

No. 20-\_\_\_\_\_

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**SUPREME COURT OF THE UNITED STATES**

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SONYA PORTER,  
*Petitioner*,

v.

COMMONWEALTH OF PENNSYLVANIA,  
*Respondent*.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF  
PENNSYLVANIA

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**PETITION FOR A WRIT OF CERTIORARI**

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## **I. Question Presented**

At CC 2015-14956, the Commonwealth charged Sonya Porter (“Ms. Porter”) with one count of Fraud in Obtaining Food Stamps, 62 P.S. §481(a) (“welfare fraud”), for the continuing fraud between August 1, 2014 and January 31, 2015. The case was resolved pursuant to Pa.R.Crim.P. 586, which permits a final order disposition upon payment of restitution. Thereafter, the Commonwealth charged Ms. Porter at CC 2016-11779 with another count of welfare fraud, this time for the period beginning the very next day, from February 1, 2015 to July 31, 2015. The Superior Court of Pennsylvania and Court of Common Pleas found these cases did not involve the same crime based only on the different time period and different employer not reported, and only this Honorable Court can clarify that the Double Jeopardy Clause under the United States Constitution bars additional punishment and prosecution after such a final resolution of all outstanding overpayments.

Based on the foregoing, the question presented is:

Where a state criminal rule allows for dismissal of a case on the merits rather than via conviction or acquittal, is this sufficient to trigger protection of the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution and bar a second subsequent prosecution and associated punishment for acts part of the same continuous crime that the prosecution knew of prior to resolution of the first case?

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#### **IV. Petition for Writ of Certiorari**

Ms. Porter, by and through Steven A. Tehovnik, Assistant Public Defender, and Brandon P. Ging, Deputy-Appeals, of the Allegheny County Office of the Public Defender, Pennsylvania, respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgment of the Pennsylvania Supreme Court denying review from the Superior Court of Pennsylvania's affirmance of Ms. Porter's conviction.

#### **V. Opinions Below**

The decision by the Superior Court of Pennsylvania affirming Ms. Porter's judgment conviction and judgment of sentence is reported as *Commonwealth v. Porter*, --- A.3d ---, 1528 WDA 2017, 2019 WL 5298736 (mem.) (Pa. Super. October 18, 2019). That Opinion is attached as Appendix B. The Order of the Supreme Court of Pennsylvania denying Ms. Porter's Petition for Allowance of Appeal is reported as *Commonwealth v. Porter*, 33 WAL 2020, 2020 WL 3566713 (Table) (Pa. July 1, 2020). That denial is attached as Appendix A.

#### **VI. Jurisdiction**

Ms. Porter's Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied on July 1, 2020. Ms. Porter invokes this Honorable Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this Petition for a Writ of Certiorari within one hundred and fifty days of the Supreme Court of Pennsylvania's judgment.<sup>1</sup>

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<sup>1</sup> Per this Honorable Court's March 19, 2020 Order, "the deadline to file any petition for a writ of *certiorari* due on or after the date of this order, is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3."

## VII. Constitutional Provisions Involved

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## VIII. Statement of the Case

Months after the last overpayment of food stamp funds to Ms. Porter, the government charged Ms. Porter at CC 2015-14956 with one count of welfare fraud on May 15, 2015. Appendix K. The case was resolved by agreement between the parties pursuant to Pa.R.Crim.P. 586<sup>2</sup> on March 21, 2016. Appendix E. The Commonwealth

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<sup>2</sup> Pennsylvania Rule 586 provides:

When a defendant is charged with an offense which is not alleged to have been committed by force or violence or threat thereof, the court may order the case to be dismissed upon motion and a showing that:

knew of Ms. Porter's last fraudulent statement (which formed the basis for the instant case) in July of 2015, a full eight months prior to the final dispositional order at CC 2015-14956. Appendix G; Appendix J. That first case dealt with Ms. Porter's misrepresentation of her daughter's employment from August 1, 2014 to January 31, 2015, based on her statement made in August 2014. Appendix C at 2-9.

