

An Overview of Commonwealth V Wiggs, 641 MDA 2023

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As part of the party concerned and alarmed by the judgement of the above case, I have taken it upon myself to scrutinize the majority's ruling and offer my opinions and arguments. I passionately believe that the majority erred in their opinion and judgement and violated the scope and practice of the case at hand as well as numerous precedential case law. Keep this in mind as I go forward. Also please keep in mind that my opinions are my own. I am not a lawyer nor am I legal counsel. My opinions are not reflective of anyone that I know, work for, or am associated with. I will possibly create a similar brief going over the minority opinion in the future.

Firstly, the court errs by going into minute detail to comment on the specific make and model of the vehicle at hand and in question, a Ford Crown Victoria. The court states:

“On June 15, 2021, Pennsylvania State Police (“PSP”) Trooper Jacob Brown-Shields observed a “fully marked black and white [C]rown [V]ic [1] style constable vehicle” that was “equipped with a light bar on top.” N.T. Summary Appeal, 4/3/23, at 7, 9. Having received a report of Appellant using a vehicle with red and blue lights a couple of weeks prior, Trooper Brown-Shields followed the vehicle, determined that it was registered to Appellant, and initiated a traffic stop.”

In that specific footnote [1], they state that,

*“We note that the Crown Victoria Police Interceptor was the iconic police vehicle on the street and on the screen in the 1990s. As explained in an article examining its importance in popular culture: The Times recently reported that police departments are assigning officers the last of the Ford Crown Victorias, thereby signaling the end for one of law enforcement’s most iconic vehicles. Produced by Ford from 1979 to 2011, the heavysset sedan is beloved by police for its durability and muscle, and also, above all, for its hulking yet stealthy silhouette. Anyone who has been pulled over in the past twenty years is self-trained in spotting an unmarked Crown Vic. Its distinctive profile was so synonymous with the police that flashing lights became secondary. The mere sight of its outline was enough to frighten civilian drivers into compliance. **Sam Sweet, The Crown Vic Jumps its Last Curb, THE NEW YORKER, Sep. 3, 2013**, available at <https://www.newyorker.com/culture/culture-desk/the-crown-vic-jumps-its-last-curb>. In the instant case, Appellant’s black and white Crown Victoria had yellow striping, an image of the Pennsylvania coat of arms, and signage indicating “State Constable” and “Emergency 911.”*

This had no bearing on the case at hand, because the issue was the mounting and use of flashing red-and-blue lights and the classification of constable vehicles as emergency vehicles. Commenting that the vehicle was a police vehicle model had little bearing on the argument at hand, but did stand to subtly imply that constables possessing and using police model vehicles are out of the norm and should not be allowed. However, constable vehicles are required to be equipped with certain police-style equipment, such as a prisoner partition (often called a prisoner

cage), a two-way radio, and access to 911 centers as well as be in “good working order”. Whether a constable marks their vehicle or not has no bearing on whether or not emergency lights can be mounted and whether or not the vehicle can be considered an emergency vehicle. It is up to the discretion of the constable on how he or she upfits his vehicle.

The court also stated on page two that,

“Since Appellant professed to being “embarrassed about being pulled over” as a constable, Trooper Brown-Shields permitted Appellant to turn on his lights. At a subsequent hearing, the trooper testified that he believed Appellant took him up on this offer, and that in doing so visually confirmed that the lights were red and blue. Id. Regardless of whether the lights were in fact activated, Appellant conceded that the lights were red and blue when he explained to Trooper Brown-Shields that the PSP had previously seized the same vehicle and cited Appellant for having red and blue lights on it. After the citation was dismissed for unknown reasons, the PSP returned the vehicle to Appellant with the red and blue lights intact. Despite the PSP asking him to remove the red and blue lights, Appellant told the trooper that he had refused to do so because he had won the case as to whether he could use such lights. See Exhibit D-2 at 7:45-9:08.”.

This seems to be of rather large importance and should have been investigated by the court as to why the previous charge was thrown out, rather than simply stating that it was dismissed “for an unknown reason.” That reason becomes particularly important being that the court decided to in fact affirm the summary judgment.

After walking through how the appeal had landed before them, the court commented that,

“This appeal followed. Appellant complied with the court’s order to file a Pa.R.A.P. 1925(b) statement, and the court issued a Rule 1925(a) opinion addressing the issues raised by Appellant [2]”.

The court, in its footnote, remarks that

“We note that Appellant’s requests for this case to be heard before another panel were denied.”

but they refuse to go in-depth as to why they denied it and why Wiggs appealed and asked for a different panel. If they would have, it would have given a large credible doubt as to the objectivity of the majority. Both the Honorable Mary Murray and the Honorable Mary Jane Bowes have serious objectivity issues when it comes to Pennsylvania State Constables. Hon. Mary Jane Bowes served as a Commissioner with the Pennsylvania Commission on Crime and Delinquency (PCCD), an organization which, among its many functions, provides for the initial and continuing training of constables. This, at first, may not seem to be a bad thing, as she should know the duties of constables and their specificities, however, both PCCD and the Constables Education and Training Board (CETB) have been found numerous times spreading falsehoods

and outright lies about the authority of constables and their status as Peace Officers. They have continued these falsehoods until required to via judicial order. As such, this puts her in a dangerous position when it comes to objectivity, as she has in the past tried to shackle and constrain constables via the required training beyond which they are by statute and common law. She was and continued to be a commissioner for PCCD until resigning days before her appointment so that she could start the role of Judge in 2023. The Hon. Mary Murray also potentially has objectivity issues, but these are unconfirmed. The issue is as follows: Hon. Mary Murray is married to a high-level member of the Pennsylvania State Police (PSP). PSP, being the forced primary law enforcement agency in the state, and it is common knowledge that the high-level officers dislike the fact that their agency was derived from the Pennsylvania State Constables, and their members often purposely single out and antagonize Constables, whether from malice, derision, or misinformation. Knowing both of these judges potentially have objectivity issues, when asked, they should both have granted the motion to have the appeal heard before a different panel, or at least should have both recused themselves, Hon. Bowes ESPECIALLY.

The court then follows by refining Wiggs' argument into four main points:

1. Statutory Construction: Does the Statutory Construction Act lead to a holding that [Appellant]'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)?
2. 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?
3. Wrong Charge: When a person is convicted under the wrong subsection of a statute, is that conviction void?
4. No Evidence: When the color of the allegedly red [and] 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?

