

In the Superior Court of Pennsylvania

No. 641 MDA 2023

COMMONWEALTH OF PENNSYLVANIA

vs.

STEVEN A. WIGGS, Appellant

Appeal from Order and Sentence on April 3, 2023,
in the Court of Common Pleas of Perry County,
in Case No. CP-50-SA-0000026-2021

BRIEF FOR THE APPELLANT

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STATEMENT OF JURISDICTION

Pursuant to 42 Pa. C.S. § 742 and otherwise according to law, the Superior Court has jurisdiction of this case, which is on appeal from orders entered by a Court of Common Pleas.

ORDER IN QUESTION

[Order:]

AND NOW, April 3, 2023, after Summary Appeal Hearing, the Court finds the Defendant Guilty of violating Title 75, Section 4571(b)(1).

Sentence of this Court as to being in violation of Title 75, Section 4571(b)(1) is that the Defendant pay a fine in the amount of \$500.00, pay all costs of prosecution including, but not limited to, the EMS fee, all appropriate surcharges and costs properly assessable hereunder and also the JCP/ATJ fee. The Defendant shall pay his costs, fees, and fines within ninety (90) days of today's date.

BY THE COURT,

/s/ Kenneth A. Mumma

KENNETH A. MUMMAH, P.J.

TEXT OF THE APPLICABLE STATUTE

[Three pages. Material in brackets is added. Wherever it appears, the ALL CAPS feature has been added; italics and underlining are also added features.]

TITLE 75—§ 4571—“Visual and audible signals on emergency vehicles”

(a) General rule.--Every emergency vehicle shall be equipped with one or more revolving or flashing RED LIGHTS and an audible warning system. Spotlights with adjustable sockets may be attached to or mounted on emergency vehicles.

(b) Police, sheriff, fire and coroner or medical examiner vehicles.
[See the “definitions” in Section 102; some terms ARE defined; some terms ARE NOT defined.]

(1) Police, sheriff, coroner, medical examiner or fire police vehicles may (IN ADDITION to the requirements of subsection (a)) be equipped with one or more *revolving* or *flashing* BLUE LIGHTS. The combination of red and blue lights may be used only on police, sheriff, coroner, medical examiner or fire police vehicles.

(2) Unmarked police and sheriff vehicles used as emergency vehicles and equipped with audible warning systems shall be equipped with the lights described in this subsection.

(b.1) Mounted lights and additional equipment.--

(1) Police, sheriff and fire vehicles may be equipped with a mounted rack containing one or more emergency warning lights or side mounted floodlights or alley lights or all such lights in conformance with department regulations.

(1.1) Nothing contained in the regulations under paragraph (1) may be construed to require a limit, modification or change of the lighting in police, sheriff and fire vehicles legally complying with regulations as of the date of enactment of this paragraph as long as the vehicle is used as an emergency vehicle.

(2) Additional visual or audible warning signal equipment, including, but not limited to, flashing headlamp system, flashing or revolving white or clear lights, steady burning lights, traffic-control emergency directional light assembly, amber lights and intersection lights, may be utilized on emergency

vehicles in accordance with regulations promulgated by the department.

(3) The department may not prohibit the use of flashing or revolving lights mounted internally in the passenger compartment of fire department vehicles or privately owned vehicles used in answering an emergency call when used by a fire police captain, fire police lieutenant, fire chief, assistant chief and, when a fire company has three or more fire vehicles, a second or third assistant chief that comply with the department's regulations.

(3.1) Police and sheriff vehicles may be equipped with *flashing* red and blue lights in reverse lamp assemblies.

(3.2) Emergency vehicles, other than police vehicles, may be equipped with *flashing* red lights in reverse lamp assemblies.

(4) On an annual basis, but no later than April 1 of each year, the State Fire Commissioner may recommend to the department any changes or challenges to the emerging technology of the flashing or revolving lights mounted internally or externally in privately owned vehicles of volunteer firefighters when used in answering an emergency call. The department, in consultation with the Pennsylvania State Police, shall review the recommendations and may promulgate any necessary regulations on the use, type and installation of the emerging technology.

(b.2) Police officer special emergency response team members.--A privately owned vehicle used in responding to an emergency under 42 Pa.C.S. § 8953 (relating to Statewide municipal police jurisdiction) by a police officer who is also a member of a county or regional special emergency response team shall be equipped with revolving or flashing red lights and an audible warning system in accordance with subsection (a) subject to the lights and audible warning system being returned to the head of the special emergency response team upon termination of a person's active status as a police officer or active member of a special emergency response team.

(c) Game Commission vehicles.--(Repealed).

(c.1) Public Utility Commission vehicles.--Vehicles owned or operated by the Pennsylvania Public Utility Commission and used in the enforcement of 66 Pa.C.S. Chs. 23 (relating to common carriers) and 25 (relating to contract carrier by motor vehicle and broker) may be equipped with revolving or flashing red lights in accordance with subsection (a).

(d) Vehicles prohibited from using signals.

Except as otherwise specifically provided in this section, no vehicle other than an EMERGENCY VEHICLE may be equipped with *revolving* or *flashing* lights or *audible* warning systems identical or similar to those specified in subsections (a) and (b). A person who equips or uses a vehicle with visual or audible warning systems in violation of this section commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$500 nor more than \$1,000.

(e) Authorized period of use.--The lights and warning systems specified by this section may be used only during an emergency, or in the interest of public safety, or by police officers, sheriffs and deputy sheriffs in enforcement of the law. Unauthorized use of the lights and warning systems specified by this section shall be a summary offense punishable by a fine of not less than \$500 nor more than \$1,000.

(f) Conformity with department regulations.--Except as provided under subsections (b.1)(1.1) and (b.2), all equipment authorized or required by this section shall conform to department regulations.

STATEMENTS OF SCOPE AND STANDARD OF REVIEW

SCOPE OF REVIEW

The trial court convicted Constable Wiggs of not having a police vehicle (*i.e.*, of having some other kind of vehicle).

Because having a police vehicle is a complete defense, it is within the scope of appellate review to determine whether that necessary finding of fact was supported by substantial evidence of record, and by the law. The preceding two sentences relate to QUESTION INVOLVED “A” (statutory construction), as well as to QUESTION INVOLVED “D” (the complete absence of any evidence showing that the lights on the vehicle were red-&-blue).

Because QUESTION INVOLVED “B” raises constitutional due process, in the form of the “void for vagueness” doctrine, the scope of review includes reviewing whether a violation of Constable Wiggs’s constitutional rights occurred. This review is done not just as a matter of law; a statute can be void vagueness on its face, or as applied. In the instant case, it is as applied.

Also, the appellate scope of review entails taking the law into account, and, accordingly, deciding whether an error of law was committed.

STANDARD OF REVIEW

In the instant case, QUESTION INVOLVED “B” involves whether there has

been unconstitutional violation of the “void for vagueness” doctrine, which, under the Constitution of the Commonwealth of Pennsylvania, and under the Constitution of the United States of America, is a due process violation. The standard of review is to discern whether Constable Wiggs’s constitutional rights were violated by using a vague definition of “police vehicle.” This is a plenary standard.

For the other issues, the standard of review is also plenary: whether the statute is properly interpreted, under the Statutory Construction Act. Interpreting a statute contrary to the Statutory Construction Act is an error of law.

QUESTIONS INVOLVED

- A. STATUTORY CONSTRUCTION: DOES THE STATUTORY CONSTRUCTION ACT LEAD TO A HOLDING THAT CONSTABLE WIGGS’S CAR WAS A “POLICE VEHICLE,” AS THAT TWO-WORD PHRASE IS USED IN THE APPLICABLE STATUTE, 75 PA.C.S. § 4571 (THROUGH ITS DEFINITIONS SECTION, § 102?

Suggested Answer: Yes.

- B. VOID FOR VAGUENESS DOCTRINE: IF THE TWO-WORD PHRASE “POLICE VEHICLE” IS INTERPRETED AS NOT INCLUDING A CONSTABLE’S MARKED VEHICLE (OF THE PARTICULAR TYPE THAT IS THE SUBJECT OF THE INSTANT CASE), DOES CONVICTING A CONSTABLE (CONVICTING HIM OF AN OFFENSE FOR WHICH HAVING A “POLICE VEHICLE” IS A COMPLETE DEFENSE) CAUSE A DUE PROCESS VIOLATION (AS APPLIED TO THAT PARTICULAR TYPE OF VEHICLE), UNDER THE “VOID FOR VAGUENESS” DOCTRINE, UNDER EITHER THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA AND/OR THE CONSTITUTION OF THE UNITED STATES OF AMERICA?

Suggested Answer: Yes.

- C. WRONG CHARGE: WHEN A PERSON IS CONVICTED UNDER THE WRONG SUBSECTION OF A STATUTE, IS THAT CONVICTION VOID?

Suggested Answer: Yes.

- D. NO EVIDENCE: WHEN THE COLOR OF THE ALLEGEDLY RED-&-BLUE LIGHTS ON A CONSTABLE’S POLICE CAR IS AN ESSENTIAL ELEMENT OF THE ALLEGED OFFENSE, AND WHEN THERE IS ZERO EVIDENCE OF THE COLOR OF THE LIGHTS IN A LIGHT BAR WHICH IS OFF, IS THAT CONVICTION VOID?

Suggested Answer: Yes.

STATEMENT OF THE CASE

A. FORM OF THE ACTION, AND PROCEDURAL HISTORY OF THE CASE

Constable Wiggs was convicted of an equipment violation, for allegedly having a car equipped with red-&-blue flashing lights.

This happened at a trial *de novo* upon a Summary Appeal from a decision by a Magisterial District Court

B. PRIOR DETERMINATION OF THE COURT OF COMMON PLEAS

The Court found Constable Wiggs guilty of violating § 4571(b)(1) of the Vehicle Code.

This happened at a trial *de novo* upon a Summary Appeal from a decision by a Magisterial District Court

C. JUDGE WHOSE DETERMINATION IS TO BE REVIEWED.

The Hon. Kenneth A. Mumma, P.J., of Juniata and Perry counties.