39 days after final resolution of the case at CC 2015-14956, Ms. Porter was charged with a second count of welfare fraud at CC 2016-11779 on April 29, 2016. Appendix F. The case at CC 2016-11779 purported to only deal with Ms. Porter's misrepresentation of her own employment from February 1, 2015 to July 31, 2015, based on her statement made in April 2015. Appendix C at 2-9. Thus, Ms. Porter was charged for conduct purported to begin the very day after her first case ended.

The evidence showed that the government knew about Ms. Porter's fraudulent statements, as well as both Ms. Porter's employment at the postal service and her daughter's employment at a local restaurant, prior to resolving the first case, CC 2015-14956. Appendix D at 4; Appendix F; Appendix K; Appendix J.

Ms. Porter, through trial counsel, filed a Motion to Enforce Rule 586 Disposition and to Dismiss on Collateral Estoppel and Double Jeopardy Grounds ("Motion"). Appendix H.<sup>3</sup> Ms. Porter argued, pursuant to the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution, that she was

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

Pa.R.Crim.P. 586.

<sup>3</sup> The Commonwealth filed a response on April 21, 2017. Appendix I.

already charged with making false statements to obtain benefits at CC 2015-14956.

Appendix H. Because the temporal relationship “could not be closer” and the Commonwealth knew of all facts prior to resolving CC 2015-14956, the Commonwealth must have included all restitution for the ongoing welfare fraud at CC 2015-14956, since both involved the same criminal act. Appendix H. Because the Commonwealth did not bring all restitution owed from the ongoing welfare fraud in the first case, Ms. Porter argued the Commonwealth could not bring a second, subsequent prosecution against her for outstanding restitution not alleged at CC 2015-14956, and therefore not covered in the Rule 586 agreement at that case. *Id.* Ms. Porter contended that the Rule 586 final dispositional order by the trial court in the first case constituted an agreement by the Commonwealth that all restitution owed for the ongoing welfare fraud by Ms. Porter was satisfied on March 21, 2016.

At a hearing on the matter on May 12, 2017, the prosecutor acknowledged that Ms. Porter’s two cases involved an “ongoing deception.” Appendix D at 7. Despite this acknowledgement, the trial court found that Ms. Porter’s cases involved “completely separate things” because “the benefit periods were different, and the Commonwealth would be required to prove a different set of facts to sustain their burden [in this case].” Appendix D at 2, 6, 9; Appendix C at 3. The trial court denied Ms. Porter’s Motion.

Ms. Porter proceeded to a jury trial and was convicted. Appendix C at 1. She was sentenced to 36 months’ probation and ordered to pay \$2,700 in restitution,

despite already having paid \$1,307, the amount the Commonwealth agreed was outstanding for the entire ongoing fraud, at CC 2015-14956. Appendix C at 1.

On appeal, Ms. Porter argued that the fraud was ongoing, the one-year time period's division was merely metaphysical, and the statements were two parts within the one whole act of fraud, which occurred over the course of one year. Appendix B at 3-4, 11-12. On October 18, 2019, the Superior Court issued its opinion affirming Ms. Porter's conviction and sentence. The Superior Court found that "the two prosecutions involved separate false statements that had to be proven by the introduction of distinct evidence." Appendix B at 13. The Superior Court also found that CC 2015-14956 involved Ms. Porter's daughter's employment, while this case involved Ms. Porter's employment and was for a subsequent period of time that began one day after the first period ended. *Id.* The Superior Court further found that the "separate" statements made by Ms. Porter on two forms involved different individual's employment at different employers over a "different time period." *Id.* This distinction in facts formed the basis for its affirmance of Ms. Porter's conviction and sentence. *Id.* The Supreme Court of Pennsylvania denied Ms. Porter's Petition for Allowance of Appeal on July 1, 2020, declining to grant discretionary review.

