silva testified that while she opened the door to 15C West Tenth Street, the police officer stood next to her with a gun. (N.T. 10/01/15 at 74, 03/02/16 at 15, 31-32). Ms. Silva further testified that the police officer threatened to shoot the dog and made gestures toward his belt and tapped his gun. (N.T. 10/01/15 at 74; 03/02/16 at 13, 33, 41). Ms. Silva testified that Mr. Schilero, Mr. Windsor, and a Borough Police Officer brushed by her and entered 15C without handing her a warrant. (N.T. 10/01/15 at 74, 76; 03/02/16 at 41). Ms. Silva never gave her consent to Mr. Schilero, Mr. Windsor, or the Pennsylvania SPCA Officers Jordan and Sosa to enter the properties. (N.T. 10/01/15 at 79-80, 82). Without asking permission to enter, the SPCA officers entered the properties. *Id.* at 82. At that time, no one entered 15A. *Id.* at 41-42.

Ms. Silva testified that she followed Mr. Schilero, Mr. Windsor, and the Borough Police Officer inside 15C and that Officers Jordan and Sosa followed her inside. (N.T. 10/01/15 at 75; 03/02/16 at 15, 20, 35-36). Mr. Schilero and Mr. Windsor went up the stairs to 15B. (N.T. 10/01/15 at 74; 03/02/16 at 20, 36). Ms. Silva testified that when she shut the doors between the two properties, the SPCA officers continued to question her. (N.T. 10/01/15 at 75). Ms. Silva tried not to answer their questions because she had a pending case against the SPCA and its employee, George Bengal. *Id.*; (N.T. 03/02/16 at 21-22). Ms. Silva had files regarding the SPCA action in 15A and 15B. (N.T. 10/01/15 at 76; 03/02/16 at 23).

Ms. Silva testified that the SPCA officers followed her when she walked in and out of 13C and when she took two dogs upstairs to 15B. (N.T. 10/01/15 at 76-77; 03/02/16 at 15-16). Ms. Silva never entered 13A or 13C because the door to 13A was locked and the door to 13C was closed and presumably locked. (N.T. 03/02/16 at 17). Ms. Silva testified that 13C was unoccupied and that 13C and 15C had no electricity at this time. (N.T. 10/01/15 at 77). Ms. Silva further testified that Mr. Schilero, Mr. Windsor, and the Borough Police Officer went outside when she went upstairs to 15B. (N.T. 10/01/15 at 77). Ms. Silva testified that the SPCA officers followed her around 15B and 15C. *Id.*

Ms. Silva testified that after Mr. Schilero and Mr. Windsor left, she exited 15 West Tenth Street. (N.T. 10/01/15 at 77). After Ms. Silva walked out of the property, the SPCA officers exited 15 West Tenth Street. *Id.* Mr. Schilero, then, handed Ms. Silva a piece of paper later identified as the Administrative Warrant. (N.T. 03/02/16 at 20-21); *See* CS-2. Once outside, Ms. Silva was not allowed to re-enter the properties. (N.T. 10/01/15 at 77-78). However, a Borough Police Officer escorted Ms. Silva inside the properties to get her purse and glasses. (N.T. 10/01/15 at 78; 03/02/16 at 21).

On behalf of the Borough, SPCA Officer Gregory Jordan testified. (N.T. 07/30/15 at 24-25). Mr. Windsor put Officer Jordan in touch with Mr. Quillen. *Id.* at 68. On February 22, 2013 at 12:15PM, Officer Jordan met with and spoke to Mr. Quillen for the first time. *Id.* at 26, 33, 64. Mr. Quillen allegedly told Officer Jordan that he had been inside of 13-15 West Tenth Street on February 21, 2013 at 8PM and that there were 30 dogs within the building, which was unsanitary. *Id.* at 34, 83-84. Mr. Quillen told Officer Jordan that there were feces on the floor, on the dogs, in the dog crates, and in the rear of the property. *Id.* at 34. Mr. Quillen further told Officer

Jordan that a person named Sam was inside the property. *Id.* at 84. Officer Jordan admitted that he was unaware that Mr. Quillen was currently incarcerated after pleading guilty to the crime of Terroristic Threats. *Id.* at 68, 71. Officer Jordan further admitted that he did not know about Mr. Quillen's criminal record and did not look up his criminal record before he spoke to him. *Id.* at 69-70.

