

**IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 33 WAL 2020
Respondent	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.	:	
SONYA PORTER,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 1st day of July, 2020, the Petition for Allowance of Appeal is
DENIED.

APPENDIX A

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
	:	
	:	
v.	:	
	:	
	:	
SONYA CHARMAIN PORTER	:	
	:	
	:	
Appellant	:	No. 1528 WDA 2017

Appeal from the Judgment of Sentence September 20, 2017

In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0011779-2016

BEFORE: OTT, J., KUNSELMAN, J., and MUSMANNO, J.

MEMORANDUM BY OTT, J.:

FILED OCTOBER 18, 2019

Sonya Charmain Porter appeals from the judgment of sentence imposed September 20, 2017, in the Allegheny County Court of Common Pleas. The trial court sentenced Porter to a term of three years' probation, and ordered her to pay \$2,770.00 in restitution, after she was convicted by a jury of one count of Fraud in Obtaining Food Stamps, 62 P.S. § 481(a). On appeal, she contends the trial court erred by denying her pretrial motion to dismiss the charge based on collateral estoppel and/or double jeopardy grounds. For the reasons below, we affirm.

The facts relevant to this appeal are as follows. On April 29, 2016, the Pennsylvania Office of Inspector General filed a private criminal complaint against Porter, alleging she unlawfully obtained \$2,770.00 in food stamp benefits between February 1, 2015, and July 31, 2015, by failing to disclose the correct income of her household. **See** Private Criminal Complaint,

5/24/2016, at 2. Specifically, the probable cause affidavit alleged Porter failed to report to the Department of Human Services that she was employed by the United States Postal Service during the relevant period, and, accordingly, obtained benefits to which she was not entitled. **See id.** at Affidavit of Probable Cause. A criminal information charging her with one count of False Statements under the Human Services Code, 62 P.S. § 481(a), was filed on November 16, 2016, at Docket No. 2016-11779.

On March 23, 2017, Porter filed a pretrial motion to dismiss the charge based on collateral estoppel and double jeopardy grounds. She averred that on December 4, 2015, she was charged at Docket No. 2015-14956, with violating Section 481(a) for an overpayment she received during the prior period of August 1, 2014, through January 31, 2015. **See** Motion to Enforce Rule 586 Disposition and To Dismiss on Collateral Estoppel and Double Jeopardy Grounds, 3/23/2017, at ¶ 1-2. That case was resolved on March 21, 2016, *via* Pennsylvania Rule of Criminal Procedure 586,¹ when she "paid the

¹ Rule 586 permits a trial court to dismiss a criminal offense, "which is not alleged to have been committed by force or violence or threat thereof" under the following conditions:

- (1) the public interest will not be adversely affected; and
- (2) the attorney for the Commonwealth consents to the dismissal; and
- (3) satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made to the aggrieved person; and

entirety of the restitution requested by the Commonwealth and Rule 586 civil penalties were imposed.” ***Id.*** at ¶ 3. Nevertheless, 39 days later, she was charged with the present offense. Porter argued the present prosecution was “barred by the double jeopardy clauses of both the federal and state constitutions, under the theory of collateral estoppel, and [S]ection 110 of the Crimes Code[.]” ***Id.*** at ¶ 7. Following a hearing on May 12, 2017, the trial court denied the motion, and concluded it was frivolous.²

The case proceeded to a jury trial, and, on September 17, 2017, the jury found Porter guilty of violating Section 481(a). On September 20, 2017, the trial court sentenced Porter to a term of three years’ probation, and ordered her to pay \$2,770.00 in restitution. This timely appeal follows.³

On appeal, Porter contends the trial court erred when it failed to dismiss the charge in this case based upon her previous prosecution for the same offense, which resulted in a Rule 586 disposition. Porter insists the Rule 586

(4) there is an agreement as to who shall pay the costs.

Pa.R.Crim.P. 586.

² The trial court’s determination that the motion was frivolous precluded Porter from filing a pretrial interlocutory appeal. **See** Pa.R.Crim.P. 587(B).

³ On October 25, 2017, the trial court ordered Porter to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) by November 27, 2017. After requesting, and being granted, an extension of time because the notes of testimony were not yet transcribed, Porter ultimately complied with the court’s Rule 1925(b) order on July 13, 2018. The trial court filed an opinion addressing Porter’s claims on November 14, 2018.

disposition at Docket No. 2015-14956 involved the same criminal episode, and, therefore, the instant prosecution was barred by 18 Pa.C.S. §§ 109 or 110, or the double jeopardy clause of the Pennsylvania or United States Constitutions. **See** Porter's Brief at 15. "Since the issue presents a question of law, our standard of review is *de novo* and our scope of review is plenary."⁴ **Commonwealth v. Kolovich**, 170 A.3d 520, 523 (Pa. Super. 2017), *appeal denied*, 182 A.3d 429 (Pa. 2018).

First, Porter argues the instant prosecution should have been barred by Section 109, which codifies the doctrine of *res judicata* for application in criminal cases.⁵ **See** Porter's Brief at 17. However, Porter failed to argue the

⁴ The Commonwealth suggests in its brief that our review should be limited to the evidence presented during the pretrial hearing, similar to appellate review of a suppression ruling. **See** Commonwealth's Brief at 9, n.5, *citing In re L.J.*, 79 A.3d 1073 (Pa. 2013). We need not consider this argument, however, because our review is focused on the criminal complaints and accompanying affidavits of probable cause. The criminal complaint for Docket No. 2015-14956 was attached to Porter's pretrial motion as Defendant's Exhibit A. **See** Motion to Enforce Rule 586 Disposition and To Dismiss on Collateral Estoppel and Double Jeopardy Grounds, 3/23/2017, at 1 n.1.

⁵ Section 109 provides, in relevant part, that when a prosecution is for a violation of the same provision and based upon the same facts as a former prosecution, it is barred by the former prosecution when, *inter alia*:

The former prosecution was terminated, after the indictment had been found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

applicability of Section 109 in her pretrial motion to dismiss, during the hearing on that motion, or in her concise statement of issues complained of on appeal.⁶ “Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.” Pa.R.A.P. 302(a). **See also** Pa.R.A.P. 1925(b)(4)(vii) (issues not raised in concise statement are waived). Accordingly, we conclude Porter’s first issue is waived.

Next, Porter contends the present prosecution should have been barred by application of Section 110, also known as the compulsory joinder rule.

Section 110 was enacted to address two specific policy concerns:

(1) to protect a person accused of crimes from governmental harassment of being forced to undergo successive trials for offenses stemming from the same criminal episode; and (2) as a matter of judicial administration and economy, to assure finality without unduly burdening the judicial process by repetitious litigation.

Commonwealth v. Hude, 458 A.2d 177, 180 (Pa. 1983). The statute provides, in relevant part:

Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as defined in section 109 of this title (relating to when

18 Pa.C.S. § 109(2).

⁶ **See** Motion to Enforce Rule 586 Disposition and To Dismiss on Collateral Estoppel and Double Jeopardy Grounds, 3/23/2017; N.T., 5/12/2017, at 2-13; Concise Statement of Errors Complained of on Appeal, 7/13/2018.

prosecution barred by former prosecution for the same offense) and the subsequent prosecution is for:

- (i) any offense of which the defendant could have been convicted on the first prosecution;
- (ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered a separate trial of the charge of such offense; or
- (iii) the same conduct, unless:
 - (A) the offense of which the defendant was formerly convicted or acquitted and the offense for which he is subsequently prosecuted each requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil; or
 - (B) the second offense was not consummated when the former trial began.

(2) The former prosecution was terminated, after the indictment was found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

18 Pa.C.S. § 110(1)-(2).

Porter insists her case "fits into each of [Section 110(1)'s] three provisions." Porter's Brief at 22. However, we find Porter cannot demonstrate, initially, that "[t]he former prosecution resulted in an acquittal or in a conviction as defined in section 109[.]" 18 Pa.C.S. § 110(1). Neither Porter nor the Commonwealth address this preliminary provision, seemingly

conceding that Porter's Rule 586 disposition qualifies as an acquittal or conviction pursuant to Section 109. However, we find that not to be the case.

By way of background, Sections 109, 110, and 111 of the Crimes Code apply *res judicata*, collateral estoppel, and double jeopardy considerations to bar present prosecutions when the allegations could have, or should have, been addressed in a former prosecution. Section 109 applies when the prosecutions are for the "same provision of the statutes and based upon the same facts[.]" 18 Pa.C.S. § 109. Section 110 applies when the prosecutions involve different statutory provisions or are based upon different facts. **See** 18 Pa.C.S. § 110. Lastly, Section 111, not relevant here, is applicable when the former prosecution was in another jurisdiction. **See** 18 Pa.C.S. § 111.

We note that as a preliminary matter when considering the applicability of Sections 109, 110, or 111, the trial court must categorize the disposition of the former prosecution. A conviction or acquittal in the former prosecution leads to further inquiry. Section 109 provides the definitions for an acquittal and a conviction. A former prosecution ends in an acquittal if "the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction." 18 Pa.C.S. § 109(1). Pursuant to Subsection 109(3), a former prosecution results in a conviction when "the prosecution resulted in a judgment of conviction which has not been set aside or vacated, a verdict of guilty which has not be set aside and which is capable of supporting a judgment, or a plea of guilty accepted by the court." 18 Pa.C.S. § 109(3).

The Rule 586 disposition in the present case does not qualify as either an acquittal or a conviction as defined above. Rather, Rule 586 permits a trial court to **dismiss** a case, which does not involve force or violence, when: (1) "the public interest will not be adversely affected;" (2) the Commonwealth "consents to the dismissal;" (3) satisfaction has been, or will be, made to the person aggrieved by the offense; and (4) "there is an agreement as to who shall pay costs." Pa.R.Crim.P. 586. Clearly, a Rule 586 disposition does not involve a finding of not guilty or insufficient evidence, nor does it qualify as a judgment of conviction, a guilty verdict, or a guilty plea. Rather, a Rule 586 disposition fits into a third category outlined in Section 110(2):

The former prosecution was terminated, after the indictment was found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

18 Pa.C.S. § 110(2). **See also** 18 Pa.C.S. § 109(2).⁷ Here, Porter's former prosecution was terminated by a final order, which has not been set aside, reversed or vacated. Accordingly, the relevant inquiry is whether Porter's present prosecution should have been barred under Section 110(2). However,

⁷ The description of this third category in Section 110(2) is virtually identical to the description in Section 109(2). Furthermore, it merits emphasis that Porter cited to this third category of dispositions in arguing her present case should have been barred under Section 109. **See** Porter's Brief at 17, *citing* 18 Pa.C.S. § 109(2).

in her brief, Porter's argument focuses solely on how Subsections (1)(i), (ii), and (iii) apply to her case.⁸ **See** Porter's Brief at 22-31. Therefore, she has waived any claim that her prosecution is barred under Section 110(2).⁹

Nevertheless, even if we were to find Porter did not waive this claim, we would conclude no relief is warranted.¹⁰ "Section 110(2) codifies the ancient doctrine of collateral estoppel[,] and precludes the "relitigation between parties of an issue where that issue has been previously decided by a competent legal forum." **Commonwealth v. Teagarden**, 696 A.2d 169, 171 (Pa. Super. 1997), *appeal denied*, 702 A.2d 1060 (Pa. 1997). However, we have cautioned:

[W]here one or several other rational explanations for the jury's actions exist, admission of evidence in a subsequent prosecution will not be excluded on collateral estoppel grounds. Only if it is "clear that the jury has spoken with respect to a particular fact, [will] the Commonwealth no longer [be] permitted to request that another jury consider the same."

