

IN THE COURT OF COMMON PLEAS,
DELAWARE COUNTY, PENNSYLVANIA

SUMMARY APPEALS

COMMONWEALTH OF PENNSYLVANIA	:	No. 869-2013; 823-13
	:	
v.	:	
	:	
TERRY E. SILVA	:	

Alan Borowsky, Esquire – Attorney for the Commonwealth
Lindsay McDonald, Esquire – Attorney for the Borough of Marcus Hook
Terry E. Silva, Esquire – Defendant *pro se*

ORDER

AND NOW, this 25th day of April, 2016, it is hereby ORDERED and DECREED
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.**

BY THE COURT:


KATHRYNANN W. DURHAM, J.

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DURHAM, J.

DATE: 04/25/16

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Defendant Terry Silva (Ms. Silva) was charged by the Commonwealth of Pennsylvania with the aforementioned charges and citations for violating various ordinances in the Borough of Marcus Hook (the Borough).
2. One of the two search warrants issued in this matter was an Administrative Search Warrant to search the properties at 13-15 West Tenth Street in Marcus Hook, Delaware County, Pennsylvania, based upon a confidential informant's observations. See CS-2.
3. The confidential informant was later identified as John Quillen.
4. The Affiant of the Administrative Warrant was the Borough's Mayor James Schilero who was also the Secretary of the Borough's Board of Health. *Id.* See CS-2.
5. George Windsor is the Code Enforcement Officer for the Borough. (N.T. 07/30/15 at 35).
6. Pursuant to 53 P.S. §3751, "[n]o justice of the peace, member of council, other officers, except school directors, 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.”

7. At the July 30, 2015 hearing, the Trial Court found that Mr. Schilero was not legally capable of holding both positions as Mayor and Board of Health’s Secretary. (N.T. 07/30/15 at 12-13).
8. The Trial Court found that Mr. Schilero did not have the authority to request an administrative warrant; and therefore, was illegal. *Id.*; (N.T. 10/01/15 at 14-16).
9. Despite the Trial Court’s finding, the Borough’s Counsel argued that the Borough was entitled to present evidence that Ms. Silva consented to the search of the properties located at 13-15 West Tenth Street. (N.T. 07/30/15 at 22-24; 10/01/15 at 14-15).
10. The Trial Court allowed the parties to present evidence as to the issue of consent at the July 30, 2015, October 1, 2015 and March 2, 2016 hearings. (N.T. 10/01/15 at 23-24).
11. On April 1, 2015, the Borough’s Counsel took the deposition of John Quillen. *See generally* (N.T. 04/01/15); D-16.
12. At the time of the March 2, 2016 hearing, Mr. Quillen had pled guilty to Terroristic Threats against Samantha Kenney and was incarcerated in the Delaware County Prison and was to testify before the Trial Court in this matter. (N.T. 03/02/16 at 4-6).
13. However, Mr. Quillen’s 5th Amendment right against self-incrimination became an issue. (N.T. 03/02/16 at 4).
14. Mr. Quillen, through his attorney, Steven Dever, informed the Trial Court that Mr. Quillen would invoke his 5th Amendment rights. *Id.* at 43-44, 47-48.

15. Based upon review of the April 1, 2015 deposition, the Trial Court finds that Mr. Quillen has absolutely no credibility.
16. Mr. Quillen testified that for the past six years, he has lived at 9 West Tenth Street, Apartment 9A, Marcus Hook, Delaware County, Pennsylvania. (N.T. 04/01/15 at 3-4, 14-15).
17. Mr. Quillen testified that he has known Mr. Schilero for about two years and that he did not speak to him in February 2013. *Id.* at 4.
18. Mr. Quillen testified that he has known George Windsor for a couple of years and in the past, has spoken to him in person. *Id.* at 4-5.
19. Mr. Quillen denied that he spoke to Mr. Windsor in February 2013. *Id.* at 4.
20. Mr. Quillen testified that he wrote letters to Mr. Windsor. *Id.*
21. Mr. Quillen testified that he has known Ms. Silva as a friend for about three years. *Id.* at 5.
22. Mr. Quillen testified that he has known Samantha Kenney as a friend for about three years. *Id.* at 5-6.
23. Mr. Quillen identified a two page document marked as C-Quillen 1. *Id.* at 6-7.
- a. Mr. Quillen testified that he wrote this two page document on February 21, 2013 to Mr. Windsor and gave it to him. *See* C-Quillen 1; (N.T. 04/01/15 at 7-8).
 - b. Mr. Quillen testified that no one asked him to write this letter to Mr. Windsor and that he wrote this letter without any help from another person. (N.T. 04/01/15 at 7).
 - c. Mr. Quillen testified that he wrote this letter because he felt sorry for the dogs and the smell that came out of the building. *Id.*
24. 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 pce 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. See C-Quillen 1.