These points are all valid questions, and in my opinion, if there is no proof beyond reasonable doubt regarding any one of these four points, the judgement must be overturned and reversed. According to the brief submitted by Wiggs, the court stated,

"Appellant first challenges the court's interpretation of the Vehicle Code as prohibiting him from equipping his constable vehicle with red and blue lights.[3] His argument is simple: "A constable vehicle is a police vehicle; and a constable is a police officer." Id. at 11 (unnecessary

capitalization omitted). Therefore, because police vehicles are permitted to have red and blue lights, he cannot be found guilty of a summary offense for having such lights.”

And in the footnote marked [3] they also stated,

“Although we refer to Appellant’s vehicle as a “constable vehicle,” we are cognizant that the designation confers no particular status. See **Commonwealth v. Rodriguez**, 81 A.3d 103, 108 & n.10 (holding that constables are not employees of the Commonwealth, and noting that their vehicles, which must be privately purchased and insured, are not government vehicles and therefore not exempt from the Vehicle Code’s window tinting prohibitions). Rather, when we refer to a “constable vehicle” within this writing, we simply mean a private vehicle operated by an individual in his or her capacity as a Pennsylvania constable.”

Let us examine in depth the argument made by Wiggs. It can be simplified to a single sentence: a constable is a police officer, and therefore a constable vehicle is a police vehicle. Constables are peace officers and have both the common law and statutory law powers of warrantless arrests. The statutory powers of arrest can be found in Title 44, Chapter 71, subsection 7158. This statute states that,

“In addition to any other powers granted under law, a constable of a borough shall, without warrant and upon view, arrest and commit for hearing any person who:

(1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness.

(2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.

(3) Violates any ordinance of the borough for which a fine or penalty is imposed.”

Therefore, it is clearly evident that they possess the powers given to law enforcement and “police” generally to arrest offenders for “on-view” crimes and offenses, crimes committed in their presence. Their status as peace officers is confirmed by Title 18, Chapter 5, section 1, subsection 501, which states in part, “

“Peace officer.” Any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or any person on active State duty pursuant to 51 Pa.C.S. § 508 (relating to active duty for emergency). The term “peace officer” shall also include any member of any park police department of any county of the third class.”

This clearly includes constables, as they are elected officials who are charged with a duty to enforce the law, generally or not. In fact, the Motor Vehicle Code for Pennsylvania, which can be found in Title 75, also clearly would include constables in its definition of police officer, which is found in Title 75, Chapter 1, section 2, subsection 102, which states in part,

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

As you will note, just as in Title 18, it does not state which violations of law that the particular officer is empowered to enforce, nor should it have to. The law is written with a broad general definition, in order to not require additional amendments every time a new law enforcement agency, department, or office is created at a municipal, county, or state level. As you will see, the court errs massively by attempting to claim that the arrest powers held by constables both in statutory and common law are no more than that of a mere “citizens arrest”, but in doing so opens up a broad swath of issues now to as the authority of both constables and civilians alike. The next point that the court errs on is the status of constable vehicles. While it is true that constable vehicles are privately purchased and owned, they are also not purely regular vehicles either. Per the PA Supreme Court Guidelines of 2013, every vehicle used by constables must be equipped with specific equipment as I have mentioned above and also must be insured with a commercial police policy. This means that while the vehicles themselves might be privately owned, they are being used for a governmental purpose and cannot generally be used for regular private purposes. Ergo, they should be considered as “privately owned government service vehicles.” This is not unique to Constables. Game Wardens and Deputy Game Wardens often use their own personal vehicles to carry out their duties and equip such vehicles with emergency lighting and equipment. Additionally, if a constable fits the definition of a police officer (which I have argued that he does) then using the term “constable vehicle” would be equivalent to the term “police vehicle” and therefore carries the same designation and authority as any other police vehicle.

The court then states that they are considering the case “de novo” and “our scope of review plenary.” This in simple words means that they are considering the case as if for the first time, and without deference to any lower court’s ruling. They also state that their statutory interpretation is within the purview of the Statutory Construction Act. This act is quoted as saying,

“Pursuant to that Act, “[t]he object of all statutory interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” 1 Pa.C.S. § 1921(a). When the words of a statute are clear and free from ambiguity, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit. Id. § 1921(b). When, however, the words of a statute are not explicit, a court may discern the General Assembly’s intent by examining considerations outside of the words of the statute. Id. § 1921(c). In addition, when construing a statute, we must, if possible, give effect to all of its provisions. Id. § 1921(a).

The Statutory Construction Act also instructs that, in ascertaining the intention of the General Assembly in enacting a statute, several presumptions may be used. Id. § 1922. Among those presumptions is that “the General Assembly intends the entire statute to be effective and certain.” Id. § 1922(2). We also may presume that the General Assembly does not intend absurd or unreasonable results. Id. § 1922(1). As this Court wisely stated over sixty years ago, to avoid

such results, we “must read [statutes] in the light of reason and common sense.” Ayers v. Morgan, 154 A.2d 788, 789 (Pa. 1959). [Further], we may presume that the General Assembly does not intend to violate the Constitution of the United States or this Commonwealth. 1 Pa.C.S. § 1922(3).”

Keep this in mind. It will be useful to remember in a little while. The court then states that using the statutory framework of “*expressio unius est exclusio alterius*,” or to translate from Latin to English,

“a section of a statute contains a given word, the omission of such word from a similar section of the statute shows a different legislative intent.”

There is no problem with this, as it is a commonly understood premise of statutory construction and framing. However, the Majority twists this to read things into the law that do not exist outside of their imagination. They argue that because constables are expressly mentioned in other parts of Title 75 and are not specifically mentioned in Title 75 Subsection 4571(b)(1) or Title 75 Subsection 102 (Relating to definitions), but are mentioned elsewhere in Title 75, that they clearly were not meant to be added to the above mentioned sections. When faced with the definition of a police officer in Title 75 subsection 102, they state the following,

“Appellant nonetheless reasons that because a constable is a police officer, a constable vehicle must be considered a police vehicle, which is one of the vehicles that our General Assembly authorized to equip such lights pursuant to §§ 4571 and 102. Our review of the Vehicle Code dictates otherwise. Throughout the Vehicle Code, constables are deemed distinct from police officers as they are consistently listed separately. See, e.g., 75 Pa.C.S. § 1376(b)(1), (5) (listing individually “[l]ocal police officers” and “[c]onstables or deputy constables” as those who may be delegated the authority to seize surrendered registration plates); 75 Pa.C.S. § 3102 (requiring compliance with the traffic direction of “any uniformed police officer, sheriff or constable”); 75 Pa.C.S. § 6309, 6309.1 (discussing impoundment by “police officer, sheriff or constable”).”

