

constables, or election officers, shall, at the same time, be a member of the board of health of such municipality, or hold any office or appointment under the same.”

Under Chapter 36 of the Borough Code, 8 Pa. C.S.A. §806(a)(1), Officers to be elected, the Mayor is an elected officer. A mayor is an elected civil officer under the Article VI, Section 7 of the Pennsylvania Constitution. *Citizens Committee to Recall Rizzo v. Board of Elections of the City and County of Philadelphia*, 367 A.2d 232, 247 (Pa. 1976).

Section 10A01 of Title 8 provides, in relevant part, as follows: “No mayor may hold any other borough office or appointment during the term for which the mayor is elected, except as is permitted under section 1104 (relating to appointments and incompatible offices).” If there is incompatibility in fact, then an elective or appointed officer of the borough is ineligible to serve on any board, commission, bureau or other agency created by or for the borough or any borough office created or authorized by statute. 8 Pa. C.S.A. §1104.

The borough council may organize a police force, but the mayor controls its day-to-day operations. *Hoffman v. Borough of Macungie*, 63 A.3d 461, 469 (Pa. Cmwlth. 2013). A mayor’s primary duty is to supervise the police force. *Id.* at 470 (citing *Slifer v. Dodge*, 362 A.2d 471 (Pa. Cmwlth. 1976)). To enable the mayor to effectually preserve the public peace, the mayor has the power to prevent and suppress mobs, riots and unlawful and tumultuous assemblies. 8 Pa. C.S.A. §10A06. Under Section 1123.1 of Title 8, the mayor’s police powers are as follows:

- (a) General rule. – The mayor shall have full charge and control of the chief of police and the police force.
- (b) Direction. – The mayor shall direct the time during which, the place where and the manner in which the chief of police and the police force perform the duties of their rank.
- (c) Delegation of duties. – The mayor may delegate to the chief of police or other officer supervision over and instruction to subordinate officers in the manner of performing their duties.
- (d) Appointment of special police. – The mayor may appoint special police during an emergency in which the safety and welfare of the borough and the public is

endangered. (e) Auxiliary police. – The mayor may activate auxiliary police in accordance with general law and, notwithstanding any other provision of law, may activate auxiliary police for purposes of crowd and traffic control for limited periods during events if, in the mayor’s discretion, public safety is promoted by the activation of the auxiliary police.

8 Pa. C.S.A. §1123.1. In addition, the mayor has the power to suspend police officers until the succeeding regular meeting of the borough council. 8 Pa. C.S.A. §1124.

Under the Borough Code, the mayor has the ultimate executive authority over the manner in which the police department operates. *Hoffman, supra* at 470.

Regarding the establishment of the Board of Health, Section 3101 of Title 8 provides that the Borough Council appoints the members of the Board of Health. 8 Pa. C.S.A. §3101(a). The Board of Health has the power to recommend rules and regulations necessary for the preservation of the public health and to “abate and remove nuisances the board deems detrimental to the public health.” 8 Pa. C.S.A. §3106. Among its powers, a member of the Board of Health, a health officer, or an employee/agent of the Board or Health Officer may “(i) enter premises in the borough where an infectious or contagious disease or a nuisance detrimental to the public health is suspected; and (ii) examine and abate the disease or nuisance.” 8 Pa. C.S.A. §3107(a). If entry to the premises is prevented,

the board of health officer may obtain an administrative search warrant from a magisterial district judge with jurisdiction over the premises upon a showing of any of the following: (1) Reasonable standards and an administrative plan for conducting inspections. (2) The condition of the premises or general area and the passage of time since the last inspection. (3) Probable cause of a violation of a law specified in section 3106(b)(relating to powers and duties of board).

8 Pa. C.S.A. §3107(b).

Administrative searches are significant intrusions upon the interests protected by the Fourth Amendment. *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967) (overruling *Frank v. Maryland*, 359 U.S. 360, 79 S.Ct. 804, 3 L.Ed.2d 877 (1959)). Without the owner’s

consent to enter the private dwelling, the health inspector is required to show the existence of probable cause to obtain a search warrant from the magistrate. *Id.* In *Camara, supra*, the Supreme Court of the United States discussed that without the protections of the Fourth Amendment,

when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization.

Id. at 532. In Justice Whittaker's dissent in *Frank, supra*, "[n]o officer of government is authorized to penalize the citizen because he invokes his constitutional protection."