25. Mr. Quillen testified that he went to fix the broken pipe on February 20, 2013.

(N.T. 04/01/15 at 8).

26. Mr. Quillen testified that he wrote the February 21, 2013 letter as “John Quillen.” *Id.* at 9.

27. Mr. Quillen identified the document marked as C-Quillen 2 as a letter he wrote on or about February 21, 2013 to Mr. Windsor. *Id.* at 10; See C-Quillen 2.

28. Mr. Quillen testified that he wrote the document as “John Quillen” and no one helped him write the letter. (N.T. 04/01/15 at 10).

29. The document, C-Quillen 2, states 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 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.

30. Mr. Quillen identified the document marked as C-Quillen 3 as a two page document entitled as “Affidavit of John Wood” dated March 21, 2013. (N.T. 04/01/15 at 12); See C-Quillen 3.

- 31.Mr. Quillen testified that Ms. Silva typed the document. (N.T. 04/01/15 at 12).
- 32.Mr. Quillen testified that he signed the Affidavit as “John Wood” in front of
Silva. *See* C-Quillen 3; (N.T. 04/01/15 at 12-13).
- 33.Mr. Quillen testified that Ms. Silva and Ms. Kenney think that his name is John
Wood. *Id.*
- 34.Mr. Quillen testified that John Wood is his stepfather’s name, not his name.
(N.T. 04/01/15 at 13-14).
- 35.Mr. Quillen identified the document marked as C-Quillen 4 as a two page
document entitled as “Affidavit of John Wood” dated March 22, 2013. *Id.* at 21;
See C-Quillen 4.
- 36.Mr. Quillen testified that Ms. Silva wrote and typed this Affidavit. *Id.*
- 37.Mr. Quillen testified that he was present during the day and evening of
February 22, 2013 and that he heard Ms. Silva stating that she did not own the
building or the dogs in the building. *Id.* at 20.
- 38.Mr. Quillen further testified that he heard Ms. Silva state that she would try
and open the side door to 15C. *Id.*
- 39.Mr. Quillen, then, testified that Ms. Silva’s statements were not accurate. *Id.*
- 40.Mr. Quillen testified that he signed the Affidavit as “John Wood.” (N.T.
04/01/15 at 22); *See* C-Quillen 4.
- 41.Mr. Quillen testified that he signed the document as John Wood even though he
is John Quillen. (N.T. 04/01/15 at 22).
- 42.Mr. Quillen testified that he did not read the Affidavit before he signed it. *Id.* at
23.
- 43.Mr. Quillen testified that he signed additional Affidavits as John Wood that Ms.
Silva prepared. *Id.* at 26, 29-31.

44. Mr. Quillen testified that he denied the statements he made in these Affidavits he signed as John Wood. *Id.*
45. On July 30, 2015, Officer Gregory Jordan of the Pennsylvania SPCA testified on behalf of the Borough. *Id.* at 24-25.
46. Officer Jordan testified that since 2009, he has been an SPCA Police Officer badged in Delaware County. *Id.* at 25.
47. Officer Jordan testified that on February 22, 2013 at approximately 8:30AM, he arrived at 13-15 West 10th Street in his capacity as an SPCA Officer. *Id.* at 25, 85.
48. Officer Jordan testified that he spoke to Mr. Quillen on February 22, 2013 at 12:15pm. *Id.* at 26, 33, 64.
49. Officer Jordan testified that he met Mr. Quillen for the first time on February 22nd. *Id.* at 33.
50. Officer Jordan testified that Mr. Quillen told him that on February 21, 2013 at 8:00PM, he had been inside 13-15 West 10th Street and that there were thirty dogs within the building, which was unsanitary. *Id.* at 34, 83-84.
51. Officer Jordan testified that Mr. Quillen told him that there were feces on the floor, on the dogs, in the dog crates, and in the rear of the property. *Id.* at 34.
52. Officer Jordan testified that Mr. Quillen told him that a person named Sam was inside the property. *Id.* at 84.
53. Officer Jordan testified that after he spoke to Mr. Quillen on the telephone, he received C-Quillen 1 via fax. *Id.* at 67.
54. Officer Jordan testified that before he spoke to Mr. Quillen, he spoke to Mr. Windsor about Mr. Quillen's credibility. *Id.* at 68.
55. Officer Jordan testified that Mr. Windsor put him in touch with Mr. Quillen. *Id.*

