

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TRICIA MEZZACAPPA,

Appellant

v.

JOHN MORGANELLI,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2538 EDA 2013

Appeal from the Order August 6, 2013
in the Court of Common Pleas of Northampton County
Criminal Division at No.: CP-48-MD-0001170-2013

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.:

FILED MAY 12, 2014

Appellant, Tricia Mezzacappa, appeals *pro se* from the trial court's order denying her motion to reconsider the district attorney's disapproval of the private criminal complaint she filed against West Easton Borough Council President Kelly Gross. Appellant filed the complaint after her confidential application to obtain a Pennsylvania license to carry a firearm (LTCF) was leaked. We affirm.

We take the factual and procedural history of this case from the trial court's August 6, 2013 opinion and our independent review of the record. On March 26, 2013, the Northampton County District Attorney's office was provided with information that Richard J. Orloski, Esq., had anonymously

* Retired Senior Judge assigned to the Superior Court.

received a copy of Appellant's LTCF application.¹ Appellant's LTCF application was leaked to the media while she was a Republican candidate for Northampton County Council. Detectives from the district attorney's office conducted an investigation into the dissemination of Appellant's confidential information, which revealed that Northampton County Sheriff's Deputy Darin R. Steward had accessed Appellant's application and made photocopies of it. Specifically, videotape footage of the sheriff's office, during a weekend when the office was closed, showed Deputy Steward, in the presence of two other deputies, accessing a filing cabinet, removing Appellant's application, photocopying it, and taking possession of the copied document. The Commonwealth filed criminal charges against Deputy Steward for violations of sale or transfer of firearms, 18 Pa.C.S.A. § 6111(g)(3.1), and obstructing administration of law or other governmental function, 18 Pa.C.S.A. § 5101. It did not file charges against any other individual in connection with the incident.

On June 17, 2013, Appellant filed a private criminal complaint against Kelly Gross. Ms. Gross is not a member of the sheriff's department and was

¹ The Commonwealth maintains that Appellant fraudulently listed Mr. Orloski as a reference on her application. (**See** N.T. Hearing, 7/19/13, at 3; **see also** Appellant's Brief, at 6-7).

not present when Deputy Steward copied Appellant's application.²

Appellant's complaint alleged as follows:

Violation of 18 [Pa.C.S.A. §] 6111 and conspiracy to violate 18 [Pa.C.S.A. §] 6111. Kelly Gross is not an uniformed "civillian" [sic] as she was referred to by [the district attorney]. She is the elected Borough Council President of West Easton and has served in that capacity for 20 years. She explicitly [sic] knew exactly what she was doing when getting her filthy corrupt hands on [Appellant's] LTCF app[lication]. [Ms. Gross] has been a defendant 30 times in 3 years in public records disputes at the [Office of Open Records] in Harrisburg, PA. She knowingly and willingly initiated a felony with malicious will. I have a 55 lb. box of evidence to prove my case[.]

(Private Criminal Complaint, 6/17/13, at 2).

District Attorney John Morganelli reviewed Appellant's complaint and, on June 18, 2013, disapproved it, citing his "prosecutorial discretion not to prosecute." (*Id.*) On July 12, 2013, Appellant filed a "Petition for Reconsideration," requesting that the trial court review and reverse the district attorney's decision not to prosecute Ms. Gross.³

² Appellant describes Ms. Gross as a "long time political adversary," and asserts that Ms. Gross orchestrated the leak "for the sole purpose of political assassination for sport[.]" (Appellant's Brief, at 6, 12; *see id.* at 10-11). Appellant claims that she lost the primary election for city council due to media attention surrounding the leak. (*See id.* at 11-12).

³ *See* Pa.R.Crim.P. 506(B)(2) (permitting private criminal complainants to seek judicial review of disapproval of complaint by district attorney).

On July 19, 2013, the trial court held a hearing⁴ where the Commonwealth represented that it based its decision not to prosecute Ms. Gross or Appellant, who was also under investigation, on the exercise of prosecutorial discretion and policy considerations, not on a legal evaluation of the case. (**See** N.T. Hearing, 7/19/13, at 3-4, 7; **see also** Trial Court Opinion, 8/06/13, at 3, 5). On August 6, 2013, the trial court entered its order and supporting opinion denying Appellant's motion to reconsider the district attorney's disapproval of her criminal complaint against Ms. Gross. This timely appeal followed.⁵

Appellant presents the following questions for our review:

1. Did the [c]ourt of [c]ommon [p]leas commit an error of law, abuse its discretion, or violate [Appellant's] [c]onstitutional right to [d]ue [p]rocess when it found that [Appellant] failed to timely file her brief, despite the fact that she did file a date-stamped copy on August 5, 2013?