Id. (internal citations omitted).

Pursuant to Section 110(2), a prosecution, based upon different facts, is barred by a former prosecution if the former prosecution "necessarily required a determination inconsistent with a fact which must be established

⁸ As will be discussed *infra*, Porter's Section 110(1)(ii) argument is relevant to her constitutional due process claim.

⁹ We note "[w]e are not limited by the trial court's rationale and may affirm its decision on any basis." **Commonwealth v. Cramer**, 195 A.3d 594, 607 (Pa. Super. 2018).

¹⁰ As noted *supra*, Porter addressed this same exception in her Section 109(2) argument. **See** Porter's Brief at 17-20.

for conviction of the second offense." 18 Pa.C.S. § 110(2). The facts which had to be established for the present prosecution were set forth in the affidavit of probable cause – namely, Porter failed to report to DHS **her own employment** by the United States Postal Service in order to obtain food stamp benefits that she was not entitled to during the period from February 1, 2015, through July 31, 2015. **See** Private Criminal Complaint, 5/24/2016, at Affidavit of Probable Cause. The prior prosecution, however, involved an overpayment of food stamp benefits for the period from August 2014 to January 2015, as a result of Porter's failure to report **her daughter's employment and income**. **See** Docket No. 2015-14956, Private Criminal Complaint, 6/26/2015, at Affidavit of Probable Cause. Therefore, the former prosecution did not require a determination inconsistent with a fact which had to be established in the present case. To the extent Porter asserts the Commonwealth agreed "all the money owed to it was represented in [the] Rule 586 disposition,"¹¹ we find the damages owed do not constitute a relevant fact for purposes of a Section 110(2) analysis.¹² As noted above, the relevant facts determined in the Rule 586 disposition were that Porter failed to alert

¹¹ Porter's Brief at 19. **See also id.** at 34.

¹² We note this is not a case in which the Commonwealth filed separate charges in an attempt to affect the grading of the offense. Pursuant to 62 P.S. § 481(b), the crime is graded as a felony of the first degree when the amount of damages exceeds \$1,000. **See** 62 P.S. § 481(b). Here, the damages alleged in both prosecutions exceeded that amount.

DHS of her daughter's employment for a six-month period of time. Those facts have no bearing on the present prosecution where the Commonwealth proved Porter failed to alert DHS of a change in her own employment and income during a separate six-month period. Accordingly, even if Porter's Section 110(2) claim were not waived, she would be entitled to no relief.

Lastly, Porter contends "[t]he Commonwealth violated [her] right under the Double Jeopardy Clauses of the Federal and Pennsylvania Constitutions to be free from multiple prosecution for one criminal act." Porter's Brief at 32. "Consideration of the constitutional protections contained in the double jeopardy clauses is necessary where[, as here,] the statutory provisions relating to subsequent prosecutions are not applicable." **Commonwealth v. Keenum**, 530 A.2d 90, 93 (Pa. Super. 1987).

We employ a unitary analysis of the state and federal double jeopardy clauses since the protections afforded by each constitution are identical.

The protections afforded by double jeopardy are generally recognized to fall within three categories-(1) protection against a second prosecution for the same offense after an acquittal; (2) protection against a second prosecution for the same offense after conviction; and (3) protection against multiple punishments for the same offense.

Id. (internal citations omitted). When considering whether a second prosecution is for the same offense as a former prosecution, "a 'single criminal

episode' analysis" is employed.¹³ **Commonwealth v. Miskovitch**, 64 A.3d 672, 686 (Pa. Super. 2013) (quotation omitted), *appeal denied*, 70 A.3d 1090 (Pa. 2013).

In **Hude, supra**, the Pennsylvania Supreme Court held "where a number of charges are logically and/or temporally related and share common issues of law and fact, a single criminal episode exists[.]" **Hude, supra**, 458 A.2d at 494. In **Commonwealth v. Reid**, 77 A.3d 579 (Pa. 2013), the Supreme Court further explained that offenses are "logically related" to one another if there is "a substantial duplication of factual, and/or legal issues presented by the offenses." **Id.** at 582 (quotation omitted). The Court emphasized, however, the duplication must be substantial and not merely *de minimis*. **See id.** at 582-583. Furthermore, the **Reid** Court explained the determination of whether the logical relationship prong is met "depends ultimately on how and what the Commonwealth must prove in the subsequent prosecution." **Id.** at 585.

Here, Porter insists the former and present prosecution are "temporally and logically related – the two time periods abut one another and the case at bar clearly involves a continuation of Ms. Porter's actions in her first case."

¹³ The "single criminal episode" analysis for double jeopardy claims appears to be the same as the analysis for a Section 110 claim. **See Commonwealth v. Hockenbury**, 701 A.2d 1334, 1338-1339 (Pa. 1997) (referring to prior Section 110 discussion when concluding separate prosecutions did not violate constitutional double jeopardy protection). **See also Commonwealth v. Schmidt**, 919 A.2d 241 (Pa. Super. 2007) (same), *appeal denied*, 936 A.2d 40 (Pa. 2007).

Porter's Brief at 27. We disagree. The fact the time periods "abut one another" has no bearing on whether the crimes involve the same criminal episode. Indeed, each false statement covered a different, and distinct, time period. Had they overlapped, Porter's argument may have more merit.

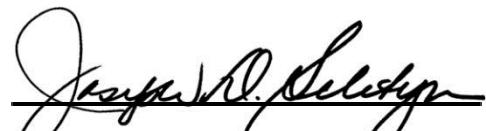
Nonetheless, the most significant difference between the two prosecutions is that they involved separate false statements that had to be proven by the introduction of distinct evidence. In the Rule 586 disposition, the Commonwealth was required to prove Porter failed to disclose to DHS that her daughter was employed at a restaurant during the period from August 1, 2014, through January 31, 2015. That false statement/omission was in her initial application for benefits filed in August of 2014.¹⁴ As the Commonwealth pointed out at the pretrial hearing, the present prosecution involved a different false statement/omission Porter made "on a separate form ... about her employment as of April 2, 2015." N.T., 5/12/2017, at 6. The second form was a semiannual reporting form that required Porter to confirm, update, and/or correct her household income. The present prosecution was based upon Porter's failure to report that she, herself, was employed by the United States Post Office from February 1, 2015, though July 31, 2015. In summary, the present prosecution involved a separate false statement made on a separate form concerning the employment of a different beneficiary by a

¹⁴ The parties referred to the relevant forms during the pretrial hearing. Although they were not introduced into evidence at that hearing, they were introduced at trial, and are included as a supplement to the certified record. **See** N.T., 5/12/2017, at 6-8.

different employer over a different time period. Consequently, we agree with the trial court's finding that the two prosecutions did not constitute a single criminal episode, and, therefore, Porter's second prosecution did not violate her double jeopardy rights. Accordingly, no relief is warranted.¹⁵

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/18/2019

¹⁵ We note that in her double jeopardy claim, Porter also raises a collateral estoppel claim. **See** Porter's Brief at 33-35. However, we have already addressed and rejected that claim in our discussion of Section 110(2). **See supra** at 9-11.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

v.

CC 2016-11779

SONYA PORTER.

1528 WDA 2017

Defendant.

ORIGINAL
Criminal Division
Dept. Of Court Record
Allegheny County, PA

OPINION

BIGLEY, J.

November 14, 2018

This is an appeal from a judgment and order of sentence entered on September 20, 2017, which followed a jury trial before this court¹. The Defendant was found guilty of one count of Public Assistance/ False Statements 62 Pa. C.S. §481. The defendant was sentenced to thirty-six months probation, and ordered to pay \$2,700.00 in restitution. This timely appeal followed.

¹ The trial was heard and the verdict was rendered September 7, 2017

DEPT. OF COURT RECORDS
CRIMINAL DIVISION
ALLEGHENY COUNTY, PA.

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—L.E.D.

APPENDIX C

The Defendant's Rule 1925(b) Concise Statement of Errors Complained of on Appeal raises the following issues on appeal:

1. This Honorable Court abused its discretion by denying Trial Counsel's Motion to Enforce Rule 586 Disposition and to Dismiss on Collateral Estoppel and Double Jeopardy Grounds. The above-captioned case was based entirely on the same action, i.e. Ms. Porter's statement on a form filed April 2, 2015. Under the Double Jeopardy Clauses of the Constitutions of the United States of America and Pennsylvania, the theory of collateral estoppel, and 18 Pa. C.S.A. 110, the Commonwealth was estopped from bringing the above-captioned case as Ms. Porter had already been charged for this criminal episode at CC2015-14956. The predicate facts at the above-captioned case were known to the prosecuting officer at the time of the commencement of the first trial, and was within the jurisdiction of this Honorable Court. The above-captioned case thus required dismissal because prosecution was barred.
2. This Honorable Court abused its discretion by denying Trial Counsel's motion for a mistrial in this case. The Commonwealth improperly entered evidence as to Tierra Porter's income, prejudicing Ms. Porter. This constitutes a fundamental error that prevented Ms. Porter from receiving a fair trial, and was not remedied through any instruction to the jury.
3. This Honorable Court abused its discretion by allowing the Commonwealth to introduce prejudicial statements made by Ms. Porter into evidence despite Trial Counsel's timely objection for lack of notice. Such evidence was prejudicial to Ms. Porter as the Commonwealth, in failing to provide proper notice, violated Ms. Porter's state and federal constitutional right to due process, as well as her right to timely discovery under the Pennsylvania Rules of Criminal Procedure.
4. This Honorable Court abused its discretion in improperly excluding evidence that Trial Counsel sought to introduce, namely a 2016 letter sent to Ms. Porter from the Department of Human Services ("DHS"). The letter incorrectly indicated that Ms. Porter was pregnant, which would have supported Ms. Porter's defense at trial that she alerted DHS of her change in employment and DHS failed to document that change. This evidence was relevant to Ms. Porter's defense that her notification to DHS was lost in the bureaucracy of a large government agency, and that she did not commit the charged offense. This Honorable Court's exclusion of this letter was prejudicial to Ms. Porter and denied her a fair trial.

For the reasons set forth below, the verdict and judgment of sentence should be affirmed.

The defendant first argues that this court erred in denying a Motion to Dismiss based on charge filed at CC2015-14956, False Statements to Public Assistance, which was filed May 15, 2015. The complaint at that case alleges that the defendant failed to disclose to Pennsylvania Department of Human Services [hereinafter DHS] income in her household earned by her daughter, Tierra Porter, during the benefit period August 1, 2014, to January 31, 2015, resulting in her receipt of \$1,307.00 in Supplemental Nutrition Benefits [hereinafter SNAP] to which she was not entitled. That case was settled when the defendant paid that amount and the case was dismissed pursuant to Pa.R.Crim.P 586 on March 21, 2016. The instant case was filed on April 29, 2016, and the criminal complaint alleged that the defendant failed to report her own income from the U.S. Postal Service during the benefit period February 1, 2015, to July 31, 2015, resulting in receipt of SNAP payments of \$2,770.00 to which she was not entitled. The defendant filed a Motion to Dismiss based on the settlement at CC2015-14956, alleging that the Commonwealth was barred from prosecuting the instant case. This court disagreed as the benefit periods were different, and the Commonwealth would be required to prove a different set of facts to sustain their burden.