Id. at 375. "This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank and the bureau from which he operates are immaterial." *Id.* at 378. "History shows that all officers tend to be officious; and health inspectors, making out a case for criminal prosecution of the citizen, are no exception." *Id.* at 382.

Under Section 3751 of Title 53, it is clear that as the Borough's Mayor, Mr. Schilero, an elected civil officer, cannot simultaneously serve as the Borough's Secretary of the Board of Health. There is an inherent conflict in Mayor Schilero's power and authority over the Borough's Chief of Police and the police force and Secretary Schilero's power and authority to preserve the Borough's public health, including the power to seek the entry of premises in the Borough. As stated in *Camara, supra*, there is no difference for purposes of the Fourth Amendment between criminal search warrants and administrative search warrants. Under the Borough Code, the Mayor has the Borough's police force at his disposal. Allowing the Mayor to also be an Officer for the Board of Health could and would allow him to improperly use

all of his powers to perform a duty dedicated to only one of his positions. Therefore, it is clear as to why holding both offices is prohibited.

At the July 30, 2015 hearing, the Borough's Counsel argued that the presence of Mr. Windsor, the Code Enforcement Officer, when Mr. Schilero executed the Administrative Warrant upheld the valid enforcement of the Borough's Property Maintenance Ordinance. As to the enforcement of sanitary conditions, Section 157-6 of Chapter 157 of the Borough's Code provides that "Enforcement of this article shall be the responsibility of the Board of Health, Code Enforcement Officer or Police Department, acting in their official capacities, and they shall act as prosecutor in all cases of violation of this article and of the rules and regulations relating thereto and adopted by resolution."

The Trial Court found that Mr. Schilero could not enforce the Borough's Ordinance as result of his unlawful dual roles as the Mayor and Secretary of the Board of Health. The fact that Mr. Windsor was present when the Administrative Warrant was executed is of no moment. Mr. Schilero, as the Secretary of the Board of Health, was the Administrative Warrant's Affiant who sought its issuance and execution, not Mr. Windsor. *See* CS-2. Therefore, Mr. Windsor's presence does not validate Mr. Schilero's actions.

At the July 30, 2015 hearing, the Borough's Counsel referenced *Frame v. Menellen Township*, 2010 WL 9514435 (Pa. Cmwlth), in support of its argument that Mr. Schilero was acting under the color of authority as Secretary of the Board of Health, and therefore, his actions don't warrant dismissal. (N.T. 07/30/15 at 8). There are several reasons as to why *Frame, supra*, is not controlling authority in this matter. First, *Frame, supra* is an unreported panel decision from the Commonwealth Court, and therefore, is merely persuasive authority and is not binding precedent.

Second, *Frame, supra* is factually distinct from the facts in this matter, and therefore, holds little, if any, persuasive value.

In *Frame, supra*, the Commonwealth Court held that, pursuant to the *de facto* doctrine, the citations issued by the Township's Code Enforcement Officer were still valid even though he had not taken the oath of office at the time he issued the citations. *Id.* at *5. This Court, in *Frame, supra*, found that the Code Enforcement Officer, under the *de facto* doctrine, acted under the color of title when he issued the citations as the Code Enforcement Officer. *Id.*

The issue in this matter is whether Mr. Schilero could lawfully hold two positions as the Mayor and the Secretary of the Board of Health. As previously discussed, there is an inherent conflict between these two positions, and therefore, his actions as the Board's Secretary are unlawful and invalid. The fact that Mr. Schilero acted in his capacity as the Secretary of the Board of Health when he sought, obtained, and executed the Administrative Warrant does not eliminate his simultaneously held position as the Mayor.

B. The Administrative Warrant was “illegal” *ab initio*, and therefore, an examination as to whether there was probable cause was not necessary.

Although it traditionally applies to statutes and ordinances, the void *ab initio* doctrine concerns “those claims that implicate notice, due process, or other constitutional rights of a party.” *Oxford Corp. v. Zoning Hearing Bd. of Borough of Oxford*, 34 A.3d 286, 297 (Pa. Cmwlth. 2011) (citing *Glen-Gary Corp. v. Zoning Hearing Board of Dover Township*, 907 A.2d 1033, 1037, n. 5 (Pa. 2006). “The effect of a finding that an ordinance is void *ab initio* essentially means that it never became law due to the procedural defects in its enactment.” *Id.* (citing *Glen-Gary Corp., supra* at 1040).

