

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-1454-2014**  
 v. :  
 :  
 :  
 **JOSEPH MARTIN JENNINGS II,** : **CRIMINAL DIVISION**  
 **Defendant** :

**OPINION AND ORDER**

On November 18, 2015, the Defendant filed a “Motion for Reconsideration of Denial of Omnibus Motion’s [*sic*] Motion to Dismiss in Light of Newly Discovered Evidence.” Argument on the motion was heard on December 21, 2015.

**I. Background**

On February 10, 2015, the Court filed an Opinion and Order, which denied the Defendant’s Omnibus Pretrial Motion filed on October 21, 2014. In the Opinion, the Court determined that 18 Pa.C.S. § 4915.1(a)(3) (Failure to Comply) and the relevant sections of Megan’s Law are not vague. The Court also determined that the Commonwealth established a *prima facie* case of Failure to Comply.

The alleged newly discovered evidence is a March 13, 2014 email exchange between Pennsylvania State Police Trooper Angela Bieber and Agent Matthew Kieski of the Pennsylvania Board of Probation and Parole. According to the Defendant, Agent Kieski asked Trooper Bieber if the Defendant violated Megan’s Law by operating a vehicle that was not registered with the Pennsylvania State Police. Trooper Bieber responded:

It would only be an issue if it is a vehicle that he uses regularly. They can occasionally use someone else’s vehicle and not register it under ML.

The Defendant argues the email “emphasizes the statute’s vagueness” and “supports that the Court misinterpreted the statute.” In addition, the Defendant argues that “he could not have

failed to provide accurate information” because he was required to provide his driver’s license, but he did not have a license.

## **II. Discussion**

The email exchange does not change the Court’s determination that the relevant statutory provisions are not vague. In the Opinion filed on February 10, 2015, the Court determined that the Commonwealth established a *prima facie* case of Failure to Comply because it presented evidence that the Defendant failed to comply with 42 Pa.C.S. § 9799.15(g)(6), which requires a registrant to “appear in person at an approved registration site within three business days to provide current information relating to . . . an addition, a change in and termination of a motor vehicle owned or operated.” The Court notes that in Coppolino v. Comm’r of the Pa. State Police,<sup>1</sup> the Commonwealth Court found that the in-person registration requirement of 42 Pa.C.S. § 9799.15(g) is unconstitutional as applied to individuals convicted prior to the current Megan’s Law enactment. 102 A.3d at 1278. “[W]ith regard to individuals convicted prior to the enactment of the provision,” the court excised the requirement that the individuals appear in person. Id. at 1279. However, the court did not find unconstitutional the requirement that a registrant provide prompt updates. Id. “The only part of this provision that this Court holds to be unconstitutionally punitive with regard to individuals convicted prior to the enactment of the provision, is the requirement that such updates be made in person.” Id.

Under Coppolino, if the Defendant operated an additional vehicle, he did not have to appear in person, but he was still required to provide information about the vehicle within three business days of operating it. The Commonwealth presented evidence that the Defendant

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<sup>1</sup> 102 A.3d 1254 (Pa. Commw. 2014).

operated an unregistered vehicle and did not provide information about the vehicle within three business days of operating it. Therefore, it established a *prima facie* case of Failure to Comply.

The Court did not discover Coppolino until after the February 10, 2015 Opinion, but the discovery does not change the Court's determination that the relevant Megan's Law provision is not vague. The provision, as stated in Coppolino, gave the Defendant notice as to what conduct was required. If he operated a vehicle that he had not previously operated, he had three business days from the operation to provide the Pennsylvania State Police with information about the vehicle. Coppolino's discussion of the dilemmas created by the in-person requirement actually supports the Court's determination that the provision is not vague. See 102 A.3d at 1277 (stating that it would sometimes be impossible for a traveling registrant to return to Pennsylvania to provide information about a rental car). 18 Pa. C.S. § 4915.1(a)(3) (Failure to Comply) gave the Defendant notice that he would commit a crime if he failed to provide information about an additional vehicle, and the provision allowed the Defendant to gauge his conduct. Finally, the Defendant being without a license does not relieve him of the requirement to provide information about a vehicle that he operates. "Two wrongs do not make a right -- it is as simple as that." Garvin v. Unemployment Compensation Board of Review, 334 A.2d 854, 855 (Pa. Commw. 1975).

### **III. Conclusion**

The email exchange does not change the Court's determination that the relevant statutory provisions are not vague. The Court discovered Coppolino after denying the omnibus pretrial motion, but the opinion does not change the Court's determination that the Commonwealth established a *prima facie* case of Failure to Comply. The relevant Megan's Law provision, as stated in Coppolino, along with the Failure to Comply statute gave the Defendant notice as to what conduct was forbidden and allowed him to gauge his conduct. The Defendant being without a license does not relieve him of the requirement to provide information about a vehicle that he operates.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of February, 2016, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's "Motion for Reconsideration of Denial of Omnibus Motion's [*sic*] Motion to Dismiss in Light of Newly Discovered Evidence," which was filed on November 18, 2015, is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge