

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	<b>CP-41-CR-00001476-2015</b>
<b>Appellee</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CARL PARKER</b>	:	<b>1925a Opinion</b>
<b>Appellant</b>	:	

**OPINION AND ORDER**

This opinion is written in support of the Court's Opinion and Order filed February 8, 2017, denying various Defense Motions in Limine. The Court did not order a 1925(b) statement as Defense Counsel did not seek permission to appeal Court's interlocutory Order of February 8, 2017, and the Court expected the Superior Court to quash the appeal.

A ruling on a motion in limine is not a final order for purposes of appeal. The Court believes that the general rule in criminal cases: that a defendant may appeal only from a final judgment of sentence, and an appeal from any prior order or judgment will be quashed<sup>1</sup> is applicable to the case at bar, and as such this issue is not reviewable by the Superior Court.

The Superior Court is considering the appeal under Pa.R.A.P. 313 (collateral orders); however, the Court believes that the three prongs of Pa.R.A.P. 313 that render an interlocutory order final and appealable have not been met.

Before addressing Pa.R.A.P. 313 (collateral orders), the Court notes that neither Defense Counsel nor the Superior Court advised it of

- 1) The allowance of a change in Appellant Counsel.

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<sup>1</sup> Commonwealth v. Ivy, 146 A.3d 241, 255 (Pa. Super 2016). (citing Commonwealth v McMurren, 945 A.2d 194, 195 (Pa. Super. 2008).

- 2) The issuance of a Rule to Show Cause on March 21, 2017.
- 3) The discharge of the Rule to Show Cause Order on March 31, 2017.
- 4) The determination to “refer the issues to the merits panel to be assigned to this case.”<sup>2</sup>

An interlocutory order is final and appealable if (1) it is separable from and collateral to the main cause of action; (2) the right involved is too important to be denied review; and (3) the question presented is such that if review is postponed until final judgment in the case, the claimed right will be irreparably lost. Appellant’s claim fails the third prong. The claim, i.e. that he should be able to submit evidence that the Court is not admitting, does not evade review after final judgment. Appellant can appeal the denial after trial and will be granted a new trial if appropriate.

If Appellant is ultimately convicted, the Court’s decision to preclude Defense evidence can be reviewed through Appellant’s right to direct appeal, thus, the claim will not be lost. Commonwealth v. Ivy, 146 A.3d 241 (Pa. Super. 2016). An order is not immediately appealable if it cannot be said “that ‘denial of immediate review would render impossible any review whatsoever of [the] individual’s claim’”. Commonwealth v. Reading Grp. Two Props, Inc, 922 A.2d 1029, 1032 (Pa. Cmwlth. 2007) (citing Commonwealth v. Wells, 719 A.2d 729 (Pa. 1998). Contrast with Commonwealth v. Minich<sup>3</sup> (review of trial court’s order **denying** the **Commonwealth’s** Pa.R.E.404(b) **motion to preclude introduction of defense evidence** would be irreparably lost in the event of an acquittal because “constitutional prohibition against double jeopardy

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<sup>2</sup> Appeal Docket Sheet Docket Number: 421 MDA 2017, Page 3 of 3, accessed May 3, 2017.

<sup>3</sup> 4 A.3d 1063, 1068 (Pa. Super. 2010).

protects against second prosecution for the same offense after an acquittal”. Ivy at 256. In Minich, the trial court admitted defense evidence. Here, the Court has denied a Defense motion to introduce evidence, rather than allow. Should Appellant be found guilty at trial, and it is determined that the Court abused its discretion in disallowing the admission of evidence Defense seeks to admit, he will have another trial and can introduce that evidence. Thus, Defendant’s claim is reviewable after a final judgment of sentence, if it should ever occur. If there is never a “final judgment of sentence”, then presumably the Defendant will not take an appeal because a non-convicted Defendant is no longer a “defendant” and unlikely to appeal the Order that finally adjudicates him as such.

To the extent the Superior Court disagrees with the Court’s position and reviews the merits, the Court relies on its Opinion and Order filed February 8, 2017.

DATE: \_\_\_\_\_

BY THE COURT,

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Nancy L. Butts, P.J.

cc: Kyle Rude, Esq.  
Melissa Kalas, Esq.  
Gary Weber, Esq. Lycoming Law Reporter  
S. Roinick, file