When he arrived at the scene on February 22, 2013, Officer Jordan saw Mr. Schilero, Mr. Windsor, and a Borough Police Officer in plain clothes were present. (N.T. 07/30/15 at 35, 87). SPCA Officer Sosa was also present and in uniform as well at the scene. *Id.* at 36. Officer Jordan saw Mr. Schilero on the phone speaking to Ms. Silva, but did not hear what he said to her. *Id.* at 82. Officer Jordan testified that Ms. Silva arrived at the scene at 4:30PM. *Id.* at 36. Officer Jordan further testified that at this time, he was on the sidewalk at the alleyway of 15 West Tenth Street and that he could not recall who Ms. Silva spoke with at that time. *Id.* at 54. Officer Jordan testified that he was five feet away from the stairwell at 15C when Ms. Silva first saw him. *Id.* Officer Jordan further testified that he did not see Mr. Schilero hand Ms. Silva anything. *Id.* at 55. Officer Jordan denied that the Borough Police Officer threatened to shoot Ms. Silva's dog. *Id.* at 54.

Officer Jordan denied entering 13-15 West Tenth Street with Mr. Schilero and Mr. Windsor, pursuant to the Administrative Warrant. (N.T. 07/30/15 at 37-38, 88). Officer Jordan further denied that he followed Ms. Silva inside 15 West Tenth Street. *Id.* at 38, 88. Officer Jordan testified that he did not know if Ms. Silva led or followed Mr. Schilero and Mr. Windsor inside. *Id.* at 91. Officer Jordan further testified that he was aware of the Administrative Warrant being sought, issued and served. *Id.* at 52, 88-89. Officer Jordan testified that based upon Mr. Quillen's complaint, he would have come to the scene on February 22, 2013. *Id.*

Contrary to Ms. Silva's testimony, Officer Jordan testified that prior to entering 15 West Tenth Street, he identified himself as SPCA Officer to Ms. Silva, who was standing on the landing of 15C, and asked her if there were any dogs inside. (N.T. 07/30/15 at 41-42, 92). Officer Jordan further testified that Ms. Silva exited the property and told him that dogs were inside. *Id.* at 42. Officer Jordan testified that when questioned whether the dogs belonged to her, Ms. Silva responded that she owned some of the dogs. *Id.* Officer Jordan further testified that when asked whether he could enter the property to check the dogs' condition based upon Mr. Quillen's complaint, Ms. Silva responded "that is fine" and told him that he could come in the property. *Id.* at 42, 49, 53-55, 88.

Officer Jordan testified that at 4PM, he and Officer Sosa entered through the door labeled 15C and followed Ms. Silva inside. (N.T. 07/30/15 at 40, 43, 55, 88). Officer Jordan further testified that he was inside 13-15 West Tenth Street for a total of five to ten minutes and did not enter three of the units. *Id.* at 49. Officer Jordan testified that he asked Ms. Silva where the dogs were and that Ms. Silva directed him to the dogs' location. *Id.* at 55. Ms. Silva told him and Officer Sosa that there was an aggressive dog inside 15A. *Id.* at 43. No one entered 15A. *Id.* at 56. Officer Jordan could not recall Ms. Silva finding two dogs wandering and putting them upstairs. *Id.* at 55.

Officer Jordan testified that he saw a loose dog and feces smeared across the bottom of the floor along the walls of the middle room in 15 West Tenth Street. (N.T. 07/30/15 at 44-45). Upon hearing a dog barking inside one of the rooms, Officer Jordan further testified that he saw a dog loose and feces on the floor, and smelled an overpowering odor of feces and ammonia. *Id.* at 45. In the rear of 15 West Tenth Street, Officer Jordan heard a dog barking behind another door. *Id.* at 45, 55-56.



Officer Jordan testified that he followed Ms. Silva upstairs into 15B, but did not enter the second floor. *Id.* at 56-57. Officer Jordan further testified that he saw four dogs in crates and feces on the floor at the top of the second floor of 15 West Tenth Street and smelled ammonia. *Id.* at 46. Regarding 13 West Tenth Street, Officer Jordan testified that he entered only the first floor and heard dogs barking behind the door that led to the second floor. (N.T. 07/30/15 at 47). Officer Jordan further testified that he smelled a strong smell of ammonia, and saw feces on the floor and a dog inside a broken crate in 13C. *Id.* at 45, 55-56.

