

COMMONWEALTH COURT OF PENNSYLVANIA

In re Four Pennsylvania Skill Amusement Devices and One Ticket
Redemption Terminal Containing \$18,692.00 in U.S. Currency —
Appeal of Commonwealth of Pennsylvania, Monroe County

No. 761 C.D. 2023 (Pa. Commw. Ct. Nov. 14 2023) (Commonwealth Court of Pennsylvania 2023) · No. No. 761
C.D. 2023 · Decided November 14, 2023

SUMMARY

The Pennsylvania Commonwealth Court affirmed the Monroe County Court of Common Pleas order granting motions for return of property and suppression of evidence involving seized skill amusement devices, a ticket redemption terminal, and \$18,692. The court held that the trial court retained jurisdiction under Pa.R.A.P. 1701(b)(6), notwithstanding the Commonwealth’s interlocutory appeal concerning recusal and the absence of a remand. The court also held that any failure to include detailed findings in the original order was waived and, in any event, was adequately addressed by the trial court’s subsequent Pa.R.A.P. 1925(a) opinion.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Lori A. Dumas; Renée Cohn Jubelirer, President Judge; Patricia A. McCullough, Judge; Michael H. Wojcik, Judge; Christine Fizzano Cannon, Judge; Ellen Ceisler, Judge; Lori A. Dumas, Judge; Stacy Wallace, Judge
JURISDICTION	Pennsylvania
DECIDED	November 14, 2023
DOCKET	No. 761 C.D. 2023
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Commonwealth appealed from the Monroe County Court of Common Pleas order granting Appellees’ motions for return of property and suppression of evidence. The Superior Court transferred the appeal to the Commonwealth Court.
STANDARD OF REVIEW	On a motion for return of property, the court reviews whether the trial court’s factual determinations are supported by substantial evidence and whether the court abused its discretion or committed an error of law. Suppression review asks whether the factual findings are

	supported by the record and whether the legal conclusions drawn from those facts are correct; review is limited to the evidence presented at the suppression hearing.
PRECEDENTIAL VALUE	unpublished_nonprecedential
PARTIES	Commonwealth of Pennsylvania, Monroe County v. Smokin' Joe's Tobacco Shop, Inc., L&M Music Company, Inc.

TOPICS

appellate procedure interlocutory appeal suppression of evidence forfeiture gambling

PRACTICE AREAS

appellate procedure criminal procedure suppression of evidence forfeiture gambling

QUESTIONS PRESENTED

1. Whether the trial court retained jurisdiction to enter the February 8, 2023 order while the Commonwealth's prior interlocutory recusal appeal and related appellate proceedings were pending.
2. Whether Pa.R.A.P. 2572 deprived the trial court of jurisdiction because the Superior Court had not yet remanded the record.
3. Whether the February 8, 2023 suppression and return-of-property order had to be reversed or remanded because it did not itself contain detailed findings of fact and conclusions of law required by Pa.R.Crim.P. 581(I).

HOLDINGS

1. The trial court retained jurisdiction because the prior appeal from the denial of recusal involved a non-appellable interlocutory order, and Pa.R.A.P. 1701(b)(6) permits a trial court to proceed in a matter notwithstanding a notice of appeal from a non-appellable interlocutory order.
2. The trial court retained jurisdiction notwithstanding the absence of a formal remand because the prior appeal was interlocutory and Pa.R.A.P. 1701(b)(6) applied.
3. Reversal or remand was unnecessary because any challenge to the absence of findings and conclusions was waived, and, in any event, the trial court's later Pa.R.A.P. 1925(a) opinion supplied detailed findings and legal reasoning sufficient for meaningful appellate review.

KEY QUOTATIONS

"Therefore, if the "trial judge orders that the devices be returned, double jeopardy principles would not be implicated and that decision could be appealed, including the trial judge's denial of the recusal motion."" (at 7)

"Instantly, because the trial court did issue a Pa.R.A.P. 1925(a) opinion explaining its reasoning in detail, a remand is both unnecessary and would not serve judicial economy, particularly where the trial court would

likely enter the same order and opinion as has been filed in this Court.” (at 12)

FACTUAL BACKGROUND

On October 28, 2021, the Commonwealth executed a search warrant and seized four video skill amusement devices, a ticket redemption terminal, and \$18,692. L&M Music Company owned the devices, while Smokin’ Joe’s Tobacco Shop possessed them. Appellees alleged that the Commonwealth intentionally misrepresented material facts in the warrant application and sought return of the property and suppression of the evidence. The trial court ultimately found that the Commonwealth improperly withheld and misrepresented material evidence, ordered suppression, and directed return of the games.

PROCEDURAL HISTORY

The Commonwealth seized four video skill amusement devices, a ticket redemption terminal, and \$18,692 pursuant to a search warrant. Appellees sought return of the property, suppression of evidence, and unsealing of the warrant. After earlier proceedings involving forfeiture obligations, recusal, and an interlocutory appeal that the Superior Court quashed, the trial court entered an order on February 8, 2023, finding material misrepresentations in the warrant process, suppressing the evidence, and ordering return of the games. The Commonwealth appealed, challenging the trial court’s jurisdiction and its failure to issue contemporaneous findings and conclusions under Pa.R.Crim.P. 581(I).

DISPOSITION

affirmed

CASES CITED

- Commonwealth v. Morelli, 55 A.3d 177, 179-80 (Pa. Cmwlth. 2012)
- Lodge v. Robinson Twp. Zoning Hr’g Bd., 283 A.3d 910, 925 (Pa. Cmwlth. 2022)
- City of Phila., Bd. of Pensions & Ret. v. Clayton, 987 A.2d 1255, 1262 (Pa. Cmwlth. 2009)
- Commonwealth v. Shaffer, 209 A.3d 957, 968-69 (Pa. 2019)
- In the Interest of L.J., 79 A.3d 1073, 1088-89 (Pa. 2013)
- Commonwealth v. Green, 291 A.3d 317, 329 n.16 (Pa. 2023)
- In re Four Pennsylvania Skill Amusement Devices & One Ticket Redemption Terminal Containing \$18,692 in U.S. Currency, 292 A.3d 1118 (Pa. Super. 2023) (unpublished mem.)
- Commonwealth v. White, 910 A.2d 648 (Pa. 2006)
- Commonwealth v. Cameron, 664 A.2d 1364, 1366-67 (Pa. Super. 1995)
- Lerch v. Unemployment Comp. Bd. of Rev., 180 A.3d 545, 550 (Pa. Cmwlth. 2018)
- Commonwealth v. Harris, 230 A.3d 1124, 1125-27 (Pa. Super. 2020)
- Commonwealth v. Irland, 193 A.3d 370, 379 (Pa. 2018)
- In re Return of Personal Property, 180 A.3d 1288, 1293-94 (Pa. Cmwlth. 2018)
- Commonwealth v. Sharaif, 205 A.3d 1286 (Pa. Super. 2019)

- Commonwealth v. Grundza, 819 A.2d 66, 67-68 & n.1 (Pa. Super. 2003)
- Commonwealth v. Reppert, 814 A.2d 1196, 1200 (Pa. Super. 2002)
- Commonwealth v. Parker, 161 A.3d 357, 360 n.5 (Pa. Super. 2017)
- Orange Stones Co. v. City of Reading, Zoning Hr'g Bd., 32 A.3d 287, 291 (Pa. Cmwlth. 2011)

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