56. Officer Jordan testified that he found Mr. Quillen credible. *Id.*
57. Officer Jordan testified that he recently found out that currently, Mr. Quillen is in prison after pleading guilty to the crime of terroristic threats. *Id.* at 68, 71.
58. Officer Jordan testified 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.
59. Officer Jordan testified that when he arrived at the scene, Mr. Schilero, Mr. Windsor and a Borough Police Officer in plain clothes were present. *Id.* at 35, 87.
60. Officer Jordan testified that he saw Mr. Schilero on the phone speaking to Ms. Silva at this time, but did not hear what he was saying to her. *Id.* at 82.
61. Officer Jordan testified that he was in uniform and that Darlene Sousa from the Pennsylvania SPCA was present as well. *Id.* at 36.
62. Officer Jordan testified that Ms. Silva arrived at the scene at 3:40PM. *Id.*
63. Officer Jordan testified that he did not enter 13-15 West Tenth Street, pursuant to the Administrative Warrant, with Mr. Schilero and Mr. Windsor. *Id.* at 37-38, 88.
64. Officer Jordan testified that he did not know if Ms. Silva led or followed Mr. Schilero and Mr. Windsor inside the property. *Id.* at 91.
65. Officer Jordan denied that he followed Ms. Silva inside the property. *Id.* at 38, 88.
66. Officer Jordan testified that he was aware of the administrative warrant being served. *Id.* at 88-89.
67. Officer Jordan testified that on the afternoon of February 22, 2013, he was advised that an administrative warrant in this matter would be sought and issued. *Id.* at 52.

68. Officer Jordan testified that even if an administrative warrant was not sought, he would have come to 13-15 West Tenth Street because Mr. Quillen made a complaint the morning of February 22nd. *Id.*
69. Officer Jordan testified that he did not hear the conversations between Ms. Silva and Mr. Schilero when he was at the scene. *Id.* at 53-54.
70. Officer Jordan testified that he saw the Borough Police Officer at the scene, but he did not see who Ms. Silva was speaking with at the scene. *Id.* at 54.
71. Officer Jordan admitted that when Ms. Silva first saw him at the scene, he was five feet away from the little stairwell at 15C. *Id.* at 54.
72. Officer Jordan testified that he was on the sidewalk at the alleyway of 15 West Tenth Street and could not recall who Ms. Silva spoke with at that time. *Id.*
73. Officer Jordan denied hearing the Borough Officer threaten to shoot Ms. Silva's dog. *Id.*
74. Officer Jordan testified that there are two separate twin type buildings, 13 West Tenth Street and 15 West Tenth Street. *Id.* at 38.
75. Officer Jordan testified that there are three units in each building, 13A, 13B, 13C, 15A, 15B, and 15C. *Id.*; *See* DS-4.
76. Officer Jordan testified that prior to entering 15 West Tenth Street, he identified himself as an SPCA Police Officer to Ms. Silva and asked her if there were any dogs inside. (N.T. 07/30/15 at 41-42, 92).
77. Officer Jordan testified that Ms. Silva was standing on the landing of 15C when he asked her if he could check the condition of the dogs. *Id.* at 92.
78. Officer Jordan testified that Ms. Silva exited the door of the property. *Id.* at 92.
79. Officer Jordan testified that Ms. Silva told him that there were dogs inside. *Id.* at 42.