⁴ We note that "a private criminal complainant is not entitled to an evidentiary hearing regarding the trial court's review of the Commonwealth's decision." **Braman v. Corbett**, 19 A.3d 1151, 1160 (Pa. Super. 2011) (citation omitted). Rule 506 "merely allows the private criminal complainant the opportunity to have h[er] complaint reviewed in the Court of Common Pleas[.]" **Id.** (citation omitted).

⁵ Pursuant to the trial court's order, Appellant filed a timely concise statement of errors complained of on appeal on September 16, 2013. **See** Pa.R.A.P. 1925(b). The court entered a Rule 1925(a) opinion on September 19, 2013, in which it referred this Court to its August 6, 2013, opinion for an explanation of its reasons for denying Appellant's petition. **See** Pa.R.A.P. 1925(a).

2. Did the [c]ourt of [c]ommon [p]leas commit an error of law, abuse its discretion, or violate [Appellant's] [c]onstitutional right to [d]ue [p]rocess when it denied [her] the ability to call witnesses to present testimony at her hearing?

3. Did the [c]ourt of [c]ommon [p]leas commit an error of law or abuse its discretion when it determined that there was no averment of bad faith to overcome the allegedly policy-based decision not to prosecute Ms. Kelly Gross, an elected official, despite the facts that (1) [the district attorney] publically stated that a law had been violated by both Ms. Gross and Deputy Steward, (2) [the district attorney] prosecuted Deputy Steward for that crime, and (3) [the district attorney] refused to prosecute Ms. Gross for the same crime?

(Appellant's Brief, at 5).⁶

In her issue on appeal, Appellant contends that the trial court erred in upholding the Commonwealth's decision to deny approval of her private criminal complaint. (**See** Appellant's Brief, at 13-18). However, in her argument on this issue, Appellant entirely fails to cite to **any** legal authority to support her claim. (**See id.**; **see also** Commonwealth's Brief, at 5). Her argument consists primarily of block quotes from the trial court's opinion,

⁶ Although Appellant raises three separate issues in her statement of the questions involved, the argument section of her brief consists of a single, undivided section in which she advances her third issue, in violation of Pennsylvania Rule of Appellate Procedure 2119(a). **See** Pa.R.A.P. 2119(a) (requiring argument section of party's brief to "be divided into as many parts as there are questions to be argued" and include "such discussion and citation of authorities as are deemed pertinent"); (**see also** Appellant's Brief, at 5, 13-18; Commonwealth's Brief, at 1 n.1). We will therefore limit our review to the one issue Appellant addresses in her argument section. **See Commonwealth v. Delvalle**, 74 A.3d 1081, 1086-87 (Pa. Super. 2013) (concluding that party's failure to develop issue in argument section of brief constitutes waiver of issue).

followed by bald claims that the court's "statement[s] [are] error[s] of law," coupled with a series of complaints regarding the Commonwealth's decision not to prosecute Ms. Gross, and accusations related to Ms. Gross's alleged attempts to "destroy," "antagoniz[e]," and "provoke[]" her. (Appellant's Brief, at 14, 18; **see id.** at 13-18).

In an appellate brief, parties must provide an argument as to each question, which should include a discussion and citation of pertinent authorities. Pa.R.A.P. 2119(a), 42 Pa.C.S.A. This Court is neither obliged, nor even particularly equipped, to develop an argument for a party. To do so places the Court in the conflicting roles of advocate and neutral arbiter. When an appellant fails to develop h[er] issue in an argument and fails to cite any legal authority, the issue is waived.

Commonwealth v. B.D.G., 959 A.2d 362, 371-72 (Pa. Super. 2008) (*en banc*) (case citations omitted) (finding claim waived for appellant's failure to cite to any legal authority in support of argument); **see also** Pa.R.A.P. 2119(a), (b); **Commonwealth v. Lyons**, 833 A.2d 245, 252 (Pa. Super. 2003), *appeal denied*, 879 A.2d 782 (Pa. 2005) (holding that *pro se* status generally confers no special benefit upon an appellant and *pro se* litigants must comply with procedural rules). Therefore, Appellant's issue is waived.