The Majority clearly fails to grasp the fact that every time a constable is differentiated from municipal police officers, it is to designate a different law enforcement agency, such as sheriffs and constables, as distinct from municipal police, while sharing the same authority. Simply put, the difference in designations is to show that there are different agencies that may perform the same service, not to show them as functionally different in their roles in the Commonwealth. The court, missing this fact, informs us that because constables are mentioned specifically in some parts of Title 75 but not others, they must not therefore fit in any place specifically not mentioned. This would be a reasonable argument if not for my point expressed above, but not only that, but the fact that constables fit the description of “police officer” for the purposes of Title 75.

The Majority then claims that,

“We cannot simultaneously give the General Assembly’s distinction between constables and police officers credit and conclude that it neglected to list constable vehicles as one of the emergency vehicles because it implicitly considers constables as police officers. If that were true, there would be no need to list constables separately in §§ 1376(b), 3102, 6309, and 6309.1. Since we construe the entire statute to have meaning and the General Assembly to have not intended absurd results, we conclude that constable vehicles are not police vehicles.”

This is absurd. The motor vehicle code addresses hundreds and thousands of violations. Simply because sometimes a specific agency is mentioned by name and other times not, are they therefore subject to only limited privileges and enforcement based on those specific sections? Absolutely not! The Legislature, as mentioned above, likely foresaw that different law enforcement agencies and entities would be created and abolished, so therefore they decided that the term “police officer” would apply broadly, so as to not necessitate a revision every time such an agency is created or abolished.

The Majority continues to claim,

*“Moreover, notwithstanding the insistence of Appellant and the dissent to the contrary, a constable vehicle cannot be included within the purview of a police vehicle because a constable simply is not a police officer. The term “police vehicle” is not defined within the statute, but we reasonably surmise that it is a vehicle equipped for use by a police officer. Section 102 of the Vehicle Code defines a police officer as ‘a natural person authorized by law to make arrests for violations of law.[4]’ 75 Pa.C.S. § 102. Our Supreme Court has interpreted this definition thusly: ‘[F]acially, the provision applies broadly to anyone with a power of arrest. See 75 Pa.C.S. § 102. Under the Statutory Construction Act, however, we presume that the General Assembly did not intend unreasonable results. See 1 Pa.C.S. § 1922. In this circumstance, a literal reading of the Vehicle Code’s definition of “police officer” would invest enforcement authority in all citizens, in light of their common-law arrest power. See generally **Commonwealth v. Chermansky**, 242 A.2d 237, 239–40 (Pa. 1968) (referencing the citizens’ authority to arrest).”*

As you will soon see, the Majority is attempting to claim that constables do not fit the definition of “police officer” for the purposes of this statute due to the fact that constables do not have any power more than that of an average citizen. This is a blatant lie. If constables do not possess any powers of arrest more than the average citizen, then they are not peace officers. If they are not peace officers, they cannot perform judicial duties such as warrants. The Majority has gone majorly out of the scope of the appeal to claim this.

They continue,

It is manifest, however, that the Legislature did not intend to denominate the citizenry at large as “police officers” or confer vehicle-related enforcement authority upon it. Thus, we find that the Legislature’s definitional reference to the authorization “by law to make arrests for violations of law,” 75 Pa.C.S. § 102, refers to some form of legal authorization beyond a mere common-law

power shared among Pennsylvania citizens. *Commonwealth v. Marconi*, 64 A.3d 1036, 1041 (Pa. 2013) (citations altered).

This is clearly evident. Peace officers are set apart from the common citizens within the commonwealth. They are tasked with a special duty: to protect the citizens of the commonwealth by enforcing the law and arresting and prosecuting offenders. Citizens, while having a common law right to arrest for felonies, cannot do more than petition a court to press charges against an offender on their behalf, and must, in fact, call upon a peace officer to take an offender into custody and initiate proceedings against them.

Next, the Majority claims,

“It is well settled that when vesting a group with police powers and duties, the Legislature does so with specificity.” Commonwealth v. Frombach, 617 A.2d 15, 19 (Pa. Super. 1992) (cleaned up). Certainly, constables possess the authority to effect certain limited arrests:

In addition to any other powers granted under law, a constable of a borough shall, without warrant and upon view, arrest and commit for hearing any person who:

- (1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness.*
- (2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.*
- (3) Violates any ordinance of the borough for which a fine or penalty is imposed.*

44 Pa.C.S. § 7158.

Additionally, this Court has observed that “constables possessed the power at common law to make warrantless arrests for felonies and breaches of the peace.” Commonwealth v. Taylor, 677 A.2d 846, 851 (Pa. Super. 1996). However, that arrest power was no greater than the “power exercised by [all] private citizens since antiquity,” namely, “the power to make warrantless arrests for felonies.” *Id.* at 852. Hence, our ruling on the authority of constables to make certain arrests did not enlarge their power, but merely “avoid[ed] the anomalous situation of depriving constables of powers possessed by the ordinary citizenry.”

There is so much wrong with this claim, it is hard to decide where to start. I will start at the beginning and break it down and refute it piece by piece. First, the claim that “*Certainly, constables possess the authority to effect certain limited arrests.*” The statutory arrest powers of Constables can be found in Title 44, amended in Act 49 of 2009. Specifically, Title 44, subsection 7158. The Majority knows this. They quote it. It states the following:

“In addition to any other powers granted under law, a constable of a borough shall, without warrant and upon view, arrest and commit for hearing any person who:

- (1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness.*

(2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.

(3) Violates any ordinance of the borough for which a fine or penalty is imposed.”

This would seem to back up their claim that constables can make “certain limited arrests,” if not for the fact that that specific verbiage is the same as the arrest powers of municipal police officers. Title 11, Chapter 120, section 5 reads, in part,

A police officer may, without warrant and upon view, arrest and commit for hearing any and all individuals:

(1) Guilty of breach of the peace; vagrancy; riotous or disorderly conduct; or drunkenness.

(2) Engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.

(3) Violates any of the ordinances of the city for the violation of which a fine or penalty is imposed.

THIS IS THE SAME VERBIAGE, outside of the word “may.” The difference is stark. Constables SHALL arrest for any of the violations that police officers MAY arrest for. Therefore, constables and municipal police SHARE the same powers of arrest. This is FAR more than the “certain limited arrests” argument that the Majority is attempting to claim. If that wasn't enough to prove my point, Title 11 Chapter 120 section 5 also states, in part,

“Police officers shall be ex-officio constables of the city and shall enforce the laws of this Commonwealth or otherwise perform the functions of their office in accordance with 42 Pa.C.S. §§ 8952 (relating to primary municipal police jurisdiction) and 8953 (relating to Statewide municipal police jurisdiction)”

The words “ex-officio” are a Latin phrase meaning “by virtue of one’s office or position.” Therefore, municipal police officers, under the authority of Title 11, are, by virtue of their office or position, constables of the city. If municipal police are constables of the city and fall under the definition of “police officer” for purposes of Title 75, then the original constables should too. I cannot stress this enough. CONSTABLES AND MUNICIPAL POLICE SHARE THE SAME ARREST POWERS. THE VERBIAGE IN THEIR RESPECTIVE ARREST STATUTES ARE THE SAME.

