

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Richard Frame,	:	
	:	
Appellant	:	
	:	
v.	:	No. 2539 C.D. 2009
	:	
Menellen Township, Pennsylvania	:	Submitted: October 29, 2010
Appeals and Reviews of Fayette	:	
County, Pennsylvania	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: March 16, 2011**

Richard Frame appeals, pro se, from the November 18, 2009, Order of the Court of Common Pleas of Fayette County (trial court), which, after holding a *de novo* appeal hearing, found Mr. Frame guilty of four counts of violating certain sections of Menellen<sup>1</sup> Township's (Township) Ordinances 179 and 190<sup>2</sup> by having an

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<sup>1</sup> Although referred to in the caption as Menellen Township, the municipality involved here is actually Menallen Township. Moreover, although the Township is listed as the appellee, it is the Commonwealth of Pennsylvania (Commonwealth) that prosecuted this matter, through the Fayette County District Attorney's office. Accordingly, we shall refer to the Commonwealth as the appellee in this matter; however, the Commonwealth was precluded from filing a brief by Order of this Court dated October 15, 2010.

<sup>2</sup> Ordinances 179 and 190 represent the Township's codification of the Building Officials and Code Administration Code.

unsafe structure, failing to cut his weeds, and accumulating rubbish on the property he owns at 1198 New Salem Road, Newboro, Pennsylvania (Property).<sup>3</sup> On appeal, Mr. Frame argues that the trial court's Order should be reversed because John Newcomer, the Township's Code Enforcement Officer (Officer Newcomer), did not take his oath of office until after issuing the citations; (2) the citations lacked particularity, thereby violating Mr. Frame's right to know the nature of the accusations against him; and (3) the trial court failed to rule on Mr. Frame's pre-trial and post-trial motions, manifesting a bias in favor of the Commonwealth of Pennsylvania (Commonwealth). For the following reasons, we affirm in part and reverse in part the trial court's Order.

The Commonwealth issued multiple citations to Mr. Frame, citing him with violating various provisions of Township Ordinances 179 and 190. Following a summary trial, a Magisterial District Judge (MDJ) found Mr. Frame guilty of, in relevant part, one count of unsafe structure (Section 108.1 of Ordinance 190), one count of failure to cut grass and/or weeds (Section 302.4 of Ordinance 190), and two counts of accumulating rubbish and garbage (Section 305.1 of Ordinance 179). Mr. Frame appealed to the trial court, which held a *de novo* hearing.

Officer Newcomer testified, in pertinent part, as follows. On March 27, 2009, Officer Newcomer issued citation P6916659-1 charging Mr. Frame with violating Section 108.1 of Ordinance 190 by having an unsafe structure, having observed a

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<sup>3</sup> The trial court dismissed seven other citations as being substantially similar to the citations of which the trial court found Mr. Frame guilty. No appeal of the dismissal of these citations was filed with this Court.

house trailer frame with a rotted-out floor in the yard of the Property. (Hr’g Tr. at 7-9, November 18, 2009, R.R. at 10-12.) Officer Newcomer produced photographs he took of the Property between 2008 and November 17, 2009, the day before the hearing, and he testified that a March 18, 2009, photograph accurately depicted the Property as it appeared when he issued the unsafe structure citation on March 27, 2009. (Hr’g Tr. at 11-12, R.R. at 14-15.) The photographs were offered and accepted into evidence over Mr. Frame’s objection. (Hr’g Tr. at 13, R.R. at 16.) Officer Newcomer issued citation P6916687-1 on June 1, 2009, and citation P6916703-3 on June 11, 2009, citing Mr. Frame for accumulating rubbish on the Property, having observed whiskey bottles, beer cans, and roofing paper in the yard on these dates.<sup>4</sup> (Hr’g Tr. at 13-14, 17, R.R. at 16-17, 20.) Also on June 11, 2009, Officer Newcomer issued citation P6916704-4 charging Mr. Frame with failure to cut grass and weeds on the Property because the weeds were uncut and chest high and that, under Ordinance 190, the height of grass or weeds cannot exceed ten inches. (Hr’g Tr. at 18, 21, R.R. at 21, 24.) Mr. Frame presented argument but did not offer any evidence. Based on the Commonwealth’s evidence, the trial court found Mr. Frame guilty of the aforementioned citations and sentenced him to pay the fines and costs imposed by the MDJ and the costs of the summary appeal.<sup>5</sup> (Hr’g Tr. at 26-27, R.R. at 29-30; Trial Ct. Order, November 18, 2009.)