80. Officer Jordan testified that he asked Ms. Silva if the dogs inside belonged to her. *Id.* at 42.

81. Officer Jordan testified that Ms. Silva told him that she owned some of the dogs in the property. *Id.* at 42.

82. Officer Jordan testified that he asked Ms. Silva if he could go inside the building to check the dogs' condition and that Ms. Silva said "that is fine." *Id.* at 42, 53, 55, 88.

a. Officer Jordan testified that Ms. Silva told him he could come in the property. *Id.* at 53-55.

83. Officer Jordan testified that at 4PM, he entered through the door labeled 15C in 15 West Tenth Street with Ms. Silva and Ms. Sosa. *Id.* at 40, 43, 88.

84. Officer Jordan testified that Ms. Silva first entered 15C and that he and Ms. Sosa followed. *Id.* at 43, 55.

85. Officer Jordan testified that he asked Ms. Silva where the dogs were and Ms. Silva directed him as to the dogs' location. *Id.* at 55.

86. Officer Jordan admitted that he followed Ms. Silva the entire time he was inside the properties. *Id.* at 55.

87. Officer Jordan testified that Ms. Silva informed him and Ms. Sousa that there was an aggressive dog inside the front office of 15A. *Id.* at 43.

88. Officer Jordan testified that they did not enter 15A. *Id.* at 43.

89. Officer Jordan testified that he did not enter 13A. *Id.* at 56.

90. Officer Jordan did not recall Ms. Silva finding two dogs wandering and putting them upstairs. *Id.* at 55.

91. Officer Jordan testified that he heard a dog barking from the middle room. *Id.* at 43.

92. Officer Jordan testified that he looked inside the room, saw a dog loose and feces smeared across the bottom of the floor along the walls, and smelled an overpowering odor of ammonia and feces. *Id.* at 45.
93. Officer Jordan testified that in the rear of 15 West Tenth Street, there was a dog barking behind another door and in the middle of 13 West Tenth Street (13C), there was a strong smell of ammonia, feces on the floor, and a dog inside a broken crate. *Id.* at 45, 55-56.
94. Officer Jordan testified that at the top of the second floor of 15 West Tenth Street, there were four dogs in crates. *Id.* at 46.
95. Officer Jordan testified that on the second floor, there was a smell of ammonia and feces was on the floor. *Id.*
96. Officer Jordan testified that he went into 13 and 15 West Tenth Street and that the buildings are connected. *Id.*
97. Officer Jordan testified that he went only into the first floor of 13 West Tenth Street and heard dogs barking behind the door that led to the second floor of 13 West Tenth Street. *Id.* at 47.
98. Officer Jordan testified that he followed Ms. Silva upstairs into 15B, but did not physically go into the second floor. *Id.* at 56-57.
99. Officer Jordan testified that he was inside the two buildings for a total of five to ten minutes. *Id.* at 49.
100. Officer Jordan did not go into three of the units in 13-15 West Tenth Street. *Id.* at 57.
101. Officer Jordan testified that as a result of Mr. Quillen's complaint, he asked Ms. Silva to enter 13-15 West Tenth Street. *Id.* at 49.
102. Officer Jordan testified that he did not take any photographs or collect

any evidence while inside 13-15 West Tenth Street. *Id.* at 49.

103. Officer Jordan testified that he left the properties from the door he entered, 15C and that Ms. Silva and Ms. Sousa left with him. *Id.* at 50.

104. Officer Jordan testified that when he left the building, he saw the same people outside when he entered the building at 15 West Tenth Street. *Id.*

105. Officer Jordan testified that then, he 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.

106. Officer Jordan testified that he spoke to Elizabeth Anderson, Esquire, Counsel for the Pennsylvania SPCA, and George Bangle, Director of Law Enforcement for Pennsylvania SPCA, while he prepared the search warrant. (N.T. 07/30/15 at 79).

107. Officer Jordan admitted that Attorney Anderson failed to disclose to him that she was an attorney in a 2010 civil matter involving Ms. Silva. *Id.* at 80.

108. Officer Jordan testified that he did not notice Attorney Anderson's name when he read Ms. Silva's files in her office. *Id.*

109. Officer Jordan admitted to testifying at a prior hearing that based on the administrative warrant, the SPCA was concerned about the multiple animals inside the properties. *Id.* at 74.

110. Officer Jordan testified that he advised the Borough Officer about getting a search warrant and wanted the conditions in the buildings to remain the same. *Id.* at 57-58.