The defendant alleges that this court abused its discretion by denying Trial Counsel's motion for a mistrial in this case. The Commonwealth improperly entered evidence as to Tierra Porter's income, prejudicing Ms. Porter. This constitutes a fundamental error that prevented Ms. Porter from receiving a fair trial, and was not

remedied through any instruction to the jury. The reference to Tierra's income was a response to a question about why a certain meeting notice was generated by DHS. [T.T.49]² After discussion at sidebar everyone agreed that the reference was inconsequential, and that an instruction might draw more notice by the jury. In fact, not only did defense counsel not request an instruction, he was in agreement that an instruction might draw attention to it. Furthermore, the jury was instructed to consider only the charge of whether the defendant failed to report her income from the United States Postal Service (USPS) for the benefit period in question.

The defendant next alleges that this court abused its discretion by allowing the Commonwealth to introduce prejudicial statements made by Ms. Porter into evidence despite Trial Counsel's timely objection for lack of notice. This allegation is belied by the record. Witness Kayla Fantini, an Investigator with the Office of Inspector General, testified that she spoke with the defendant by phone, and that the defendant acknowledged that she started employment at the USPS in October 2014. [T.T. 89-90] This information was contained in Ms. Fantini's report which the defendant received in discovery materials. [T.T. 92-93]. Further, the Commonwealth introduced copies of the defendant's paycheck and payroll information from the USPS. This issue is without merit.

² T.T. refers to the Trial Transcript of September 7, 2017, followed by the page number(s).

Finally, the defendant claims that this court erred in not allowing the admission of a letter allegedly sent to the defendant by DHS in 2016 that inquired about whether she was pregnant. [T.T. 108-111] This court found that the letter had no relevance to this case given the time period, as well as the content.

FOR ALL ABOVE REASONS, the verdict and Judgment of sentence should be affirmed.

BY THE COURT,

 Kelly Bleday J.

IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

vs.

SONYA PORTER

CRIMINAL DIVISION

CC No. 2016-11779

PROCEEDING:
Pretrial Motion

BEFORE: The Honorable
Kelly E. Bigley

DATE:
May 12, 2017

Reported and transcribed by:
Mary Beth Perko, RMR
Official Court Reporter

COUNSEL OF RECORD:

For the Commonwealth:
Jameson Rohrer, ADA

For the Defendant:
Andrew Howard Esq.

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FILED

DEPT OF COURT RECORDS
CRIMINAL DIVISION
ALLEGHENY COUNTY, PA

T17-1232

1 P-R-O-C-E-E-D-I-N-G-S
2

3 THE COURT: Just very informally
4 summarize. The first case where there was a
5 586, the allegation was that the defendant
6 was overpaid in benefits because they found
7 out her daughter was working.

8 MR. ROHRER: Yes.

9 THE COURT: And in this case, which
10 happened after that, the allegation is the
11 defendant didn't report income.

12 MR. ROHRER: Yes.

13 THE COURT: Okay. Then it's not
14 something that would have had to have been
15 charged.

16 MR. HOWARD: Well, so there's going to
17 be some argument about that, Judge.

18 THE COURT: I thought you were going
19 based on what you filed. What would the
20 argument be? Just like if I have -- and we
21 have it all the time. You have clients who
22 go out and on the same day a lot of times
23 with the same exact people go to six stores
24 in different locations and steal things and
25 they're all separate cases.

1 In this case the allegations aren't the
2 same.

3 MR. HOWARD: The allegation is that
4 there was a false statement on a form which
5 was -- It's the same form. It's the same
6 statement. It's the same. It's just a
7 matter of degree. It's how much, because
8 there's allegedly a misstatement as to how
9 much household income was coming in from two
10 different people. So it really comes down
11 to --

12 THE COURT: Let me see the form.

13 MR. ROHRER: I would add, Your Honor,
14 that the most obvious example of the
15 misstatement is from a form filed by the
16 defendant in April 2015 allegedly. It was a
17 completely separate thing.

18 I apologize, Your Honor. I have a lot
19 of exhibits.

20 THE COURT: I see that.

21 I get it if it was the same or a
22 refiling of the same, but it's not.

23 MR. HOWARD: Well, Your Honor --

24 THE COURT: I don't think it's barred.
25 I read that.

1 MR. HOWARD: I don't think we need to.
2 We can just incorporate it because it was a
3 filing. It was the motion to enforce 586
4 disposition and dismiss on grounds of
5 collateral estoppel and double jeopardy.

12 MR. HOWARD: August 1, 2014 to
13 January 31, 2015.

14 THE COURT: August 1 of '14 to
15 January 31 of 2015.

16 MR. HOWARD: Correct.

17 THE COURT: So that case resolves in a
18 586 settlement

19 Then this case is filed at 2016-11779.
20 It was filed on June 26 of '15, so basically
21 five months later. I'm sorry. I'm looking
22 at the other one.

23 MR. HOWARD: It was five months after
24 the allegations in this second case.

25 THE COURT: Let me step back a minute.

1 At 2015-14956 the case was filed
2 June 26 of '15, but the time period that's
3 alleged that she received an overpayment due
4 to misstatements was from August 1 of '14 to
5 January 31 of '15.

6 MR. ROHRER: That's correct.

7 THE COURT: And then they filed them in
8 June of '15.

9 MR. ROHRER: That's correct, Your
10 Honor.

11 MR. HOWARD: And I think this timeline
12 is real important, Judge, because there's the
13 alleged misstatement, the false statement,
14 and then six months of the first case's
15 alleged overpayment period. And then
16 starting the next day, apparently at midnight
17 January 31 to February 1, according to the
18 allegations, Case No. 2 begins running for
19 six months. Then after --

20 THE COURT: Well, I understand the six
21 months because you fill them out twice a
22 year, the application or the certification or
23 whatever. So I understand it's always six
24 months, six months.

25 MR. HOWARD: In this case, Your Honor,

1 there's no renewal of a form. This is still
2 the same form as the original case. It's one
3 form, one alleged false statement from the
4 first date before the first case.

5 MR. ROHRER: That's incorrect, Your
6 Honor. The false statement that we are most
7 interested in prosecuting occurred on a
8 separate form that you have in front of you
9 about her employment as of April 2, 2015.

10 THE COURT: This one?

11 MR. ROHRER: That's correct.

12 THE COURT: And can I ask, what's the
13 time period?

14 MR. ROHRER: I actually have a timeline
15 here, if you'd like.

16 Andy, I have a demonstrative, if you
17 would like to look at it before I give it to
18 her.

19 THE COURT: What's the time period in
20 this case at 2016-11779?

21 MR. ROHRER: The most explicit alleged
22 deception occurred in April of 2015 regarding
23 specifically, after on a form that already
24 reflected her daughter's employment, the
25 whole content of the other case, that she

1 herself was not employed.

2 THE COURT: Okay.

3 MR. ROHRER: There was an ongoing
4 deception throughout the entire six-month
5 period, and this is a six-month, as far as I
6 understand, like a financial block of time,
7 but it was based on a different discovery of
8 a different misstatement. And even though
9 some of the deception occurred at the same
10 time in both of these cases, the deception
11 overlaps, but the actual event that is most
12 clearly evident of the defendant's guilt here
13 is completely irrelevant to the other case
14 and occurred late in the period.

15 MR. HOWARD: Where on this is the new
16 misstatement?

17 MR. ROHRER: Do you mind if I give it
18 to the judge?

19 MR. HOWARD: You're saying this is a
20 form filled out by Ms. Porter?

21 MR. ROHRER: Yes.

22 MR. HOWARD: Where's her misstatement?

23 MR. ROHRER: That's what the trial's
24 going to be about. Most seriously on Page 5
25 there's a signature of Ms. Porter, and on

1 Page 4 there's a statement that there's no
2 changes. On Page 3 there's a statement that
3 Tiara Porter has court-ordered support, but
4 it doesn't say anyone lost or started
5 receiving income or had a change in the
6 amount for this time.

7 Pages 1, 3, and 5 are the most
8 significant. Page 1 is particularly
9 significant because it gives us the exact
10 time that the defendant allegedly made the
11 statement.

12 MR. HOWARD: So, Your Honor, I think
13 the issue --

14 MR. ROHRER: May I give it to --

15 MR. HOWARD: I'm sorry. Yes.

16 MR. ROHRER: That's the timeline for
17 this case. It reflects the other one as
18 well.

19 THE COURT: Let me ask, when would you
20 have learned that there was a statement in
21 this particular case, not the '15 case, with
22 respect to whether or not the defendant had
23 employment? Is that something you would have
24 discovered later through a search or a hit
25 on -- I forget what they say, like Department

1 of Labor or something?

2 MR. ROHRER: Yes, Your Honor. It's a
3 separate hit. I believe Cheryl Brown is the
4 witness. No, that's not correct. Cheryl
5 and --

6 THE COURT: Can we go off the record
7 for a one second?

8 (Discussion held off the record.)

9 THE COURT: Let's go back on the
10 record. With respect to the motion, the
11 motion alleges that I guess essentially it
12 should have been discovered and should have
13 been included in the last case that was
14 resolved via a 586.

15 I say the allegations aren't the same.
16 They're of the same type. They're not the
17 same. They don't cover the same time period
18 and that the argument that the new
19 certification, that there's been no
20 substantial change means that that relates
21 back to the original yearly one they do. I
22 think it is yearly.

23 I don't accept that that's the case.
24 There's an ongoing -- I know I've seen them
25 before in other cases with respect to the

1 documents that they sign that there's an
2 ongoing duty to report to the Department any
3 change in income or household size or makeup
4 or anything that might affect benefits.

5 So based on that, that motion is
6 respectfully denied. I'll give you guys a
7 minute to figure out if there's anything. If
8 not, we'll just do it witness by witness.

9 MR. HOWARD: Your Honor, before you go,
10 I understand you denied my motion. One of
11 the grounds for it was double jeopardy under
12 Rule 587, 587 (b), and subsection 6 says that
13 if you deny that motion, we need a ruling on
14 whether it was frivolous or not.

15 THE COURT: On what?

16 MR. HOWARD: On whether my motion to
17 dismiss on double jeopardy was frivolous.

18 THE COURT: What your thought process
19 was -- because maybe it was. Maybe it was.
20 Let's put it this way: Is it nice for me to
21 say it's frivolous if I see no legal basis
22 for it and I don't understand the argument
23 and I don't think it had any validity?

24 MR. HOWARD: I'll tell you why it's
25 important, Judge. Because if you deny the

1 motion and find it frivolous, then we proceed
2 to trial today. If you found it to be not
3 frivolous but still denied, then it's
4 immediately appealable as a collateral order.

5 So we need a ruling on whether it's
6 frivolous or not to determine how we're going
7 to proceed.

8 MR. ROHRER: Your Honor, the
9 Commonwealth's position in this, with all
10 respect to Mr. Howard, is the law in this
11 area is black and white and it is a frivolous
12 motion. But that being said --

13 THE COURT: I guess the standard is, no
14 real argument and no real basis, then it is.
15 I just don't see that there's any validity to
16 the argument that jeopardy attached on an
17 allegation that requires different proof and
18 it's covering a different period and it would
19 require them to present different evidence.

20 MR. ROHRER: That being said, Your
21 Honor, I would say that because this is a
22 fraud case, there is probably more of a gray
23 area with regard to the specific elements of
24 the crime that Mr. Howard was trying to say
25 were frivolous here, was trying to say were

1 estopped here.

2 I think it would be beyond reason
3 either way, and the Commonwealth certainly
4 respects your discretion in this.

5 THE COURT: All right. So again, you
6 want to what? Take it up on appeal prior
7 to --

8 MR. HOWARD: Your Honor, if you find it
9 to be frivolous, then I can't. I'd only be
10 able to do it as a post-sentencing motion.
11 If you find it to be not frivolous, then I
12 would have to do it that way.