D. CHRONOLOGICAL STATEMENT OF THE FACTS

Constable Wiggs was stopped due to a hearsay report that he had been using red-&-blue lights several weeks earlier, in a different car.

Because we, on appeal, are no longer pursuing the *Brady* issues, and we are no longer pursuing the probable-cause issues, the following CHRONOLOGICAL STATEMENT OF THE FACTS focuses on the Constable's

vehicle, itself.

Exhibit D-3, RR at 15a-21a, consists of seven (7) photographs of the Constable's police vehicle. (Color photographs are in the official record.)

The fact is, it's a police vehicle. It's marked. It's clearly marked. And the Exhibit D-3 photographs show this fact.

Almost no other facts are relevant.

Constable Wiggs was a certified Constable. (Undisputed.) Constable Wiggs was the driver of the car. (Again, undisputed.)

The only disputed facts are whether the lightbar on the Constable's police vehicle was equipped with flashing (or revolving) lights, and what color those lights were. ARGUMENT SECTION "D" addresses this fact dispute, by pointing out that the short 19-page trial transcript, RR. at 51a-69a, is devoid of any such evidence—especially the part about whether a light is "flashing or revolving." *See* ARGUMENT SECTION "D."

E. BRIEF STATEMENT OF THE ORDER UNDER REVIEW

Constable Wiggs was convicted of an equipment violation, for allegedly having a car equipped with red-&-blue flashing lights. The Court found Constable Wiggs guilty of violating § 4571(b)(1) of the Vehicle Code.

SUMMARY OF ARGUMENT

- A. THE STATUTORY CONSTRUCTION ACT LEADS TO A HOLDING THAT CONSTABLE WIGGS’S CAR WAS A “POLICE VEHICLE,” AS THAT TWO-WORD PHRASE IS USED IN THE APPLICABLE STATUTE, 75 PA.C.S. § 4571 (THROUGH ITS DEFINITIONS SECTION, § 102).

With or without resorting to the interpretation operations set forth in the Statutory Construction Act, Vehicle Code Section 4571, by means of the definitions in Vehicle Code Section 102, allows “police vehicles” to have red-&-blue lights. A Constable vehicle is a police vehicle; and a Constable is a police officer.

And then, just in case that’s vague, the Statutory Construction Act mandates that, when there is any vagueness in any statute with a fine attached to it, that vagueness must be interpreted in favor of the accused. This is mandated by § 1928 of the Statutory Construction Act.

- B. IF THE TWO-WORD PHRASE “POLICE VEHICLE” IS INTERPRETED AS NOT INCLUDING A CONSTABLE’S MARKED VEHICLE (OF THE PARTICULAR TYPE THAT IS THE SUBJECT OF THE INSTANT CASE), CONVICTING A CONSTABLE (CONVICTING HIM OF AN OFFENSE FOR WHICH HAVING A “POLICE VEHICLE” IS A COMPLETE DEFENSE) CAUSES A DUE PROCESS VIOLATION (AS APPLIED TO THAT PARTICULAR TYPE OF VEHICLE), UNDER THE “VOID FOR VAGUENESS” DOCTRINE, UNDER EITHER THE CONSTITUTION OF THE COMMONWEALTH OF

PENNSYLVANIA AND/OR THE CONSTITUTION OF
THE UNITED STATES OF AMERICA.

And speaking of vagueness, the very same point made in § 1928 of the Statutory Construction Act, is a constitutional requirement as well.

This is the law, not only under Due Process in the U.S. Constitution (in Fifth Amendment and the Fourteenth Amendment), but also under the due process provisions of Article I, Section 9, of the Constitution of the Commonwealth of Pennsylvania.

C. WHEN A PERSON IS CONVICTED UNDER THE WRONG
SUBSECTION OF A STATUTE, THAT CONVICTION IS VOID.

The conviction is ostensibly under Section 4571(b)(1). However, this was a Summary Appeal, and the MDJ court's conviction was under § 4571(a).

This cannot be.

Furthermore, neither § 4571(a) nor § 4571(b)(1) is a prohibition. Only § 4571(d) has a prohibition, and only that subsection can lead to a conviction.

D. WHEN THE COLOR OF THE ALLEGEDLY RED-&-BLUE
LIGHTS ON A CONSTABLE'S POLICE CAR IS AN ESSENTIAL
ELEMENT OF THE ALLEGED OFFENSE, AND WHEN THERE IS
ZERO EVIDENCE OF THE COLOR OF THE LIGHTS IN A LIGHT
BAR WHICH IS OFF, THAT CONVICTION IS VOID.

There was zero-point-zero ("0.0") evidence that the lights were flashing or revolving. "Revolving or flashing" is an essential element of the offense,

no matter whether it's under 4571(a), under 4571(b)(1), or under 4571(d).

ARGUMENT

ARGUMENT SECTION “A”

- A. THE STATUTORY CONSTRUCTION ACT LEADS TO A HOLDING THAT CONSTABLE WIGGS’S CAR WAS A “POLICE VEHICLE,” AS THAT TWO-WORD PHRASE IS USED IN THE APPLICABLE STATUTE, 75 PA.C.S. § 4571 (THROUGH ITS DEFINITIONS SECTION, § 102.

The Statutory Construction Act, 1 Pa.C.S. §§1501-1991, first requires that a statute be given its plain meaning. Only if that is not possible (that is, if the meaning is not perfectly clear), then certain interpretation principles and procedures are mandatory.

Let us first consider the very terms of the applicable statute, 75 Pa.C.S. § 4571. Then, let us consider the Statutory Construction Act.

Section 4571(a) of the Vehicle Code allows red lights on “emergency vehicles” (and § 4571(b)(1) further allows the red-&-blue combination on a “police vehicle” [*inter alia*]). In the instant case, the Constable’s car—the car that he was driving when he was ticketed—is a “police vehicle,” as that phrase is used in 75 Pa. C.S. § 102 (which contains the applicable definition of “emergency vehicle”).

This two-word phrase - - “police vehicle” - - is not defined anywhere in the Vehicle Code. However, but the § 102 definition of “emergency vehicle” lists 22 categories (or types) of emergency vehicles, and one of the 22 types

of "emergency vehicle" IS a "police vehicle." In other words, "police vehicle" is a sub-category of "emergency vehicle."

Only eight (8) of these 22 categories of vehicles consist of vehicles which need to be government-owned, and, in fact, the vast majority of the 22 categories can be - - or even must be - - privately owned.

Here is a breakdown of Section 102's definition of "emergency vehicle"; it shows, in the final column whether each of the 22 categories must be, cannot be, or can be privately owned. This chart shows that only eight (8) of the twenty-two (22) categories will usually or always be government owned. (After the chart, this Argument Section "A" text continues, and addresses why the topic of government ownership isn't a key deciding factor.)

CHART (which is a "breakdown" of the "emergency vehicle" definition):
--

75 Pa. C.S. § 102—"Definitions"—The definition of "emergency vehicle" has 22 categories:

Category:	Statutory text of Section 102:	Can be privately owned?
1.	A State or county emergency management vehicle,	[GOVERNMENT OWNED (1*)]
2.	fire department vehicle,	[includes volunteer companies]
3.	police vehicle,	← [not defined] [includes privately owned]
4.	sheriff vehicle,	[GOVERNMENT OWNED (2*)]
5.	ambulance,	[includes privately owned]
6.	advanced life support squad vehicle,	[includes privately owned]
7.	basic life support squad vehicle,	[includes privately owned]
8.	emergency canteen support service organization vehicle,	[includes privately owned]
9.	blood delivery vehicle,	[includes privately owned]
10.	human organ delivery vehicle,	[includes privately owned]
11.	hazardous material response vehicle,	[includes privately owned]
12.	armed forces emergency vehicle,	[GOVERNMENT OWNED (3*)]
13.	one vehicle operated by a coroner or chief county medical examiner and one vehicle operated by a chief deputy coroner or deputy chief county medical examiner used for answering emergency calls,	[says " operated by "] [therefore, might be gov't owned OR non-gov't owned]

*= See the footnote at the end of the chart.

ARGUMENT SECTION “A,” continued

- | | | |
|-----|---|---|
| 14. | a vehicle owned by or leased to a regional emergency medical services council that is used as authorized by the Department of Health to respond to an actual or potential disaster, mass casualty situation or substantial threat to public health [<i>see</i> 35 Pa. C.S. §8103 for the definition], | [these are NOT gov’t agencies—
<i>see</i> 35 Pa. C.S. §8103]
[i.e., <i>these are</i> privately owned] |
| 15. | a vehicle owned by a county or regional police association and operated by a police officer that is used for police transport or victim extraction, | [GOVERNMENT OWNED (4*)] |
| 16. | a vehicle that is owned and operated by a county correctional institution in a city of the first class and used to respond to an emergency at a correctional institution in a city of the first class or to escort an ambulance which is transporting sick or injured prisoners in a city of the first class, | [GOVERNMENT OWNED (5*)] |
| 17. | any vehicle operated by a special agent, special agent supervisor, narcotics agent or narcotics agent supervisor while performing official duties as employees of the Office of Attorney General, | [says “ operated by ”]
[therefore, might be gov’t owned
OR non-gov’t owned] |
| 18. | any vehicle owned and operated by the Philadelphia Parking Authority established in accordance with 53 Pa.C.S. Ch. 55 (relating to parking authorities) and used in the enforcement of 53 Pa.C.S. Ch. 57 (relating to taxicabs and limousines in first class cities), | [GOVERNMENT OWNED (6*)] |
| 19. | a vehicle owned by a city of the first class and operated by first judicial district certified armed probation officers, | [GOVERNMENT OWNED (7*)] |
| 20. | a vehicle owned and operated by the Pennsylvania Turnpike Commission that is used by an emergency service responder as dispatched by the Pennsylvania Turnpike Commission's traffic operations center, | [GOVERNMENT OWNED (8*)] |
| 21. | or any other vehicle designated by the State Police under section 6106 (relating to designation of emergency vehicles by Pennsylvania State Police), | [includes many private vehicles,
but Section 6106 vehicles may not
have red-&-blue lights—just red] |
| 22. | or a privately owned vehicle used in answering an emergency call when used by any of the following:
[ten particular users are listed.] | [says “ when used by ”]
[all “Category 22” vehicles
are privately owned --by anybody] |

<p>* ONLY these eight (8) items, each marked with an asterisk in this chart of 22 categories, are government-owned vehicles. All of the others can be privately owned (ambulances, for example). Therefore, being government-owned cannot be a term to be added, as a matter of interpretation.</p>
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[END OF THE CHART]

So, why is “government owned” a key point. Yes - - why indeed?!