## IX. REASONS FOR GRANTING THE WRIT

A. Ms. Porter's double jeopardy claim, and its treatment by Pennsylvania courts, is so intertwined with federal law that this case presents a substantial federal question for this Honorable Court's review.

It is well-established that this Honorable Court's jurisdiction is dependent on a determining federal question being presented to the highest court of a state, and that the resolution of that federal question was necessary to the determination below. *Williams v. Kaiser*, 323 U.S. 471, 477-479 (1945). This Honorable Court will not review a decision if the state court relied on state grounds, "but it is likewise well settled that if the independent ground was not a substantial or sufficient one, it will be presumed that the State court based its judgment on the law raising the Federal question, and this court will then take jurisdiction." *Id.* (internal quotation marks omitted).

Recognizing that it is often unclear whether a case was disposed of on federal or state grounds, this Honorable Court made clear that only a plain statement of state grounds can defeat review in the face of an otherwise ambiguous state opinion. *Michigan v. Long*, 463 U.S. 1032, 1037-1044 (1983). There, this Honorable Court analyzed a decision by the Supreme Court of Michigan where the Fourth Amendment was the basis for the ultimate decision that a search was proscribed by said amendment. *Id.* The *Long* Court explained:

[W]hen, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear

from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way that it did because it believed that federal law required it to do so...If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

*Id.* at 1040-1041 (emphasis added). *See Florida v. Powell*, 559 U.S. 50, 55-60 (2010) (holding state court decision that “treated state and federal law as interchangeable and interwoven” did not provide the clear statement required under *Long*); *Pennsylvania v. Muniz*, 496 U.S. 582, 587 (1990) (finding that although the state judgment referenced a state constitutional provision holding testimony should be excluded from a criminal trial, that provision’s protections were identical to that provided by the Fifth Amendment, and “[t]he decision therefore does not rest on an independent and adequate state ground.”).

Ms. Porter respectfully asks this Honorable Court to find that the grounds relied upon below were not adequate and independent from federal law. In *Pennsylvania v. Labron*, 518 U.S. 938 (1996), this Honorable Court granted review despite citations below to Pennsylvania cases because the state law appeared to be “interwoven with federal law,” and the independence and adequacy of the state grounds were not plain from the opinion. *Id.* at 941.

With respect to Ms. Porter’s double jeopardy claim, the Pennsylvania Supreme Court has held that the Pennsylvania Constitution and United States Constitution are interpreted the same way. *See Commonwealth v. Johnson*, 231 A.3d 807, 819, 821 (Pa. 2020).

Here, the Superior Court cited *Commonwealth v. Keenum*, 530 A.2d 90, 93 (Pa. Super. 1987) for the proposition that Pennsylvania courts “employ a unitary analysis of the state and federal double jeopardy clauses since the protections afforded by each constitution are identical.” Appendix B at 11. The Superior Court employed a “single criminal episode” analysis, citing *Commonwealth v. Hockenbury*, 701 A.2d 1334, 1338-1339 (Pa. 1997). Appendix B at 12. In that decision, the Supreme Court of Pennsylvania relied extensively on precedent from this Honorable Court to interpret the Double Jeopardy Clause under both the Pennsylvania and Federal Constitutions.

*Id.*

The Superior Court also cited to other Pennsylvania Supreme Court cases relying on this Honorable Court’s decisions. *See* Appendix B at 11-14 (citing *Commonwealth v. Hude*, 458 A.2d 177 (Pa. 1983) and, by extension, *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), both of which rely extensively on *Ashe v. Swenson*, 397 U.S. 436 (1970), among other opinions from this Honorable Court). True, the Superior Court referenced the state constitution, but “[t]he references to the state constitution in no way indicate that the decision below rested on grounds in any way *independent* from the state court’s interpretation of federal law.” *Long, supra*, at 1043 (emphasis in original). Indeed, under *Johnson, supra*, the state and federal standards at issue here are at least “interwoven.” *Id.* *See also Hude, supra*, at 180 (“the relationship of the double jeopardy protections provided by our federal and state constitutions in this area” stem from the same “underlying objective.”).