111. Officer Jordan did not recall testifying at a prior hearing that he did not direct the police officers to lock and secure the buildings. *Id.* at 58.

112. Officer Jordan testified that the search warrant was signed at 8:10PM.

Id. at 77; *See* CS-1.

113. Officer Jordan testified that he returned to 13-15 West Tenth Street with the signed search warrant at 8:50PM. (N.T. 07/30/15 at 75); *See* CS-1.

a. Officer Jordan testified that Ms. Silva's former attorney, Joseph Lesniak, Esquire, gave Mr. Bangle a key to 15A. *Id.* at 80-81.

b. Officer Jordan testified that Mr. Bangle accompanied him when he searched the properties, pursuant to the search warrant. *Id.* at 81.

c. Officer Jordan testified that the dog inside 15A was removed and placed inside an SPCA transport van. *Id.* at 76.

d. Officer Jordan testified that he searched 15A and saw only urine stains on the floor. *Id.* at 75-76.

114. Officer Jordan identified a picture of Ms. Silva's dog. *Id.* at 78.

115. Darlene Sosa, a Pennsylvania SPCA Police Officer, testified that she was appointed to perform her duties in Philadelphia. (N.T. 10/01/15 at 18).

116. Officer Sosa testified that on February 22, 2013 at 3:30PM, she arrived with her partner, Officer Jordan, to assist Mr. Schilero regarding the Administrative Warrant at the properties. *Id.* at 18.

117. Officer Sosa testified that she and Officer Jordan stood on the sidewalk in front of the properties. *Id.* at 18, 45-46.

118. Officer Sosa testified that Mr. Schilero, Mr. Windsor, and the Borough Police Officer went down the side breezeway when Ms. Silva arrived about 10 minutes later. *Id.* at 18-19.

119. Officer Sosa denied that she heard Mr. Schilero on the phone with Ms. Silva threatening to break down the door, but heard Mr. Schilero state that Ms. Silva was on her way. *Id.* at 31.

120. Officer Sosa testified that Mr. Schilero, Mr. Windsor, the Borough Police Officer and Ms. Silva entered the properties through the door of 15C West Tenth Street and exited soon thereafter. *Id.* at 19-21, 29, 33.
121. Officer Sosa testified that Ms. Silva led Mr. Schilero, Mr. Windsor and the Borough Police Officer inside the properties. *Id.* at 43.
122. Officer Sosa testified that she did not see Mr. Schilero hand Ms. Silva a warrant. *Id.* at 35.
123. Officer Sosa testified that she saw Ms. Silva standing on the stoop of 15C after Mr. Schilero, Mr. Windsor and the Borough Officer exited the properties. *Id.* at 33.
124. Officer Sosa denied that she entered the properties with Mr. Schilero, Mr. Windsor and the Borough Officer. *Id.* at 33-34.
125. Officer Sosa testified that she knew that there were two properties, 13-15 West Tenth Street, but did not know that there were multiple units inside the properties. *Id.* at 44.
126. Officer Sosa testified that she did not look at or take any photographs of the electric meters outside of the buildings for purposes of applying for the search warrant. *Id.* at 47.
127. Officer Sosa testified that she did not research whether Ms. Silva owned the properties. *Id.* at 44-45.
128. Officer Sosa could not recall stating to Ms. Silva that she did not have a right to enter the properties through the Administrative Warrant because it was not their warrant. *Id.* at 35, 44.
129. When confronted with her testimony from the preliminary hearing, Officer Sosa could not recall answering yes when asked whether she entered the