Because that is a test improperly grafted onto the definition of “police vehicle”

by some Courts of Common Pleas, by most Magisterial District Courts, by almost all municipal and state police officers, and by many other sources of (mis-)interpretation, who somehow (and who somewhat automatically) force the erroneous two-word phrase “government-owned” (or its concept) onto the statutory definition of “police vehicle,” as though being government-owned is a necessary ingredient of being a “police vehicle.”

It is not.

A CONSTABLE IS A POLICE OFFICER.

Perhaps the largest error the Court of Common Pleas has made in the instant case was to falsely state, on the 5th page of its Rule 1925(a) Statement (appended hereto), “that constables are not police officers.” This exact same error continues, throughout the Rule 1925(a) Statement - - for example, on the 2nd page (erroneously stating that “constables are not to be included in the definition of “police officer”); and on the 3rd page (erroneously stating that, for 30 years, “the courts have uniformly agreed that constables are not police officers”); and in an additional statement on the 5th page (completely misapprehending *In re Act 147 of 1990*, 528 Pa. 460, 598 A.2d 985 (1991)).

In its closing announcement of the verdict, on the record, at the close of the trial (in the transcript from April 3, 2023 [of which only the first 19

pages—the evidence—is in the Reproduced Record]), starting on page 45 at line 3, the trial court announces several times that a constable is NOT a police officer.

This is plain error.

The trial court also committed itself to this misapprehension of the law, on the record, at the close of the trial. In the transcript from April 3, 2023 (of which only the first 19 pages—the evidence—is in the Reproduced Record), starting on page 45 at line 3, the Court erroneously commits to the false notion that whether a constable is a police officer can toggle back-&-forth, depending on what he or she is doing. No. If a constable is a constable, then he or she can have the red-&-blue lights. (Can the constable USE the lights? That’s a different question, addressed in 4571(e), which was not (and is not) before the Court.) But it’s extremely clear that a constable cannot be installing and un-installing a lightbar all day long. If he or she, as constable, is a police officer, then he or she can have the red-&-blue lights.

Constables are police officers. Thanks to two very explicit holdings of the Pennsylvania Supreme Court, in 1991 and in 1822 (cited in 1991 with complete approval), it is 100% undeniable that constables are police officers. He or she is *not* a municipal police officer; he or she is *not* a state trooper; he

or she is *not* a probation officer (probation officers are police officers); and he or she is not a statutorily appointed “police officer” (yes, that’s the statutory term) at a college or university, at an agricultural society (all of which have Pennsylvania statutory authority to ask the local court to appoint “police officers” at their request [and at their own expense]). However, a constable is a police officer. The Pennsylvania Supreme Court held, in 1991, that:

Simply stated, **a constable is a peace officer.**³
A constable is a known officer charged with the conservation of the peace, and **whose business it is to arrest** those who have violated it. *Commonwealth v. Deacon*, 8 Serg. & R. 47, 49 (Pa. Supreme Ct. 1822). ...

^{3/} [Footnote 3:] **The constable is a police officer.**
...

In re Act 147 of 1990, 528 Pa. 460, 470 & 470 n.3, 598 A.2d 985, 990 & 990 n.3 (1991) (emphasis added) (citing precedent from the year 1822, and, by doing so, giving that precedent modern applicability). Also, a constable is a police officer under the Vehicle Code’s definition:

“Police officer.” A natural person authorized by law to make arrests for violations of law.

75 Pa. C.S. § 102 (definitions).* Many other statutes, rules, cases, and

* There is case law holding that a Constable may not “enforce the motor vehicle laws,” but that precept does not contradict either of the two blocked-&-indented quotes, *supra*, on the instant page, which, respectively, quote from the Pennsylvania Supreme Court, and from Pennsylvania statute.

administrative decisions, including, but certainly not limited to, Pa.R.Crim.P. 103,¹ Pa.R.Crim.P. 431(A),² Pa.R.Crim.P. 515(B),³ and 3 P.S. § 459-102,⁴ also establish that **constables are police officers**. This is 100% certain; yet, in the instant case, it is precisely this particular point of law which the trial court has misapprehended.

A CONSTABLE VEHICLE IS A POLICE VEHICLE.

A constable vehicle is a police vehicle. In addition to ruling in its 1991 decision, cited *supra*, in addition to promulgating Rules 431(A) and 515(B), both cited *supra*, the Pennsylvania Supreme Court has officially taken control (not ownership, but supervisory control) over constables’ vehicles.⁵ The

¹ **Pa. R. Crim. P. 103** (part): “**Police officer** is any person who is by law given the power to arrest when acting within the scope of the person’s employment.”

² **Pa. R. Crim. P. 431(A)**: “When a warrant is issued pursuant to Rule 430 in a summary case, the warrant shall be executed by a police officer as defined in Rule 103.” Executing these particular warrants is probably the most well-known job that constables do. **Constables, therefore, are police officers.**

³ **Pa. R. Crim. P. 515(B)**: “A warrant of arrest shall be executed by a police officer.” Again, executing warrants is the most well-known job that constables do. **Constables, therefore, are police officers.**

⁴ **3 P.S. § 459-102** (part) (emphasis added): “**Police officer.**” “Any person employed or elected by this Commonwealth, or by any municipality and whose duty it is to preserve peace or to make arrests or to enforce the law. **The term includes constables**”

⁵ **Pa. R.J.A. 1907.2(a)**, and the resultant policies, procedures, and standards of conduct that have since been issued by the AOPC (requiring all constables, as a requirement prerequisite to getting any MDJ-assigned work, to have a

vehicle itself continues to be owned by the constable; please *see* the discussion on the following three (3) pages, and in all of the remainder of the instant ARGUMENT SECTION “A,” to see why this feature (*i.e.*, NON-governmental ownership) is NOT an impediment to its being a “police vehicle.” However, simultaneously with this feature (and overlapping with this feature), the Supreme Court absolutely requires that, to be assigned any court work, a constable must have a vehicle that is a police car.⁶

vehicle that has a “cage” in the back for arresting people and tanking them to the MDJ court [or back-&-forth between the MDJ-court and the prison]). *See also* the following footnote (footnote 7, *infra*) for more information about the “PENNSYLVANIA UNIFIED JUDICIAL SYSTEM CONSTABLE POLICIES, PROCEDURES AND STANDARDS OF CONDUCT.”

Rule 1907.2(a), as well as the said Supreme Court promulgation of “PENNSYLVANIA UNIFIED JUDICIAL SYSTEM CONSTABLE POLICIES, PROCEDURES AND STANDARDS OF CONDUCT,” are appended hereto as the Third Appendix.

⁶ The “PENNSYLVANIA UNIFIED JUDICIAL SYSTEM CONSTABLE POLICIES, PROCEDURES AND STANDARDS OF CONDUCT” referred to in the preceding footnote is available online at <https://www.pccd.pa.gov/training/Pages/Legislation-and-Regulation.aspx>, by clicking on “Supreme Court Rules for Constables.” (In addition, this 12-page document is appended to the instant Brief, as its Third Appendix.) (Pages 11-12 are the relevant pages, containing Sections E(1), E(2), E(3), and E(4) of Division IV of the “SUPREME COURT POLICIES ...”)

Under this order of the Supreme Court, the constable vehicle must have a “cage behind the driver’s seat and in front of the back passenger seat[, which must] be permanent, rather than temporary, and **must be the same type and quality used in police and sheriff vehicles.**” Division IV.(E)(3) of the “PENNSYLVANIA UNIFIED JUDICIAL SYSTEM CONSTABLE POLICIES, PROCEDURES AND STANDARDS OF CONDUCT” (emphasis added).

A constable vehicle is a police vehicle (continued). There are 22 categories of vehicles listed in the definition of “emergency vehicle” in the Vehicle Code. And one of those 22 categories (the third one) is “police vehicle.”

The “definitions” section of the Vehicle Code, Section 102, DOES have a definition of the two-word phrase “emergency vehicle.” However, Section 102 does NOT contain a definition of the two-word phrase “police vehicle.”

Therefore, please see the “CHART” of the 22 types of emergency vehicles, *supra*.

Nothing could be clearer.

Constables are police officers.

How can the statutes (and the extremely clear *In re Act 147* case, *supra*) possible be interpreted any other way.

There are several reasons why the phrase “police vehicle” *doesn’t* mean that the vehicle must be government-owned, to fall under the definition.

1. The Legislature didn’t say so. If they Legislature wanted a “government vehicle” exception in Section 4571, the Legislature would’ve used that phrase. And if the Legislature wanted to narrow down the “police vehicle” exception, then they would’ve said so. In various regions of the

Commonwealth, 22 P.S. § 501 provides the statutory basis for colleges and other non-profit organizations (*i.e.*, many colleges which are not part of any government-owned system) to apply for a Court Order “appoint[ing] policemen” whose compensation shall not be paid by the public, but by the private college or other non-profit organization. And these organizations - - especially the colleges - - privately own police vehicles for the use of their employees who are Court-appointed “policemen.” Other examples of “police vehicles” which are not government-owned include, but are not limited to: Railroad Police, established by law under 22 Pa. C.S. §§ 3301-3305; Humane Society Police, established by law under 22 Pa. C.S. §§ 3701-3718;

2. Elsewhere in legislation, the Legislature DOES use that phrase—“government vehicle”—in the exception to the tint statute. There is a “government vehicle” exception, in § 4524(e)(2)(1). (Thus, it is clear that the Legislature certainly knows how to write that two-word phrase, WHEN they want to do so.)

3. It’s wrong to add extra requirements to the statute. The statute—§ 4571(a)—allows “emergency vehicles” to have flashing red lights. And the phrase “emergency vehicle” is defined. The way it’s defined, its definition has 22 types (or categories) of vehicles which automatically fall under the

definition. And ONLY 8 of the 22 types of vehicles are vehicles which must be automatically government-owned: categories #1, #4, #12, #15, #16, #18, #19, and #20.