13 THE COURT: I find it frivolous. I
14 don't see it. I just don't see it.

15 MR. HOWARD: I'm just asking for your
16 ruling.

17 THE COURT: Again, I don't think it was
18 intentionally frivolous on your part. I
19 guess that would be where I draw the line. I
20 don't think you intended it to be, but I find
21 that it is because I find that it doesn't
22 have any basis -- Although there's a
23 connection, I don't find it to be dispositive
24 of today's case.

25 There's no question there's a

1 connection with the parties and the claim,
2 the type of claim it is, but with respect to
3 the real differences, which is time periods,
4 what the misstatement was, how it affected
5 benefits, that's different.

6 So I do find it frivolous, and you can
7 do it all as one if you want.

8 MR. HOWARD: Thank you.

9 THE COURT: But I'll give you guys a
10 minute to see if there's anything. If not,
11 we'll just do it one witness at a time.

12 Thank you. I would say this. Off the
13 record.

14 (Discussion held off the record.)

15 MR. ROHRER: Your Honor, we may have
16 another preliminary issue.

17 THE COURT: Okay.

18 MR. HOWARD: It has to do, Your Honor,
19 whether or not to have a nonjury or jury
20 trial.

21 THE COURT: As opposed to last time
22 when you checked nonjury and picked one?

23 MR. HOWARD: Yes, Your Honor.

24 THE COURT: I know we had scheduled
25 this for a nonjury, but it doesn't seem like

1 it's in the cards at this point.

2 What's the date I just suppressed?

3 June something.

4 THE MINUTE CLERK: June 6.

5 THE COURT: What day of the week is
6 that, John?

7 THE MINUTE CLERK: It is a Tuesday.

8 THE COURT: Sounds good. June 6.

9 THE MINUTE CLERK: Wait one second.

10 THE DEFENDANT: Give me a sentence.

11 Let me go. I don't want to go through this
12 no more. I'm sick of this. I know no matter
13 which way it goes they're going to look like
14 I did something wrong, so I want to get rid
15 of it today. I want to go home. I want to
16 be done and over with.

17 THE COURT: I'm going to give you that
18 date, and you guys decide what you want to
19 do. But that's the date we have, June 6.

20 MR. ROHRER: I apologize. The --

21 THE MINUTE CLERK: That won't work.
22 Hold on one second.

23 THE DEFENDANT: I'm tired of coming
24 down here. I'm tired of missing jobs for
25 bull crap for somebody else's mistake.

1 THE COURT: Why don't you go out in the
2 hall and discuss your case with your attorney
3 instead of in front of me.

4 (Discussion held off the record.)

12 MR. HOWARD: Understood, Your Honor.

13 (Proceedings adjourned.)

15 THE COURT: We're going to go on the
16 record. Everyone's still sworn. I'm done
17 with this as far as understanding. I was
18 trying to be nice when I said to you that I'd
19 rather she not go nonjury because she's
20 convinced that I'm not going to be fair to
21 her, which is not a correct statement, but
22 okay.

23 So in order to do that, then, you would
24 go jury because today there was a lot of
25 equivocation. Initially it was scheduled as

1 a nonjury, which that's scheduled
2 differently, so we come and it's a nonjury,
3 but when I decide against the motion, now
4 it's going to be a jury and then later on
5 maybe another nonjury.

6 I'd really rather, given the vehemence
7 with which the statement was made, that it be
8 something that was thought out. So when
9 there was, Let's do nonjury, I said a nonjury
10 can go to another room so the defendant
11 doesn't make up her mind I'm unfair to her
12 just because I find the facts differently.

19 Nonjury trial from another courtroom, I
20 take them. If somebody came down here in a
21 nonjury trial from another courtroom and
22 said, Give me a jury trial, I'd be like,
23 You're going right back to your judge because
24 that's their jury.

25 So we've gone back and forth about

this, but, again, I think it is what it is. The only reason it wasn't scheduled correctly at this point was because the election was different at that point. The election was for a nonjury trial, which can be scheduled in a certain time period, and jury trials I just can't accommodate on that same schedule.

So I don't understand what the issue is because the case doesn't leave this room as a jury because no one will take it, and there's absolutely no reason to. The reality is, I can be fair to the defendant and I can be fair listening to the evidence. The fact that she has some subjective view that's different I can't really help.

That's all. Hey, that's how it is.

MR. HOWARD: Your Honor, it's my understanding Ms. Porter would like to proceed in a nonjury fashion in a different courtroom. The Commonwealth has indicated to me if it does go to a different courtroom, they'd be exercising the Commonwealth's right to a jury trial.

THE COURT: Okay. Then we're back where we are, which is a jury trial that will

1 be here what date, John? September
2 something?

3 MR. ROHRER: 7, Your Honor.

4 THE COURT: 7?

5 MR. HOWARD: Picking on the 6th.

6 THE COURT: They have the right just as
7 you do.

8 MR. HOWARD: And that's my
9 understanding.

10 Your Honor, I'm kind of at a loss what
11 to ask for because there were very few --
12 with regard to these decisions, the only
13 decision that Ms. Porter and I get to make is
14 about whether it's jury or nonjury, not which
15 judge we get.

16 THE COURT: They don't have the right
17 to decide that either.

18 MR. HOWARD: I agree. Because in
19 reality, when you have a jury trial, the
20 judges are the jurors.

21 MR. ROHRER: I guess I just ask for a
22 scheduling order at the Court's discretion.
23 If it's going to stay in this courtroom,
24 then, Your Honor -- I know Ms. Porter wants
25 to have a jury; right?

1 THE DEFENDANT: I said specifically
2 that I wanted a nonjury trial. He does not
3 want to do it outside of your courtroom, and
4 the only reason I'm going --

5 THE COURT: It's not he doesn't want to
6 do it outside the courtroom.

7 THE DEFENDANT: He said that, ma'am.

8 THE COURT: He said he elected to have
9 a jury.

10 THE DEFENDANT: Because he wants it to
11 be in your courtroom. My question is, I'll
12 say this first and foremost because I'm a
13 woman of my word. When I say I don't think
14 you would be fair because of the comment that
15 you made --

16 THE COURT: That's fine. I understand
17 that.

18 THE DEFENDANT: You looked directly at
19 me. That means there's a little bit clouded
20 judgment.

21 THE COURT: Let me just correct
22 something. I actually didn't look at you
23 because what you didn't understand is I
24 wasn't specifically talking about you. I was
25 addressing that, and they knew it, to the

1 people here from the Department of Public
2 Welfare. I was talking specifically about
3 the offense and not you.

4 So your statement that I looked at you
5 is not true. The first time I looked at you
6 is when you spoke out and said something.
7 Okay? That's the honest to God truth. So I
8 wasn't looking at you.

9 When we were talking about during the
10 motion the type of offense it is and my
11 frustration that the very kinds of
12 bureaucratic things that cause problems end
13 up being part of the cases, I was addressing
14 them and looking at them. So your perception
15 was inaccurate.

16 I don't have any issue -- I'm not angry
17 that you think I can't be fair to you. It is
18 what it is, and that's your perception, which
19 is why later on, if I had an issue with
20 you -- I should say about half an hour later
21 then everybody wanted to go nonjury. I
22 didn't feel comfortable because I knew how
23 the defendant felt.

24 So if I were all that unfair, you'd
25 have taken it at that point and done it. I

1 don't want there to be a record that someone
2 feels because of my rulings that they're not
3 going to get a fair trial.

4 I don't have any interest in your case.
5 I'm doing it based on evidence. I know
6 everyone likes to think this is all personal,
7 but it's not. With all due respect, it's
8 just not.

9 But in any event, the result here is
10 that the Commonwealth wants a jury trial.
11 Each side has that right. I'm just doing it
12 as far as scheduling. The fact that they
13 won't consent to a nonjury trial and moving
14 it, I really can't -- He has the same right
15 as you guys do, so I can't deal with that.

16 MR. HOWARD: That is my understanding.
17 So we're going to do a jury in here?

18 THE COURT: Yeah. You guys already
19 picked a date a while ago.

20 THE DEFENDANT: But I won't agree to
21 this.

22 THE COURT: Well, you don't have to
23 agree to the jury. That's the right that the
24 Commonwealth has as well.

25 THE DEFENDANT: Ma'am, he specifically

1 said that he wants to be seen in your
2 courtroom so that he can bring my old case,
3 which I paid off, into this case, which they
4 never even asked me why did I pay that case
5 off.

6 I paid it so I didn't have to go
7 through this because even though it was their
8 error, I did receive that money, so I paid it
9 back, being honest about it, not lying.

10 The man that caused all of this that
11 was sitting in here only saw me two times.
12 That's the only two times I've ever been in
13 the office. I did not give anything. I did
14 not call in and not report. They sent me
15 letters to my old address. All this stuff
16 still got my old address on it.

17 And I feel like if he's saying that the
18 old case has nothing to do with this case and
19 how they filed it, then how is that going to
20 do with how I get sentenced? Is that fair to
21 me? I don't feel that's fair.

22 THE COURT: It won't come in really in
23 any way. It's not --

24 THE DEFENDANT: Well, I heard him say
25 that's the reason he wants to be in here.

THE COURT: No. No. But I think, again, a cooling down period would be good. You have our date. If you need anything in the interim, let me know.

MR. ROHRER: Your Honor, just for the cleanliness -- May it please the Court, Jameson Rohrer on behalf of the Commonwealth.

Just for the cleanliness of the record, this is a linked case. There has been a lot of paper going around. There have been preliminary motions.

At this point, Your Honor, the reason that this case should remain in front of you is the reason any linked case should remain in front of any judge. That being said, we talked specifically about the 586 disposition. The Commonwealth agreed not to use it as crimen falsi evidence. And, in fact, in front of a jury it would be even more sacrosanct because you are not required to expel it from your thoughts.

The Commonwealth at this point has an interest in keeping the record as clean as possible. I intend to retain control of this case to try the witnesses in the same order

1 and to treat everybody involved exactly the
2 same as I would have otherwise except with
3 the delicacy that a jury calls for.

4 THE COURT: Okay.

5 MR. ROHRER: And honestly, Your Honor,
6 even though on some level I would have
7 preferred to get this case out today and that
8 would be the convenient thing to do, given
9 the vehemence with which the defendant
10 opposed these charges, I think in the
11 interests of justice a jury trial is the most
12 appropriate way forward. And I certainly
13 think that a jury trial in front of Your
14 Honor is the most appropriate way forward.

15 THE COURT: Okay. All right. So you
16 guys have the date. If you need anything in
17 the interim, let me know. All right? Thank
18 you.