Given the Superior Court's reliance on *Ashe* and the interconnectedness of the federal and state Double Jeopardy Clauses, it is clear the Superior Court "felt compelled by what it understood to be federal constitutional considerations." *Id.* See also *Campana*, *supra*, at 434 ("All charges resulting from the criminal 'episode' of each appellant should have been consolidated at one trial, and consequently the second prosecutions violated the Double Jeopardy Clause of the Fifth Amendment.").

As this Honorable Court held in *Oregon v. Kennedy*, 456 U.S. 667(1982), "[e]ven if the case admitted of more doubt as to whether federal and state grounds for decision were intermixed, the fact that the state court relied to the extent it did on federal grounds requires us to reach the merits." *Id.* at 671. That is because "it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *Long*, *supra* (internal citation omitted). The same is true for Ms. Porter's case. It cannot be said that the Superior Court's decision was not, at least, intertwined with a federal question, and did not rest on independent and adequate state grounds. Respectfully, this Honorable Court must reach merits review on this case in light of the interwoven, important federal question presented.

**B. Ms. Porter was twice prosecuted, as jeopardy attached after the first case was resolved through the trial court's final dispositional order at CC 2015-14956.**

Ms. Porter was first put in jeopardy at the conclusion of CC 2015-14956, when the Commonwealth agreed to resolve her case, on the merits, pursuant to Rule 586. Based on the final dispositional order entered in that matter, Ms. Porter agreed to

pay restitution (thereby implicitly admitting culpability), and the Commonwealth agreed to the dismissal of the case. Appendix E. When the Commonwealth brought the instant case against Ms. Porter involving the same criminal act, it sought to twice prosecute her for the same crime. This is because the Commonwealth agreed in the final dispositional order at CC 2015-14956 that Ms. Porter had paid all restitution owed for the ongoing welfare fraud. Appendix E.

It is a “fundamental principle that an accused must suffer jeopardy before [she] can suffer double jeopardy.” *Serfass v. United States*, 420 U.S. 377, 393 (1975). Jeopardy in the multiple punishment context attaches when a final judgment of punishment is imposed, and only at that point is the defendant’s interest in preserving the integrity of the final judgment firmly in place. *Id.*

A common statement of the rule of collateral estoppel is that “where a question of fact essential to the judgment is actually litigated and determined by a valid and final judgment, the determination is conclusive between the parties in a subsequent action on a different cause of action.

*Hoag v. State of New Jersey*, 356 U.S. 464, 470 (1958) (emphasis added).

As a matter of first impression, this Honorable Court has not yet determined if the type of final dispositional order at issue in Ms. Porter’s case a bars subsequent prosecution for the same criminal act. Here, Ms. Porter was subject to prosecution at CC 2015-14956. The government agreed to dispose of her case through Rule 586. Appendix E. Ms. Porter paid the restitution as set out by the Commonwealth, representing all money owed by Ms. Porter for the ongoing fraud for the one-year period from March 2014 through February 2015. On March 21, 2016, the trial court

entered a judgment dismissing the case since Ms. Porter had successfully paid the money owed for her fraud. *Id.* This disposition was a final order and ended the litigation regarding Ms. Porter's misrepresentations for the time she was receiving welfare payments.

39 days later, the government again charged Ms. Porter with welfare fraud for the same one-year aggregate time period, this time from February 1, 2015 – July 31, 2015. Appendix F. To interpret the trial court's first order granting dismissal as anything other than a final disposition attaching jeopardy on the ongoing fraud would be to ignore the very purpose behind the Fifth Amendment's Double Jeopardy Clause; i.e. protection of individuals from multiple prosecutions for the same criminal offense. *Pearce*, 395 U.S. at 717.