Completely disregarding that fact, the Majority says that,

“This Court has observed that ‘constables possessed the power at common law to make warrantless arrests for felonies and breaches of the peace... However, that arrest power was no greater than the power exercised by [all] private citizens since antiquity,’ namely, the power to make warrantless arrests for felonies.”

And they cite Commonwealth v. Taylor, 677 A.2d 846, 851 (Pa. Super. 1996). The problems with this are as follows:

1. Constables' authority to make arrests not only has merit based on common law, but also statutory law.
2. Commonwealth V Taylor was decided in 1996. Title 44 was amended to give constables statutory arrest powers in 2009. Therefore, Commonwealth V Taylor has little to no merit, especially when using it violates the Principle of Legislative Supremacy, Principle of Statutory Override, and the Principle of Stare Decisis. None of these legal principles were applied or followed in this ruling.

Additionally, even if they COULD override current statutory law, doing so creates the very problem that they claim to be avoiding. By stating that constables have no more power than ordinary citizens, they are by default claiming that citizens have the same arrest powers as constables, and therefore citizens have the same powers of arrest as municipal police, because remember, the wording for both arrest statutes is the same outside of one word.

The court's next argument as to why they believe (wrongly) that constables have no more power than private citizens is,

"Hence, our ruling on the authority of constables to make certain arrests did not enlarge their power, but merely "avoid[ed] the anomalous situation of depriving constables of powers possessed by the ordinary citizenry."

This is a clear and evident falsehood. If constables are no more than ordinary citizens, then there is no need to establish a statutory arrest law. At most, all that would be needed would be a notation that constables hold the same powers as citizens because the job title holds no peace officer status or power. This, however, would cripple constables entirely and make their duties and office completely irrelevant. Using the Majority's own reasoning, if that is what the legislature intended, then indeed that is what the legislature would have said. However, that is now what the legislature said, and as such the powers and duties of constables are evident as set forth not only in common law, historical precedent, but also in current statutory law.

The Majority also quotes the book titled **Arrest and Search Powers of Special Police in Pennsylvania: Do Your Constitutional Rights Change Based on the Officer's Uniform?** By Peter J Gardner, published in 1986, to back up their claims. They quote the following,

"Constables, however, do not possess general police powers and they have no statutory search powers. Despite their statutory arrest powers, their historical role as law enforcement officers, and the fact that they are more likely than private citizens to perform arrests and searches, some question exists whether police powers possessed by constables are any greater than the powers of private citizens."

This quote brings up troubling issues. Not only has the law been changed and codified differently since the book was written, but it is also evident that the Majority believes this passage of the book to be true. If the Majority is correct, and disregarding my prior points about the arrest statutes, then constables have absolutely no right to be enforcing warrants for the courts, as warrants can only be enforced by law enforcement. Pennsylvania Rules of Criminal Procedure Code Rule 515 states the following,

“Execution of Arrest Warrant.

(A) A warrant of arrest may be executed at any place within the Commonwealth.

(B) A warrant of arrest shall be executed by a police officer.

(C) When the warrant has been issued by a magisterial district judge, and the defendant cannot be found, the case shall remain in the magisterial district, and shall not be forwarded to the court of common pleas for further proceedings.

Comment

No substantive change in the law is intended by paragraph (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court’s procedural rules. 42 Pa.C.S. § § 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule 103.”

Therefore, when we look at Pennsylvania Rules of Criminal Procedure Code Rule 103, we see the following,

“POLICE OFFICER is any person who is by law given the power to arrest when acting within the scope of the person’s employment.”

Notice that the wording is remarkably similar to Title 75’s definition of a police officer. In fact, you could swap them out for each other. The Majority is attempting to claim that constables do not fit the definition of police despite the fact that they acquiesce to the fact that constables fall under a remarkably similar definition of police in a different portion of the PA Codified Statutes. The Majority simply is attempting to spell out when constables can be defined as police based solely on when it is convenient for the Majority’s interests. It is a fact that constables serve the most warrants out of anyone in the Commonwealth, and it appears that the Majority is aware of it as well, and is loathe to lose those services, but does not wish to have to acquiesce to that fact across the board. The problem is this. Either constables fit the definition of police, being that the two definitions are functionally identical, or constables do not fit that definition. If they do, then they must be allowed to equip their

vehicles as with all other police officers. If they do not, then they must immediately cease any and all warrant functions as part of their judicial duties. If they are not peace officers, then they are at most only an elected security guard, who may be called upon to provide some limited security services at certain times.

The Majority continues,

“Moreover, the statutory provisions governing constables confirm that constables are not synonymous with police officers. Section 7132 (Police Officers), sets forth the following pertinent conflict between the two positions:

(a) Constable employed as policeman not to accept other fees in addition to salary.--Except for public rewards and legal mileage allowed to a constable for traveling expenses, and except as provided in subsection (b), it is unlawful for a constable who is also employed as a policeman to charge or accept a fee or other compensation, other than his salary as a policeman, for services rendered or performed pertaining to his office or duties as a policeman or constable.

(b) Exception. --Unless prevented from doing so by the operation of 8 Pa.C.S. Ch. 11 Subch. J (relating to civil service for police and fire apparatus operators), borough policemen who reside in the borough may hold and exercise the office of constable in the borough, or in any ward thereof, and receive all costs, fees and emoluments pertaining to such office.

44 Pa.C.S. § 7132 (footnote omitted).

Clearly, and consistent with our interpretation of the Vehicle Code, the General Assembly views constables as distinct from police officers.”

The Majority fails to (or I would argue, refuses to) see that the portions of Title 44 that they reference are specifically referring to Municipal or Regional Police agencies. The portions of Title 44 they refer to are little more than basic legal frameworks to prevent a person from double billing the services that he or she is providing. To be frank, it is in fact a trivial piece of legislation meant to prevent double charging when the person works for two different agencies. Every elected constable should be seen as the chief law enforcement officer of their respective offices, and as such each office, while sharing duties, should be seen as an individual law enforcement agency. The referenced legislation simply states that if you are working for two different agencies, you cannot bill for services provided by both agencies at the same time. The agencies are distinct separate entities but do not have separate law enforcement powers. And as for their final argument, the General Assembly does appear to view constables as distinct from Municipal or Regional police officers, as they are a different agency, but not a different class, breed, or type of law enforcement. Instead, the general Assembly clearly saw the Office of Constable as distinct within the borough or township from that of the Police Department. It clearly did not intend for the Office of

Constable to not be a law enforcement entity, or it would have clarified that statement when it designed and passed into law Act 49 of 2009.