Moreover, even if Appellant had not waived her claim, it would not merit relief. "A private criminal complaint must at the outset set forth a *prima facie* case of criminal conduct." **In re Private Crim. Complaint of Wilson**, 879 A.2d 199, 211 (Pa. Super. 2005) (*en banc*) (citations omitted). "[A] district attorney is permitted to exercise sound discretion to refrain from proceeding in a criminal case whenever he, in good faith, thinks that the

prosecution would not serve the best interests of the state.” **Id.** at 212 (citation omitted).

It is settled that following the receipt of a petition to review the Commonwealth’s decision to disapprove a private criminal complaint, the court must determine whether the Commonwealth’s rationale for disapproving the private criminal complaint is for purely legal reasons or if it is based solely or in part on policy considerations. When the Commonwealth’s disapproval is based wholly on legal considerations, the court employs a *de novo* review. Where the decision includes or is entirely based on policy considerations, the trial court reviews the Commonwealth’s determination under an abuse of discretion standard. [Where] the reasons for disapproving of [an a]ppellant’s private criminal complaint were not purely legal[,] . . . , [this Court] evaluate[s] [the] claims under an abuse of discretion standard.

In conducting our examination, we are mindful that the private criminal complainant must show that the decision not to prosecute was patently discriminatory, arbitrary or pretextual, and therefore not in the public interest. We will not disturb the trial court’s ruling unless there are no reasonable grounds for the court’s decision, or the court relied on rules of law that were palpably wrong or inapplicable.

Braman, supra at 1157-58 (citations and quotation marks omitted).

The private criminal complainant has the burden to prove the district attorney abused his discretion, and that burden is a heavy one. In the Rule 506 petition for review, the private criminal complainant must demonstrate the district attorney’s decision amounted to bad faith, fraud or unconstitutionality. The complainant must do more than merely assert the district attorney’s decision is flawed in these regards. The complainant must show the facts of the case lead only to the conclusion that the district attorney’s decision was patently discriminatory, arbitrary or pretextual, and therefore, not in the public interest. In the absence of such evidence, the trial court cannot presume to supervise the district attorney’s exercise of prosecutorial discretion, and should leave the district attorney’s decision undisturbed.

In re Private Crim. Complaints of Rafferty, 969 A.2d 578, 581-82 (Pa. Super. 2009) (footnote and citation omitted).

Here, the allegations set forth in Appellant's private criminal complaint fail to make out a *prima facie* case of criminal conduct; the complaint merely contains unsupported claims against Ms. Gross, insulting language to describe her alleged misconduct, and information regarding disputes between Appellant and Ms. Gross unrelated to the instant matter. (**See** Private Criminal Complaint, 6/17/13, at 1-2); **see also** *Wilson, supra* at 211. Likewise, Appellant's argument to this Court consists of rambling accusations against Ms. Gross and the district attorney without citation to any legal authority. (**See** Appellant's Brief, at 13-18). Further, a review of the record reflects that the Commonwealth, after investigation, exercised its discretion to prosecute only Deputy Steward in connection with the March 2013 incident, and it declined to bring charges against Ms. Gross, the other deputies who were present when Deputy Steward photocopied Appellant's LTCF application, or Appellant, who was also under investigation. (**See** N.T. Hearing, 7/19/13, at 2-3, 7).

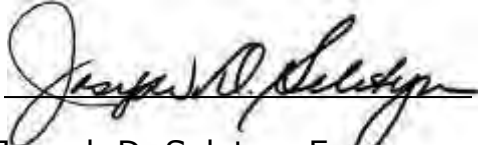
After reviewing the record, we conclude that Appellant has failed to meet her heavy burden of establishing that "the facts of the case lead only to the conclusion that the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore, not in the public interest." ***Rafferty, supra*** at 582. Accordingly, even if the issue were not waived, we would hold that the trial court did not abuse its discretion in

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upholding the district attorney's decision to disapprove Appellant's private criminal complaint. ***See Braman, supra*** at 1158.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/12/2014