Officer Jordan admitted that he did not take any photographs or collect any evidence while inside 13-15 West Tenth Street when he entered it for the first time. (N.T. 07/30/15 at 49). Officer Jordan testified that he left the properties from the door he entered, 15C, and that Ms. Silva and Officer Sosa left with him. *Id.* at 50. Officer Jordan advised the Borough Officer about getting a search warrant for the properties and wanting the conditions inside to remain the same. *Id.* at 57-58. However, Officer Jordan did not recall testifying at a prior hearing that he did not direct the Borough Officer to lock and secure the properties. *Id.* at 58.

Officer Jordan, then, went to the Borough's Administrative Building, and prepared a search warrant for 13-15 West Tenth Street. *Id.* at 50, 86; *See* CS-1. Officer Jordan testified that while preparing the search warrant, he spoke to Elizabeth Anderson, Esquire, Counsel for the Pennsylvania SPCA, and George Bangel, Director of Law Enforcement for Pennsylvania SPCA. (N.T. 07/30/15 at 79). Officer Jordan admitted that Attorney Anderson failed to disclose to him that she was an attorney involved in a 2010 civil matter involving Ms. Silva and did not notice Attorney Anderson's name when he read Ms. Silva's files in her office. *Id.* The Pennsylvania SPCA Warrant was signed at 8:10PM. *See* CS-1. The Pennsylvania SPCA Warrant

was **only** for 13 West Tenth Street. See CS-1.

Officer Jordan returned to 13-15 West 10<sup>th</sup> Street with the Pennsylvania SPCA Warrant for 13 West Tenth Street at 8:50PM. (N.T. 07/30/15 at 75); See CS-1.

Officer Jordan testified that Ms. Silva's former attorney gave Mr. Bangel a key to 15A. (N.T. 07/30/15 at 80-81). Officer Jordan and Mr. Bangel searched the properties. *Id.* at 81. The dog inside 15A was removed and placed inside an SPCA van. *Id.* at 76, 78. Officer Jordan searched 15A and saw urine stains on the floor. *Id.* at 75-76.

Contrary to Ms. Silva's testimony, Officer Darlene Sosa denied entering the properties with Mr. Schilero, Mr. Windsor, the Borough Officer, and Ms. Silva. (N.T. 10/01/15 at 33-34). Officer Sosa testified that she arrived, in uniform and carrying a firearm, at the properties with Officer Jordan on February 22<sup>nd</sup> at 3:30PM to assist Mr. Schilero regarding the Administrative Warrant. *Id.* at 18, 22. Officer Sosa heard Mr. Schilero on the phone with Ms. Silva threatening to break down the door. *Id.* at 31. Ms. Silva arrived 10 minutes later. *Id.* at 18-19. Officer Sosa testified that she and Officer Jordan stood on the sidewalk in front of the properties. *Id.* at 18, 45-46. Officer Sosa further testified that Mr. Schilero, Mr. Windsor, the Borough Officer, and Ms. Silva entered the properties through the door of 15C and exited soon thereafter. *Id.* at 19-21, 29, 33. Officer Sosa testified that Ms. Silva led Mr. Schilero, Mr. Windsor and the Borough Officer inside the properties. *Id.* at 43. Officer Sosa did not see Mr. Schilero hand Ms. Silva a warrant. *Id.* at 35.

Although she knew that there were two properties, Officer Sosa did not look at or take any photographs of the electric meters outside for purposes of applying for the Pennsylvania SPCA Warrant. (N.T. 10/01/15 at 44, 47). Officer Sosa did not research whether Ms. Silva owned the properties. *Id.* at 44-45. Officer Sosa could not recall telling Ms. Silva that she did not have the right to enter the properties through the

Administrative Warrant because it was not their warrant. *Id.* at 35, 44. When confronted with her Preliminary Hearing testimony, Officer Sosa could not recall answering yes when asked whether she entered properties after Mr. Schilero and the Borough representatives. *Id.* at 36-37.

