

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

VICTOR R. CAPELLE JR.,

Appellant

No. 302 WDA 2012

Appeal from the Order Entered February 8, 2012  
In the Court of Common Pleas of Forest County  
Criminal Division at No(s): CP-27-MD-0000008-2012

BEFORE: SHOGAN, J., OTT, J., and COLVILLE, J.\*

MEMORANDUM BY OTT, J.

Filed: May 15, 2013

Victor R. Capelle, Jr. appeals from the order entered on February 8, 2012 in the Court of Common Pleas of Forest County, which found him in indirect criminal contempt of a prior Protection From Abuse (“PFA”) order<sup>1</sup> and sentenced him to 30 days to six months’ incarceration commencing on February 18, 2012.<sup>2</sup> After review of the original record, submissions of the parties, and the relevant law, we affirm.

---

\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 23 Pa.C.S. § 6114.

<sup>2</sup> The sentencing court also stated it would “consider a modification of this sentence if, within ten (10) days from the date hereof, the Defendant relinquishes to the Sheriff of Forest County the two (2) weapons registered in his name and the Court receives copies of the paperwork evidencing the transfer of all other weapons to the Defendant’s brother through a licensed  
*(Footnote Continued Next Page)*

The trial court aptly stated the factual and procedural history as follows:

On February 1, 2012, Jennifer Lynn Bauer ("Victim") filed a Petition for Protection from Abuse, and on the same date, the Court entered a Temporary Protection from Abuse Order ("PFA Order") and scheduled a hearing for February 8, 2012, at 1:30 p.m. The PFA Order evicted and excluded [Capelle] from the residence and required [Capelle] to relinquish his weapons, any firearms licenses, keys to the residence, and a key to Victim's four-wheeler vehicle; not to abuse, harass, stalk, or threaten Victim; and not to contact Victim, except for the custody arrangement pursuant to paragraph 5 of the order. On February 3, 2012, the Forest County Sheriff's Office ("Sheriff's Office") filed a Sheriff's Return of Service, stating that the Sheriff's Office served [Capelle] by telephone on February 1 and served [Capelle's] employer on February 2. On February 8, 2012, the Court entered a Final Protection from Abuse Order ("Final PFA Order") by agreement without admission. Commonwealth's Exhibit 1, [Capelle's] Protection from Abuse Seizure of Weapon(s) / Firearm(s) Acknowledgment<sup>1</sup>, was attached to the Final PFA Order in docket number CD 16 of 2012.

---

<sup>1</sup> In the acknowledgment, [Capelle] asserted that he did not have any weapons or firearms in his possession and that no one else had any weapons or firearms in his or her possession that [Capelle] owned.

---

(Footnote Continued) \_\_\_\_\_

dealer approximately six (6) months ago." Sentencing Order, 2/9/2012 at 1.

On February 2, 2012, an Indirect Criminal Contempt Complaint<sup>2</sup> was submitted to Magisterial District Judge George F. Gregory ("MDJ Gregory"), and MDJ Gregory issued an arrest warrant for [Capelle] for violating the PFA Order. [Capelle] was arrested on February 2, 2012. After being advised that [Capelle] had been arrested for violating the PFA Order, the Court scheduled a hearing for February 8, 2012, at 1:30 p.m. On February 6, 2012, [Capelle] filed a Motion to Set Bail, and Forest County District Attorney Elizabeth Ziegler responded by agreeing that a bail amount should be set in this matter. The Court set bail at \$5,000 secured and ordered [Capelle] to relinquish his weapons as a condition of his release. After conducting a hearing, the Court found [Capelle] guilty of indirect criminal contempt pursuant to 23 Pa.C.S.A. § 6114. The Court sentenced [Capelle] to a minimum period of 30 days to a maximum period of six months in the Warren County Jail with credit for time served, to pay the costs of prosecution and a \$300 fine, to have no contact with Victim, and to report to the Sheriff's Office for fingerprinting. In addition, the Court included that if [Capelle] relinquished the two weapons registered in his name to the Sheriff's Office and provided the Court with paperwork evidencing the transfer of the other weapons to [Capelle's] brother within 10 days of the order, then the Court would reconsider [Capelle's] sentence. On February 17, 2012, [Capelle] filed a Notice of Appeal and Motion to Continue Bail Pending Appeal from the Judgment of Sentence. On February 21, 2012, Erika L. Mills, Esquire, [Capelle's] counsel, filed a Motion to Withdraw Appearance and Blair H. Hindman, Esquire, filed a Praecipe for Entry of Appearance on behalf of [Capelle]. On the same date, the Court granted [Capelle's] Motion to Continue Bail Pending Appeal and ordered [Capelle] to file a concise statement of the matters complained of on appeal. On March 13, 2012, [Capelle] filed a Concise Statement of Matters Complained of on Appeal.