That is precisely what happened here. Ms. Porter was twice prosecuted for the same offense, despite a final dispositional order in the first case. Although the first dispositional order was not, strictly speaking, an acquittal or conviction, it was nevertheless a ruling on the merits of the case. In order to obtain dismissal of the case, Ms. Porter was required to pay restitution, thereby implicitly admitting guilt of her ongoing fraud. The Commonwealth agreed that the amount owed represented all restitution for this ongoing fraud. Such circumstances must constitute a final order qualifying for protection by the Double Jeopardy Clause from subsequent prosecution for the same criminal offense.

Here, Ms. Porter agreed to pay restitution. In exchange, the Commonwealth agreed to dismissal of the charges. Appendix E. Rule 596 functionally operates like

a negotiated guilty plea where both parties agree to specific performance for consideration of a benefit. The only difference is that a Rule 586 agreement eliminates the requirement that the defendant formally admit guilt – instead, the defendant accepts culpability, implicitly admitting guilt, and pays the owed restitution. Thus, the Rule 586 agreement should have the same enforceability and carry the same weight as a guilty plea.

Because Ms. Porter was subject to the final dispositional order from the trial court in CC 2015-14956, recognizing her satisfaction of all moneys owed to the government for her continuing, one-year welfare fraud as agreed by the government, she could not be subject to the subsequent prosecution for that same criminal offense. Appendix D at 7.

**C. The Commonwealth cannot be permitted to bring a second case against an individual after a final resolution based on facts known to it prior to the initial case's conclusion was agreed to without violating the Double Jeopardy Clause of the United States Constitution.**

This Honorable Court has established that the Double Jeopardy Clause prohibits multiple punishments and prosecutions for the same crime, protecting defendants' interest in procedural finality. *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). For successive prosecutions, the Clause guarantees an individual the right to be “able, once and for all, to conclude their confrontation with society.” *United States v. Jorn*, 400 U.S. 470, 479, 486 (1971) (plurality opinion). “The state with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting [her] to embarrassment,

expense, and ordeal and compelling [her] to live in a continuing state of anxiety and insecurity..." *Green v. United States*, 355 U.S. 184, 187 (1957) (plurality).

The fact pattern in this case presents a legal issue that is likely to reoccur: Where a state criminal rule allows a case to be dismissed on the merits pre-trial, such that no formal conviction or acquittal results, does this bar a subsequent case involving the same criminal act? The facts of both Ms. Porter's cases were known to the prosecutor prior to concluding the first case and the crimes involved two parts of the same ongoing fraudulent scheme.

Whether a crime is the same as in a former prosecution is determined under this Honorable Court's holding in *Blockburger*. In *United States v. Dixon*, this Honorable Court summarized the test for determining whether a crime is the same as in a former prosecution:

In both the multiple punishment and multiple prosecution contexts, this Court has concluded that where the two offenses for which the defendant is punished or tried cannot survive the "same-elements" test, the double jeopardy bar applies. The same-elements test, sometimes referred to as the "*Blockburger*" test, inquires whether each offense contains an element not contained in the other; if not, they are the "same offense" and double jeopardy bars additional punishment and successive prosecution.

*United States v. Dixon*, 509 U.S. 688, 696 (1993).

There is no dispute that the crimes charged at CC 2015-14956 and CC 2016-11779 are identical in that they both involve one count of welfare fraud pursuant to 62 P.S. §481(a). Appendix B at 1; Appendix K. As the Double Jeopardy Clause is concerned with "whether the offenses are the same, not the interests that the

offenses violate,” *Id.* at 699, and given the factual and legal closeness in the two charges against Ms. Porter, the instant case should be found by this Honorable Court to violate the Double Jeopardy Clause’s bar on multiple prosecutions for the same offense.

However, the trial court and Superior Court both found that these cases involved proof of a different fact, namely the employment of Ms. Porter in the present case as opposed to her daughter in the first case, and held this was dispositive in the *Blockburger* test. Appendix B at 11-14; Appendix C at 3.