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<sup>4</sup> Officer Newcomer also testified that he observed a room in the home on the Property that was littered with whiskey bottles and beer cans, and both citations P6916687-1 and P6916703-3 cited Mr. Frame for having a room littered with whiskey bottles and beer cans. However, we do not believe that an allegation simply of a “room littered with whiskey bottles and beer cans,” (Hr’g Tr. at 13-14, R.R. at 16-17; Citation No. P6916687-1, June 1, 2009; Citation No. P6916703-3, June 11, 2009), without more, would support a conviction for the violation of Ordinance 179.

<sup>5</sup> Officer Newcomer has issued multiple citations against Mr. Frame; however, all of the citations are not the subject of this appeal. Throughout the proceedings of Mr. Frame’s other  
(Continued...)

Mr. Frame filed a notice of appeal, and the trial court directed him to file a Concise Statement of Matters Complained of on Appeal (Statement). Mr. Frame did so, stating the following relevant issues:

1) Does the de facto office doctrine trump objections made through Class Township code, Article V, Section 501 as well as the Pennsylvania Constitution Article VI, Section 3, by a person aggrieved by the acts of a township office unempowered by an oath of office?

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3) Were the situations infirm as a matter of law for failing to accord the defendant the nature and cause of the accusation, per Com[monwealth] v. Borriello[, 696 A.2d 1215 (Pa. Cmwlth. 1997),] U.S. Const. Art. 6 and Pa. Const. Article 1, section9[ ]?

4) Did the trial court improperly decline to adjudicate the pretrial and post trial motions in light of [Commonwealth v. Breslin, 732 A.2d 629 (Pa. Super. 1999),] which contained various challenges uneven by a Court with prevention?

(Statement, filed January 4, 2010 (emphasis deleted).)

The trial court addressed each issue in an opinion supporting its November 18, 2009, Order. The trial court concluded that Mr. Frame did not adequately identify, in a concise manner, the first issue sought to be appealed and, therefore, that issue was waived pursuant to Commonwealth v. Lord, 553 Pa. 415, 420, 719 A.2d 306, 309 (1998) (holding that any issue not raised in a Concise Statement is waived), and Lineberger v. Wyeth, 894 A.2d 141, 148 (Pa. Super. 2006) (holding that a trial court is impeded in its preparation of pertinent legal analysis where an appellant fails to adequately identify, in a concise manner, the issues sought to be pursued on appeal

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appeals, it became apparent that Officer Newcomer did not take his oath of office until August 11, 2009, after he issued the citations in this case. See Frame v. Menellen Township, No. 1921 C.D. 2009, slip op. at 3 (Pa. Cmwlth. August 5, 2010) (Frame I).

and that a vague or unclear Concise Statement is the equivalent of no Concise Statement at all). (Trial Ct. Op. at 3-4.) Regarding the third issue, the trial court held that Borriello was inapplicable because, unlike the defendants in Borriello, Mr. Frame received citations for each of the charges against him. (Trial Ct. Op. at 4-5.) Lastly, on its alleged failure to address Mr. Frame's motions, the trial court held that Breslin was irrelevant here because, unlike the defendant in that case, Mr. Frame did not raise any suppression issues in either his pre or post-trial motions. (Trial Ct. Op. at 5.) Mr. Frame now raises, for the most part, the same issues before this Court.

Mr. Frame first asserts that the citations issued by Officer Newcomer were invalid because Officer Newcomer had not yet taken the oath of office when he issued the citations. Although the trial court concluded that this issue was not adequately stated, we conclude that it is sufficiently stated for appellate review and will address it. However, we considered and rejected this argument in a prior matter involving Mr. Frame and other citations issued by Officer Newcomer. Frame v. Menellen Township, No. 1921 C.D. 2009, (Pa. Cmwlth. August 5, 2010) (Frame I). In that opinion, we applied the well-settled "de facto doctrine," under which "the official acts of one who acts under the color of title to an office are given the same effect as those of a de jure official." Id., slip op. at 8 (quoting Ucheomumu v. County of Allegheny, 729 A.2d 132, 135 (Pa. Cmwlth. 1999) (citing State Dental Council and Examining Board v. Pollock, 457 Pa. 264, 268, 318 A.2d 910, 913 (1974))). For the reasons set forth in Frame I, we apply the de facto doctrine in this case and, again, reject Mr. Frame's attack on the validity of the citations Officer Newcomer issued prior to taking the oath of office.