Officer Sosa testified that at 4PM, Ms. Silva told them that they could come inside the properties after she and Officer Jordan identified themselves. (N.T. 10/01/15 at 21-22, 29, 34, 42). Officer Sosa further testified that she and Officer Jordan followed Ms. Silva inside the properties through the door of 15C. *Id.* at 23, 29, 31, 45, 53-54. Officer Sosa testified that they were inside the properties for about 10 minutes. *Id.* at 28. Ms. Silva informed the SPCA Officers that the dog inside 15A, her office, was aggressive, and therefore, they did not go inside. *Id.* at 23, 31-32. Officer Sosa further testified that Ms. Silva put two other dogs inside another room on the first floor of 15 West Tenth Street which contained feces and smelled of urine. *Id.* at 23, 42-43, 57. Ms. Silva told the SPCA Officers that the dogs belonged to other tenants. *Id.* at 24, 26, 42. Officer Sosa testified that there were three or four dogs and four crates on the second floor of 15 West Tenth Street. *Id.* at 26. Regarding 13 West 10<sup>th</sup> Street, Officer Sosa testified that she saw a dog inside a broken crate on the first floor and heard barking while inside. *Id.* at 25, 27, 42.

After exiting the properties, Officer Sosa could not recall who gave an instruction that no one could enter the properties. (N.T. 10/01/15 at 53). Officer Sosa admitted that Ms. Silva could not re-enter the properties without a police escort. *Id.* at 48. Officer Sosa went to the Borough's Administrative Building to prepare the warrant application with Officer Jordan. *Id.* at 62-63. Officer Sosa denied that Mr. Schilero was present when they prepared the warrant application. *Id.* at 63.

## **Procedural History**

The Trial Court held several suppression hearings in this matter on July 30, 2015, October 1, 2015, and March 2, 2016, respectively. At the July 30, 2015 hearing, Ms. Silva argued that Mr. Schilero cannot lawfully hold the positions of Mayor and the Secretary of the Board of Health, and therefore, lacked authority to ask for the issuance of the Administrative Warrant. (N.T. 07/30/15 at 3-6, 10-11); *See* 53 P.S. §3781. Both Counsel for the Commonwealth and the Borough argued in response to this argument. *Id.* at 6-10. The Trial Court concluded that Mr. Schilero could not serve in both capacities and lacked the necessary authority to request the Administrative Warrant, and therefore, the Administrative Warrant was illegal. *Id.* at 12-16. No one asked to call or called Mr. Schilero to testify during the suppression hearings.

After the Trial Court made its ruling as to the illegality of the Administrative Warrant, the Borough's Counsel argued that it should be allowed to present evidence as to consent, an exception to the Search Warrant requirement. (N.T. 07/30/15 at 14, 19-24). The Trial Court allowed the Borough to introduce evidence as to consent. *Id.* at 23-24; (N.T. 10/01/15 at 14-16).

Prior to the first suppression hearing, the Borough decided to depose Mr. Quillen, the Confidential Informant, on April 1, 2015. *See* Exhibit D-16. The Trial Court reviewed Mr. Quillen's deposition and the attached exhibits, including C-Quillen 1 through 4, and found that Mr. Quillen had absolutely no credibility. *Id.*

At the April 1<sup>st</sup> deposition, Mr. Quillen testified that for the past 6 years, he has lived at 9 West Tenth Street, Apartment 9A in Marcus Hook. (N.T. 04/01/15 at 3-4, 14-15). Mr. Quillen has known Mr. Schilero and Mr. Windsor for approximately two years. *Id.* at 4-5. Mr. Quillen allegedly denied speaking to Mr. Schilero and Mr.

Windsor in February 2013. *Id.* However, Mr. Quillen sent letters to Mr. Windsor, C-Quillen 1 and 2. *Id.* Mr. Quillen testified that he has known Ms. Silva and Ms. Kenney as friends for about three years. *Id.* at 5-6.