The Trial Court found that the Administrative Warrant was “illegal” *ab initio*. As

previously discussed, Mr. Schilero lacked the legal authority to seek, secure, and execute the Administrative Warrant as a result of his positions of the Borough's Mayor and the Secretary of the Board of Health. If the Affiant lacks the authority to seek, secure, and execute the Warrant, the Trial Court cannot uphold its validity regardless as to whether probable cause existed to support its issuance. The Administrative Warrant was illegal from the beginning.

As to the issue of suppression, the Trial Court finds *Com. v. Dobbins*, 934 A.2d 1170, 1180-1181 (Pa. 2007), to be instructive because it involved the issue of whether deputy sheriffs lacked the authority to seek a search warrant in the investigation of a violation of the Controlled Substance Act, a predicate offense under the Wiretapping Act. In *Dobbins, supra*, the Supreme Court reiterated its ruling in *Kopko v. Miller (Kopko II)*, 892 A.2d 766 (Pa. 2006) that sheriffs are not investigative or law enforcement officers for purposes of the Wiretapping Act because they lack authority to conduct investigations of or to make arrests for the predicate offenses of the Act. *Id.* at 1175. In addition, the Supreme Court, in *Kopko II*, specifically underscored its duty to strictly construe any statute that grants authority to invade individuals' constitutional right to privacy. *Id.* at 1180.

In *Dobbins, supra*, the sheriff deputies conducted an unwarranted investigation of private property based on suspicion rather than the commission of any felony or breach of the peace in their presence. *Id.* at 1181. Relying on these observations, the deputy sheriffs, in *Dobbins, supra*, sought, secured, and executed a search warrant, a process that implicated the same privacy concerns that the Wiretapping Act does. *Id.* The deputy sheriffs, in *Dobbins, supra*, obtained an arrest warrant for the defendant based upon the evidence seized pursuant to the search warrant that "never should have [been] issued, inasmuch as sheriff's deputies had no legal authority to obtain

that warrant in the first instance.” *Id.*

The *Dobbins* Court held that, absent specific statutory authorization, sheriffs lack authority to conduct independent investigations under the Controlled Substances Act, including the seeking of search warrants where no breach of the peace or felony has occurred in their presence. *Id.* The *Dobbins* Court agreed with the trial court that the proper remedy where evidence has been discovered by an illegal search and/or incident to an illegal arrest is suppression, not dismissal. *Id.*

Like the deputy sheriffs in *Dobbins, supra*, Mr. Schilero lacked the legal authority to seek, secure, and execute the Administrative Warrant. Therefore, the illegal warrantless search of 15 West Tenth Street was “illegal” *ab initio* wherein the proper remedy was suppression.

There was no reason for the Trial Court to examine whether the Administrative Warrant contained probable cause because its Affiant, Mr. Schilero, could not lawfully seek its issuance. However, the Borough never called any witnesses to establish probable cause, such as Mr. Schilero, Mr. Windsor, or Mr. Quillen. The Trial Court allowed the Borough to present evidence as to consent because it is an exception to the search warrant requirement. Evidence as to consent does not involve Mr. Schilero’s unlawful application of the Administrative Warrant, including the preparation of the Affidavit of Probable Cause. Therefore, such evidence was appropriate for the Trial Court’s consideration.

C. The Trial Court properly considered John Quillen’s testimony from the Borough’s deposition and found that he lacked credibility in light of the admitted exhibits, specifically Mr. Quillen’s letters to the Borough’s representatives.

The Borough’s Counsel argues that the Trial Court improperly made a credibility determination about Mr. Quillen even though Mr. Quillen did not testify. Ms. Silva filed a Motion to Disqualify Mr. Quillen as a Witness. It should be noted that

Mr. Quillen was not called to testify by either party. Without objection, the Trial Court reviewed the Borough's April 1, 2015 deposition of Mr. Quillen. *See* Ex. D-16. Ms. Silva's Motion alleged that Mr. Quillen was not mentally competent and/or lacked knowledge as to the properties' activities. (N.T. 03/02/16 at 55).