Next, we address Mr. Frame’s contention that the citations lacked particularity and, therefore, are void for vagueness in accordance with Borriello, the fourth, fifth, and sixth amendments to the United States Constitution, and article I, section 9 of the Pennsylvania Constitution. Again, we disagree.

“[I]t is well established that the essential elements of a summary offense must be set forth in the citation so that the defendant has fair notice of the nature of the unlawful act for which he is charged.” Borriello, 696 A.2d at 1217. In Borriello, this Court reversed a trial court’s order that convicted the landowners of violating a municipality’s ordinance because only two of the twenty-six citations issued mentioned specific defects in the property and none cited to the sections of the ordinance for which they ultimately were convicted. Id. at 1216. In reversing, we stated that the “[f]ormal accusation and specified charge enables a defendant to properly defend and protect himself from further prosecution of the same offense, and enables the court to determine the sufficiency of the prosecution’s case to support a conviction.” Id. at 1217. Our Court also cited to former Rule 90 of the Pennsylvania Rules of Criminal Procedure,<sup>6</sup> which proscribed dismissal for defects in the citation unless the defendants suffer actual prejudice to their rights. Id. “Such prejudice will not be found where the content of the citation, taken as a whole, prevented surprise as to the nature of summary offenses of which [the] defendant was found guilty [of] at trial, . . . or the omission does not involve a basic element of the offense charged.” Id.

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<sup>6</sup> Rule 90 was replaced with Rule 109 of the Pennsylvania Rules of Criminal Procedure, which indicates, *inter alia*, that a case will not be dismissed due to a defect in the form or content of a citation unless the defendant raises the defect before the conclusion of the trial in a summary case and the defect is prejudicial to the defendant’s rights. Pa. R. Crim. P. 109 and *comment*.

Here, a review of the citations themselves reveals that they specifically state which sections of the Township Ordinances Mr. Frame was charged with violating by having an unsafe structure on the Property, failing to cut high grass and/or weeds, and accumulating rubbish and/or garbage on the Property. (Citation No. P6916659-1, March 27, 2009; Citation No. P6916687-1, June 1, 2009; Citation Nos. P6916703-3 and P6916704-4, June 11, 2009.) The March 27, 2009, citation indicated that he was violating the “Unsafe Structure” provision of Township Ordinance 190 with regard to his “House Trailer frame with floor.” (Citation No. P6916659-1, March 27, 2009.) The June 1, 2009, citation stated that the nature of Mr. Frame’s offense was “Accumulation of Rubbish” in violation Township Ordinance 179 by having, *inter alia*, “[B]eer cans also scattered in the yard.” (Citation No. P6916687-1, June 1, 2009.) The June 11, 2009, citations indicated that Mr. Frame violated Ordinance 179 and Ordinance 190, respectively, related to: (1) the “Accumulation of Rubbish” by having a “[Y]ard [l]ittered w[ith] Whiskey bottles and beer cans also [r]oofing [p]aper”; and (2) “Weeds” by having “Uncut [weeds] over waist high.” (Citation Nos. P6916703-3 and P6916704-4, June 11, 2009.) These citations provided Mr. Frame with sufficient information regarding the charges against him such that he could defend himself and enable a trial court to determine the sufficiency of the Commonwealth’s evidence to support a conviction. Further, there is no evidence that Mr. Frame was “surprise[d] as to the nature of [the] summary offenses of which [he] was found guilty [of] at trial . . . or [that] the omission[s] d[id] not involve a basic element of the offense charged.” Borriello, 696 A.2d at 1217. Accordingly, we conclude that the citations adequately informed Mr. Frame of the accusations against

him such that there was no violation of Mr. Frame's due process rights pursuant to Borriello.<sup>7</sup>