At the April 1<sup>st</sup> deposition, Mr. Quillen identified C-Quillen 1 as a two page document that he wrote and gave to Mr. Windsor on February 21, 2013. *Id.* at 7-8. Without assistance, Mr. Quillen wrote this letter because of the building's odor and feeling sorry for the dogs. *Id.* Mr. Quillen further testified that he wrote this letter as "John Quillen." *Id.* at 9. Mr. Quillen also identified C-Quillen 2 as a letter he wrote, without assistance, to Mr. Windsor on or about February 21, 2013. *Id.* at 10. Again, Mr. Quillen testified that he wrote this letter as "John Quillen." *Id.*

Mr. Quillen identified the document marked as C-Quillen 3 as the "Affidavit of John Wood" dated March 21, 2013. *See* Exhibit D-16; (N.T. 04/01/15 at 12). Mr. Quillen testified that he signed this Affidavit prepared by Ms. Silva as "John Wood." *See* Exhibit D-16; (N.T. 04/01/15 at 12-13). Mr. Quillen further testified that Ms. Silva and Ms. Kenney think that his name is John Wood. (N.T. 04/01/15 at 12-13). Mr. Quillen testified that John Wood is not his name, but his stepfather's name. *Id.* at 13-14. Mr. Quillen identified the docket marked as C-Quillen 4 as the "Affidavit of John Wood" dated March 22, 2013. *Id.* at 21; *See* Exhibit D-16. Mr. Quillen testified that he again signed this Affidavit prepared by Ms. Silva as "John Wood." *Id.*

In C-Quillen 3, the Affidavit dated March 21, 2013, Mr. Quillen stated that he was present at the properties during the day and evening of February 22, 2013 and that he heard Ms. Silva state on February 22, 2013 that she did not own the properties or the dogs inside. *See* Exhibit D-16. Mr. Quillen denied that he heard Ms. Silva make this statement. (N.T. 04/01/15 at 19-20). Mr. Quillen readily admitted that he signed the aforementioned Affidavits and other affidavits prepared by Ms. Silva

as John Wood. *Id.* at 22, 26, 29-31. Mr. Quillen's testimony, at his deposition, changed and testified that the sworn statements he made in these Affidavits were not true. *Id.*

At the March 2, 2016 hearing, Counsel for the Commonwealth informed the Trial Court that Mr. Quillen had been transported from the Delaware County Prison to testify in this matter because Ms. Silva intended to call him as a witness. (N.T. 03/02/16 at 3-4). As previously stated, Mr. Quillen is currently incarcerated because he pled guilty to Terroristic Threats wherein the victim was Ms. Kenney, a Kira Management employee and a possible defense witness *sub judice*. *Id.* at 4-6. Prior to the continuation of the suppression hearing, a discussion between the Trial Court and all counsel occurred regarding whether Mr. Quillen has filed or will file an appeal or a post-conviction petition and about Mr. Quillen's possible assertion of his 5<sup>th</sup> Amendment privilege if called to testify. *Id.* at 4-6.

While the Trial Court heard Ms. Silva's testimony on March 2, 2016, Attorney Steven Dever from the Delaware County Public Defender's Office met and spoke with Mr. Quillen outside of the Courtroom regarding his privilege against self-incrimination, including the possible effects on his probation or parole. (N.T. 03/02/16 at 43-44). Mr. Dever stated that whether Mr. Quillen invoked his 5<sup>th</sup> Amendment right would be dependent on what questions he was asked. *Id.* at 44. Both Counsel for the Commonwealth and the Borough stated that they were satisfied with Mr. Dever's representations. *Id.* at 44-45.

Then, a discussion began whether Mr. Quillen would need counsel if called to testify as a witness. (N.T. 03/02/16 at 45-49). The Borough's Counsel represented that she would not call Mr. Quillen to testify. *Id.* at 49. Only Ms. Silva wanted to call Mr. Quillen as a witness because she believed that he was not competent and lacked

knowledge as to the alleged acts in the properties. (N.T. 03/02/16 at 50, 55). No one at the March 2, 2016 hearing called Mr. Quillen as a witness. The Trial Court, without objection from Counsel, stated that it would review Mr. Quillen's April 1, 2015 deposition transcript and the attachments to determine whether Ms. Silva was entitled to a *Franks* Hearing regarding material misstatements in the Administrative Warrant. *Id.* at 51-52, 58; *See* Exhibit D-16.