- properties after Mr. Schilero and the people from the Borough. *Id.* at 36-37.
130. Officer Sosa testified that after she and Officer Jordan identified themselves, Ms. Silva told them that they could come inside the properties. *Id.* at 21-22, 29, 34, 42.
131. Officer Sosa testified that she was in uniform and carried a firearm. *Id.* at 22.
132. Officer Sosa testified that at approximately 4PM, she and Officer Jordan followed Ms. Silva inside the properties through the door of 15C West Tenth Street. *Id.* at 23, 29, 31, 45, 53-54.
133. Officer Sosa testified that it was bright inside 15C when she entered and did not need a flashlight. *Id.* at 54-56, 61.
134. Officer Sosa testified that she could not recall the floor's color inside 13C or inside 15C. *Id.* at 56-57, 60-62.
135. Officer Sosa testified that Ms. Silva informed them that the dog inside 15A, her officer, was aggressive, and therefore, they did not go inside. *Id.* at 23, 31-32.
136. Officer Sosa testified that Ms. Silva put two dogs inside another room on the first floor which contained feces and smelled of urine. *Id.* at 23, 42-43, 57.
137. Officer Sosa testified that Ms. Silva explained to them that the dogs belonged to the other tenants. *Id.* at 24, 26, 42.
138. Officer Sosa testified that the first floor of 15 West Tenth Street smelled of urine and contained feces. *Id.* at 25.
139. 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.
140. Officer Sosa testified that she saw a dog inside a broken crate on the first

floor of 13 West Tenth Street and heard barking coming from 13 West Tenth Street. *Id.* at 25, 27, 42.

141. Officer Sosa testified that they exited the properties from the same door that they entered. *Id.* at 27.

142. Officer Sosa testified that they were inside the properties for about 10 minutes. *Id.* at 28.

143. Officer Sosa denied having any knowledge that Ms. Silva had a pending civil lawsuit against the Pennsylvania SPCA and Mr. Bengal. *Id.* at 38-39, 66.

144. Officer Sosa testified that after she and Officer Jordan exited the properties, she could not recall who gave an instruction that no one could enter the properties. *Id.* at 53.

145. Officer Sosa testified that after she and Officer Jordan exited the properties, Ms. Silva was not allowed to re-enter without a police escort. *Id.* at 48.

146. Officer Sosa testified that she went to the Borough building to prepare the warrant application with Officer Jordan. *Id.* at 62-63.

147. Officer Sosa denied that Mr. Schilero was present when they prepared the warrant application. *Id.* at 63.

148. Ms. Silva testified that she has been an attorney for thirty years, but has never practiced criminal law. *Id.* at 86; (N.T. 03/02/16 at 6-7, 18-20).

149. Ms. Silva testified that she did Civil Rights litigation, but did not do work involving Fourth Amendment issues. (N.T. 03/02/16 at 18-20).

150. Ms. Silva testified that while at the Delaware County Courthouse, Mr. Schilero called her on February 22, 2013. (N.T. 10/01/16 at 73).

151. Ms. Silva testified that as a result of her phone call with Mr. Schilero, she

went to her office at 15A West Tenth Street. *Id.* at 74.

152. Ms. Silva testified that the only unit she occupied was 15A West Tenth Street and stored files in 15B West Tenth Street. *Id.* at 88; (N.T. 03/02/16 at 10-11, 40).

153. Ms. Silva testified that she has a key to 15A and that the door to the rear of her office was unlocked, and therefore, Mr. Schilero was able to walk into 15C. (N.T. 03/02/16 at 15).

154. Ms. Silva testified that when she opened the door to 15C West Tenth Street, 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).

155. Ms. Silva testified that she told everyone standing on the stoop outside of 15C not to enter her office in 15A because she had an aggressive dog inside her office in 15A. (N.T. 10/01/15 at 74; 03/02/16 at 13, 40, 41).

156. Ms. Silva testified that the Borough Police Officer threatened to shoot the dog. (N.T. 10/01/16 at 74; 03/02/16 at 13).

157. Ms. Silva testified that the Borough Police Officer made gestures toward his belt and tapped his gun. (N.T. 03/02/16 at 33, 41).

158. Ms. Silva testified that no one handed her a warrant and that Mr. Schilero, Mr. Windsor, and the Borough Police Officer brushed by her and entered 15C. (N.T. 10/01/15 at 74, 76; 03/02/16 at 41).

159. Ms. Silva testified that she thought the warrant Mr. Schilero referenced was a criminal warrant. (N.T. 10/01/15 at 80; 03/02/16 at 34, 40).

160. Ms. Silva testified that she never gave her consent to Mr. Schilero, Mr. Windsor, or the Pennsylvania SPCA officers to enter the properties. (N.T. 10/01/15 at 79-80, 82).