Ms. Porter respectfully submits that the crimes are two parts of the same ongoing criminal episode of welfare fraud, the conduct in each being part of one continuing criminal act spanning the course of one year. The government broke this time period up perhaps to make up for its failure to charge the total money owed for the one-year period at CC 2015-14956. Nevertheless, this division required Ms. Porter to attend double the court dates, pay double the court costs, and miss double the days of work. The Double Jeopardy Clause prevented the Commonwealth from twice subjecting Ms. Porter to a final disposition, forcing her to endure the embarrassment, cost, and incurring the anxiety associated with each prosecution. *Green, supra*, at 187.

Even if this Honorable Court finds the *Blockburger* test satisfied here, that is not the end of the inquiry. Although some might read the Double Jeopardy Clause’s “same offense” requirement literally, this Honorable Court has long held otherwise. *See Brown v. Ohio*, 432 U.S. 161, 164 (1977) (“It has long been understood that

separate statutory crimes need not be identical – either in constituent elements or in actual proof – in order to be the same within the meaning of the [Double Jeopardy Clause].”) (emphasis added).

To be sure,

[t]he *Blockburger* test is not the only standard for determining whether successive prosecutions impermissibly involve the same offense. Even if two offenses are sufficiently different to permit the imposition of consecutive sentences, successive prosecutions will be barred in some circumstances where the second prosecution requires the relitigation of factual issues already resolved by the first.

*Brown, supra*, at 166 n. 6. Thus, once jeopardy attaches to a continuing criminal act, as it did here with the final dispositional order at CC 2015-14956, a successive prosecution is barred for an offense not charged in the original indictment for the criminal episode. *Id.*

Although the Superior Court found that the second case involved different factual showings, that alone is therefore not dispositive of whether these cases involve different crimes. Appendix B at 11-14. As this Honorable Court held in *Grady*, a subsequent prosecution “must do more than merely survive the *Blockburger* test.” *Grady v. Corbin*, 495 U.S. 508, 522 (1990).

This Honorable Court analyzed one such exception to *Blockburger* in *In re Nielsen*, 131 U.S. 176 (1889). There, a defendant had been prosecuted for the crime of unlawful cohabitation and was charged for the crime of adultery for dates directly subsequent to those charged in the first case – the government alleged the second crime began the very next day. *Id.* at 185-186. Although each crime required proof

of an element that the other did not (satisfying *Blockburger*), this Honorable Court found that the subsequent prosecution was barred by the Double Jeopardy Clause. *Id.* When an individual has been prosecuted “for a crime which has various incidents included in it, [she] cannot be a second time tried for one of those incidents without being twice put in jeopardy for the same offense.” *Id.* at 188.

In *Nielsen*, as here, the defendant had been charged in a second case for the period of time directly following the time period at issue in the first case. *Id.* at 183. Thus, despite the factual and elemental differences between the two cases under *Blockburger*, both cases involved the same offense for the purposes of protecting the accused from multiple prosecutions. *Id.* This Honorable Court made special note that its decision was based on the fact that “the first indictment covered all continuous unlawful cohabitation down to the time it was found.” *Id.* at 185. This, as this Honorable Court noted, was not “a mere error in law, but a case of denying to a person a constitutional right.” *Id.* 184.

Further, in *Ashe v. Swenson*, this Honorable Court was confronted with two cases involving the robbery of different individuals. *Ashe, supra*, at 439. There was different evidence presented, though most of the witnesses were the same. *Id.* Nevertheless, this Honorable Court found the two cases involved the same criminal

episode, and collateral estoppel<sup>4</sup> and the Double Jeopardy Clause prevented the second prosecution as the issue was already litigated. *Id.* at 447.<sup>5</sup>

The doctrine espoused in *Ashe, supra*, that collateral estoppel prevents relitigation of previously litigated issues in a subsequent case is dispositive of Ms. Porter's financial obligation in this case. The previously litigated issue here was whether Ms. Porter owed restitution to the government for failing to update them on the employment status of those receiving monetary assistance and, if so, how much money was owed. Appendix E. The Commonwealth knew of all fraudulent statements made by Ms. Porter prior completing the first case. Appendix F, Appendix G, Appendix J.