19 - - -
20 (Whereupon, the proceedings were concluded.)
21 - - -
22
23
24
25

1 COMMONWEALTH OF PENNSYLVANIA }
2 COUNTY OF ALLEGHENY }
3
4

5 CERTIFICATE OF REPORTER

6
7 I, Mary Beth Perko, RMR, do hereby certify that the
8 evidence and proceedings are contained fully and accurately in
9 the machine shorthand notes taken by me at the hearing of the
10 within cause, and that the same were transcribed under my
11 supervision and direction, and that this is a correct
12 transcript of the same.
13
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24
25

Mary Beth Perko

Official Court Reporter
Court of Common Pleas

The foregoing record of the proceedings upon the
hearing of the above cause is hereby approved and directed to
be filed.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

CP-02-CR- 14956 - 2015

Sonya vs. Porter

RULE 586 ORDER OF COURT

AND NOW, to-wit, this 21 day of March,
it appearing to the court that:

- (a) the offense(s) charged is/are not alleged to have been committed by force or violence or threat thereof;
- (b) the public interest will not adversely be affected by a dismissal of the above-captioned case;
- (c) the Commonwealth's attorney consents to the dismissal of the above-captioned case;
- (d) restitution has been paid by the defendant to the victim in the amount of \$_____.____;
 restitution has been paid to the Department of Court Records in the amount of \$1,307.00, and the Department of Court Records is Ordered to pay \$1,307.00 of said funds from escrow to the victim;
- (e) there is an agreement that the defendant is to pay the costs of prosecution to the County of Allegheny;

THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that the above-captioned case be and is hereby DISMISSED pursuant to Pa.R.C.P. 586, provided that the defendant complies with the agreement set forth in paragraph (e) above.

BY THE COURT,

Kelly Bagley, J.

Total Restitution \$1,307.00

By signing below, the victim has agreed
that this is the full amount of
restitution to be received in connection
with this criminal matter.

AGREED TO THIS 21 DAY OF March, 2016:

K. H.
Counsel for the Commonwealth

K. H.
Counsel for the defendant

Victim's Signature

PA Dept of Revenue
Victim's Name (Please Print)
2121 Nobletown Rd, Ste 400
Victim's Address (Street)
Pittsburgh PA 15205
(City) (State) (Zip)

Sonya Porter
Defendant
3459 Shadyside Ave
Defendant's Address (Street)
Pgh PA 15212
(City) (State) (Zip)



Magisterial District Number	05-0-03
MDJ Name Hon.	Municipal Courts Building
Address	660 First Avenue Pittsburgh, PA 15219
Telephone	(412)255-2700

Docket No.: CP 3461-16
Date Filed: 4/19/16
OTN: T788078-4

(Above to be completed by court personnel)

COMMONWEALTH OF PENNSYLVANIA
VS.

DEFENDANT:
[]

NAME and ADDRESS

Sonya Porter

21 Trent St.
Pittsburgh, PA 15219

11779

(Fill in defendant's name and address)

Notice: Under Pa.R.Crim.P. 506, your complaint may require approval by the attorney for the Commonwealth before it can be accepted by the magisterial district court. If the attorney for the Commonwealth disapproves your complaint, you may petition the court of common pleas for review of the decision of the attorney for the Commonwealth.

Fill in as much information as you have.

Defendant's Race/Ethnicity	Defendant's Sex	Defendant's D O B	Defendant's SID (State Identification Number)
<input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Hispanic <input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Female <input type="checkbox"/> Male	5/21/74	
Defendant's A K A (also known as)	Defendant's Vehicle Information Plate Number (MM/YY)	State	Registration Sticker
			Defendant's Driver's License Number PA [REDACTED]

I, Office of Inspector General, c/o Agent Kayla Fantini, 2121 Noblestown Road, Suite 400, Pittsburgh, PA 15205

(Name of Complainant-Please Print or Type)

do hereby state: (check appropriate box)

- I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as _____
- I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe

with violating the penal laws of the Commonwealth of Pennsylvania at Pennsylvania Department of Human Services,
(Place-Political Subdivision)

332 5th Ave., 2nd Floor, Pittsburgh, PA 15222

in Allegheny County on or about February 1, 2015 through July 31, 2015

Participants were: (if there were participants, place their names here, repeating the name of the above defendant)

Sonya Porter

ORIGINAL

Defendant's Name:Sonya Porter
Docket Number:



**PRIVATE
CRIMINAL COMPLAINT**

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA.Code §§ 213.1 – 213.7.)

The defendant, Sonya Porter, between the dates of February 1, 2015 and July 31, 2015 in

the county of Allegheny unlawfully obtained \$2,770.00 in Supplemental Nutrition Assistance Program (SNAP) benefits, formerly known as Federal Food Stamp Benefits (M1) by means of a willfully false statement or misrepresentation, or by willfully failing to disclose a material fact regarding eligibility or other fraudulent means secured assistance. To wit: the defendant, Sonya Porter, failed to disclose to the Pennsylvania Department of Human Services (DHS) the correct income of her household in order to continue collecting SNAP benefits for which she was not entitled in violation of Section 481 (a) of the Public Welfare Code, Act of June 13, 1967, 62 P.S. 481 (a), as amended July 15, 1976.

All of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of 481 (Section) and (a) (Subsection) of the 62 P. S. §481 (PA Statute)

3. I ask that process be issued and that the defendant be required to answer the charges I have made.

4. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.

April 29 2016
Date

Kayla Jantini

Signature of Complainant

Office of the Attorney for the Commonwealth Approved Disapproved because:

Lori Dyer for Stephen Zappala
(Name of Attorney for Commonwealth-Please Print or Type)

[Signature]
(Signature of Attorney for Commonwealth)

[Signature]
(Date)

AND NOW, on this date 5/24/2016, I certify that the complaint has been properly completed and verified.

Defendant's Name: Sonya Porter
Docket Number:



CRIMINAL COMPLAINT

AFFIDAVIT OF PROBABLE CAUSE

Kayla Fantini
NAME OF AFFIANT

February 1, 2015 through July 31, 2015
DATE OF VIOLATION (CRIME)

Commonwealth of Pennsylvania, Office of Inspector General

AFFIANT BELIEVES THAT PROBABLE CAUSE EXISTS TO ISSUE PROCESS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES.

- 1) WHEN: when affiant received information: August 5, 2015
when the source of information received the information: July 15, 2015
- 2) HOW: how both affiant and source of information know that a particular crime has been committed.
The Pennsylvania Department of Human Services (DHS) received information that Sonya Porter was employed by, and earning wages from the United States Postal Service. Sonya Porter failed to report that information to DHS as required. In fact and to the contrary, Sonya Porter provided DHS with documentation during the overpayment period on which she reported no employment and no earned income for herself. The Affiant verified (by matching Social Security number and wages) that Sonya Porter failed to report true and correct information to DHS in order to fraudulently obtain SNAP benefits that she was not entitled to from February 1, 2015 through July 31, 2015.
- 3) WHAT CRIME(S): Section 481 (A) & (B) of the Public Welfare Code of June 13, 1967 and Act of 1982-75 and Act 1996-35.
- 4) WHERE CRIME (COMMITTED: Pennsylvania Department of Human Services, 332 5th Ave., 2nd Floor, Pittsburgh, PA 15222

5) WHY AFFIANT BELIEVES THE SOURCE OF INFORMATION (RELIABILITY OF INFORMANT)

The source is presumed reliable in view of the fact that the caseworker and County Board of Assistance records have been reliable in previous cases; and have previously submitted information which resulted in convictions.

I, Kayla Fantini, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Sworn to me and subscribed before me this

24 day of May, 2016, District Justice
5/24/2016 Date 5/24/2016, District Justice

My commission expires first Monday of January 2016

SEAL

FILED

PHOENIX

16 JAN 20 PM 2:26



Commonwealth of Pennsylvania

DEPT. OF COURT RECORDS
CRIMINAL DIVISION
ALLEGHENY COUNTY PA

vs
Sonya Porter

Docket No.	CP-02-CR-0014956-2015	Offense Date	8/1/2014
O.T.N. No.	T6671066	Filed Date	6/26/2015
S.I.D. No.	[REDACTED]	Pre-Trial Date	
Race	Black or African American	Rule 600 Date	6/25/2016
Sex	Female	F/A Date	1/22/2016
SS #	[REDACTED]	Judge	
D.O.B.	5/21/1974	Reporter	
		Minute Clerk	
		A.D.A	

Count 1: 62481A: PUBLIC ASSISTANCE/FALSE STATEMENTS

And now, _____, upon motion of
Defense Counsel and with consent of the
Assistant District Attorney, this case is
dismissed per Rule 586 of PA Rules
of Criminal Court Procedure.
The defendant is to pay court costs.

By the court,

APPENDIX G

Commonwealth of Pennsylvania

vs

Sonya Porter

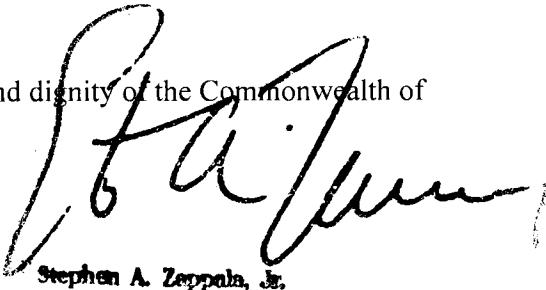
Criminal Action No. CP-02-CR-0014956-2015

The District Attorney of ALLEGHENY County, by this information charges that on (or about) Friday, the 1st day of August, 2014 through Saturday, the 31st day of January, 2015 in the said county of ALLEGHENY, Sonya Porter thereafter called actor, did commit the crime or crimes indicated herein, that is:

Count: 1 PUBLIC ASSISTANCE/FALSE STATEMENTS Misdemeanor 2

The actor secured or attempted to secure Pennsylvania public assistance by means of a willfully false statement or misrepresentation, or by impersonation, or by willfully failing to disclose a material fact regarding eligibility, or other fraudulent means, that is said actor failed to disclose accurate household income, in violation of Section 481(a) of the Pennsylvania Public Welfare Code, Act of June 13, 1967, 62 P.S. § 481(a), as amended.

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.



Stephen A. Zappala, Jr.

Attorney for the Commonwealth

DOCKET NO. CP-02-CR-0014956-2015

COMMONWEALTH OF PENNSYLVANIA

VS.

SONYA PORTER

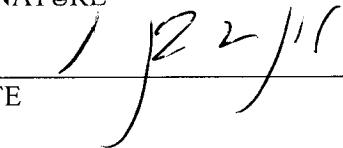
RECEIPT OF COPY OF INFORMATION

I hereby certify that I have received a copy of the information filed by the District Attorney in the above-captioned action.

DEFENDANT

DEFENDANT'S COUNSEL OF RECORD


Sonya Porter
SIGNATURE


1/22/11
DATE

FILED
2017 MAR 23 AM 9:15
DEPT. OF COURT RECORDS
CRIMINAL DIVISION
ALLEGHENY COUNTY, PA.
ALL

ORIGINAL
Criminal Division
Dept. of Court Records
Allegheny County, PA.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

v.

SONYA PORTER,

Defendant

CC: 201611779
OTN: T 667106-6
JUDGE: KELLY E. BIGLEY
OMNIBUS PRETRIAL MOTION
PURSUANT TO PA.R.CRIM.P. 578
TRIAL DATE: May 12, 2017

**MOTION TO ENFORCE RULE 586 DISPOSITION AND TO DISMISS ON
COLLATERAL ESTOPPEL AND DOUBLE JEOPARDY GROUNDS**

AND NOW COMES the Defendant, SONYA PORTER, by and through her attorney, Andy Howard, Esq., of the Allegheny County Office of the Public Defender, who files the within Motion to Dismiss on Double Jeopardy Grounds, in compliance with Pa.R.Crim.P. 587(B), whereof the following is a statement.

Factual Background

1. On December 4, 2015, approximately five months after the last alleged criminal overpayment of funds in the above-captioned case, Ms. Porter was charged by Private Criminal Complaint at CR-14956-2015, with violating 62 P.S. §481(a).¹

¹ A copy of the Criminal Complaint for Ms. Porter's previous case (CR-14956-2015) is attached, and labelled as Defense Exhibit A.