No other person or agency provides a vehicle for a constable. A constable is legally required to have a vehicle with a cage in it before getting court-assigned warrant work. The Rules of Criminal Procedure regarding assignment of warrant work clearly state that ONLY a police officer may do that work (and THAT’S the very work that constables routinely DO, as we all know). A “police vehicle” is permitted to have flashing red-&-blue lights under § 4571(a)-(b); and the allowance for a “police vehicle” to have flashing red-&-blue lights under § 4571(a)-(b) is NOT limited to “government-owned” vehicles.

Constable Wiggs’s vehicle - - the one he was driving when the instant case’s traffic ticket was issued - - is permitted to have red-&-blue lights, because it is a “police vehicle,” and because there is no “government-owned” restriction on that statutory authorization.

As the preceding paragraphs point out, there is a temptation to read the “police vehicle” exception to § 4571(d)’s prohibition (prohibiting car drivers and car owners from having flashing red-&-blue lights) as though the “police

vehicle” must be government-owned.

There is no such requirement.

And just in case we might be tempted to “read between the lines,” and to “interlineate” such a requirement, our Legislature has given us mandatory guidance, forbidding us from adding text to a statute - - in particular, to any statute with a fine or possible imprisonment.

In the Statutory Construction Act of 1972, our Legislature has included a particular section—Section 1928—which closes a statute off at its four corners. No citizen is required to guess when he or she is “stepping across the line” in a manner which will end up with a trial in the Criminal Division of the Court.

Section 1928(b)(1) requires that:

“All provisions of a statute of the classes hereafter
enumerated shall be strictly construed:

(1) Penal provisions.

....

1 Pa. C.S. § 1928(b)(1). Penal statutes include any statute that imposes a fine.
Commonwealth v. Stone & Co., 788 A.2d 1079 (Pa.Cmwlth. 2001).

When a statute can lead to a conviction, any doubt as to the statute’s
meaning must be resolved in favor of the defendant. Commonwealth v. Velez,
51 A.3d 260 (Pa.Super 2012); accord, Commonwealth v. J.C., 199 A.3d 394

(Pa.Super. 2018), *appeal denied*, 210 A.3d 268; *Harmer v. Pennsylvania Board of Probation & Parole*, 83 A.3d 293 (Pa.Cmwlth. 2014), *appeal denied*, 97 A.3d 746. Dozens of other cases are in accord; this section of the Statutory Construction Act is one of the most-often cited sections of the Statutory Construction Act.

Therefore, just in case there remains a temptation to interpret the two-word phrase “police vehicle” AS THOUGH it includes an IMPLIED statutory requirement, requiring that the vehicle must be “GOVERNMENT-OWNED” before it can “count as a police vehicle,” the Statutory Construction Act’s § 1928(b)(1) makes it mandatory to interpret the red-&-blue lights statute—75 Pa. C.S. § 4571(a)-(b)—to forbid adding such a requirement.

The Statutory Construction Act locks Pa. law in, into NOT adding requirements that aren't in the text.

The Pennsylvania Constitution does the same thing - - and so does the U.S. Constitution. *See* ARGUMENT SECTION “B,” *infra*.

It is not necessary to reach the constitutional argument set forth in ARGUMENT SECTION “B,” *infra*, if the statute is properly interpreted as is set forth in the instant ARGUMENT SECTION “A.” But if we DO reach the constitutional requirements, whenever two possible interpretations, both

interpretations being legal based on other factors, are available, the only interpretation that is available is the one that goes in favor of the accused. *See, e.g., Sessions v. Dimaya*, 584 U.S. ___, 138 S. Ct. 1204, 1212; 200 L. Ed. 2d 549; 2018 U.S. LEXIS 2497 (2018), especially at 138 S. Ct. at 1212 (focusing on substantive due process, and, in particular, on fair warning). *See* ARGUMENT SECTION “B,” *infra*, discussing *Dimaya* in the context of reversing convictions based on statutes that are, either on their face, or as applied, unconstitutionally vague, violating Due Process on the federal level

Constable Wiggs’s car is a “police vehicle.” See Exhibit D-3 (7 color photographs), RR at 15a-21a (black-&-white photos in the RR; color photos in the official record). And the ONLY way that a different interpretation could be reached, would be to ADD one or more provisions to the text of the statute - - provisions which the Legislature did not put there.

ARGUMENT SECTION “B”

B. IF THE TWO-WORD PHRASE “POLICE VEHICLE” IS INTERPRETED AS NOT INCLUDING A CONSTABLE’S MARKED VEHICLE (OF THE PARTICULAR TYPE THAT IS THE SUBJECT OF THE INSTANT CASE), CONVICTING A CONSTABLE (CONVICTING HIM OF AN OFFENSE FOR WHICH HAVING A “POLICE VEHICLE” IS A COMPLETE DEFENSE) CAUSES A DUE PROCESS VIOLATION (AS APPLIED TO THAT PARTICULAR TYPE OF VEHICLE), UNDER THE “VOID FOR VAGUENESS” DOCTRINE, UNDER EITHER THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA AND/OR THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

It is not necessary to reach the constitutional argument set forth in ARGUMENT SECTION “B,” if the statute is properly interpreted as is set forth in the preceding ARGUMENT SECTION “A.” But if we DO reach the constitutional requirements, the law is unconstitutional as applied. Constable Wiggs, and every other constable in the Commonwealth, is entitled to the benefit of any possible variance in interpretation of the two-word phrase “police vehicle.” And, thus, every constable in the Commonwealth is entitled to the “except” language in the first clause of Section 4571(d): the clause that says that a person doesn’t violate Section 4571, if the vehicle he or she is are driving is an “police vehicle” (properly incorporating Section 102’s inclusion of every “police vehicle” into its definition of “emergency vehicle,” the term used in Section 4571(a) (as well as in Section 4571(b)(1), which specifically and explicitly allows “police vehicles” to have red-&-blue lights.

Federal and State Due Process Violations — Void for Vagueness

“For more than 125 years, the Supreme Court has evaluated defendants’ claims that criminal statutes are unconstitutionally vague, developing a doctrine hailed as ‘among the most important guarantees of liberty under law.’” A. Goldsmith, *The Void for Vagueness Doctrine in the Supreme Court, Revisited*, 30 Am. J. Crim L. 279 (2003) (quoting Cass R. Sunstein, LEGAL REASONING AND POLITICAL CONFLICT, at 102 (1996)).

Whenever two possible interpretations, both interpretations being legal based on other factors, are available, the only interpretation that is available is the one that goes in favor of the accused. *See, e.g., Sessions v. Dimaya*, 584 U.S. ___,⁷ 138 S. Ct. 1204, 1212; 200 L. Ed. 2d 549; 2018 U.S. LEXIS 2497 (2018), especially at 138 S. Ct. at 1212 (focusing on substantive due process, and, in particular, on fair warning).

Dimaya is only the latest U.S. Supreme Court decision, in a long line of federal cases holding that the U.S. Constitution’s Due Process Clause in the Fourteenth Amendment - - especially the concept of substantive due process - - forbid any government, state or federal, from (and, accordingly,

⁷ As of this writing, the United States Reports have been paginated and published only through Volume 577. Cases in Volumes 578 and later, including Volume 584, do not yet have a “U.S.” page cite.

guarantee to the citizen the personal right to be free from) any governmental use of its power to imprison, or its power to impose a fine, without “fair warning”—and “fair warning” requires that every statute with a fine or confinement as a potential penalty must be construed in favor of the accused.

Pennsylvania’s due process clause is part of Article 1, Section 9, of the Constitution of the Commonwealth of Pennsylvania. *See, e.g., Commonwealth v. Barud*, 545 Pa. 297, 681 A.2d 162 (1996).

If a penal statute can be interpreted in two ways, both of which are legally correct ways to read it, then there is no “fair warning” to the citizen that his conduct is clearly proscribed.

Accordingly, because we find that [a new DUI statute] clearly, palpably and plainly violates both the Constitutions of the United States and of this Commonwealth, the order of the trial court [dismissing a particular DUI charge] is hereby affirmed.

Commonwealth v. Barud, 545 Pa. 297, 307, 681 A.2d 162, 167 (1996). The *Barud* court noted that the statute in question “unnecessarily encompasses both lawful and unlawful conduct; fails to provide a reasonable standard by which a person may gauge their conduct; encourages arbitrary and discriminatory enforcement; and fails to require proof that a person's BAC actually exceeded the legal limit at the time of driving....” 545 Pa. at 299,

681 A.2d at 163. Similarly, in the instant case, when a “police vehicle” is allowed to have red-&-blue lights, but when a “police officer” gets convicted for having those lights on his “police vehicle,” the statute in question in the instant case similarly “unnecessarily encompasses both lawful and unlawful conduct” (by supposing that a constable is, and also isn’t, a police officer), similarly “fails to provide a reasonable standard by which a person may gauge their conduct” (by making it impossible to guess which law enforcement officer might stop this particular police officer and haul him or her into court), and encourages arbitrary and discriminatory enforcement (again, by making it impossible to guess which law enforcement officer might stop this particular police officer and haul him or her into court).

[*Continued on the next page.*]

Constables have recently been successfully defending against charges filed in red-&-blue lights cases.⁸ Or not (*see* the instant case, for example,, and the second paragraph of the footnote affiliated with the preceding sentence).

The void-for-vagueness holdings both of the U.S. Supreme Court, *supra*, and of the Pennsylvania Supreme Court, *supra*, apply to the instant case.

⁸ The most recent successful defense of which the undersigned is aware has been *Commonwealth v. Filson*, Docket No. CP-46-SA-0000254-2023 (Montg. CCP, Nov. 27, 2023).

Others have pled guilty to other summary charges or to the main charge, primarily because the president judges in their counties cut them off from making a living, by suspending their court-assigned work from the MDJS.

One MDJ found a Constable (this same constable, Constable Wiggs) Not Guilty, at Docket No. MJ-03204-TR-0000761-2022 (Northampton MDJ, July 7, 2022).