### **Issues Asserted on Appeal**

The Borough asserts the following issues on appeal:

1. The Trial Court erred by finding that James Schilero was not legally capable of holding a position as a Mayor and as a Secretary of the Board of Health. Also, there is no record as to James Schilero's positions.
2. The Trial Court erred by finding that James Schilero did not have authority to request an administrative warrant, and that the warrant was illegal.
3. The Trial Court erred in ruling that the remedy for violation of Title 53 P.S. Section 3751 is suppression.
4. The Trial Court erred by ruling that everything James Schilero was involved in would be suppressed.
5. The Trial Court erred by ruling that the Borough of Marcus Hook could not proceed in arguing the merits of their search warrant. Specifically, the Trial Court erred when it prevented the Borough of Marcus Hook from defending the probable cause contained within the four corners of the Affidavit and did not allow the Borough of Marcus Hook to present evidence in regards to administrative warrants. The Trial Court limited the scope of the Borough of Marcus Hook to the issue of consent. The Trial Court prevented the Borough of Marcus Hook from creating an adequate record.

6. The Trial Court erred by accepting John Quillen's invocation of his 5<sup>th</sup> Amendment right off the record, without a colloquy, and without examining whether his 5<sup>th</sup> Amendment right was legitimate.
7. The Trial Court erred in considering evidence and testimony outside the four corners of the Affidavit of Probable Cause of the search warrant.
8. The Trial Court erred in considering John Quillen's testimony. Specifically, the defendant did not specifically allege a material misstatement, or establish her initial burden that there was a material misstatement. The Borough of Marcus Hook was prevented from rebutting and defending its warrant.
9. The Trial Court erred in making a credibility determination as to John Quillen's credibility when John Quillen did not testify.
10. The Trial Court erred in finding that the defendant had an expectation of privacy in the 15 West Tenth Street, Marcus Hook, Pennsylvania and 13 West Tenth Street, Marcus Hook, Pennsylvania.
11. The Trial Court erred in ruling that the SPCA warrant was tainted by Marcus Hook's administrative warrant.
12. The Trial Court erred in determining that the defendant did not consent to the search of 15 West Tenth Street, Marcus Hook, Pennsylvania and 13 West Tenth Street, Marcus Hook, Pennsylvania.

### **Discussion**

On issues of suppression, the Appellate Court is to determine whether the factual findings support the record. *Com. v. Antoszyk*, 985 A.2d 975, 978 (Pa. Super. 2009). If so, the Appellate Court is bound by those findings. *Id.* Where the Commonwealth appeals the suppression court's decision, the Appellate Court must consider only the evidence of the defendant's witnesses and so much of the evidence



for the prosecution as read in the context of the record as a whole remains uncontradicted. *Id.* Where a motion to suppress has been filed, the Commonwealth has the burden to establish by a preponderance of the evidence that the challenged evidence is admissible. *Id.* It is the suppression court's sole province to judge credibility and determine the weight to be given to their testimony. *Com. v. Walton*, 63 A.3d 253, 256 (Pa. Super. 2013). The suppression court is free to believe all, part or none of the evidence presented. *Com. v. Simmen*, 58 A.3d 811, 817 (Pa. Super. 2012).

**A. James Schilero, as the Borough's Mayor and Secretary of the Board of Health, did not have the legal authority to issue the Administrative Warrant, and therefore, the Administrative Warrant was illegal.**

The Record is absolutely clear that at the time of the issuance of the Administrative Warrant, Mr. Schilero was the Borough's Mayor and the Secretary of the Borough's Board of Health. See Exhibit D-16 at 4; CS-2. Even the Borough's Confidential Informant, Mr. Quillen, identified Mr. Schilero as the Borough's Mayor. See Exhibit D-16 at 4. No one has ever made the argument at any time that Mr. Schilero was not the Borough's Mayor. Even after the Trial Court ruled that the Administrative Warrant was "illegal" *ab initio* because of Mr. Schilero's dual roles, the Borough's Counsel never argued that Mr. Schilero was not the Borough's Mayor and the Board of Health's Secretary. (N.T. 07/30/15 at 15-23). In the Affidavit of Probable Cause for the Administrative Warrant, Mr. Schilero identified himself as follows: "Your affiant is James Schilero, **Secretary of the Board of Health of the Borough of Marcus Hook**, who has been in that capacity since 2006." (**emphasis added**) See CS-2. Therefore, the Trial Court finds the allegation that there is no record as to Mr. Schilero's positions to be extremely disingenuous.

In Chapter 17, Article II of General Municipal Law, 53 P.S. §3751, provides that "No justice of the peace, member of council, or other officers, except school directors,