2. According to the Criminal Complaint (CR 14956-2015), Ms. Porter was overpaid in the form of public assistance **from August 1, 2014 to January 31, 2015**. Exhibit A.
3. On March 21, 2016, the case at CR-14956-2015 was resolved before this Honorable Court by Pa.R.Crim.P. 586. Ms. Porter paid the entirety of the restitution requested by the Commonwealth, and Rule 586 civil penalties were imposed.
5. On April 29, 2016, 39 days after the disposition of CR-14956-2015, and approximately nine months after the last alleged criminal overpayment of funds in the above-captioned case, **Ms. Porter was charged again, at CR-11779-2016 (the present case)**.
6. The Private Criminal Complaint at the above-captioned case alleges that Ms. Porter was overpaid in the form of public assistance **from February 1, 2015 to July 31, 2015**. Please note that this period of time directly succeeds the allegations at the former prosecution, and was terminated prior to the initiation of either criminal case.

Argument

7. The charges must be dismissed because prosecution is barred by the double jeopardy clauses of both the federal and state constitutions, under the theory of collateral estoppel, and section 110 of the Crimes Code, 18 Pa.C.S.A. § 110.
8. The Supreme Court of the United States interpreted the Double Jeopardy Clause to prevent prosecution for offenses stemming from the same criminal episode:

The compulsory joinder rule set forth in *Compana I and II* and the provisions of section 110 were designed to serve two distinct policy considerations: (1) to protect a person accused of crimes from governmental harassment of being forced to undergo successive trials from the same criminal episode; and (2) as a matter of judicial administration and economy, to assure finality without unduly burdening the judicial process by repetition litigation. ‘By requiring compulsory joinder of all charges arising from . . . [the same criminal episode], a defendant need only once “run the gauntlet” and confront the awesome resources of the state.’ *Commonwealth v. Campana*, (*Campana I*), 452 Pa. at 251, 304 A.2d at 440-441..

Com. v. Hude, 500 Pa. 482, 489 (1983) (internal citations omitted).

9. Section 110 provides, in relevant part:

Although a prosecution is for a violation of a different provision of the statute than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

- (1) The former prosecution resulted in an acquittal or in a conviction as defined in Section 109 of this title (relating to when prosecution barred by former prosecution for same offense)² and the subsequent prosecution is for: . . .
- (ii) any offense based on the same conduct **or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of commencement of the first trial and was within the jurisdiction of a single court unless the court ordered a separate trial of the charge of such offense.**

18 Pa.C.S. § 110 (emphasis added).

² Section 109 provides that the former prosecution should be considered a conviction if that prosecution “was terminated, after the indictment had been found, by a final order or judgment for the defendant, which has not been set aside . . . and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.” 18 Pa.C.S. §109. The Joint State Government Commission statement clarifies this section, stating

There apparently is no existing law on this point, which establishes the principle of *res judicata*. Such a principle applies in the civil law and this subsection makes it applicable to the criminal law as well. Any final judgment or order, including pre-trial judgments, should bar a subsequent prosecution for the same offense.

Id., Jt. St. Govt. Comm. Comment (1967).

10. "Campana I recognized that the 'same transaction' or 'same criminal episode' test is not self defining." *Hude*, 500 Pa. at 490.
11. The temporal relationship between criminal acts will be a factor which frequently determines whether the acts are 'logically related.' However, the definition of a 'single criminal episode' should not be limited to acts which are immediately connected in time . . . 'Transaction' is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship.' It is submitted that by requiring that criminal acts be logically related instead of temporally related, the courts will be better able to implement the policies which the 'single criminal episode' test is designed to promote.
Id. at 491-92.
12. In the instant case, Ms. Porter is charged with False Statements in order to obtain benefits. This is the same charge for which she had been previously prosecuted. The relevant temporal aspect could not be closer: they abut one another without respite.
13. The entirety of the alleged crimes in this case, including all documents which have been provided, and all payments which were alleged to have been made and all statements which are alleged to have been false, were known to the Commonwealth prior to charges being filed in the former case, in December of 2015.
14. The facts of the instant case, it follows, were "known to the appropriate prosecuting officer at the time of the commencement of the first trial, and was within the jurisdiction of a single court." *See* 18 Pa.C.S. § 110.

15. The charges in the above-captioned case are brought by the same law enforcement officer who filed the charges in Ms. Porter's other case - Agent Kayla Bartlebaugh, formerly Kayla Fantini, is the affiant in both cases.
16. The charges in the above-captioned case are based on the same alleged misstatement of fact on the PA 600 benefits application form, filled out on August 29, 2014, as the alleged misstatements on the same form in the former case (OTN T 667106-6).
17. For the foregoing reasons, the alleged offenses in the above-captioned case arise from the same criminal episode as the charges at OTN T 667106-6, for which Ms. Porter has already been charged, and a final order and judgment has already been entered, and penalties assessed.

WHEREFORE, based on the foregoing reasons of law and fact, Ms. Porter respectfully requests that this Honorable Court grant the within Motion to Dismiss on Double Jeopardy Grounds.

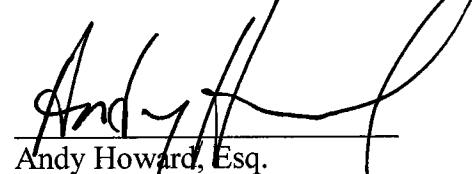
REQUEST FOR A BILL OF PARTICULARS PURSUANT TO PA.R.Crim.P. 572(A)

Counsel for Ms. Porter requests the following, as such is necessary for the proper and adequate preparation of this matter for trial:

1. A detailed explanation of how the proposed restitution total of \$2,770 was determined;
2. All documents relating to how benefits were actually conferred to Ms. Porter;
3. Any and all evidence that these benefits were actually redeemed by Ms. Porter.

WHEREFORE, Ms. Porter requests that this Court order the Commonwealth to disclose all of the requested items or information and the Defense respectfully reserves the right to file supplemental motions once the Commonwealth has complied with these requests.

Respectfully submitted,



Andy Howard, Esq.
Assistant Public Defender
PA I.D. 318866
Attorney for the Defendant

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

v.

SONYA PORTER,

Defendant

CC: 201611779
OTN: T 667106-6
JUDGE: KELLY E. BIGLEY
OMNIBUS PRETRIAL MOTION
PURSUANT TO PA.R.CRIM.P. 578
TRIAL DATE: May 12, 2017

PRELIMINARY ORDER

AND NOW, to-wit this _____ day of _____, 20____, it is hereby
ORDERED that a hearing shall be held on the _____ day of _____, 20____, at
_____ a.m./p.m.

BY THE COURT.

J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

v.

SONYA PORTER,

Defendant

CC: 201611779
OTN: T 667106-6
JUDGE: KELLY E. BIGLEY
OMNIBUS PRETRIAL MOTION
PURSUANT TO PA.R.Crim.P. 578
TRIAL DATE: May 12, 2017

ORDER OF COURT

AND NOW, this _____ day of _____ 20___, it is hereby
ORDERED that Defendant's REQUEST FOR A BILL OF PARTICULARS in the above-
captioned case is GRANTED/DENIED.

BY THE COURT:

_____, J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

v.

SONYA PORTER,

Defendant

CC: 201611779
OTN: T 667106-6
JUDGE: KELLY E. BIGLEY
OMNIBUS PRETRIAL MOTION
PURSUANT TO PA.R.Crim.P. 578
TRIAL DATE: May 12, 2017

CERTIFICATE OF SERVICE

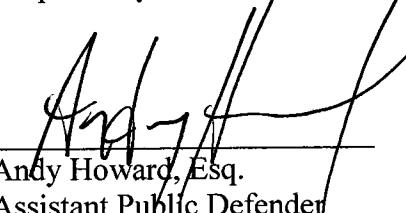
On this 23rd day of March, 2017, the Office of the Public Defender hand-delivered a true and correct copy of the foregoing motion to the following:

Office of the District Attorney
Allegheny County Courthouse, 4th Floor
436 Grant Street
Pittsburgh, PA 15219

The Honorable Kelly E. Bigley
526 Court House
436 Grant Street
Pittsburgh, PA 15219

Criminal Court Administrator
436 Grant Street
Pittsburgh, PA 15219

Respectfully submitted,


Andy Howard, Esq.
Assistant Public Defender
PA I.D. 318866
Attorney for the Defendant

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: Allegheny

Magisterial District Number:

05-0-03

MDJ Name: Hon.

Municipal Courts Building

Address: 660 First Avenue
Pittsburgh, PA
15219

Telephone: (412)255-2700

Docket No: CR 5292-15

Date Filed:

OTN: T 667106-6

(Above to be completed by court personnel)

PRIVATE
CRIMINAL COMPLAINT



COMMONWEALTH OF PENNSYLVANIA
VS.

DEFENDANT:

NAME and ADDRESS

Sonya Porter

3459 Shadeland Ave.
Pittsburgh, PA 15212-2253
DHS: 02-0917545

14056

(Fill in defendant's name and address)

Notice: Under Pa.R.Crim.P. 506, your complaint may require approval by the attorney for the Commonwealth before it can be accepted by the magisterial district court. If the attorney for the Commonwealth disapproves your complaint, you may petition the court of common pleas for review of the decision of the attorney for the Commonwealth.

Fill in as much information as you have.

Defendant's Race/Ethnicity	Defendant's Sex	Defendant's D.O.B.	Defendant's SID (State Identification Number)
<input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Hispanic <input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Female <input type="checkbox"/> Male	5/21/74	
Defendant's A.K.A. (also known as)	Defendant's Vehicle Information Plate Number (MM/YY)	State Registration Sticker	Defendant's Driver's License Number State
			PA 1340802461

I, Office of Inspector General, c/o Agent Kayla Bartlebaugh, 2121 Noblestown Road, Suite 400, Pittsburgh, PA 15205

(Name of Complainant-Please Print or Type)

do hereby state: (check appropriate box)

- I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as _____
 I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe

with violating the penal laws of the Commonwealth of Pennsylvania at Pennsylvania Department of Human Services,
(Place-Political Subdivision)

332 5th Ave., 2nd Floor, Pittsburgh, PA 15222

in Allegheny County on or about August 1, 2014 through January 31, 2015

Participants were: (if there were participants, place their names here, repeating the name of the above defendant)

Sonya Porter

Defendant's Exhibit
A

ORIGINAL

Defendant's Name: Sonya Porter
Docket Number:



**PRIVATE
CRIMINAL COMPLAINT**

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA. Code §§ 213.1 – 213.7.)

The defendant, Sonya Porter, between the dates of August 1, 2014 and January 31, 2015 in the county of Allegheny unlawfully obtained \$1,307.00 in Supplemental Nutrition Assistance Program (SNAP) benefits (M2) by means of a willfully false statement or misrepresentation, or by willfully failing to disclose a material fact regarding eligibility or other fraudulent means secured assistance. To wit: the defendant, Sonya Porter, misrepresented, or failed to disclose to the Pennsylvania Department of Human Services the correct income of her household while continuing to collect SNAP benefits for which she was not entitled in violation of Section 481 (a) of the Public Welfare Code, Act of June 13, 1967, 62 P.S. 481 (a), as amended July 15, 1976.

All of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of 481 _____ and (a) _____
(Section) (Subsection)

of the 62 P. S. §481
(PA Statute)

3. I ask that process be issued and that the defendant be required to answer the charges I have made.

4. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.

May 15, 2015

Date

Kayla Battaglia

Signature of Complainant

Office of the Attorney for the Commonwealth Approved Disapproved because:

Stephen A. Zappala Jr.