One Court of Common Pleas heard Constable Wiggs defend himself *pro se*, and entered a “judgment of acquittal” on the docket, which also says, in a docket entry, “Quashed, Dismissed, Demurrer Sustained.” Docket No. CP-51-SA-0001107-2018 (Phila. CCP, May 30, 2018).

Two cases in northeastern Pennsylvania were abandoned by the Commonwealth. Docket No. CP-40-SA-301-2015 (Nov. 7, 2019, or earlier), and CP-43-SA-0000153-2016 (May 12, 2017) (respectively, Luzerne CCP and Monroe CCP). Neither of these cases was Constable Wiggs’s case.

One case in Lehigh County was abandoned by the Commonwealth. Docket No. MJ-31104-TR-0003109-2022 (Sept. 13, 2022).

Any available rationale for overturning the conviction will, of course, be, from Constable Wiggs’s perspective, a beneficial result.

It would truly be helpful if, in the instant case, Constable Wiggs’s conviction could be overturned on constitutional grounds; that result would provide some certainty, statewide.

Constable Wiggs's car is a "police vehicle." And the ONLY way that a different interpretation could be reached, would be to ADD one or more provisions to the text of the statute - - provisions which the Legislature did not put there.

ARGUMENT SECTION “C”

- C. WHEN A PERSON IS CONVICTED UNDER THE WRONG SUBSECTION OF A STATUTE, THAT CONVICTION IS VOID.

When the wrong criminal (or summary) charge is filed - - that is, when the person might arguably be guilty of something *similar*, but when the charge itself is not something which he or she can indeed actually be guilty of - - then there can be no conviction.

But what is before us is no technicality, no over-nicety. Here there is one charge in the indictment, forcible rape, where there should have been another, statutory rape, or both set forth in the indictment, to warrant a proper finding of statutory rape. And where there is no charge, or a wrong charge, then a verdict found in such proceeding does not cure the omission or the error. A verdict found in such proceeding does not cure the omission or the error. A verdict or a plea of guilty does not cure it. *Commonwealth v. Smith* [,] 116 Pa.Super 146, 155, [177 A. 73 (1935)]. [A person] “**cannot be convicted** of an offence which is not the [formal] accusation made against him” *Commonwealth v. Komatowski*, 347 Pa. 445, 453, [32 A.2d 905 (1943)]

Commonwealth v. Ashmore, 8 Pa. D.&C.2d 523, 525 (C.P. Phila. 1957) (citing both Pa. Superior Court and Pa. Supreme Court precedent) (reversing a conviction) (emphasis added).

Research on the *Ashmore* case shows no negative treatment. In fact, the *Komatowski* Pa. Supreme Court case cited in *Ashmore* has been cited

numerous time, including as follows:

The law is clear that a defendant cannot be convicted of an offense which is not the accusation made against him. *Commonwealth v. Komatowski*, 347 Pa. 445, 453, 32 A.2d 905, 909 (1943)....

Commonwealth v. Speller, 458 A.2d 198, 311 Pa.Super. 569, 579 (1983).

The trial court committed a significant error when it erroneously reasoned that “Section 4571(d) only prescribes what the punishment should be if a person violates any part of Section 45741(a) [*sic*] or Section 4571(b).” Nothing could be further from a correct reading of Section 4571. Subsections (a) and (b) say that certain vehicles “shall” and “may” have certain equipment, but, among subsections (a), (b), & (c), only Section 4571(d) prohibits conduct. Only subsections (d) and (e) are things which can be violated, and all of the preceding subsections provide exceptions; subsection (d) explicitly so states:

(d) Vehicles prohibited from using signals.

Except as otherwise specifically provided in this section, no vehicle other than an emergency vehicle may be equipped with *revolving* or *flashing* lights or *audible* warning systems identical or similar to those **specified** in subsections (a) and (b). A person who equips or uses a vehicle with visual or audible warning systems in violation of this section commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$500 nor more than \$1,000.

75 Pa.C.S. § 4571(d) (emphasis added). Above, the word “specified” is given special emphasis here, to point out that subsections (a) and (b) give definitions

and/or specifications. Subsections (a) and (b) lay out the conditions under which the owner or operator of a vehicle is exempt, under those circumstances, from the PROHIBITION set forth in subsection (d).

The undersigned filed a brief, when the *de novo* Summary Appeal was first scheduled on April 11, 2022. (The trial was finally held, 51 weeks later.) One of the things noted in that brief was the wrong charging subsection. *See, e.g.*, the said Brief, accompanying the instant Brief at RR. 25a, and the said 2022 brief’s Appendix A, found at RR. 35a.

In addition, although the Common Pleas record shows a conviction of subsection (b)(1), the MDJ document shows a conviction of subsection (a). RR at 13a.

A citizen has both the constitutional right (*see* ARGUMENT SECTION “B”) as well as the legal right, with or without invoking constitutional protection (*see* the case law in the instant ARGUMENT SECTION “C”), to a proper indictment or a proper information. The instant case (a Summary

Appeal) has a different kind of formal charging document, but that document (RR. at 13a) says “4571(a),” while the later conviction says “4571(b)(1).”

That conviction cannot stand. Not only due to *that* difference, but also due to the fact that *both* of them are wrong.

The conviction should be overturned.

ARGUMENT SECTION “D”

- D. WHEN THE COLOR OF THE ALLEGEDLY RED-&-BLUE LIGHTS ON A CONSTABLE’S POLICE CAR IS AN ESSENTIAL ELEMENT OF THE ALLEGED OFFENSE, AND WHEN THERE IS ZERO EVIDENCE OF THE COLOR OF THE LIGHTS IN A LIGHT BAR WHICH IS OFF, THAT CONVICTION IS VOID.

There are literally thousands of cases holding that the decision of a tribunal—civil or criminal, administrative or adjudicative—cannot stand, if there is no evidence to support it. Not surprisingly, there is a “zero evidence” standard, which requires reversal if one of the essential elements has “zero evidence” to support it. At least one appellate court has used the phrase “zero evidence,” to support reversing a decision:

Here, the [prosecution] did not produce any evidence on salon and spa operations. Consequently, there is zero evidence in the record that patrons are in a vulnerable state while receiving services; are separated from their personal belongings while receiving services; or carry controlled substances in their pocketbooks.

Abruzzese v. Bureau of Professional and Occupational Affairs, 185 A.3d 446, 454 (Pa.Cmwlt. 2018).

In the instant case, no evidence was admitted at the April 3, 2023, trial, which indicated that the “light bar” on the Constable’s police vehicle was

equipped with red-&-blue lights. In fact, Defendant’s Exhibit D-2⁹ was admitted into evidence. Exhibit D-2 is a video (actually, an audio) of the conversation between the Trooper and the Constable. It is clear from the 22-minute conversation that the lights were never activated; because the lights were never activated, there is zero evidence that the lights were of any particular color.¹⁰

It is axiomatic that findings of fact, even when they are being given

⁹ Exhibit D-2 is a flash drive. It is in the Court of Common Pleas/Prothonotary original court record, transmitted to the Superior Court in the instant appeal.

Contrary to what the trial court states on the final page of its Rule 1925(a) Statement (appended to the instant Brief), this video/audio recording was offered into evidence NOT by the Commonwealth, but by the Constable/Defendant, precisely to prove that the light bar was NEVER activated during the traffic stop.

See also the next footnote.

¹⁰ Erroneously, the trial court, on the final page of its Rule 1925(a) Statement (appended hereto as the First Appendix), makes the following two wrong statements:

1. “Trooper Brown-Shields ... testified under oath that he observed the lights on Appellant’s vehicle to be red and blue ...”
2. “The audio recording indicated that Appellant admitted that the lights on his vehicle were red and blue.”

Final page of the 2023, Memorandum (the Rule 1925(a) Statement). Both of these statements have nothing of record to support them.

The Trooper testified (RR. 56a-61a, only that he “believe[d]” that he saw the lightbar on. He wasn’t sure, so a factfinder cannot add to that. MOREOVER, the Trooper NEVER testified that the lights were “flashing,” and “flashing or revolving” is a necessary element of the offense.

Indeed, this is a situation with zero evidence.

deference, cannot stand if zero evidence supports them.

The conviction should be reversed, because - - even viewed in the light most favorable to the verdict-winner - - the evidence included exactly zero testimony about the lights being “revolving or flashing,” which is an essential element of the offense.

CONCLUSION
STATING THE PRECISE RELIEF SOUGHT

The Superior Court should please reverse the Order of the Court of Common Pleas which convicted Constable Wiggs, and should please vacate the sentence.

Respectfully submitted,
/s/ Ronald L. Clever
Attorney for the Appellant

CERTIFICATIONS AND CERTIFICATE:

CERTIFICATION OF WORD COUNT

Using the word-processing program on which the instant document was written, the undersigned has determined that the word count is approximately 8,958 words.

CERTIFICATION FOR PAPER COPY:

The paper copies being mailed are time-stamped, and are identical to the copy that was PAC-filed.

CERTIFICATE OF COMPLIANCE:

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellant and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

/s/ Ronald L. Clever

Attorney for the Appellant

FIRST APPENDIX

The Rule 1925(a) Statement

COMMONWEALTH

v.

STEVEN A. WIGGS

: IN THE COURT OF COMMON PLEAS OF
: THE 41ST JUDICIAL DISTRICT OF
: PENNSYLVANIA
: PERRY COUNTY BRANCH
: No. CP-50-SA-000026-2021

PROthonotary
Clerk of Court
Perry County PA
2023 JUL -7 PM 2:50

FILED

MEMORANDUM

Appellant was cited on June 16, 2021, for a violation of 75 Pa. C.S. § 4571(b)(1) operating a vehicle with flashing red and blue lights without lawful authorization and was found guilty of this offense by Magisterial District Judge Elizabeth R. Frownfelter on August 17, 2021. Appellant was ordered to pay a fine of \$500.00 plus costs and fees consistent with the punishment required under the applicable Section of the Motor Vehicle Code. Appellant then filed his summary appeal to the Court of Common Pleas on August 17, 2021. Appellant was then convicted of the alleged offenses by the Perry County Court of Common Pleas after a de novo hearing on April 4, 2023.