Nevertheless, the Majority steams forward with their opinion. The Majority posits that,

*“Based upon the foregoing, we hold that a constable is not a police officer. This holding is based in part upon our interpretation that the constable’s limited arrest power is not equivalent to the arrest powers described within the definition of police officer in § 102 of the Vehicle Code. Indeed, the authority of constables is inconsistent with the unqualified arrest powers attributed to police officers in § 102. In point of fact, to include constables within that definition, we would need to read it as ‘authorized by law to make arrests for **certain violations** of the law.’ Such a broad interpretation would convert every citizen into a police officer, render every vehicle a police vehicle, and permit every private vehicle owned by a citizen to equip red and blue lights. See Marconi, 64 A.3d at 1041. Rather, a plain reading of “police officer” in § 102, in conjunction with the presumption that the General Assembly did not intend absurd results by its enactment, leads us to the conclusion that it means only those natural persons who have a general authority to make arrests, i.e., those employed as police officers by police departments.[5]”*

There is not much more that I can say that I have not already said. Constable’s arrest powers under Act 49 of 2009 are clearly not limited. They are functionally the same as that of municipal police officers. As such, the authority of constables is equivalent to that of police officers in Title 75. The Majority comes to an absurd conclusion that authority outside of and broader than that of a constable is needed to satisfy the requirements in Title 75 Subsection 102, when in fact the authority of constables to arrest is equal to that of municipal police. The Majority is attempting to judicially create a distinction between the functional arrest powers of constables and other peace officers, when in fact there is none. As a note, I would also like to point out that the Majority attempts to claim in footnote [4] that one of the reasons that they are hesitant to state that constables meet the definition of police for purposes of Title 75 is that there is a training imbalance between that prescribed for constables and that prescribed for municipal police. While it is true that there is an imbalance, that imbalance is a result of the legislature mandating that constables only receive a maximum of 120 hours of initial training. Certainly, many constables take voluntary training outside of that initial training, including many aspects such as DWI detection and enforcement, Dog law, ordinance enforcement, and other topics. The fact of the matter is that if the Majority would like the hours of training for constables to be enhanced, they should petition the legislature to update the statutes. It is not the fault of the constables for being restricted by statute to the number of hours of training that they are required to attend. I personally believe that the statute should be updated to state that constables and deputy constables should be required to take the same training as prescribed for sheriffs and deputy sheriffs in Act 2, as the jobs of sheriffs and constables are remarkably similar to each other. However, it is not for me nor the Majority to decide. It is for the General Assembly to do, as is their right and privilege. Additionally, there

are other law enforcement entities that operate as peace officers with more rights and duties than constables with less training, such as Humane Police Officers. These officers drive marked vehicles equipped with red and blue lights, and I would argue that they have less need of them than constables!

Next, the Majority posits the following,

*“We would end our analysis here were it not for Appellant’s insistence that the statute implicitly includes constable vehicles within the characterization of police vehicles based upon our Supreme Court’s statement that “[t]he constable is a police officer” in **In re Act 147 of 1990, 598 A.2d 985, 990 n.3 (Pa. 1991)**. See Appellant’s brief at 19. Indeed, the learned dissent rests his writing upon that same allegedly “unequivocal” statement. See Dissent at 1. For the reasons that follow, we find this premise faulty.*

*First, it bears clarifying that the case from which this statement derives, **In re Act 147 of 1990**, did not touch upon the limited issue before us in this matter. Rather, in that case, the issue was where constables belonged within our governmental system for purposes of oversight and accountability. Our Supreme Court categorized constables as executive branch officials. Because Act 147 had placed constables within the judicial hierarchy, the Court found Act 147 unconstitutional.”*

Unbelievably, we are getting to the worst part of the ruling. The Majority acknowledges that both the accused and the Minority bring up the words of the Pennsylvania Supreme Court in the case known as **In re Act 147 of 1990**. This case occurred when the legislature attempted to place constables directly under the purview of the courts, rather than seeing them as independent law enforcement agencies. The Pennsylvania Supreme Court took up the case when questions were raised about the constitutional ramifications of such a bill. The Majority claims that “(In re Act 147 of 1990) *did not touch upon the limited issue before us in this matter. Rather, in that case, the issue was where constables belonged within our governmental system for purposes of oversight and accountability*” which is false. The case law came down to not only where constables belong in the hierarchy of the government of Pennsylvania, but also what their role in that hierarchy was. I will touch on that in a moment, as it is necessary to let the Majority spell out their entire argument in reference to **In re Act 147 of 1990**.

They write the following,

“Second, the Court’s statement that a ‘constable is a police officer’ must be considered in context. Notably, it appeared in a footnote as a reference to the comic opera, the Pirates of Penzance. In full, the phrase relied upon by Appellant and the dissent appears thusly:

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. By statute in Pennsylvania, a constable may also serve process in some instances. As a peace officer, and as a process server, a constable belongs analytically to the executive branch of government,

even though his job is obviously related to the courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and the police generally. Act 147 is unconstitutional and violates the separation of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory authority of the judicial branch.... At most, constables are 'related staff' under the Rules of Judicial Administration. They cannot, however, be made part of the judicial branch under our Constitution. To attempt to do so constitutes a gross violation of the separation of powers. Personnel whose central functions and activities partake of exercising executive powers cannot be arbitrarily made part of another branch of government whose functions they do not perform. To do so interferes with the supervisory authority of the Supreme Court just as much as attempting to dictate how that authority is to be exercised over personnel who are properly part of the judicial system. In consequence, we find Act 147 unconstitutional and invalid.

*[3] The constable is a police officer. It would perhaps not be remiss to recall Sir William S. Gilbert's famous line from *The Pirates of Penzance*, 'When constabulary duty's to be done, to be done, a policeman's lot is not an 'appy one!'*

In re Act 147 of 1990, 598 A.2d at 990 (cleaned up, emphasis added)."

The Majority immediately attempts to discredit the decision of the Pennsylvania Supreme Court by noting that one place where the phrase "a constable is a police officer" can be found is in a footnote that references a Broadway comedy musical theater play, *The Pirates of Penzance*. However, the Majority completely and totally disregards any other portion of the ruling, namely where the Pennsylvania Supreme Court stated 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. By statute in Pennsylvania, a constable may also serve process in some instances. As a peace officer, and as a process server, a constable belongs analytically to the executive branch of government, even though his job is obviously related to the courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and the police generally."

