

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v</b>	:	<b>CR 222-2021</b>
	:	
<b>ERIC DERR</b>	:	
	:	
<b>Defendant</b>	:	

**MEMORANDUM AND ITS ORDER**

Before the court is Defendant’s Omnibus Pretrial Motion in the nature of a Petition for Writ of Habeas Corpus requesting dismissal of various charges bound over by the District Magistrate Judge following Preliminary Hearing.

***Procedural Background***

On December 15, 2020 Defendant was charged with one count of Unlawful Use of a Computer in violation of 18 Pa.C.S.A.§7611(a)(1); one count of Unsworn Falsification to Authorities in violation of 18 Pa.C.S.A. §4904(a)(1); one count of Tampering with Public Records in violation of 18 P.C.S.A. §4911(a)(1) and related offenses. A Preliminary Hearing was scheduled for February 5, 2021 before the Hon. Alan Page, Sr.. MDJ. At the Preliminary Hearing the Commonwealth withdrew Counts 5, 6, and 7, and amended the charges to include 28 counts of Unlawful Use of a Computer. Following a hearing the MDJ dismissed Count 1 as well as the amended counts 8 through 34. The court found prima facie evidence on Count 2 - Unsworn Falsification, Count 3 - Tampering with Public Records, and Count 4 - Obstructing Administration of Law. An Arraignment was waived by the Defendant, and on March 16, 2021 an Information was filed.

### ***Challenge to the Unsworn Falsification to Authorities Count***

Testimony at the Preliminary Hearing reveals that the Defendant was, at the time of the alleged offenses, a police officer assigned to the Williamsport Police Department. On or about April 28, 2016 Defendant was called as the investigating officer for an allegation of shoplifting by the loss prevention supervisor of Kohls Department Store, Christopher Shaw. Shaw outlined the basis of his suspicion that an individual, later identified as Morgan Mcalpin, had removed various articles of clothing from the store premises surreptitiously and without paying for them on that date. Defendant, using Facebook identification and photos, was able to find the identification and address of the alleged shoplifter. On April 29, 2016 he entered his initial report into the records management system, Spillman, which is a database of all arrests and reports. His report reflected that he was able to locate alleged shoplifter Mcalpin, and although he went to her residence, he was unable to contact her at that time. He indicated that he would be attempting to contact Mcalpin for an interview; however, if he was unable to make contact with her he would file citations on the evidence he had at that point. No charges were ever filed. On January 19, 2017, a supplemental narrative was entered in the records management system indicating that “contact was made with Mcalpin and the items were subsequently located in the store. No theft had occurred. Nothing further.”

The Commonwealth asserts that the averment that the items were subsequently located in the store and that no theft had occurred were knowingly untruthful statements made by Defendant. The factual basis for the Commonwealth’s position is supposedly established by Commonwealth’s witness Christopher Shaw who, being employed by Kohls from June 2009 to November 2016, indicated that he had no knowledge of the items having been located in the

store. In addition, his review of the records of the incident maintained by Kohls gave no indication that the items had been recovered. It is noteworthy that Mr. Shaw left employment of Kohls prior to the record entry by the Defendant, and accordingly a potential factual time gap exists for approximately two months during which time there may have been some development in the case.

The Commonwealth further argues that the false report entered into the record management system was done so with intent to mislead any supervisory officer who would review the report and charging determination, because the defendant was involved in an ongoing sexual relationship with the perpetrator of the retail theft, and he did not want to get her into trouble. There was, however, no testimony by any witness that the Defendant had entered into a sexual relationship with Mcalpin. The only reference thereto was made by the Commonwealth's Attorney in her closing argument. That, of course, was not evidence proffered for consideration by the court.

Testimony was presented indicating that ordinary patrol officers submitted their reports into the records management system and that such reports were reviewed by a Supervisor. At the time of the Defendant's record entries indicating that the allegedly shoplifted merchandise had on been found or returned, he was not a supervisor. The Commonwealth, therefore, asserts that the false statement was intended to mislead the Supervisor in believing that the case was properly closed and there was no basis for charges to be lodged against Ms. Mcalpin.

The statutory provisions for this crime are as follows:

**§ 4904. Unsworn falsification to authorities**

**(a) In general.**--A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function, he:

- (1) makes any written false statement which he does not believe to be true;
- (2) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or

(3) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

**(b) Statements “under penalty”.**--A person commits a misdemeanor of the third degree if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.

**(c) Perjury provisions applicable.**--Section 4902(c) through (f) of this title (relating to perjury) applies to this section.

**(d) Penalty.**--In addition to any other penalty that may be imposed, a person convicted under this section shall be sentenced to pay a fine of at least \$1,000.

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! The Commonwealth correctly points out that the principal purpose of a preliminary hearing is to protect an individual’s right against unlawful arrest and detention. *Commonwealth v Mullen, 333 A.2d 755 (Pa.1975)*. At the Preliminary Hearing the burden is on the Commonwealth to establish a prima facie case that a crime has been committed and the accused is probably the one who committed it. *Commonwealth v Prado, 393 A.2d 8 (Pa.1978)*. At the hearing the Commonwealth must present evidence with regard to each of the material elements of the charge and to establish sufficient probable cause to warrant the belief that the accused likely committed the offense. *Commonwealth v Wodjak, 466 A.2d 991 (Pa.1983)*. The evidence at the Preliminary Hearing must be read in the light most favorable to the Commonwealth’s case. *Commonwealth v Lopez, 654 A.2d 1150 (Pa.Super.1995)*. To meet his burden, the Commonwealth’s proof need only be such that if the evidence were presented at trial and accepted as true, the trial judge would be warranted in allowing the case to go to the jury. *Commonwealth v Lagana, 662 A.2d 1127 (Pa,Super.1995)*.