In the trial court as well as the Superior Court at CC 2016-11779, Ms. Porter claimed that collateral estoppel barred the instant case from moving forward, as the issue of whether she had satisfied her restitution owed to the government from her ongoing fraud was satisfied at CC 2015-14956. Appendix E; Appendix H at 2-5 (unpaginated); Appendix D at 2-8.

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<sup>4</sup> Collateral estoppel, of course, bars a redetermination of issues necessarily determined between the parties in the first proceeding. *Id.* This principle is to be applied with "realism and rationality" and not "applied with the hyper-technical and archaic approach of a 19th century pleading book." *Ashe, supra*, at 439.

<sup>5</sup> Though not the majority in *Ashe*, three Justices indicated that Double Jeopardy requires "the prosecution...to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe, supra*, at 453-454. Though this "compulsory joinder" rule has not been so adopted by a majority of this Honorable Court, the present case does not quite require that such a burdensome standard be placed on the government. However, this concept assists in the analysis of the instant question of whether a Rule 586 determination precludes a subsequent prosecution for the same criminal episode. *See Ashe, supra*, at 454 ("Consolidation in one lawsuit of all issues arising out of a single transaction or occurrence best promotes justice, economy, and convenience.") (Brennan, J., concurring) (footnote omitted).

Though the government knew of all facts relevant to both cases here, it failed to bring all charges related to this single, ongoing criminal act in the first case. Instead, the prosecution chose to first resolve CC 2015-14956 via a Rule 586 disposition, where it agreed that all financial obligations pertaining to this criminal episode were satisfied. Appendix E. Rather than end Ms. Porter's legal problems, the Rule 586 agreement marked the beginning of them.

The first criminal proceeding against Ms. Porter, at CC 2015-14956 had therefore "run [its] full course," because the Rule 586 order was a final disposition on the merits. Appendix E; *Justices of Boston Municipal Court v. Lydon*, 466 U.S. 294, 308 (1984). Jeopardy attached and, as this is the same crime or, at very least, the same criminal transaction,<sup>6</sup> the government was required to bring all restitution owed in the first case, resolved by payment of that money to the Commonwealth for dismissal. Appendix E. The second prosecution (the instant matter) is therefore barred by that final dispositional order because Ms. Porter's financial liability for her continuing fraud had already been determined in the 2015 case. *See Ashe, supra*, at 443 ("when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.").

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<sup>6</sup> As this Honorable Court found in *Moore v. New York Cotton Exchange*, 270 U.S. 593 (1926), "transaction" can "comprehend a series of many occurrences, depending not so much on the immediateness of their connection as it does upon their logical relationship." *Id.* at 610. Applying this "logical relationship" inquiry to the case at bar, it is evident that the two cases involve the same criminal statute, one year-long period subdivided by two, virtually the same evidence save, perhaps, one witness, and an ongoing fraud. Appendix F, Appendix K, Appendix C at 6; Appendix B at 11-14. The cases thus involve charges that thus should be required to have been brought together.

Notwithstanding the Rule 586 agreement, the Commonwealth brought a second case and second charge of welfare fraud for a purportedly different time period. The Commonwealth argued, and the trial court and Superior Court agreed, that this second case was based on another statement made by Ms. Porter about her own employment, rather than her daughter's employment. Appendix B at 11-14; Appendix I at 4-5; Appendix D at 6-9. However, both statements were part of her ongoing criminal act within one episode of welfare fraud. The Commonwealth did not charge Ms. Porter for this second period of time or second statement at CC 2015-14956. Rather, the Commonwealth forced Ms. Porter to again go through the criminal justice system to resolve the outstanding restitution not brought at CC 2015-14956. This potentially-endless prosecution flies in the face of this Honorable Court's precedent and our country's constitutions. *Pearce, supra* at 717.