Appellant timely filed a Notice of Appeal to the Superior Court on April 26, 2023, and a concise statement of issues to be raised on appeal on May 17, 2023.

The appellate court enjoys a broad scope of review and “[is] not bound by deductions and inferences drawn by the trial court from the facts found, nor required to accept findings which are wholly without support in the record.” Jordan v. Jackson, 876 A.2d 443, 449 (Pa. Super. Ct. 2005). The appellate court is bound to factual findings in the record of the trial court but it “may reject conclusions drawn by the trial court only if they involve an error of law, or are unreasonable in light of the sustainable findings of the trial court.” Id.

ARGUMENT

1. The Court Did Not Err By Convicting Appellant Based on A Reasonable Interpretation of a Non-Vague Statute

Appellant argues that this court erred by convicting him of summary offenses for the unauthorized use of lights on the vehicle he was operating in the performance of his work as a constable. Appellant argues that he did not violate the motor vehicle code because constables' vehicles are police vehicles and are therefore permitted to have red and blue revolving lights affixed to their roofs. 75 Pa. C.S. § 4571. Appellant also argues that the term "police vehicle" is not clearly defined, and therefore could be reasonably interpreted in multiple ways, therefore the trial court should have construed the statute in his favor. 1 Pa. C.S. § 1928(b)(1).

The legislature of the Commonwealth has defined the term "police officer" by statute multiple times and never included constables in any definition of the term. 42 Pa. C.S. § 8951; *see also* 53 Pa.C.S. § 2162¹. The Supreme Court of Pennsylvania has ruled that "a constable is an independent contractor and is not an employee of the Commonwealth, the judiciary, the township, or the county in which he works." Commonwealth v. Taylor, 677 A.2d 846, 450 Pa. Superior Ct. 583, 586 (1996); *citing In re: Act 147 of 1990*, 598 A.2d 985 (Pa. 1991). The Superior Court of Pennsylvania later reviewed the matter and decided that constables are not to be included in the definition of "police officer". Commonwealth v. Rodriguez, 2018 WL 3099679, 1, n.4.

The legislature of the Commonwealth has specifically stated that only police and county sheriffs are permitted to affix flashing red and blue lights to the roofs of their

¹ Defining the term "police department".

vehicles. 75 Pa. C.S. § 4571(b.1)(3.1). This statute does grant exceptions allowing certain groups of first responders who are specifically named in the statute to have and use flashing blue lights including county sheriffs, coroners, medical examiners, and fire police².

75 Pa. C.S. § 4571(b)(1). The legislature has also limited the use of flashing blue or red and blue lights to times when the vehicle is responding to an emergency situation. 75 Pa. C.S. § 4571(d).

Appellant's argument is based on the assertion that there are two ways to interpret the statute at issue in this case and the trial court should have interpreted the statute in his favor because of the alleged vagueness of the statute. The statute does not include constables in the exceptions to the law forbidding any group other than police officers from using flashing lights and sirens on their vehicles. It is a reasonable conclusion that any persons or groups who are excluded from the legislature's comprehensive list of those who fall under the exception to the statute were intentionally excluded from the list. There is no exception to Section 4571 of the motor vehicle code permitting constables to have and use flashing red and blue lights on their vehicles.

Since there is no exception permitting constables to have and use flashing lights on their vehicles, then the only way that would be allowed is if constables are a type of police officer. There is over thirty years' worth of Pennsylvania caselaw on this issue and the courts have uniformly agreed that constables are not police officers. The trial court is mandated by the legislature to strictly construe penal statutes³, meaning that the court does not have the ability to interpret the words of the legislature to mean something different

² Ambulance personnel, firefighters, and members of certified search and rescue groups may affix rotating red lights to their vehicles, including personally owned vehicles, so long as those vehicles have been registered with the state police. 75 Pa. C.S. § 4572(a)(1).

³ 1 Pa. C.S. § 1928(b)(1).

than the plain meaning of what has been written. The courts have consistently ruled that constables are not police officers, therefore, constables are not permitted to affix rotating blue or red and blue lights to the roofs of their vehicles.

Appellant also argued in his defense that the lights on his car were not flashing lights and therefore not subject to the statute. However, according to the credible testimony of the citing officer, Trooper Jacob Brown-Shields, the trooper and Appellant agreed that Appellant would turn on the vehicle's lights while he was stopped on the side of the road in order to save Appellant the embarrassment of having been pulled over. Tr. at 9. Trooper Brown-Shields testified that this event was when he confirmed that the lights on Appellant's vehicle were red and blue flashing lights. Tr. at 9. The trial court reasonably concluded from the trooper's testimony and common sense that the lights in the light bar on the vehicle were flashing lights of the kind prohibited and not a solid light, like a lamp or flashlight. Trooper Brown-Shields also credibly testified that Appellant admitted that his lights were red and blue but argued that he was permitted to have them on his vehicle.

The section of the motor vehicle code being disputed in this case is not ambiguous. It is clear to the trial court that the only way to interpret this statute is to interpret it as disallowing Appellant from affixing and using the aforementioned lights on his vehicle in his role as constable because the office of the constable is not permitted to use such lights on their vehicles under the Motor Vehicle Code. Therefore, the trial court did not err by convicting Appellant of the summary offenses.

2. The Court Did Not Err Under the Constitution By Convicting Appellant

Appellant argues that the applicable statute is vague and that this Court erred because both the Federal and Pennsylvania Constitutions required this court to interpret

the statute in his favor. The rules of construction are constitutional and 1 Pa. C.S. § 1928(b)(1) requires a strict interpretation of the applicable statute.

An evaluation of the motor vehicle code on its face and an in-depth review of the preceding case law, *supra*, support Appellant's conviction for violating the statute without the benefit of falling under one of the statute's exceptions. Therefore, the court did not err.

3. The Court Did Not Err By Convicting Appellant Under the Motor Vehicle Code

Appellant argues that the trial court erred in upholding his conviction because constables are police officers which means that constables' vehicles are police vehicles. Appellant argues that the Pennsylvania Supreme Court has ruled that constables qualify as police officers. However, the abundance of precedent in Pennsylvania regarding this subject clearly states otherwise. In making its ruling in this case, this court relies on the Pennsylvania Supreme Court's opinion in In re: Act 147 of 1990 wherein it determined that constables were independent contractors and not police as well as the Superior Court's corresponding decisions that constables are not police officers. Taylor, at 586; Rodriguez, at 1, n.4.

This court relied on decades of guidance from the higher courts to conclude that Appellant violated the motor vehicle code by affixing and using red and blue lights to the roof of the vehicle used in his work as a constable. The courts have repeatedly determined that constables are not police officers and the trial court followed that precedent. Further, as argued above, the legislature itself has determined that constables are not police so the trial court was compelled to find that the constable's vehicle was not a police vehicle permitted to have and use red and blue lights. Therefore, the trial court did not err under the motor vehicle code.

4. The Court Did Not Err By Convicting Appellant and Appellant Was Charged Under the Proper Section of the Applicable Statute

Appellant was charged with a violation of the Motor Vehicle Code under § 4571(b)(1). The evidence and testimony offered supported the Commonwealth's allegation that Appellant violated this statute. As stated above, Appellant, as a constable, was not permitted to affix lights to the roof of his vehicle or to use the same but the evidence and testimony offered by the Commonwealth proved that he did have lights affixed to the roof of his vehicle. The statute in question is operative because it clearly states what persons or organizations may affix lights to their vehicles and use those lights in times of emergency.

Appellant argues that he should have been charged under 75 Pa. C.S. § 4571(d). An inspection of the statute reveals that Section 4571(d) only prescribes what the punishment should be if a person violates any part of Section 4571(a) or Section 4571(b). Assuming, *arguendo*, that the Commonwealth would have more accurately charged Appellant under Section 4571(d), the Commonwealth still appropriately charged Appellant under Section 4571(b)(1) because that is the Section of the statute that plainly describes who may lawfully mount flashing emergency lights on their vehicle and is the Section of the Motor Vehicle Code that Appellant actually violated. The Commonwealth met its burden to prove that Appellant violated the statute that he was charged with violating and therefore this court did not err by convicting Appellant.

5. The Court Did Not Err by Denying Appellant's Claim of a Brady Violation

A defendant may establish that the prosecution committed a Brady violation only when he proves that “(1) the prosecutor has suppressed evidence; (2) the evidence, whether exculpatory or impeaching, is helpful to the defendant, and (3) the suppression prejudiced the defendant.” Commonwealth v. Fason, 2021 WL 50436, 10; *quoting*

Commonwealth v. Koehler, 36 A.3d 121, 133 (Pa. 2012); *see also* Brady v. Maryland, 373 U.S. 83 (1963). Brady also includes a test for whether evidence that was destroyed before it could be examined by the defendant could have potentially been used to exonerate the defendant. Commonwealth v. Chamberlain, 30 A.3d 381, 402 (Pa. 2011). If the Commonwealth destroys evidence that could be classified as *potentially useful* and not *exculpatory* then there is no due process violation unless it is proven that the evidence was destroyed in bad faith. Id. At the hearing, the Commonwealth put on proper testimony from Trooper Brown-Shields that any video of the encounter that was destroyed was destroyed in compliance with the Pennsylvania State Police's policy for purging video records. It is permissible under Brady to destroy records after a reasonable period of time and in the normal course of record-keeping.

The test in Brady, *supra*, places the burden on the defendant to prove that the Commonwealth suppressed exculpatory or impeaching evidence and that such suppression prejudiced the defendant. Appellant did not offer evidence or testimony to refute Trooper Brown-Schieds' testimony that the Appellant violated the statute by having and using an unlawful light on the roof of his vehicle. Appellant did not prove that the evidence was withheld or destroyed in bad faith or that the exclusion of the video did prejudice Appellant. Therefore, Appellant did not prove that the Commonwealth committed a Brady violation and this court did not err in denying Appellant's claim of a Brady violation.