On April 1, 2015, Mr. Quillen testified at the deposition as "John Quillen." *See* Ex. D-16. However, Mr. Quillen provided sworn affidavits in this matter as "John Wood." *See* C-Quillen 3, 4 of Ex. D-16. Mr. Quillen initially sent letters to Mr. Windsor in February 2013, the Borough Code Enforcement Officer, regarding the condition of the properties. *See* C-Quillen 1, 2 of Ex. D-16. C-Quillen 1 is unsigned. C-Quillen 2 is signed "your inside guy." Then, Mr. Quillen, as "John Wood," signs several affidavits in March 2013 recanting the contents of the aforementioned letters. *See* C-Quillen 3, 4 of Ex. D-16. Then, Mr. Quillen as "John Quillen" recanted his statements made in the March 2013 Affidavits. *See* Ex. D-16 *generally*.

Upon review of the admitted deposition transcript and the attached exhibits, the Trial Court concluded that Mr. Quillen was not credible. In light of the fact that Mr. Quillen, the Borough's Confidential Informant, testified as **two different people**, the Trial Court had no choice but to find him not credible. Therefore, there is nothing improper for the Trial Court to reach such a conclusion based upon the multiple changes in Mr. Quillen's sworn testimony and statements.

It was agreed that the Trial Court would review the testimony to determine whether a *Franks* hearing was necessary. Upon review, a *Franks* hearing was not necessary because the Administrative Warrant was illegal *ab initio*, and therefore, not at issue. The Borough subsequently argued that there was consent to serve the properties, and therefore, was an exception to the warrant requirement. Mr. Quillen was not called to testify as to consent.

The Borough argued that Ms. Silva did not specifically allege a material misstatement or establish there was a material misstatement. In point of fact, Ms. Silva filed a petition wherein she alleged that Mr. Quillen is not competent and lacked personal knowledge of the properties. However, since the substance of the Administrative Warrant is not at issue, this argument is not relevant. The Borough's Counsel did not object to the Trial Court considering Mr. Quillen's testimony. In fact, the Borough's Counsel provided the copy of the April 1, 2015 deposition transcript to the Trial Court. (N.T. 03/02/16 at 62). The Borough never called Mr. Quillen as a witness in this matter. During the proceedings, the Borough never offered to or called any witnesses from the Borough, including but not limited to Mr. Schilero and Mr. Windsor, who were present at the time of the execution of the Administrative Warrant. (N.T. 07/30/15 at 17). Therefore, the Borough was never prevented from rebutting and defending the Administrative Warrant. More importantly, any argument as to the lack of a material misstatement is of no moment because the Trial Court excluded the Administrative Warrant as illegal *ab initio*. Therefore, this issue is without merit.

D. Mr. Quillen's counsel informed the Trial Court that if Mr. Quillen were called to testify, his invocation of his 5th Amendment rights would depend on the questions asked. None of the parties ever called Mr. Quillen to testify.

Borough Counsel's assertion that the Trial Court erred when it accepted Mr. Quillen's invocation of his 5th Amendment rights is absolutely incorrect. The Trial Court could not have accepted Mr. Quillen's invocation of his 5th Amendment rights because Mr. Quillen never testified at any time during the proceedings. In fact, no one ever called Mr. Quillen as a witness to testify in this matter.

As previously stated, Ms. Silva subpoenaed Mr. Quillen to testify. At the March 2, 2016 hearing, Assistant District Attorney Alan Borowsky informed the Trial Court that Mr. Quillen, an inmate at the Delaware County Prison, had been transported to

the Delaware County Court House at Ms. Silva's request and questioned whether Mr. Quillen had been counseled about his 5th Amendment rights because he was currently incarcerated for Terroristic Threats wherein the victim was Ms. Kenney, a Kira Management employee. (N.T. 03/02/16 at 4).

As previously stated, a discussion occurred between the parties and the Trial Court regarding Mr. Quillen's possible invocation of his 5th Amendment rights. (N.T. 03/02/16 at 4-6). Then, Assistant Public Defender Steven Dever from the Delaware County Public Defender's Office came to the courtroom to inform the parties and the Trial Court that after meeting with Mr. Quillen, Mr. Quillen was aware of and understood his 5th Amendment privilege. *Id.* at 43. Mr. Dever further stated that Mr. Quillen would have to invoke that privilege on the witness stand. *Id.* at 44-45. Mr. Dever stated that whether Mr. Quillen invoked his 5th Amendment privilege would depend on what questions he was asked. *Id.* at 44. The Trial Court stated that if the questions involved facts as to what happened before Mr. Quillen's conviction as it relates to this matter and the conviction involved one of the witnesses in this matter, then it could not see how Mr. Dever could counsel him to testify. *Id.* at 47-48. Mr. Dever agreed and stated that he certainly wouldn't tell him to testify. *Id.* at 48.