In the light most favorable to the Commonwealth it can be assumed that the reports submitted by a police officer will be read by other officers and supervisors in the official function of administering their part of the justice system. The submission of a false report could be either innocent as mistaken, misunderstood, or forgotten, or it could be criminally culpable as having been intended to cover up the crime of a paramore or friend. There was, however, no testimony that Mcalpin was someone whom Defendant had any desire to protect for any reason. In the

context of his work Defendant may have had a motive to push old matters under the table to clear the way with his supervisors for promotion to corporal. If the jury should find Defendant knowingly entered into the record management system a false statement about both the closing of a case and the reason for closing it they would further be pressed to analyze whether he did so with intent to mislead a public servant in performing his official function. As indicated, Defendant's reports were to be reviewed by his supervisor, a public servant, who, in performing his official function, would be determining whether the Defendant's work followed the policies and procedures of the Williamsport Police Department.

With respect to Defendant's knowing that the report was false the Commonwealth asserts that its witness, Shaw, was credible in asserting both that items were missing and that they had not been returned to Kohl.s. Even Defendant stated that he would file charges based solely on Shaw's statements regarding the shoplifting and the corroborated identification of Mcalpin; however, he did not do so without further explanation. The inference would be that if the case had fallen through against Mcalpin, Defendant would have so notified Shaw or his successor.

Based on the foregoing analysis Defendant's motion for habeas corpus relief on the charge of Unsworn Falsification to Authorities is denied.

### ***Challenge to Tampering with Public Records or Information Count***

Defendant next argues that the Commonwealth failed to establish that there was a false entry or false alteration of any record or document as required for a conviction under *18 Pa.C.S.A. §4911*.

The statutory provision is as follows:

**§ 4911. Tampering with public records or information**

**(a) Offense defined.**--A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government;

(2) makes, presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in paragraph (1) of this subsection; or

(3) intentionally and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

**(b) Grading.**--An offense under this section is a misdemeanor of the second degree unless the intent of the actor is to defraud or injure anyone, in which case the offense is a felony of the third degree.

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! Like §4904, this crime requires proof that the Defendant knowingly made a false entry in a government record; however, it does not require a specific intent to mislead a public servant in performing his official function. In essence, §4911(a)(1) is a lesser included offense of §4904. Our analysis of the prima facie case for the Defendant's knowing that he was making a false statement in the record when he stated that the shoplifting goods had been returned carries through to this charge.

Based on the foregoing analysis, Defendant's motion for habeas corpus relief on the charge of Tampering with Public Records or Information is denied.

### ***Challenge to Obstructing Administration of Law or Other Governmental Function Charge***

Finally, Defendant argues that the Commonwealth failed to produce evidence at the preliminary hearing that Defendant intentionally obstructed, impaired, or perverted the administration of law or other government function.

The statute provides the following:

#### **§ 5101. Obstructing administration of law or other governmental function**

A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

The Commonwealth asserts that the testimony presented at the Preliminary Hearing was sufficient to demonstrate that the Defendant, while a Williamsport police officer, did pervert administration of law by failing to carry out his official duties as a police officer by failing to

arrest/charge one or more individuals, on a number of occasions, who were engaged in criminal activity and/or violating the vehicle code or other laws, because he was having sexual contact and/or a sexual relationship with those individuals or their associates.

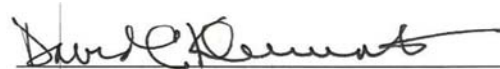
In the context of this crime perversion is tended to include a correction of the administration of law by one of the enumerated actions. One such action includes the “breach of an official duty” which, the Commonwealth argues, would be the duty to arrest individuals who are committing crimes in the presence of the police officer. Evidence was presented that the defendant had an intimate or sexual partner, Dana Rockwell, who was operating a motor vehicle without a current license. No arrest or report of the same was made. In addition, illegal drug activity was known by the Defendant to be occurring by friends of Dana Rockwell, and Defendant failed or refused to charge them for the criminal activity occurring with his knowledge and in his presence.

We believe that the Commonwealth has made a prima facie case of violation of 18 Pa.C.S.A. §5101.

The motion for habeas corpus relief on this charge is denied.

We enter the Order following as part of the Memorandum Opinion.

BY THE COURT



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David C. Klementik, Senior Judge  
Specially Presiding

Dated: January 7, 2022

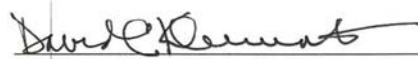
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	:	
<b>ERIC DERR</b>	:	
<b>Defendant</b>	:	

**ORDER**

AND NOW, this 7<sup>th</sup> day of January, 2022, consistent with the Court's Memorandum in this case, the Defendant's Omnibus Pretrial Motion in the nature of a Petition for Writ of Habeas Corpus is DENIED.

By the Court,



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David C. Klementik, Senior Judge  
Specially Presiding