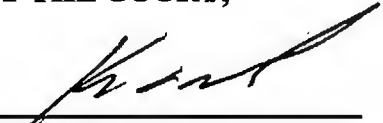
6. The Court Did Not Err Because the Commonwealth Proved Beyond a Reasonable Doubt that the Lights on Appellant's Vehicle Were Red and Blue

The Commonwealth put on testimony from the citing officer, Trooper Brown-Shields of the Pennsylvania State Police, who testified under oath that he observed the lights on Appellant's vehicle to be red and blue when Appellant and the trooper agreed to permit Appellant to flash his lights to avoid the embarrassment of a constable being pulled over by a state trooper. The Commonwealth also admitted into evidence an audio recording of the Appellant speaking with Trooper Brown-Shields. The audio recording indicated that Appellant admitted that the lights on his vehicle were red and blue.

The trial court made its ruling based on the facts, evidence, and testimony available at the hearing, therefore the trial court did not err.

WHEREFORE, Appellee's Preliminary Objections were granted and the Appellant's Complaint was dismissed and the Court did not err in denying those motions.

BY THE COURT,


A handwritten signature in black ink, appearing to read 'K. Mumma', is written over a horizontal line.

KENNETH A. MUMMAH, J.

July 7, 2023

Distribution:

District Attorney
Ronald L. Clever, Esq. (for Appellant)
Affiant
Court Administration
Court Reporter

SECOND APPENDIX

The Rule 1925(b) Statement

IN THE COURT OF COMMON PLEAS OF PERRY COUNTY, PENNSYLVANIA
CRIMINAL COURT DIVISION

COMMONWEALTH
vs.
STEVEN A. WIGGS

No. CP-50-SA-0000026-2021

CONCISE STATEMENT OF THE ERRORS COMPLAINED OF ON APPEAL

1. The Statutory Construction Act, 1 Pa.C.S. §§1501-1991—especially § 1928(b)(1)—applies. When the text of a penal statute has two possible reasonable interpretations, the statutory law of Pennsylvania requires that that statute must be construed in the manner that is in favor of the accused, and therefore must be construed against the Commonwealth.

Under § 4571 of the Vehicle Code, a “police vehicle” may be equipped with red-&-blue flashing and/or revolving lights. Because the 2-word phrase “police vehicle” is not defined, and because that phrase, therefore, could be interpreted either (*a*) as meaning a government-owned vehicle (as the Court seems to have interpreted it), or (*b*) as meaning otherwise—the statute must be construed otherwise, and, thus, in favor of the accused. Therefore, a Pennsylvania Court must construe the statute in such a way that the vehicle in the instant case was, indeed, a police vehicle.

In addition, in the instant case, the vehicle was, in fact, owned by the Office of the Constable.

In the instant case, the vehicle in question was a police vehicle.

The Court erred by deciding otherwise.

2. The Pennsylvania Constitution and the U.S. Constitution each require such an interpretation as well.

The Court erred by deciding otherwise.

PROthonotary
CLERK OF COURTS
PERRY COUNTY PA
2023 MAY 18 AM 11:23

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3. Under the Vehicle Code itself, the vehicle in question was a police vehicle. This conclusion is required, due in part to the language of the applicable statute, and partly because the Pennsylvania Supreme Court has decided that “[t]he constable is a police officer.”

In the instant case, the vehicle in question was a police vehicle.

The Court erred by deciding otherwise.

4. The wrong subsection of the Vehicle Code was charged and the basis of a conviction. All of the subsections of § 4571 preceding § 4571(d) create certain authorizations, and, then, § 4571(d) is the operative subsection of § 4571 which prohibits the actual alleged activity.

The Court erred by finding the Defendant guilty of violating a subsection which cannot be violated: any failure to fall within the authorizations of § 4571 (contained within the subsections preceding § 4571(d)), does not constitute a violation of any of the said preceding subsections, but, rather, constitutes a violation (if of anything) of § 4571(d).

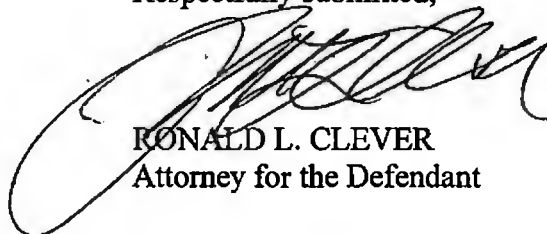
5. The Commonwealth destroyed evidence, in violation of the *Brady* rule.

The Court erred by deciding otherwise.

6. The Commonwealth had no evidence that the lights were red-&-blue.

The Court erred by deciding otherwise.

Respectfully submitted,



RONALD L. CLEVER
Attorney for the Defendant

THIRD APPENDIX

Pennsylvania Rule of Judicial Administration 1907.2(a) **(“Policies, procedures and standards of conduct”)**

“The Court Administrator shall establish uniform policies, procedures and standards of conduct for constables who perform services for the courts. These policies, procedures and standards of conduct shall be mandatory* for all judicial districts and constables engaged to perform services for any court of the unified judicial system.”

* The “CONSTABLE POLICIES, PROCEDURES AND STANDARDS OF CONDUCT” are found online at:

<https://www.pccd.pa.gov/training/Pages/Legislation-and-Regulation.aspx>

... by clicking on “Supreme Court Rules for Constables.”

**PENNSYLVANIA
UNIFIED JUDICIAL SYSTEM**

**CONSTABLE POLICIES, PROCEDURES AND
STANDARDS OF CONDUCT¹**

**Administrative Office of Pennsylvania Courts
May, 2013**

¹ See Pa.R.J.A. No. 1907.2.

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PREFACE

In Pennsylvania, constables perform numerous important functions at the municipal level and are independent contractors, statutorily authorized to perform services for the courts.

The purpose of the Unified Judicial System Constable Policies, Procedures and Standards of Conduct (Constable Policies), is to establish uniform policies and procedures, as well as standards of conduct for constables engaged to perform services for the courts. The provisions that follow are mandatory, unless expressly stated otherwise. All references to constables herein include elected and appointed constables and deputy constables. A constable's failure to comply with the Constable Policies may render the constable ineligible to receive assignments from the courts or be paid for work performed.

Nothing in the Constable Policies, Procedures or Standards of Conduct are intended to create an employer / employee relationship between the courts and constables. *See In re Act 147 of 1990*, 528 Pa. 460, 598 A.2d 985 (1991).

Constables having questions regarding the Constable Policies, or local policies and procedures should contact their president judge or district court administrator.

I. ADMINISTRATION

A. QUALIFICATIONS

1. Election & Appointment

Constables and deputy constables must be in compliance with all applicable laws, Pennsylvania Commission on Crime and Delinquency (PCCD) Constable Education and Training Board (Board) regulations and certification requirements, requirements of the Ethics Act, *see* Appendix “A”, and the provisions of the Constable Policies in order to be assigned to perform judicial duties.² Compliance with the aforementioned does not entitle a constable to the receipt of judicial duties.

Only individuals who have been elected or appointed to serve as a constable, and who are currently certified by PCCD, may perform or assist in the performance of judicial duties, unless otherwise authorized by law.

2. Registration

Each district court administrator’s office shall maintain a list of constables and deputy constables from their county who are authorized to perform judicial duties. The list shall include those constables who are certified to perform judicial duties by PCCD and who have not been prohibited from receiving judicial duties by the President Judge. The list, and any updates, shall be provided to all magisterial district judges in the judicial district, and, upon request, to any other judge, magisterial district judge or district court administrator.

If a president judge decides that an otherwise certified constable is not to be assigned judicial duties, the district court administrator shall immediately notify the district court administrators of all other judicial districts of this determination.

3. Insurance

A constable must file with the Clerk of Courts proof of current professional liability insurance, covering each individual in the performance of his or her judicial duties with a minimum coverage of \$250,000 per incident and a minimum aggregate of \$500,000 per year. 44 Pa.C.S.A. § 7142(b).

² Throughout the Constable Policies, “judicial duties” refers to those services a constable performs for the courts pursuant to Act 49 of 2009, 44 Pa.C.S.A. §§ 7161-7161.1.

4. Appointment of Deputies

Deputies serve based upon need and at the pleasure of elected constables, subject to approval and appointment as prescribed by law. Deputies must comply with all requirements governing elected constables.

B. CONSTABLE REVIEW BOARD

President Judges may authorize the creation of an advisory board called a Constable Review Board (CRB) to assist in resolving any disputes related to a constable's performance of judicial duties.³ If a CRB is created, the President Judge, in consultation with relevant county officials, should develop filing procedures and guidelines, including notice and opportunity to be heard, and timetables for decisions.

The CRB may receive complaints by or against constables regarding the performance of judicial duties, financial/payment disputes or other matters relevant to a constable's services to the courts. The CRB may then make recommendations to the President Judge regarding the judiciary's continued use of the constable's services, or to the county controller / county executive if the dispute concerns financial or other matters within the county's control.

Any findings of suspected criminal activity shall be forwarded to the county District Attorney. The President Judge shall be notified of any referrals to the District Attorney and shall determine if a constable's services should continue to be used.

It is recommended that membership on a CRB include:

- A Judge of the Court of Common Pleas or Magisterial District Judge
- The District Court Administrator or Special Courts Administrator
- A Certified Constable and an alternate to be used in case of conflict
- The County Controller or his or her designee.

³ If a CRB is created, it is anticipated that the President Judge will appoint members to the CRB. If the county wishes to empower the CRB to make recommendations to the appropriate county individual / agency regarding disputes within the county's purview, the county executive or another member of the county executive branch would also make an appointment to the CRB.

C. FINANCE / PAYMENTS

Each court of common pleas must develop or adopt a form (“payment sheet”) to be used by all constables seeking payment for the performance of judicial duties. Payment sheets submitted by constables must be legible, complete, and contain at a minimum the following information: 1) the defendant’s name; 2) the docket and/or OTN number; 3) the statutorily authorized fees requested, *see* 44 Pa.C.S. A. §§ 7161 and 7161.1; 4) the signature of the constable/deputy constable who is submitting the document; and 5) the signature of the judicial authority who authorized the services to be performed. The President Judge or his or her designee, as well as the county executive / paying agent, may require that additional information be included on payment sheets.