No one ever called Mr. Quillen, including the Borough, to testify in this matter. (N.T. 03/02/16 at 49). Only Ms. Silva wanted to call Mr. Quillen to testify in support of her Motion to Disallow Mr. Quillen's Testimony because she believed him to be mentally incompetent and/or lacking knowledge as to the properties, and therefore, his testimony should not be considered. *Id.* at 55.

There is nothing in the Record that the Trial Court accepted Mr. Quillen's invocation of his 5th Amendment privilege on or off the record. In light of the discussion of Mr. Quillen's probable invocation of his 5th Amendment rights, then

Counsel for all parties agreed that the Trial Court could review Mr. Quillen's April 1, 2015 deposition conducted by the Borough's Counsel. (N.T. 03/02/16 at 56-57, 62, 64). No one objected to the Trial Court reviewing Mr. Quillen's April 1, 2015 deposition and to it being admitted as an exhibit. (N.T. 03/02/16 at 50-64). More importantly, Mr. Quillen's testimony was not relevant as to the issue of consent. Therefore, this issue is devoid of merit.

E. The Borough's Counsel failed to identify the evidence and testimony outside the four corners of the Administrative Warrant's Affidavit of Probable Cause that the Trial Court allegedly considered, and therefore, this issue is vague.

The Trial Court finds this issue to be vague and overly broad. "When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review. When an appellant fails adequately to identify in a concise manner the issues sought to be pursued on appeal, the trial court is impeded in its preparation of a legal analysis which is pertinent to those issues." *Lineberger v. Wyeth*, 894 A.2d 141, 148 (Pa. Super. 2006); *Com. v. McCree*, 857 A.2d 188, 192 (Pa. Super. 2004).

The issue raised fails to identify what evidence and testimony outside the Administrative Warrant's four corners that the Trial Court allegedly considered. Therefore, the Trial Court is left to guess and is impeded in preparing the appropriate legal analysis in response. However, this issue is of no moment because, as stated earlier, the Trial Court suppressed the evidence because the Administrative Warrant was illegal *ab initio* because of Mr. Schilero's illegal dual roles as the Borough's Mayor and the Board of Health's Secretary.

F. The Trial Court properly found that Ms. Silva had an expectation of privacy of 15A and B West Tenth Street. The Trial Court never found that Ms. Silva had an expectation of privacy of 13 West Tenth Street.

When reviewing the April 25, 2016 Order, it clearly states that Defendant's Motion for Suppression (Omnibus Pre-Trial Motion) is denied only as to 13 West Tenth

Street and 15C West Tenth Street. As stated in Number 213 of the Trial Court's Findings of Fact and Conclusions of Law, "[t]he Trial Court finds that based upon the Record, Ms. Silva does not have standing to assert a privacy interest in 13 West Tenth Street and 15C West Tenth Street." Therefore, the Borough's allegation that the Trial Court found that Ms. Silva had an expectation of privacy in 13 West Tenth Street is obviously incorrect.

The Trial Court, in its April 25, 2016 Order, found that Ms. Silva had an expectation of privacy as to 15A and B West Tenth Street, and therefore, had standing to assert her privacy interest and challenge the legality of the search and seizure of these properties. "The concept of standing in a criminal search and seizure context empowers a defendant to assert a constitutional violation and thus seek to exclude or suppress the government's evidence pursuant to the exclusionary rules under the Fourth Amendment of the United States Constitution or Article I, Section 8 of the Pennsylvania Constitution." *Com. v. Bostick*, 958 A.2d 543, 550-551 (Pa. Super. 2008). A defendant must establish a legitimate expectation of privacy in the invaded place as a predicate to standing. *Bostick, supra* at 551. To prevail on a Motion for Suppression, a defendant is required to separately demonstrate a personal privacy interest in the area searched or effects seized, and that such interest was "actual, societally sanctioned as reasonable, and justifiable. *Bostick, supra* at 551.

