

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
EDWARD DALE OSBORNE,	:	
	:	
Appellant	:	No. 891 WDA 2012

Appeal from the Judgment of Sentence May 7, 2012,  
Court of Common Pleas, Crawford County,  
Criminal Division at No. CP-20-SA-0000009-2012

BEFORE: DONOHUE, MUNDY and PLATT\*, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: March 12, 2013

Edward Dale Osborne ("Osborne") appeals from the judgment of sentence entered following his conviction of unlawful devices and methods, 34 Pa.C.S.A. § 2308(a)(8). For the following reasons, we remand this case with instructions for further proceedings.

The conviction in this case relates to illegal baiting of deer in violation of the Game and Wildlife Code, 34 Pa.C.S.A. § 101 *et. seq.* A magisterial district judge found Osborne guilty of the above-stated offense, and Osborne appealed to the Court of Common Pleas ("trial court"). Following a hearing *de novo*, the trial court found Osborne guilty and ordered him to pay a fine of \$150. Osborne then timely filed this appeal on June 5, 2012. The trial court entered an order on June 8, 2012 requiring Osborne to file a statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b) within 21

\*Retired Senior Judge assigned to the Superior Court.

days ("Rule 1925 Order"). This order was served on Osborne's counsel via email only, despite the fact that Osborne's counsel never elected to receive orders via email pursuant to Pa.R.Crim.P. 114(B)(3)(a)(vi).<sup>1</sup> On July 9, 2012, the trial court issued an opinion stating that no Rule 1925(b) statement had been filed and requested that this Court quash Osborne's appeal. Osborne subsequently filed a motion with the trial court alleging that he did not receive the Rule 1925 Order, and asking the trial court to permit him to file a Rule 1925(b) statement. Motion to Reconsider, 7/27/12, at 1-2. The trial court denied this motion. Subsequently, however, the trial court held a hearing, at the conclusion of which it found that because Osborne's counsel had not requested service via email, he was never properly served with the Rule 1925 Order. Trial Court Order, 1/24/13.

It is well established that failure to file a Rule 1925(b) statement when ordered to do so by a trial court will result in waiver of all issues on appeal. *Commonwealth v. Hill*, 609 Pa. 410, 427, 16 A.3d 484,494 (2011); Pa.R.A.P. 1925(b)(4)(vii). Before waiver will be found, however, the trial court must be found to have satisfied four requirements:

First, the trial court must issue a Rule 1925(b) order directing an Appellant to file a response within [21] days of the order. Second, the Rule 1925(b) order must be filed with the prothonotary. Third, the

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<sup>1</sup> This rule provides that service may be made by "sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has filed a written request for this method of service ... ." Pa.R.Crim.P. 114(B)(3)(a)(vi).

prothonotary must docket the Rule 1925(b) order and record in the docket the date it was made. Fourth, the prothonotary shall give written notice of the entry of the order to each party's attorney of record, and it shall be recorded in the docket the giving of notice. **See Pa. R.C.P. 236. *If any of the procedural steps set forth above are not complied with, Appellant's failure to act in accordance with Rule 1925(b) will not result in a waiver of the issues sought to be reviewed on appeal.***

***Commonwealth v. Hooks***, 921 A.2d 1199, 1202 (Pa. Super. 2007)  
(emphasis added).

Given the lack of election to receive notices electronically, notice of the Rule 1925 Order to Osborne by e-mail was not proper. Therefore, the finding of waiver was error. ***Id.*** Accordingly, we remand this matter to the trial court for re-entry and proper notice of a Rule 1925(b) order.

Case remanded. Jurisdiction retained.