By the reckoning of the Pennsylvania Supreme Court, a constable is a peace officer and law enforcement officer, whose main duty is the conservation of peace and the arrest of offenders. While judicial duties and process service may be the services constables are known for, it is clear and evident that doing those judicial duties are NOT the primary duties of the constabulary in Pennsylvania. This was also corroborated in **Swinehart v. McAndrews, 221 F. Supp. 2d 552 (E.D. Pa. 2002)**. The Majority clearly glosses over both of those cases, violating the legal doctrine of precedence in order to bulldoze their way to their desired outcome.

Additionally, it is plain to see from the words and phrases used by the Pennsylvania Supreme Court that they considered constables to be the head of their individual law enforcement agencies, whose main function was the same “*as the same is the job of district attorneys, sheriffs, and the police generally.*” This leaves no room for other opinions: The Pennsylvania Supreme Court clearly believes that constables are law enforcement and have the same primary duties as that of police officers. Additionally, even though the footnote referenced by the Majority does include a portion of dialogue from the Pirates of Penzance, it should be noted what exactly was quoted by the Pennsylvania Supreme Court in that footnote:

“When constabulary duty’s to be done, to be done, a policeman’s lot is not an ‘appy one!”

Clearly in this dialogue, though found in a comical play, a constable is equated to be one and the same, equal to if not just a synonym of, a policeman. If we were to even dive into that argument, the British Constabulary is the official name for the police forces in Great Britain. As such, the equation by the William S. Gilbert and the Pennsylvania Supreme Court is the same: A constable is a law enforcement officer, sharing the same powers and duties as police officers in general. As such, and as evidenced by the arrest powers given in Act 49 to constables, constables can be considered police officers for general law enforcement purposes.

This does not mean that constables may claim to be Municipal Police officers, but rather that any law enforcement officer or agency that draws its powers from constables or requires its officers or members to be ex-officio constables, inevitably its scope of powers from constables, so constables may enforce any sections or powers of law that the other agencies enforce. However, this requires that constables be subject to additional training, and I would add that it may be at the discretion of the constable, as head of their respective and individual agencies, to decide which duties outside of general law enforcement they decide to perform. There are other law enforcement agencies that use the title of police that are not municipal or regional police forces, such as Private Police as found in Act 22 section 501, Humane Police, and Municipal Authorities Police. The term “police” is a broad one and simply informs of a person’s duty as a law enforcement officer or peace officer to enforce the law and arrest offenders.

The Majority continues to remark that,

“Despite determining that a constable cannot be placed within the judiciary because that position constitutes an executive branch official, the Court observed that “[a] constable is an elected official[,] . . . an independent contractor[,] and is not an employee of the Commonwealth, the judiciary, the township, or the county in which he works.” Id. at 986 (cleaned up). In other words, it is apparent that constables exist in a league of their own.

We do not extrapolate the High Court’s footnote and operatic allusion to equate constables with police officers for all purposes, including in the definition of police officers in § 102 of the Vehicle Code. Instead, we heed the warning of our Supreme Court regarding “the necessity of reading legal rules—especially broad rules—against their facts and the corollary that judicial

*pronouncements should employ due modesty.” **Tincher v. Omega Flex, Inc.**, 104 A.3d 328, 378 (Pa. 2014). Our High Court adopted “the principle that the holding of a decision is to be read against its facts” precisely because “it is very difficult for courts to determine the range of factual circumstances to which a particular rule should apply in light of the often myriad possibilities.” **Maloney v. Valley Med. Facilities, Inc.**, 984 A.2d 478, 490-91 (Pa. 2009). In doing so, the Court echoed the sentiment of the Seventh Circuit Court of Appeals that “[j]udicial opinions are frequently drafted in haste, with imperfect foresight, and without due regard for the possibility that words or phrases or sentences may be taken out of context and treated as doctrines.” *Id.* (cleaned up).”*

The Majority acknowledges that the Pennsylvania Supreme Court states that a constable is an elected official, but not an employee of the Commonwealth, township, city, borough, or county that they operate in, as well as being independent contractors. The Majority posits that this puts constables in a “league of their own.” However, I would like to point out that constables are accountable directly to the Governor of Pennsylvania by virtue of being members of the executive branch and to their constituents via voting and elections. As for the “league of their own,” like I have stated before, constables for law enforcement purposes are less independent contractors and more akin to chief law enforcement officers of their own departments. This is backed up by the existence of deputy constables. The Pennsylvania Supreme Court and the General Assembly clearly understood that each elected constable is responsible for the running of their own agency, much like each sheriff in the Commonwealth. Therefore, while sharing the name of “Pennsylvania State Constable” due to their statewide authority as law enforcement officers, each elected constable runs their own agency and may do so as they see fit, so long as their agency complies with all requirements and regulations for law enforcement agencies. I would argue that this is the meaning given by the Pennsylvania Supreme Court rather than what the Majority claims, which is that the Pennsylvania Supreme Court did not exactly know what to do with constables outside of generally place them in the Executive Branch of Government.

The Majority states that they simply do not believe that the Pennsylvania Supreme Court’s statements on the equation of constables to police officers suits every circumstance. While I would generally agree, I would argue that clearly for law enforcement purposes the two are synonymous. And general law enforcement purposes include arrests and initiations of proceedings against offenders for any on-view breach of peace or violation of the law contained in the Pennsylvania Crimes Code, including but not limited to Title 75 and Title 18.

The Majority attempts to argue that they are being cautious because of the warnings found in **Tincher v. Omega Flex, Inc.**, and **Maloney v. Valley Med. Facilities, Inc.**, but I would argue that there is no need, as the Pennsylvania Supreme Court was perfectly clear in its ruling on the place of constables within the structure of Pennsylvania Government.

However, the Majority argues that,

“The Supreme Court’s statement that ‘a constable is a peace officer’ was merely express recognition of a well-settled legal principle. See e.g., Black’s Law Dictionary (5th ed. 1979) (defining “peace officers” to include ‘sheriffs and their deputies, constables ... and other officers whose duty it is to enforce the peace.’), and 6A C.J.S. Arrest, § 17 (‘Justices, sheriffs, coroners, constables and watchmen are recognized peace officers at common law.’). Lastly, 16 P.S. § 1216, Peace officers; powers and duties, expressly applies to constables.