---

<sup>2</sup> The Indirect Criminal Contempt Complaint, which was not filed with the Forest County Clerk of Court until February 6, 2012, is docket number MD 8 of 2012.

---

Preliminarily, we note the issue raised in Capelle's Pa.R.A.P. 1925(b) statement does not match that the issue briefed on appeal. The Rule 1925(b) statement contends: "Evidence was insufficient to prove beyond a reasonable doubt that [Capelle] violated the Protection from Abuse (PFA) Order. [Capelle] was never properly served or apprised of the firearms relinquishment provisions of the PFA. [Capelle's] action did not constitute Indirect Criminal Contempt." Rule 1925(b) statement at 1. However, his brief on appeal contains no argument relative to the issue of service/notice. Accordingly, the issue of service/notice is waived for failure to fully develop an argument. **See** Pa.R.A.P. 2119(a) (requiring pertinent argument and citation of authority for each question to be argued); **See also Commonwealth v. Clayton**, 816 A.2d 217 (Pa. 2002) (recognizing failure to develop argument in support of issue results in waiver). Therefore, we will consider only the issue of whether there was sufficient evidence to convict Capelle of indirect criminal contempt.

"A trial court's finding of contempt will not be disturbed absent an abuse of discretion." **Commonwealth v. Baker**, 766 A.2d 328, 331 (Pa. 2001). "An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill will or partiality, as shown by the evidence of record." **Commonwealth v. Dent**, 837 A.2d 571, 577 (Pa. Super. 2003).

Pennsylvania law defines indirect criminal contempt as follows:

A charge of indirect criminal contempt consists of a claim that a violation of an Order or Decree of court occurred outside the presence of the court. Where a PFA order is involved, an indirect

criminal contempt charge is designed to seek punishment for violation of the protective order. As with those accused of any crime, one charged with indirect criminal contempt is to be provided the safeguards, which statute and criminal procedures afford. To establish indirect criminal contempt, the Commonwealth must prove: (1) the Order was sufficiently definite, clear, and specific to the contemnor as to leave no doubt of the conduct prohibited; (2) the contemnor had notice of the Order; (3) the act constituting the violation must have been volitional; and (4) the contemnor must have acted with wrongful intent.

***Commonwealth v. Brumbaugh***, 932 A. 2d 108, 110 (Pa. Super. 2007).

Capelle argues the Commonwealth failed to prove, beyond a reasonable doubt, the act was volitional and that he acted with wrongful intent. Specifically he contends because he had relinquished all of his firearms to his brother approximately six months prior to the PFA order he no longer owned any weapons, and therefore could not violate the order's surrender directive. Capelle's brother, Richard E. Capelle, testified he received ownership of all firearms in Capelle's possession and the transfer was made by a firearms dealer. N.T., 2/8/2012, at 24-25, 30. However, after questioning by the court Richard Capelle acknowledged that the seven-millimeter rifle with scope and a pistol remain registered in Capelle's name. *Id.* at 32-33. Capelle testified he and his brother lacked the \$70.00 (\$35.00 per weapon) necessary to accomplish the transaction to transfer the weapons into his brother's name. *Id.* at 49. The trial court found Capelle's testimony as to both not knowing he still had to bring the weapons into the

Sheriff's office and having funds to only transfer some of the weapons into his brother's name to be evasive and untruthful.

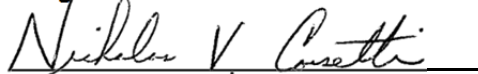
Crucially, Capelle acknowledged that the rifle and the pistol registered in his name were never relinquished to the Sheriff pursuant to the directive of the February 1, 2012 PFA order. *Id.*

We can discern no abuse of discretion by the trial court in finding Capelle knew he was the registered owner of the pistol and the rifle, knew of the terms of the February 1, 2012 PFA order and chose not to either relinquish them or file an affidavit listing each weapon and its location. Accordingly, we affirm the trial court's finding of indirect criminal contempt.

Order affirmed.

Colville, J., concurs in the result.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: May 15, 2013