161. Ms. Silva testified that no Pennsylvania SPCA officer requested to enter the properties. *Id.* at 82.
162. Ms. Silva testified that the Pennsylvania SPCA officers entered the properties. *Id.* at 82.
163. Ms. Silva testified that at that time, no one entered 15A. (N.T. 03/02/16 at 41-42).
164. Ms. Silva testified that she followed Mr. Schilero, Mr. Windsor, and the Borough Police Officer inside 15C and that the two Pennsylvania SPCA officers followed her inside. (N.T. 10/01/15 at 75; 03/02/16 at 15, 20, 35-36).
165. Ms. Silva testified that Mr. Schilero and Mr. Windsor went up the stairs to 15B. *Id.* at 74; (N.T. 03/02/16 at 20, 36).
166. Ms. Silva testified that when she shut the gray door between the two properties, the Pennsylvania SPCA officers kept asking her questions. (N.T. 10/01/15 at 75).
167. Ms. Silva provided floor plans and photographs of 13-15 West Tenth Street. *See* D-1-4, 13-15.
168. Ms. Silva testified that she walked in and out of 13C with the SPCA officers following her. (N.T. 03/02/16 at 15-16).
169. Ms. Silva testified that she, then, took two dogs upstairs into 15B and that the Pennsylvania SPCA officers followed her. (N.T. 10/01/15 at 76; 03/02/16 at 16).
170. Ms. Silva testified that she never entered 13A because the door was locked. (N.T. 03/02/16 at 17).
171. Ms. Silva testified that she never entered 13C because the door was closed and presumably locked. (N.T. 03/02/16 at 17).

172. Ms. Silva testified that she tried not to answer their questions because she has a pending case against the Pennsylvania SPCA. *Id.* at 75.
173. Ms. Silva testified that she thought one of the SPCA officers had a criminal warrant. *Id.* at 76.
174. Ms. Silva testified that she has a pending case against the Pennsylvania SPCA and its employee, Mr. Bengal. (N.T. 03/02/16 at 21-22).
175. Ms. Silva testified that she had files regarding the Pennsylvania SPCA action in her office in 15A and in storage upstairs in 15B. (N.T. 10/01/15 at 76; 03/02/16 at 23).
176. Ms. Silva testified that a week later, she determined that the Pennsylvania SPCA seized and inventoried the files related to her action in 15A against the Pennsylvania SPCA and her computer from 15A which contained her clients' files. (N.T. 03/02/16 at 23-24, 29-30).
177. Ms. Silva testified that she also had files regarding actions filed against Mr. Schilero and Mr. Windsor in her office in 15A and in storage upstairs in 15B. (N.T. 10/01/15 at 76).
178. Ms. Silva testified that when she went upstairs to put the two dogs away, Mr. Schilero, Mr. Windsor, and the Borough Police Officer went outside. *Id.* at 77.
179. Ms. Silva testified that the Pennsylvania SPCA officers followed her around 15B and 15C and to the fire door of 13C. *Id.* at 77.
180. Ms. Silva testified that the fire door was ajar and that 13C was unoccupied. (N.T. 03/02/16 at 14).
181. Ms. Silva testified that there was no electricity in 13C or 15C at this time. (N.T. 10/01/16 at 77).

182. Ms. Silva testified that the flooring in 15B and 15C is dark mahogany laminate. *Id.* at 77.
183. Ms. Silva testified that she walked out of 15 West Tenth Street after Mr. Schiliro and Mr. Windsor. *Id.* at 77.
184. Ms. Silva testified that after she walked out, the Pennsylvania SPCA officers walked out of 15 West Tenth Street. *Id.* at 77.
185. Ms. Silva testified that Mr. Schiliro handed her a piece of paper later identified as the Administrative Warrant, after exiting the properties. (N.T. 03/02/16 at 20-21).
186. Ms. Silva testified that she was not allowed to re-enter the properties. (N.T. 10/01/16 at 77).
187. Ms. Silva testified that when she tried to re-enter the properties, a Borough Police Officer did not let her enter and touched her arm. *Id.* at 78.
188. Ms. Silva testified that the police officer escorted her back inside the properties to get her purse and glasses. (N.T. 10/01/16 at 78; 03/02/16 at 21).
189. Ms. Silva testified that she did not occupy 13C or 15C. (N.T. 10/01/15 at 79; 03/02/16 at 40).
190. Ms. Silva testified that she could not recall the last time she had been inside 13 West Tenth Street prior to February 2013. (N.T. 10/01/16 at 80).
191. Ms. Silva testified that she stored files in the basement of 15 West Third Street as well. (N.T. 03/02/16 at 10).
192. Ms. Silva testified that she had permission of Samantha Kenney to store files in 15B. (N.T. 03/02/16 at 10).
193. Ms. Silva testified that the units in 13 West Tenth Street are occupied by

other tenants. (N.T. 10/01/16 at 80-81; 03/02/16 at 10-11).