*Moreover, following its statement that ‘a constable is a peace officer,’ the Court inserted a footnote which provides, ‘[t]he constable is a police officer.’ **In re Act 147 of 1990**, 598 A.2d at 990. Instantly, the Commonwealth [I believe that the Majority meant to say “The Appellant” here] asserts that this statement constitutes Supreme Court recognition that constables possess ‘the same authorities and duties’ as police officers under all circumstances. (Appellant’s brief at 10.) We flatly reject this claim. Specifically, when read in the context in which it was uttered, the Court’s statement indicates that the powers of constables and police officers are coextensive in matters relating to ‘conservation of the peace.’ *Id.* Further, as the remainder of the Court’s Opinion indicates, its notation that ‘[t]he constable is a police officer’ was intended as further support for the Court’s ultimate conclusion that ‘a constable belongs analytically to the executive branch of government.’ *Id.* Therefore, since Act 147 did not involve the relative arrest powers of constables and police officers, the Court’s statement cannot be taken as a blanket endorsement of constable powers coextensive with those of police officers under all circumstances. Finally, the Court’s finding that constables are independent contractors, as quoted above, clearly indicates that the Court did not consider constables and police officers analogous for all purposes, since Pennsylvania law has never characterized police officers as independent contractors.”*

I’m not sure you could get a worse understanding of **In Re Act 147 of 1990** if you tried (which I believe the Majority did, with malice). While I disagree with the Appellant that the duties of police and constables are the same under all circumstances, the reason I would disagree is that there are certain functions that are unique to each agency. For example, constables are statutorily required to provide peacekeeping services to the polling places within their township, borough, or ward on election days. This is not a duty assigned to municipal police officers, and indeed constables are the only law enforcement officers who may be in uniform at polling places on those election days. Therefore, the duties of police officers and constables are not the same in all circumstances, but for general law enforcement purposes and “conservation of the peace.”

The General Assembly has never expressly qualified what crimes constitute a “breach of the peace” for the purposes of the Pennsylvania Crimes Code, but it is reasonable to assume that a “breach of the peace” is any act that would tend to cause alarm or threaten the safety of any citizen of Pennsylvania or their property. Notably, so-called “breach of peace” crimes can be found in all areas and Titles of the Pennsylvania Crimes Code. As stated above, the Pennsylvania Supreme Court clearly deemed the terms “peace officer” and “police officer” to be synonymous with one another, but anticipating future issues with these terms (such as this one) chose to

determine that “a constable is a police officer” to dissuade future issues, citing the Pirates of Penzance to show that the terms are synonymous with each other. Unfortunately, the Majority “flatly rejects this claim” that constables and police are the same. They state that because **In re Act 147 of 1990** did not explicitly comment on the arrest powers of constables (although I would argue that it did argue that constables and all peace officers’ main duties is to arrest offenders of the law) then apparently the ruling has no bearing, despite using it themselves to attempt to make their own point. They also point out that constables are independent contractors, and once again I reiterate that the independent contractor designation is only for tax purposes, and rather that each constable is the chief of their own agency.

The Majority then claims that because **In re Act 147 of 1990** that the Pennsylvania Supreme Court never expressly covered Title 75 or the definition of police officer for that title, that it cannot apply to this case. This is an absolutely astounding conclusion. That case stated that a constable’s primary duty was the enforcement of law and the arrests of offenders. Title 75 defines a police officer as “a natural person authorized by law to make arrests for violations of law”. That is extremely relevant. Not only does it back up Wiggs’ case that, for purposes of general law enforcement, a constable is a police officer, as it says explicitly, but also, when tied to a constables common law and statutory law powers of arrest, it leaves little to no room to argue that a constable fits the definition of a police officer for the purposes of Title 75.

The Majority leans on the findings of **Commonwealth V Leet 641 A.2d 299** and conversely **Commonwealth V Roose 710 A.2d 1129** for its confirmation. Commonwealth V Leet found that Sheriffs possessed common law arrest powers and as such could stop motorists for Title 75 violations that qualify as “breach of peace” violations even though they did not have express statutory license to do so. Commonwealth V Roose, on the other hand, found that Constables apparently did not have such common law powers. However, the court in Roose noted that a constable also possesses statutory law powers of arrest. I would argue that based on **Commonwealth V Allen 48 MDA 2019**, that constables potentially possess the common law powers, but definitely possess the statutory law powers to arrest for and initiate proceedings against offenders for any Title 75 violation, but especially those which qualify as “breach of peace” crimes and offenses, thus overturning Commonwealth V Roose.

The Majority uses Commonwealth V Leet but especially Commonwealth V Roose to state that because constables at this time cannot enforce Title 75 (completely bypassing Commonwealth V Allen, because DUI is a crime codified under Title 75) then there is no need for them to have emergency lights, despite the fact that they acknowledge that constables are mentioned elsewhere in Title 75 and do have some regulatory traffic duties in Title 75, which I would argue mandates that constables have some level of emergency lighting to be able to regulate traffic and demand the attention of motorists. They also again argue that training is an issue, and that constables notable lack training on the enforcement of motor vehicle code. While I agree with them that constables do not have any training on the enforcement of motor vehicle code in the required training, I would argue that since the training requirements are set via

statute, it cannot be held against constables for not being able to initially attend that training. Also, what if constables go to and attend that training? These questions in Roose and Wiggs are left unanswered, and as such leave gaping holes in their arguments.

The Majority's next argument is this: because Roose raises some issues about whether or not motorists have the duty to stop or pull over when seeing flashing emergency lights on constable vehicles (they do) and considering the statistically unlikely possibility of a pursuit by a constable of a fleeing motorist, that they would not be persuaded. Indeed, the Majority, quite openly states the following,

“Based on the foregoing, even if the Vehicle Code did not plainly provide that constable vehicles are not one of the enumerated vehicles which may equip red and blue lights, we would not be persuaded by Appellant’s arguments to deviate from our concerns expressed in the panel decision in Roose”

This is quite damning; I would point out. The Majority claims that, in essence, their mind was set before the proceedings even started. Based on case law (which I would argue has already been overturned, though not expressly).

The Majority continues, saying that,

“Permitting constables to affix red and blue lights would cause confusion to motorists and bystanders, blurring the distinction between those who have the authority to act and aid as police officers, and those who lack such authority but are operating in what purports to be an authoritative vehicle.”

As I have argued countless times in this brief, a constable fits the definition of police officer for purposes of Title 75. As such, unless otherwise stated, any time the term “police officer” is used in Title 75, the term may be swapped out for the term “constable”. If I am correct, then there would be no confusion, as constables and police would be synonymous with law enforcement officers under this Title and thus there would be no confusion.

The Majority continues to go into depth as to Wiggs’ other claims for appeal. I admit I am less well-versed in these aspects of this case, but I will do my best to summarize and give my opinion on it as I go.