To the extent that Mr. Frame's arguments in his brief suggest that there was insufficient evidence to support the trial court's findings of guilt, we agree in part.<sup>8</sup> There is sufficient evidence in the record to support the trial court's findings regarding citation P6916659-1 (unsafe structure) and citation P6916704-4 (uncut grass/weeds). However, a review of the record reveals that the only evidence related to the accumulation of rubbish was Officer Newcomer's testimony.<sup>9</sup> Officer Newcomer merely testified, with regard to the June 1, 2009, citation, that he observed

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<sup>7</sup> To the extent that Mr. Frame asserts in his brief that his conduct related to the Property does not constitute a crime because it is not "a crime under Ti[t]le 18 or another statute[,] [s]ee 18 Pa. C.S. [§] 107(b)," (Mr. Frame's Br. at 12), we disagree. Section 106(c) of the Crimes Code, 18 Pa. C.S. § 106(c), defines summary offenses to include those offenses that are defined by the Crimes Code or any statute to be such an offense and which is punishable by a fine and up to ninety days in jail. Section 103 of the Crimes Code includes in the definition of "statute" the ordinances of a political subdivision. 18 Pa. C.S. § 103. Thus, Mr. Frame's violations of the Township's Ordinances are offenses under the Crimes Code.

<sup>8</sup> Relying on various cases, Mr. Frame contends in his brief, *inter alia*, that the Commonwealth relied upon an unconstitutional statutory presumption to "impose criminal liability for [his] actions" and that his behavior was "equally consistent with innocence as with culpability, and thus fails to satisfy the required corpus deficit." (Mr. Frame's Br. at 13.) With regard to his latter claim, his citation to Commonwealth v. Forman, 590 A.2d 1282 (Pa. Super. 1991) implies that he is arguing that a criminal conviction, even a summary offense, cannot be based solely on the confession of the accused where there is no independent evidence of the crime, i.e., the corpus delicti rule. Although we note that Mr. Frame did not testify before the trial court, we infer from these arguments that Mr. Frame is challenging the sufficiency of the Commonwealth's evidence against him in this matter.

<sup>9</sup> Although the photographs introduced by the Commonwealth showed the height of the weeds on the Property and the unsafe nature of the house trailer platform, none of the photographs depicted the rubbish Officer Newcomer described in his testimony.

that “through the yard were also whiskey bottles, beer cans, and -- as if some kids are going in there, having parties and the like. I don’t know what’s -- why it’s there, but that’s what we have,” (Hr’g Tr. at 14-15, R.R. at 17-18), and that the June 11, 2009, citation was “just repeating itself,” (Hr’g Tr. at 17, R.R. at 20.) We conclude that this testimony does not sufficiently describe an “accumulation” of rubbish on the Property such as would violate the Ordinance.

Finally, Mr. Frame asserts that the trial court’s Order should be reversed because the trial judge ignored Mr. Frame’s pre-trial and post-trial motions in violation of Breslin, which evidenced the trial judge’s bias in favor of the Commonwealth. In Breslin, the Superior Court held that a trial court erred when, based on the trial court’s belief that motions to suppress are not available in summary offense matters, it denied a defendant’s motion to suppress without allowing the defendant to introduce evidence relevant to the motion and without considering the issues underlying the motion. Id., 732 A.2d at 632-33. The Superior Court rejected the trial court’s reasoning, indicating that there was “no indication in our case law or rules of criminal procedure that motions to suppress are not properly brought in summary offense cases.” Id. at 633. The Superior Court then explained “that we do not find that the lower court committed procedural error in not conducting a separate suppression hearing. Rather, we hold that the lower court erred by refusing to consider the issues raised in [the defendant’s] motion.” Id. at 633 n.3.

We first address Mr. Frame’s assertion that the trial court exhibited bias in favor of the Commonwealth. Our review of the record reveals no evidence of such bias. The trial court allowed Mr. Frame to, *inter alia*, object to Officer Newcomer’s

testimony and the presentation of the photographs, cross-examine Officer Newcomer, and provide argument both at the beginning and end of the hearing. Further, the trial court overruled one of the Commonwealth's objections during Mr. Frame's cross-examination of Officer Newcomer. (Hr'g Tr. at 20, R.R. at 23.)