194. Ms. Silva testified that Kira Management owns 13 and 15 West Tenth Street and that the units are leased to various tenants. (N.T. 10/01/16 at 82-83, 90).

195. Ms. Silva testified that Kira Management has always owned 13-15 West Tenth Street. (N.T. 03/02/16 at 8).

196. Ms. Silva testified that she was an officer in Kira Management, but has not been an officer for a number of years. (N.T. 10/01/16 at 83; 03/02/16 at 8).

197. Ms. Silva testified that her stock in Kira Management was bought out in 2005. (N.T. 03/02/16 at 7).

198. Ms. Silva testified that the Government website does not reflect that she is no longer an officer in Kira Management. *Id.* at 83-84.

199. Ms. Silva testified that since 2011, she has leased her office in 15A from Kira Management. (N.T. 03/02/16 at 9).

200. Ms. Silva testified that in 2010, she leased 15B from Kira Management. (N.T. 03/02/16 at 9).

201. Ms. Silva testified that she pays rent to Ms. Kenney who works for Kira Management. (N.T. 03/02/16 at 9).

202. Ms. Silva testified that she was only at her office in 15A on a part time basis. (N.T. 03/02/16 at 11).

203. The Trial Court finds Ms. Silva to be credible.

204. The Trial Court finds Officers Jordan and Sosa not to be credible.

205. "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).

206. A defendant must establish a legitimate expectation of privacy in the invaded place as a predicate to standing. *Bostick, supra* at 551.

207. 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.

208. “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.

209. The totality of the circumstances must be considered when determining whether a person’s expectation of privacy is legitimate or reasonable. *Bostick, supra* at 552.

210. 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. *Bostick, supra* at 552.

211. “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.

212. 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. *Bostick, supra* at 553.

213. The 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.

214. “The ‘fruit of the poisonous tree’ doctrine excludes evidence obtained from or as a consequence of lawless official acts, not evidence obtained from an ‘independent source.’” *Com. v. Ariondo*, 580 A.2d 341, 347 (Pa. Super. 1990).

215. In *Wong Sun v. U.S.*, 371 U.S. 471 (1963), the United States Supreme Court stated as follows: “We need not hold that all evidence is ‘fruit of the poisonous tree’ simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is ‘whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” *Com. v. Brown*, 700 A.2d 1310, 1218 (Pa. Super. 1997).

216. The burden rests on the Commonwealth to demonstrate that the secondary evidence was gathered by means sufficiently distinguishable from any illegality so as to be “purged of the primary taint” rather than deriving from exploitation of the illegality. *Brown, supra* at 1319.

217. The Trial Court finds that the SPCA Warrant as to 15A and 15B West Tenth Street was tainted by the illegal Administrative Warrant.

218. 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).
219. 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).
220. The burden is on the Commonwealth to prove by clear and convincing evidence that a valid consent was given by the defendant. *Blasioli, supra*.
221. 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*.
222. The subject of a search must be made aware of his rights against a warrantless search for a waiver to be intelligent. *Gibson, supra*.
223. 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).
224. 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.
225. The consent must be given free from coercion, duress, or deception. *Blasioli, supra*.
226. 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*.
227. No one factor is determinative in concluding whether consent is

voluntary. *Markman, supra* at 341.

228. The Trial Court finds that the Commonwealth failed to prove by clear and convincing evidence that Ms. Silva provided a 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.

229. The Trial Court finds that any and all evidence seized from only 15A and B West Tenth Street is SUPPRESSED.

230. The Trial Court notes that the SPCA Warrant seeks only for the search of 13 West Tenth Street.

BY THE COURT:


KATHRYNANN W. DURHAM, J.