II. EDUCATION

The following section is a summary of the training and certification programs and requirements established by the PCCD pursuant to Act 49 of 2009. *See* 44 Pa. C.S.A. §§ 7141 - 7149 and 37 Pa. Code §§ 431.1 - 431.54 . (This information is provided by the PCCD Constables’ Education and Training Board). This information applies to elected and appointed constables and deputy constables.⁴

1. Requirements for Certification

Act 49 of 2009 established the Constables’ Education and Training Board (Board) as an advisory board of the PCCD and authorized the Board to establish and administer the mandatory training and certification of constables.

2. Training Requirements

Training programs administered by the Board include: basic training (the initial certification of constables) and annual continuing education (the re-certification of constables). Certification is awarded only to individuals who hold the office of constable or deputy constable. Constables/deputy constables must complete these programs in order to receive judicial assignments.

3. PCCD Registration

Act 49 training is available, free of charge, to all elected or appointed constables and deputy constables who are registered with PCCD. Registration is the first step in

⁴Constables and other users of the Constable Policies are advised to review state law and Constable’s Education and Training Board regulations for changes that may occur after this publication.

obtaining certification and allows constables to receive training bulletins, training schedules, and other PCCD communications regarding certification.

4. Training

The Constables' Education and Training Program provides six types of training:

- * 80 hours basic training
- * 20 hours annual continuing education training
- * 40 hours basic firearms training
- * 20 hours annual firearms training
- * 20 hours advanced firearms training
- * Up to 16 hours annual optional training.

Regional contractors offer training from January through October of each year at various locations throughout the state.

A constable must successfully complete basic training in order to obtain initial certification as a constable. Successful completion of continuing education and training every subsequent year is required in order to maintain certification.

Firearms training is optional, as constables are not required to carry firearms in the performance of their duties. However, Act 49 mandates firearms training and certification for any constable who intends to carry a firearm during the performance of his or her constable duties. 44 Pa.C.S.A. §7148.

Note: By the requirements set forth in the Constable Policies, some judicial duties, such as prisoner transports and security, may require a constable to carry a firearm.

A constable must successfully complete basic firearms training one time in order to obtain initial certification to carry a firearm in the performance of constable duties. Following initial firearms certification, successful completion of annual or advanced firearms training every year is required in order to maintain firearms certification

A. Basic Training

A constable must attend basic training only once, as long as he or she maintains certification. If a constable has taken and passed the law enforcement basic training waiver examination, as determined by PCCD, and has been certified by the Board, he or she is not required to attend basic training.

B. Continuing Education

A constable must complete annual continuing education in order to renew his or her certification for the following calendar year. Upon successful completion of

continuing education by October, constables and deputy constables will be issued new certification cards in December, providing certification for the following year.

C. Basic Firearms Training

A constable must be at least twenty-one (21) years of age to attend firearms training. Constables who seek Act 49 firearms certification must first complete Basic Firearms Training. While not mandatory, this training is available to any constable who has completed the 80-hour basic training course, has acquired a certification number, and is not precluded under state or federal law from possessing or using a firearm. Firearms certification is contingent upon a constable passing an annual criminal history record check. Successful completion of the 40-hour Basic Firearms training course is a prerequisite for the Annual Firearms and the Advanced Firearms courses.

D. Annual & Advanced Firearms Training

Constables who are currently in office and have obtained certification through basic training or the waiver examination are authorized to attend firearms training. This training must be completed annually in order to maintain firearm certification. The Annual Firearms course is designed for the average proficiency level shooter while the Advanced Firearms course is for more experienced proficiency level shooters.

III. STANDARDS OF CONDUCT

Scope: "Constable" includes elected and appointed constables and deputy constables.

Standard 1. Adherence to the Unified Judicial System Constable Policies, Procedures and Standards of Conduct

A constable shall adhere to the terms and provisions contained within the Constable Policies. Nothing in the Constable Policies shall prohibit judicial districts from enacting policies and procedures consistent therewith.

Standard 2. Non-Discrimination and Equal Employment Opportunity

A constable shall comply with all provisions of the UJS Policy on Non-Discrimination and Equal Employment Opportunity (attached as Appendix "B"). As "officers serving process or enforcing orders," a constable is included in the policy's definition of "related staff" (as defined in 42 Pa.C.S.A. § 102) and is thus covered by the Supreme Court policy.

Standard 3. Impropriety and Appearance of Impropriety to be Avoided

A constable must respect and comply with the law, and while performing judicial duties, shall conduct him or herself in a manner that promotes public confidence in his or her integrity and impartiality. A constable shall not allow family, social or other relationships to influence his or her conduct while performing judicial duties. A constable shall not lend the prestige of his or her office to advance the private interests of others, nor shall he or she convey or permit others to convey the impression that they are in a special position to influence the constable in the performance of judicial duties.

Standard 4. Business of the Office of Constable

A constable shall devote the time necessary for the prompt and proper performance of judicial duties.

Standard 5. Solicitation of Funds

A constable shall not solicit funds for any educational, religious, charitable, fraternal, political or civic organizations while performing judicial duties.

Standard 6. Political Activity

A constable shall not engage in partisan political activity while performing judicial duties.

As used in this Rule, the term “partisan political activity” shall include, but is not limited to: running for public office; serving as a party committee-person; working at a polling place on Election Day, except as part of the constable’s statutory duties; performing volunteer work in a political campaign; soliciting contributions for political campaigns; and soliciting contributions for a political action committee or organization, but shall not include involvement in non-partisan or public community organizations or professional groups.

This prohibition applies only while constables are performing judicial duties. It is not a complete ban on all political activity.

Standard 7. Professionalism

A constable shall conduct him or herself in a professional, courteous and respectful manner when interacting with the public and the courts.

Standard 8. Confidentiality

A constable shall not disclose personal or confidential information obtained while performing judicial duties, except as authorized by law. A constable shall neither access directly, nor request through an individual with authorized access, information contained within criminal justice agency databases, unless expressly authorized to do so by law,

Supreme Court rule, AOPC policy, or by the court on a case-by-case basis. Criminal justice agency databases include, but are not limited to, the Pennsylvania Justice Network (JNET), the Commonwealth Law Enforcement Assistance Network (CLEAN), and the Federal Bureau of Investigation's National Crime Information Center (NCIC).

IV. SECURITY AND TRANSPORTS

The following procedures set forth the minimum standards to be implemented by constables and deputy constables while performing judicial duties, including but not limited to the transportation of defendants to and from magisterial district courts and the performance of security within a magisterial district court facility.

A. Certification & Clearances

A constable may only perform judicial duties for the courts if he or she has been certified by the Constables' Education and Training Board pursuant to 44 Pa.C.S.A. § 7142.

B. Weapons

No constable shall carry a firearm in the performance of judicial duties unless he or she has received firearm certification pursuant to 44 Pa.C.S.A. § 7144 and complied with all regulations established by the Constables' Education and Training Board.

C. Attire

A constable shall carry identification and wear clothing that clearly identifies him or her as a constable while performing judicial duties.

D. Security at a Magisterial District Court Facility

1. When providing security at a magisterial district court, a constable:
 - a. shall conduct a search of prisoner hold areas, restrooms, and any other areas of the magisterial district court facility accessible by prisoners prior to allowing them to occupy such areas;
 - b. shall observe all actions of those within the court facility to ensure the safety of the public, the parties, court staff, and the magisterial district judge, and be prepared to act swiftly should the need arise;
 - c. shall prohibit any direct or indirect contact within the magisterial district court facility between a defendant and family members,

friends, or members of the public unless authorized by the magisterial district judge;

- d. shall search all defendants prior to handcuffing and shackling of the waist and/or ankles.⁵ Concerns regarding the use of restraints on a defendant while in a magisterial district court facility or during proceedings should be discussed with the magisterial district judge; and
 - e. shall, when carrying a firearm, secure the weapon in a Level 2, or higher, security holster.
2. High-Profile/High-Risk Cases: In addition to the requirements set forth above, the following shall also be observed when providing security at a magisterial district court in a proceeding that has been deemed high-profile and/or high-risk by the magisterial district judge and/or the President Judge of the judicial district or his or her designee:
- a. As many constables as necessary shall be present to ensure safety and security⁶;
 - b. Two fire armed, certified constables shall transport the defendant(s) to and from the magisterial district court, unless directed otherwise by the President Judge.⁷

E. Vehicles

Vehicles used for the transportation of defendants shall:

1. comply with applicable law and regulations, including the provisions of the Pennsylvania Motor Vehicle Code (Title 75);

⁵ It is recommended that a transport belt with an integrated “D” ring be used around the defendant’s waist. It is further recommended that all handcuffs and shackles should be double-locked for added security.

⁶ For example, a constable may be stationed at the court entrance with a metal detector wand while another is assigned to monitor activity within the courtroom and another to escort defendants to and from a holding cell. It is recommended that constables assigned to maintain physical custody of defendants should not be assigned to or perform other court security duties.

⁷ A President Judge may waive or amend this requirement in individual cases, or in a class of cases.

2. be maintained in a roadworthy condition to ensure the safety of its occupants and the public;
3. contain a cage behind the driver's seat and in front of the back passenger seat for purposes of creating separate and secure areas of the vehicle for the constable and the defendant(s). Cages shall be permanent, rather than temporary, and of the same type and quality used in police and sheriff vehicles; and
4. include functioning window and child safety door locks.

F. Transports

While transporting a defendant to and from court, the following provisions apply.

1. Each transport to and from a magisterial district court or other court facility⁸ shall include at least one certified fire armed constable, unless directed otherwise by the President Judge.⁹
2. Each transport shall include at least one of the following forms of two-way communication: i) two-way radio or ii) cellular phone.
3. A constable shall not transport a number of defendants that is greater than the number of seatbelts present in the secure area of the vehicle, in accordance with applicable provisions of the Pennsylvania Motor Vehicle Code (with the exception of a specially-adapted van without seatbelts, such as a prisoner transport van).
4. The constable shall search the transport area of the vehicle prior to and following each transport.
5. The constable shall, in the event of an escape or other security breach during a transport, immediately contact 911 or, if applicable, the local emergency communications center, and then notify the magisterial district judge who issued the transport or commitment order.

⁸ Magisterial district court includes not only the established magisterial district court office, but also any other facility that may be used by that court to conduct judicial business.

⁹ A President Judge may waive or amend this requirement in individual cases, or in a class of cases.