With regard to Mr. Frame's contentions that the trial court failed to rule on his post-trial motions, we note that a review of the docket in this matter reveals that Mr. Frame filed post-trial motions on December 3, 2009. Those motions sought reconsideration and modification of his sentence. Contrary to Mr. Frame's contention, the trial court acted on these motions by denying them on December 10, 2009.

Next, we review Mr. Frame's claims regarding his pre-trial motions. With regard to Mr. Frame's pre-trial motions, the docket reflects the filing of a "Pro Se First Notice of Defects in Form, Content or Procedure Pursuant to Rule 109" (Notice of Defects) and a "Pro Se Motion for Clarification." The trial court did not rule on either of these filings. However, a review of the motion for clarification reveals that Mr. Frame was seeking clarification of an August 18, 2009, order. The docket reveals that the trial court issued no order on that date in this matter.<sup>10</sup> Accordingly, even if the trial court erred in not ruling on this motion, any such error was harmless.

Regarding the Notice of Defects, it is unclear whether this document was a motion or a statement regarding the defects of the citations which, pursuant to

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<sup>10</sup> The order Mr. Frame appealed in Frame I was issued on August 18, 2009.

Pennsylvania Rule of Criminal Procedure 109, had to be raised sometime before the conclusion of the trial in a summary case. Rule of Criminal Procedure 109 does not identify this document as a motion. Although there was a “Certificate of Presentation” attached to the Notice of Defects, which referred to the document as a “motion,” that certificate did not include any indication of what date this motion would be presented to the trial court, how long such presentation would take, or a citation of authority for the trial court to grant the requested relief. Indeed, the clerk of courts did not consider this document a motion as evidenced by the fact that the clerk did not describe the document as a motion on the docket. The Notice of Defects, itself, alleges twenty-nine different defects or errors in the citations, without referring to any specific citation but, intriguingly, does not seek to suppress any of the evidence.<sup>11</sup> Finally, Mr. Frame did not object to the trial court’s failure to address the Notice of Defects during the November 18, 2009, hearing, thereby precluding the trial court from the opportunity to address that issue. Thus, we conclude that, given the confusion of exactly what the Notice of Defects was, the trial court did not commit error or an abuse of discretion in failing to rule on that document.<sup>12</sup>

Accordingly, we affirm that portion of the trial court’s order that found Mr. Frame guilty of the charges in citations P6916659-1, issued March 27, 2009, and

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<sup>11</sup> This is intriguing because, citing Breslin, Mr. Frame states to this Court that “[t]he rules of procedure and the laws of this Commonwealth allow for *suppress[ion]* Motions even in the context of Summary Cases.” (Mr. Frame’s Br. at 15 (emphasis added).)

<sup>12</sup> Mr. Frame also appears to challenge, for the first time, whether he received proper notice of the citations involved here. Having not raised this issue before the trial court or in his Statement, it is waived and will not be addressed on appeal. Pa. R.A.P. 302(a) (indicating that “[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal”); Pa. R.A.P. 1925(b)(4)(vii) (stating, *inter alia*, that issues not included in a Concise Statement are waived).

P6916704-4, issued June 11, 2009. However, we reverse that portion of the trial court's order finding Mr. Frame guilty of the charges in citations P6916687-1, issued June 1, 2009, and P6916703-3, issued on June 11, 2009, and Mr. Frame's fine should be reduced accordingly.

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**RENÉE COHN JUBELIRER, Judge**

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Richard Frame,	:	
	:	
Appellant	:	
	:	
v.	:	No. 2539 C.D. 2009
	:	
Menellen Township, Pennsylvania	:	
Appeals and Reviews of Fayette	:	
County, Pennsylvania	:	

**ORDER**

**NOW**, March 16, 2011, the order of the Court of Common Pleas of Fayette County in the above-captioned matter is hereby **AFFIRMED** to the extent that it found Richard Frame guilty of the charges in citation P6916659-1, issued March 27, 2009, and citation P6916704-4, issued June 11, 2009. However, we **REVERSE** that portion of the trial court's order finding Mr. Frame guilty of the charges in citation P6916687-1, issued June 1, 2009, and citation P6916703-3, issued on June 11, 2009, and Mr. Frame's fine should be reduced accordingly.

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**RENÉE COHN JUBELIRER, Judge**