(Name of Attorney for Commonwealth-Please Print or Type)

(Signature of Attorney for Commonwealth)

(Date)

AND NOW, on this date b-2b-15

I certify that the complaint has been properly completed and verified.

D5-0-04 PMC

(Magisterial District)

(Issuing Authority)

**RANDY C. MARTIN, JUDGE
MAGISTERIAL DISTRICT 05-13
MY COMMISSION EXPIRES ON JANUARY 1, 2018
FIRST MONDAY IN JANUARY**

Defendant's Exhibit

A

Defendant's Name: Sonya Porter
Docket Number:



CRIMINAL COMPLAINT

AFFIDAVIT OF PROBABLE CAUSE

Kayla Bartlebaugh
NAME OF AFFIANT

August 1, 2014 through January 31, 2015
DATE OF VIOLATION (CRIME)

Commonwealth of Pennsylvania, Office of Inspector General

AFFIANT BELIEVES THAT PROBABLE CAUSE EXISTS TO ISSUE PROCESS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

- 1) WHEN: when affiant received information: February 2, 2015
when the source of information received the information: January 13, 2015
- 2) HOW: how both affiant and source of information know that a particular crime has been committed.
The Pennsylvania Department of Human Services received information that Tierra Porter, an individual on the benefits grant of Sonya Porter, was employed by, and earning wages from Eat 'n Park Hospitality Group. Sonya Porter failed to report that information to DHS as required.. The Affiant verified (by matching Social Security number and wages) that Sonya Porter failed to report true and correct information to The Pennsylvania Department of Human Services, in order to fraudulently obtain SNAP benefits that she was not entitled to from August 1, 2014 through January 31, 2015.
- 3) WHAT CRIME(S): Section 481 (A) & (B) of the Public Welfare Code of June 13, 1967 and Act of 1982-75 and Act 1996-35.
- 4) WHERE CRIME (COMMITTED: Pennsylvania Department of Human Services, 332 5th Ave., 2nd Floor, Pittsburgh, PA 15222

5) WHY AFFIANT BELIEVES THE SOURCE OF INFORMATION (RELIABILITY OF INFORMANT)

The source is presumed reliable in view of the fact that the caseworker and County Board of Assistance records have been reliable in previous cases; and have previously submitted information which resulted in convictions.

I, Kayla Bartlebaugh, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Kayla Bartlebaugh
(Signature of Affiant)

Sworn to me and subscribed before me this 26 day of JUNE, 2015

6-26-15 Date RCM

My commission expires first Monday of January

RANDY C. MARTINI, MAGISTERIAL DISTRICT JUDGE
MAGISTERIAL DISTRICT 06-3-13
MY COMMISSION EXPIRES ON THE
FIRST MONDAY IN JANUARY 2018

Defendant's Exhibit
A

FILED

2017 APR 21 PM 2:26

DEPT. OF COURT RECORDS
CRIMINAL DIVISION
ALLEGHENY COUNTY PA

ORIGINAL

RECEIVED
DEPT. OF COURT RECORDS
CRIMINAL DIVISION
ALLEGHENY COUNTY PA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

VS.

CP-02-CR-0011779-2016

SONYA PORTER

COMMONWEALTH'S BRIEF OPPOSING
DEFENDANT'S MOTION TO ENFORCE
RULE 586 DISPOSITION OR TO DISMISS
ON COLLATERAL ESTOPPEL OR
DOUBLE JEOPARDY GROUNDS

Judge Kelly E. Bigley

Filed on Behalf of the
Commonwealth of Pennsylvania

Counsel of Record for the
Commonwealth of Pennsylvania

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY

By

Jameson C. Rohrer
Assistant District Attorney
Pa. I.D. No. 316134

Office of the District Attorney
of Allegheny County
303 Courthouse
Pittsburgh, Pennsylvania 15219

(412) 350-6060

APPENDIX I

**COMMONWEALTH'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO
ENFORCE RULE 586 DISPOSITION OR TO DISMISS ON COLLATERAL ESTOPPEL
OR DOUBLE JEOPARDY GROUNDS**

TO THE HONORABLE KELLY E. BIGLEY:

AND NOW, comes the Commonwealth of Pennsylvania by its attorneys, STEPHEN A. ZAPPALA, JR., District Attorney of Allegheny County, and Jameson C. Rohrer, Assistant District Attorney, and respectfully represents the following:

1. Trial of the above-captioned case is scheduled to proceed on May 12, 2017 before the Honorable Kelly Bigley;
2. The above-listed Defendant is charged with one count pursuant to 62 Pa. C.S.A. § 481(a) of Public Assistance / False Statements.

RELEVANT FACTS

3. As alleged by the Commonwealth in CR-14956-2015, from August 1, 2014 to January 31, 2015, Defendant unlawfully received excessive public assistance.
4. As alleged in CR-14956-2015, Defendant's public assistance during the 8/1/14-1/31/15 six-month period was excessive because Defendant's adult daughter Tierra Porter, an individual on Defendant's benefits grant, received wages that Defendant did not report to the Pennsylvania Department of Human Services ("DHS"). *See* Defense Exhibit A.
5. Here, in the above-captioned case, the Commonwealth alleges that Defendant was overpaid from the subsequent six-month period, February 1, 2015 through July 31, 2015.
6. The 2/1/15-7/31/15 six-month payment period at issue in the above-captioned case does not overlap with the six-month payment period at issue in CR-14956-2015.

7. On January 13, 2015, as alleged in CR-14956-2015, DHS learned of Tierra Porter's employment.
8. Thus, the charges DHS brought in CR-14956-2015 were not premised upon, and did not require any knowledge of, the employment of Defendant specifically.
9. On July 15, 2015, as alleged in the above-captioned case, DHS learned of *Defendant's* employment.
10. In the above-captioned case, the Commonwealth alleges that Defendant's public assistance was excessive because Defendant Sonya Porter received wages, for her *own* employment, that she did not report to the Department of Human Services. *See* Criminal Complaint.

APPLICABLE LAW

11. After an actor has been acquitted or convicted of a particular offense, double jeopardy principles generally bar subsequent prosecution based entirely on the actor's same conduct or arising from the same criminal episode, assuming no knowledge- or jurisdiction-based exceptions apply. *E.g.*, *Commonwealth v. Bracalielly*, 540 Pa. 460, 469-70 (1995) (permitting prosecution of substantially similar drug sales where investigations were by separate law enforcement organizations and involved separate sets of witnesses).
12. “[T]he ‘same criminal episode’ analysis cannot be made ‘by merely cataloguing simple factual similarities or differences between the various offenses with which the defendant was charged,’ even if the offenses at issue constitute an enterprise.” *Commonwealth v. Reid*, 621 Pa. 245, 258 (2013) (quoting *Bracalielly*, 540 Pa. at 472).
13. For example, two factually similar and logically related drug transactions occurring within days of each other may nevertheless be separate “episodes” if their proof “would not rest

solely on the credibility of a single witness, but rather, would require the introduction of the testimony of completely different police officers and expert witnesses.” *Bracalielly*, 540 Pa. at 474; *see Commonwealth v. Nolan*, 579 Pa. 300, 311 (2004) (“[E]ach week’s story has similar characters, producers, and continuity of storyline, but each week is a separate episode—*the series of episodes is an enterprise.*”) (emphasis added); *cf. Commonwealth v. Failor*, 564 Pa. 642 (2001) (speeding and driving under suspended license charges originating from a single traffic stop constituted a single criminal episode).

14. The existence of a “single criminal episode” ultimately depends on “how and what the Commonwealth must prove in the subsequent prosecution.” *Reid*, 621 Pa. at 257.

15. Consequently, Pennsylvania courts finding the “same criminal episode” almost always do so where “the Commonwealth’s case rests *solely* upon the credibility of one witness in both prosecutions”: some overlap notwithstanding, the need for different witnesses generally shows the absence of substantial duplication. *See Reid*, 621 Pa. at 252-57 (discussing Pennsylvania cases and holding that subsequent homicide investigation involving multiple additional witnesses was not part of same criminal episode).

ARGUMENT

16. The two investigations—the first in CR-14956-2015 and the second in the above-captioned case—initiated six months apart, followed separate notifications regarding two distinct six-month payment periods, and concerned the employment of two different people (Tierra Porter in CR-14956-2015, and Defendant here) by two different employers (Eat ‘n Park and the United States Postal Service (“USPS”), respectively).

17. Moreover, the investigation in CR-14956-2015 had developed for approximately six

months when the investigation in this case—into employment of a different person, by a different employer, during a different six-month payment period—was initiated.

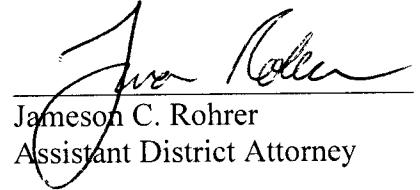
18. While the above-captioned case will involve testimony from at least one witness who investigated the Defendant's violations in CR-14956-2015, this case will require additional testimony from witnesses not called or even considered in CR-14956-2015.
19. For example, the CR-14956-2015 case would have required proof of Tierra Porter's employment by Eat 'n Park during the 8/1/14-1/31/15 six-month payment period. By contrast, this case concerns the Defendant's employment by USPS, and it will likely require admission of USPS business records showing Defendant was employed by USPS during the 2/1/15-7/31/15 six-month payment period at issue here.
20. Similarly, this case should not require testimony from two caseworkers central to the Attorney General's investigation in CR-14956-2015, yet may require testimony from Department of Human Services employees who were not involved in CR-14956-2015.
21. For these reasons, the violations alleged in the above-captioned case do not arise from the same criminal episode and are not based on the same criminal act.
22. Therefore, this prosecution is not barred on double jeopardy or collateral estoppel grounds.

WHEREFORE, based upon the foregoing, the Commonwealth respectfully requests this Court deny Defendant's Motion To Enforce Rule 586 Disposition And To Dismiss On Collateral Estoppel And Double Jeopardy Grounds.

Respectfully submitted,

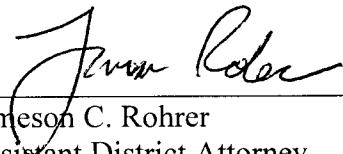
STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY

By:


Jameson C. Rohrer
Assistant District Attorney

VERIFICATION

I, Assistant District Attorney, Jameson C. Rohrer, the undersigned, do hereby declare that the statements of fact set forth in the foregoing notification are true and correct to the best of my knowledge, information and belief and are made subject to the penalties related to unsworn falsification to authorities under Section 4904 of the Pennsylvania Crimes Code, 18 Pa. C.S. §4904.



Jameson C. Rohrer
Assistant District Attorney

4/21/17

Date

CERTIFICATE OF SERVICE

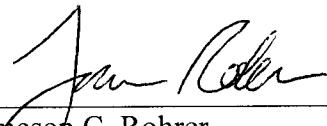
I hereby certify that, on this 21 day of April, 2017, I have caused to be served upon the persons listed below a true and correct copy of the within notification.