True, the Superior Court found that separate witnesses would be required for each trial. Appendix B at 11-14. True, too, the Superior Court found that Ms. Porter's two cases involved "distinct, separate" time periods. *Id.* Nevertheless, the government candidly acknowledged that Ms. Porter's fraud was "ongoing." Appendix D at 7. Ms. Porter submits the Superior Court erroneously disagreed with the Commonwealth on this last point. Appendix B at 12-13.

Respectfully, these findings by the Superior Court misapplied the Double Jeopardy Clause. The criminal offense at issue in both of Ms. Porter's cases is the same, and separate prosecutions were not permissible under the Double Jeopardy Clause. The same witnesses were required, as the same investigator served as affiant

in both cases, which were investigated at the same time and concluded prior to the first case being filed. Appendix F; Appendix K. The evidence at issue in each case both came from either duplicitous sources within the Department of Human Services, or from automatically generated business records. Appendix F; Appendix K; Appendix D at 23. To the extent each employer needed to testify about the employment of Ms. Porter as well as that of her daughter, this represented a single witness with minimal testimony.

The two cases at issue spanned a one-year period, and the period involved in Ms. Porter's second case began the day after the period involved in her first case ended. Appendix F; Appendix K; *See Nielsen, supra*, at 185-186 (finding such division did not justify multiple prosecutions). This metaphysical division by the government is indicative of the "mental gymnastics" necessary to justify these two cases. *Braverman v. United States*, 317 U.S. 49, 52-53 (1942). Both cases involved the same "ongoing" fraud, as the Commonwealth conceded. Appendix D at 7. Since the August 2014 and April 2015 fraudulent statements and all other required information was known prior to the criminal information being filed in the 2015 case on January 20, 2016, the second, instant, case must be barred by double jeopardy prohibition of multiple prosecutions for the same crime.<sup>7</sup>

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<sup>7</sup> The labored division of time and actions made by the Commonwealth in this case is akin to breaking a bar fight into separate cases for each punch thrown by a defendant at the same person in a given minute increment. Or, in a theft case, this would be the equivalent of charging a separate crime for each bill stolen from a register owned by a single person, broken down into different criminal cases for each second that passed. These results are no more absurd than the case at bar, where the ongoing fraud has been broken down into increments and actions despite being part of one overarching act.

Ms. Porters' cases did not merely involve an "overlap" of proof. Both cases were essentially identical. *See contra United States v. Felix*, 503 U.S. 378, 386 (1992) (holding that a mere overlap in proof offered in two prosecutions does not constitute a double jeopardy violation). "[A] state cannot avoid the dictates of the Double Jeopardy Clause merely by altering in successive prosecutions the evidence offered to prove the same conduct." *Grady, supra*, at 522. Yet that is precisely what the government was permitted to do here.

The doctrine of collateral estoppel prevented litigation of the issue of moneys owed by Ms. Porter, since that issue was necessarily decided at CC 2015-14956. *See Keokuk & Western R. Co. v. State of Missouri*, 152 U.S. 301, 316-316 (1894) (applying collateral estoppel to successive actions "growing out of the same transaction."). CC 2015-14956 was resolved by final disposition wherein the Commonwealth agreed that all money improperly given to Ms. Porter for the ongoing criminal act of fraud was settled. Appendix E. The second case at CC 2016-11779 was based on facts known by the prosecution prior to completion of CC 2015-14956 and all facts at issue were part of the same criminal episode. As such, the facts at both of Ms. Porter's cases encompass two sides to the same coin; two aspects of the same crime. To allow the government to subsequently prosecute Ms. Porter after already prosecuting her for the same episode at CC 2015-14956 violates the very government overreach the Double Jeopardy Clause seeks to prevent. *Pearce, supra*, at 717.

Ms. Porter had an expectation of finality in her first case for the entire continuing fraud. As such, the second case was constitutionally barred by the Double Jeopardy Clause. *Brown, supra*, at 165.

## X. CONCLUSION

For the foregoing reasons, Ms. Porter respectfully requests that this Honorable Court issue a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania.

DATED this 7<sup>th</sup> day of October, 2020

Respectfully Submitted:

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