"An expectation of privacy will be found to exist when the individual exhibits an actual or subjective expectation of privacy and that expectation is one that society is prepared to recognize as reasonable." *Bostick, supra* at 552. The totality of the circumstances must be considered when determining whether a person's expectation of privacy is legitimate or reasonable. *Id.* An expectation of privacy is not dependent on the subjective intent of the individual asserting the right but on whether the

expectation is reasonable in light of the surrounding circumstances. *Id.*

“A defendant must establish a possessory interest, a legitimate presence, or some ‘factor from which a reasonable and justifiable expectation of privacy could be deduced’ to prove that this subjective expectation of privacy is legitimate.” *Bostick, supra* at 552. Factors to be considered in determining whether a defendant has a legitimate expectation of privacy in another person’s home include: (1) possession of a key to the premises; (2) having unlimited access to the premises; (3) storing of clothing or other possessions on the premises; (4) involvement in illegal activities conducted on the premises; (5) ability to exclude other persons from the premises; and (6) expression of a subjective expectation of privacy in the premises. *Id.* at 553.

“Within the workplace context, this Court has recognized that employees may have a reasonable expectation of privacy against intrusions by police.” *Com. v. Jackson*, 809 A.2d 411, 414 (Pa. Super. 2002). “As with the expectation of privacy of one’s home, such an expectation in one’s place of work is ‘based upon societal expectations that have deep roots in the history of the [Fourth] Amendment.’” *Id.* An occupant other than the owner or lessee of an apartment must demonstrate a significant and current interest in the searched premises in order to establish an expectation of privacy. *Com. v. Govens*, 632 A.2d 1316, 1319 (Pa. Super. 1993).

The Trial Court notes that 15A is no ordinary office. It is Ms. Silva’s law office. (N.T. 03/02/16 at 10-11, 40). Ms. Silva testified that since 2011, she has leased her office from Kira Management and pays her rent to Ms. Kenney, a Kira Management employee. (N.T. 03/02/16 at 9, 11). Ms. Silva has a key for 15A. *Id.* at 15. At the time the Administrative Warrant was executed, Ms. Silva’s dog was inside 15A. *Id.* There was no conflicting testimony that 15A was not Ms. Silva’s law office where she stored her clients’ case files. (N.T. 10/01/15 at 76; 03/02/16 at 21-24, 29-30). Ms.

Silva testified that she had files in 15A and B involving an action against the Pennsylvania SPCA and actions against Mr. Schilero and Mr. Windsor. With Ms. Kenney's permission, Ms. Silva stored her clients' files in 15B. (N.T. 03/02/16 at 10/01/15 at 76, 88; 10-11, 21-24, 29-30, 40).

Under Rule 1.6(a) and (d) of the Pennsylvania Rules of Professional Conduct, "[a] lawyer shall not reveal information relating to representation of a client..." and "shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Therefore, Ms. Silva, as an attorney, had a fiduciary duty to protect the privacy of her clients as well.

The Record supports a finding that Ms. Silva had a reasonable expectation of privacy in her law office at 15A West Tenth Street. Ms. Silva was a lawful tenant of 15A who paid rent to Kira Management to use as her law office, the owner of 15 West Tenth Street. As for 15B, the Borough failed to present any contrary evidence to show that anyone other than Ms. Silva had access. The fact that Ms. Silva was not a tenant of 15B does not eliminate her privacy right. Ms. Silva was a lawful occupant of 15B who, with the owner's permission, stored her clients' files, and therefore, had a reasonable expectation of privacy. Therefore, the Trial Court properly concluded that Ms. Silva had standing to assert her privacy interest in 15A and B and challenge the lawfulness of the search and seizure of these properties.

G. The Trial Court properly concluded that the Administrative Warrant tainted the SPCA Warrant.

The SPCA Warrant in this matter cannot be purged of the Administrative Warrant's primary taint. The evidence seized pursuant to the SPCA Warrant was the result of the exploitation of that illegality, the illegal *ab initio* Administrative Warrant. The Trial Court found that Ms. Silva did not have standing to assert a privacy interest

properties under the illegal Administrative Warrant and without Ms. Silva's consent. See CS-1; (N.T. 07/30/15 at 50, 86). Therefore, the Administrative Warrant's primary taint cannot be purged from the SPCA Warrant. Thus, this issue is without merit.