Service by first class mail or hand delivery addressed as follows:

Andy Howard, Esq.
Allegheny County Public Defender's Office
Suite 400, County Office Building
542 Forbes Avenue
Pittsburgh, PA 15219

The Honorable Kelly E. Bigley
526 County Courthouse
436 Grant Street
Pittsburgh, PA 15219

Thomas McCafferty, Court Administrator
5th Floor, County Courthouse
436 Grant Street
Pittsburgh, PA 15219



Jameson C. Rohrer

Assistant District Attorney

THREE RIVERS DIS
WARNER CENTER
332 FIFTH AVENUE SUITE 210
PITTSBURGH, PA 15222-9677

Mail Date: 07/16/2015

Pennsylvania receives information from other state and federal agencies to verify the information you give them. If you misrepresent, hide, or withhold facts which may affect your eligibility for benefits, you may be required to repay your benefits, and you may be prosecuted and disqualified from receiving certain future benefits.



pennsylvania
DEPARTMENT OF HUMAN SERVICES

OFFICE OF INCOME MAINTENANCE

Record ID: 02/0917545

Telephone: 1-412-565-7755

Notice ID: 9039833493

COMPASS: The fast and easy way to apply for benefits

www.compass.state.pa.us

Sonya Porter

3459 Shadeland Ave
Pittsburgh, PA 15212-2253

Dear Ms. Porter,

This letter tells you about your benefits. If you have a question, please call the number listed above.

Which benefit?	This is a summary of your benefits
You can find more information inside this letter.	
SNAP	<p>You no longer qualify for SNAP starting August 01, 2015 because your income is too high.</p> <p>If you do not agree with this decision, fill out the enclosed Fair Hearing form, then mail it or give it to your caseworker by September 28, 2015. If we get the form on or before July 30, 2015, you will continue to receive your benefits while you wait for the Fair Hearing decision.</p>
Medical Assistance	You qualify for Medical Assistance starting July 15, 2015.

COMMONWEALTH'S
EXHIBIT



If you have a disability and need this letter in large print or another format, please call our helpline at 1-800-692-7462. TDD Services are available at 1-800-451-5886.

If you do not agree with our decision, you have the right to a Fair Hearing. To learn more about Fair Hearings, read Your Right to Appeal and to a Fair Hearing.

Do you need legal help? You can get free legal help by visiting:

NEIGHBORHOOD LEGAL SERVICE ASSOCIATION at 928 PENN AVENUE, PITTSBURGH, PA 15222 or by calling (412) 255-6700.



Your SNAP Benefits



Who no longer qualifies?

Who?	When?
BRE'YA, SONYA, TIERRA	Starting August 01, 2015
This is the law we used to make this decision: 7 CFR § 273.10(a)	

BRE'YA, SONYA, TIERRA: You do not qualify for this benefit because your total gross monthly income is greater than the income limit for the number of persons included in your budget group.

Remember that you can apply again for SNAP at any time.



Your Medical Assistance Benefits



Who qualifies?

Who qualifies?	When?	Which package?	Access Number
BRE'YA	Starting Jul 15, 2015	Children's	090139361
SONYA	Starting Jul 15, 2015	Adult	002367632

Members in your household listed above will get the package shown until there is a change in the case. We will review the case in November 2015 to see if the members still qualify.

You are required to report any changes in your circumstances to your caseworker in a timely manner. Types of changes to report include income, address, telephone number and people leaving or moving into your household. Failure to report changes in a timely fashion could result in a loss of benefits. You may report changes to the CAO in person, by phone, fax, mail or through a COMPASS account. You may also report changes to the Statewide Customer Service Center at 1-877-395-8930, or for Philadelphia 1-215-560-7226 any time.

BRE'YA: (Starting 07/15/2015) You qualify for Transitional Medical Assistance for up to 4 months. At that time, we will review your case and you will receive a notice if there is a change to your Medical Assistance.

This is the law we used to make this decision: 42 CFR § 435.115(f), 62 P.S. §§ 201(2), 403(b); 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII), 42 C.F.R. § 435.119.

You will receive the Children's benefit package, effective 07/15/2015, because you are under 21 years of age. Medical Assistance pays for all medically necessary services for children under 21. For a complete list of services covered in this benefit package, see the "Welcome to Medical Assistance" for children page that came with this letter.

SONYA: (Starting 07/15/2015) You qualify for Transitional Medical Assistance for up to 4 months. At that time, we will review your case and you will receive a notice if there is a change to your Medical Assistance.

This is the law we used to make this decision: 42 CFR § 435.115(f), 62 P.S. §§ 201(2), 403(b); 42 U.S.C.

Your benefit information is continued on the next page..

§ 1396a(a)(10)(A)(i)(VIII), 42 C.F.R. § 435.119:

Your Household Income and Expenses

Here is a list of the monthly income and expenses that we have for your household.

Who has income?	Income		
	07/2015	08/2015	09/2015
BREYA Employment: BRUEGGERS	\$394.40	\$394.40	\$394.40
SONYA Employment: US POSTAL SERVICE	\$3,505.34	\$3,505.34	\$3,505.34
TIERRA Employment: EAT N PARK		\$749.60	\$749.60
Total income	\$3,899.74	\$4,649.34	\$4,649.34

Expenses

Expenses
No Expenses Reported.





How We Counted Your Income

Here are the amounts and limits that we used to decide if you qualify for benefits.

**SNAP**

This was used for: BRE'YA, SONYA, TIERRA

	08/2015					
Gross income	\$4,255.00					
-Deductions	\$.06					
-Expenses	\$0.00					
=Net income	\$4,254.94					
Income limit to qualify	\$2,640.00					

Total income includes all reported income plus any Public Assistance that you may have received. To get net income we started with gross income. Next, we subtracted deduction(s) up to the maximum allowable limit(s):

Then, we would subtract expenses, but there are none that we can use.

The amount left is net income. To qualify, net income must be lower than the income limit.

The Household is categorically eligible for SNAP benefits. We used 160% Federal Poverty Income Guidelines (FPIG) to determine SNAP eligibility.

To learn more, see the eligibility handbooks at
<http://www.dpw.state.pa.us/publications/policyhandbooksandmanuals/index.htm>

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: Allegheny

Magisterial District Number:

05-0-03

MDJ Name: Hon.

Municipal Courts Building
Address: 660 First Avenue
Pittsburgh, PA
15219
Telephone: (412)255-2700

Docket No: CR 5242-15

Date Filed:

OTN: T 667106-6

(Above to be completed by court personnel)

PRIVATE
CRIMINAL COMPLAINT



COMMONWEALTH OF PENNSYLVANIA
VS.

DEFENDANT:

NAME and ADDRESS

Sonya Porter

3459 Shadeland Ave.
Pittsburgh, PA 15212-2253

14956

(Fill in defendant's name and address)

Notice: Under Pa.R.Crim.P. 506, your complaint may require approval by the attorney for the Commonwealth before it can be accepted by the magisterial district court. If the attorney for the Commonwealth disapproves your complaint, you may petition the court of common pleas for review of the decision of the attorney for the Commonwealth.

Fill in as much information as you have.

Defendant's Race/Ethnicity	Defendant's Sex	Defendant's D.O.B.	Defendant's SID (State Identification Number)
<input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Hispanic <input type="checkbox"/> Unknown	<input checked="" type="checkbox"/> Female <input type="checkbox"/> Male	5/21/74	
Defendant's A.K.A. (also known as)		Defendant's Vehicle Information Plate Number (MM/YY)	Registration Sticker
		State	Defendant's Driver's License Number State PA

I, Office of Inspector General, c/o Agent Kayla Bartlebaugh, 2121 Noblestown Road, Suite 400, Pittsburgh, PA 15205

(Name of Complainant-Please Print or Type)

do hereby state: (check appropriate box)

- I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as _____
 I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe

with violating the penal laws of the Commonwealth of Pennsylvania at Pennsylvania Department of Human Services,
(Place-Political Subdivision)

332 5th Ave., 2nd Floor, Pittsburgh, PA 15222

in Allegheny County on or about August 1, 2014 through January 31, 2015

Participants were: (if there were participants, place their names here, repeating the name of the above defendant)

Sonya Porter

ORIGINAL

Defendant's Name: Sonya Porter

Docket Number:



**PRIVATE
CRIMINAL COMPLAINT**

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated. The age of the victim at the time of the offense may be included if known. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA. Code §§ 213.1 – 213.7.)

The defendant, Sonya Porter, between the dates of August 1, 2014 and January 31, 2015 in the county of Allegheny unlawfully obtained \$1,307.00 in Supplemental Nutrition Assistance Program (SNAP) benefits (M2) by means of a willfully false statement or misrepresentation, or by willfully failing to disclose a material fact regarding eligibility or other fraudulent means secured assistance. To wit: the defendant, Sonya Porter, misrepresented, or failed to disclose to the Pennsylvania Department of Human Services the correct income of her household while continuing to collect SNAP benefits for which she was not entitled in violation of Section 481 (a) of the Public Welfare Code, Act of June 13, 1967, 62 P.S. 481 (a), as amended July 15, 1976.

All of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of 481 (Section) and (a) (Subsection)

of the 62 P. S. §481 (PA Statute)

3. I ask that process be issued and that the defendant be required to answer the charges I have made.

4. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.

May 15, 2015

Date

Kayla Battaglia
Signature of Complainant

Office of the Attorney for the Commonwealth Approved

Stephen A. Zappala Jr. by 5/15/15
(Signature of Attorney for Commonwealth) (Date)

Disapproved because:

AND NOW, on this date 6-28-15,

I certify that the complaint has been properly completed and

DS-0-04 PMC

(Magisterial District)

(Issuing Authority)

RANDY C. MARTIN, JUDGE
 MAGISTERIAL DISTRICT 05-13
 MY COMMISSION EXPIRES ON THE
 FIRST MONDAY IN JANUARY 2018
SEAL

Defendant's Name: Sonya Porter
Docket Number:



CRIMINAL COMPLAINT

AFFIDAVIT OF PROBABLE CAUSE

Kayla Bartlebaugh
NAME OF AFFIANT

August 1, 2014 through January 31, 2015
DATE OF VIOLATION (CRIME)

Commonwealth of Pennsylvania, Office of Inspector General

AFFIANT BELIEVES THAT PROBABLE CAUSE EXISTS TO ISSUE PROCESS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

- 1) WHEN: when affiant received information: February 2, 2015
when the source of information received the information: January 13, 2015
- 2) HOW: how both affiant and source of information know that a particular crime has been committed.
The Pennsylvania Department of Human Services received information that Tierra Porter, an individual on the benefits grant of Sonya Porter, was employed by, and earning wages from Eat 'n Park Hospitality Group. Sonya Porter failed to report that information to DHS as required.. The Affiant verified (by matching Social Security number and wages) that Sonya Porter failed to report true and correct information to The Pennsylvania Department of Human Services, in order to fraudulently obtain SNAP benefits that she was not entitled to from August 1, 2014 through January 31, 2015.
- 3) WHAT CRIME(S): Section 481 (A) & (B) of the Public Welfare Code of June 13, 1967 and Act of 1982-75 and Act 1996-35.
- 4) WHERE CRIME (COMMITTED): Pennsylvania Department of Human Services, 332 5th Ave., 2nd Floor, Pittsburgh, PA 15222
- 5) WHY AFFIANT BELIEVES THE SOURCE OF INFORMATION (RELIABILITY OF INFORMANT)

The source is presumed reliable in view of the fact that the caseworker and County Board of Assistance records have been reliable in previous cases; and have previously submitted information which resulted in convictions.

I, Kayla Bartlebaugh, BEING DULY SWORN ACCORDING TO LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Kayla Bartlebaugh
(Signature of Affiant)

Sworn to me and subscribed before me this

6-26-15
Date

day of JUNE 2015

My commission expires first Monday of January

RANDY C. MARTINI, District Justice
MAGISTERIAL DISTRICT JUDGE
MAGISTERIAL DISTRICT 05-3-13
MY COMMISSION EXPIRES ON THE
FIRST MONDAY IN JANUARY, 2018