Then Majority then clashes with Wiggs’ argument for the “void for vagueness” doctrine. The Majority acknowledges that,

“Under the void-for-vagueness standard, a statute will only be found unconstitutional if the statute is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. However, a statute will pass a vagueness constitutional challenge if the statute defines the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Due process requires that a criminal statute give fair warning of the

conduct it criminalizes. Furthermore, even if the General Assembly could have chosen clearer and more precise language equally capable of achieving the end which it sought does not mean that the statute which it in fact drafted is unconstitutionally vague.”

The Majority remarks that because they agreed with the interpretation that the previous court and Trooper Brown-Shields posited, the claim fails even though Wiggs has a different interpretation. This is...dubious to say the least. There are at least 2 different interpretations of that portion of the Vehicle Code. The Majority has spent most of the previous portions of their ruling attempting to dismantle the interpretation posed by the Appellant, Wiggs. Now, I would agree that just because there are two interpretations of a statute does not mean that the statute can be overturned based on this doctrine. However, I would say that there IS some merit to the claim made by Wiggs when he states that there is some vagueness as to the exact wordings of the statute. I would, however, state that based on a plain and simple reading of the statute, that his appeal on this merit should fail, but only because his appeal based on his first interpretation is correct, negating the reason or necessity for the second reason for appeal.

Next, the Majority is faced with the third portion of Wiggs' appeal, namely that he was charged with and convicted of the wrong portion of the Motor Vehicle Code. Wiggs argues that he was charged with a violation of Title 75, Subsection 4571(a), which states,

“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.”

Wiggs also claims that he was convicted of a violation of Title 75, Subsection 4571(b)(1). That portion of the Motor Vehicle Code can be quoted as saying,

“(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.”

Wiggs claims that he should have instead been charged with Title 75, Subsection 4571(d). This section 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”.

The Majority contends that the initial trial court where Wiggs was initially convicted was correct, potentially violating their description that this case was de-novo, and states that a violation of Title 75, Subsection 4571(d) occurs when the offender violates Title 75, Subsection 4571(a) and Title 75, Subsection 4571 (b)(1). I would disagree. Title 75, Subsections 4571(a) and 4571(b)(1) are both prescriptive in nature, which is to say that they spell out what lights emergency vehicles may use in the course of their duties. However, Title 75 Subsection 4571(d) is prohibitive in nature, which is to say informing of what unauthorized users should not do to their vehicles. While it is true that a violation of Subsection 4571(d) can be derived from violations of Subsections 4571(a) and 4571(b)(1), I would argue that, using the Majority's own logic, a constable vehicle is not an emergency vehicle, and therefore is not subject to the requirements for emergency vehicles under Subsections 4571(a) and 4571(b)(1). Therefore, the only thing that he should have been charged with is a violation of subsection 4571(d), if indeed we are to believe the Majority's position that constables are,

1. Not law enforcement,
2. Do not have powers of arrest more than that of an average citizen, and
3. Do not fit the definition of "police officer" for purposes of Title 75, subsection 102.

Finally, the Majority comments on the fourth pillar of Wiggs' appeal, namely that there was not probable cause to convict him because his lightbar was clear and not illuminated, and therefore Trooper Brown-Shields could not have gained probable cause to believe that the lightbar in fact contained red and blue emergency lights. Wiggs posits that the lights on his car were never activated, and indeed according to the Majority, Trooper Brown-Shields own report stated that he was unsure if he had actually witnessed the color of the emergency lights on Wiggs' vehicle. However, based on the Trooper's testimony and the audio recording, the Majority states that there is no reason not to believe Trooper Brown-Shields, and that Wiggs even admits to the color of the lights. I cannot be certain, as I have not heard the audio recording, but if this is true, then it is also true that this appeal should have failed. Admission by a suspect, as long as it is within the confines of the 4th amendment, is evidence. This portion of the appeal set forth by Wiggs is the easiest to break and holds little to no merit. While it would have definitely been more advantageous of Trooper Brown-Shields to properly recollect the events of that stop and take photographic evidence, the fact that Wiggs admitted to what color the lights are should be enough to halt this portion of the appeal, provided that the audio recording is valid and the statement was made voluntarily.

If only this were the end of the opinion by the Majority. However, it is not, they say the following:

"Viewing this evidence in the light most favorable to the Commonwealth, we conclude that there was sufficient evidence to prove that Appellant's light bar emitted red and blue flashing lights in violation of § 4571(b)(1). Accordingly, Appellant's sufficiency challenge fails. In light of

the foregoing, we discern no reason to overturn Appellant's summary conviction. Therefore, we affirm his judgment of sentence. Judgment of sentence affirmed."

I am not a lawyer. I have no legal training. However, when they openly and blatantly say that they, as the majority, are "viewing this evidence in the light most favorable to the Commonwealth", they are potentially violating the legal principle known as the Rule of Lenity, although there is standing case law that the Majority could bring to their defense in that argument, namely the Light Most Favorable standard. I would see a potential argument for either, although I will admit I prefer that the standard favor the defendant, even on appeal after conviction.

Overall, I believe that the Majority opinion in the case of Commonwealth V Wiggs, namely the Honorable Mary Murray and Honorable Mary Jane Bowes, erred in massive ways when deciding this case. There are many, many reasons for the Appeal of this case to go forward in my opinion, including but not limited to:

- Potential bias issues from both Judges
- Potentially failure to recuse violations from one or both Judges.
- Refusing to stay within the scope of the appeal
- Refusal to acknowledge plain precedent from a higher court.
- Potential violations of the Rule of Lenity
- Violations of the "de-novo" status of the court when hearing the appeal
- Violations of the Statutory Construction Act
- Violations of the Principle of Legislative Supremacy
- Violations of the Principle of Statutory Override
- Violations of the Rule of Stare Decisis

I believe that this ruling was created by biased individuals with the main purpose to handicap constables. There are many reasons that tis ruling is absurd, crazy, and out of the ordinary. If I, as an untrained citizen with an extremely basic grasp of legal dealings can read through this decision and pick apart this ruling to this length, then the decision is just, well, bad. I sincerely hope that this is overturned on appeal, as some of the now precedent-setting issues have caused the very problems they pretended to address and set a dangerous standard for constables and all peace officers at the hands of those who would constrict them.

Once again, I am not a lawyer. I have no legal training. I am, at most, an interested observer in this fight. My opinions are my own, and do not reflect the opinions of anyone other than myself. I am simply a man with a passive interest in this case, and as such am writing this to express my feelings and opinions about it. Do with that what you will.

If you have made it this far, thank you. You have put up with my ramblings and rabbit trails. Thank you for reading this.

Sincerely,

Dietrich Piepho.