H. The Trial Court properly determined that Ms. Silva did not consent to the search of 15A and B West Tenth Street.

Again, the Trial Court, in its April 25, 2016 Order, did not suppress the evidence as to 13 West Tenth Street and 15C West Tenth Street. Therefore, any argument that the Trial Court erred in finding Ms. Silva consented as to the aforementioned properties is incorrect.

The Trial Court properly concluded that the Borough failed to meet its burden to prove by clear and convincing evidence that Ms. Silva consented to the search of 15A and B West Tenth Street. A search warrant is not required if the person voluntarily consents to the search. *Com. v. Blasioli*, 685 A.2d 151, 156 (Pa. Super. 1996). In order for consent to an otherwise illegal search to be valid, the consent must be unequivocal, specific, and voluntary. *Blasioli, supra*; *Com. v. Gibson*, 536 Pa. 123, 132, 638 A.2d 203, 207 (1994). The burden is on the Commonwealth to prove by clear and convincing evidence that a valid consent was given by the defendant. *Blasioli, supra*. It is only where there is an intentional relinquishment or abandonment of a known right or privilege that an effective waiver can be found. *Gibson, supra*.

The subject of a search must be made aware of his rights against a warrantless search for a waiver to be intelligent. *Gibson, supra*. To determine whether consent is voluntary, the court must look at the totality of the circumstances. *Blasioli, supra*; *Com. v. Markman*, 467 A.2d 336, 340 (Pa. Super. 1983). The voluntariness of a defendant's consent to search is determined by whether the consent was procured through force or other coercion. *Markman, supra* at 341. The consent must be given free from coercion, duress, or deception. *Blasioli, supra*. The following factors should

be considered in determining whether consent was voluntarily given: “the setting in which the consent was obtained; what was said and done by the parties present; and the age, intelligence, and educational background of the person consenting.” *Blasioli, supra*. No one factor is determinative in concluding whether consent is voluntary. *Markman, supra* at 341.

On the issue of consent, the Trial Court credited Ms. Silva’s testimony. The Trial Court did not find Officers Jordan and Sosa to be credible. Ms. Silva testified that after arriving at 15 West Tenth Street, she opened the door to 15C while the Borough Police Officer stood next to her with a gun. (N.T. 10/01/16 at 74; 03/02/16 at 15, 31-32). 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 in response, the Borough Police Officer threatened to shoot the dog, made gestures toward his belt, and tapped his firearm. (N.T. 03/02/16 at 33, 41).

Ms. Silva testified that she never gave her consent to Mr. Schilero, Mr. Windsor, or the SPCA officers to enter the properties. (N.T. 10/01/15 at 79-80, 82). Ms. Silva testified that no one handed her the Administrative Warrant and that Mr. Schilero, Mr. Windsor and the Borough Police Officer 15C brushed by her and entered 15C. (N.T. 10/01/15 at 74, 76; 03/02/16 at 41). Ms. Silva further testified that she followed Mr. Schilero, Mr. Windsor and the Borough Police Officer inside 15C and that the SPCA officers followed her inside. (N.T. 10/01/15 at 75; 03/02/16 at 15, 20, 35-36). Ms. Silva testified that the SPCA officers never asked her to enter the properties. (N.T. 10/01/15 at 82).

As an attorney, Ms. Silva properly assumed that Mr. Schilero had a valid warrant to enter the properties. (N.T. 10/01/15 at 80; 03/02/16 at 6-7, 18-20, 34,

40). Ms. Silva testified that after exiting the properties, Mr. Schilero handed her a paper later identified as the Administrative Warrant. (N.T. 03/02/16 at 20-21). Ms. Silva further testified that she was not permitted to re-enter the properties with the exception of retrieving her purse and glasses with a police escort. (N.T. 10/01/15 at 78; 03/02/16 at 21).

Upon the totality of the circumstances, the Trial Court properly found that the Commonwealth failed to prove by clear and convincing evidence that Ms. Silva provided an unequivocal, specific and voluntary consent to Mr. Schilero, Mr. Windsor, the Borough Police Officer, and Officers Sosa and Jordan to enter 15A and/or 15B West Tenth Street. As stated earlier, the Trial Court found Ms. Silva's testimony to be credible that she did not give consent. Therefore, this issue is without merit.

Conclusion

For the aforementioned reasons, the Trial Court respectfully requests that its decision be **AFFIRMED**.

BY THE COURT:


KATHRYNANN W. DURHAM, J.