NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. THOMAS H. UNGARD, JR. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 530 MDA 2012

Appeal from the Judgment of Sentence October 12, 2011
In the Court of Common Pleas of Lycoming County
Criminal Division at No(s): CP-41-CR-0001398-2007

BEFORE: BOWES, J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.: Filed: February 21, 2013

Appellant, Thomas H. Ungard, Jr., appeals from the judgment of sentence entered in the Lycoming County Court of Common Pleas, following his jury trial convictions for two (2) counts of tampering with public records or information and one (1) count of obstructing administration of law or other governmental function.[1] We affirm.

The relevant facts and procedural history of this appeal are as follows.

> [Appellant] was the coordinator of the Lycoming County Drug Task Force ("Task Force"), which at that time was under the direction and supervision of the Lycoming County District Attorney's office. In July 2006, a reporter informed the District Attorney that [Appellant] and the Chief of the Williamsport Bureau of Police allegedly used a forfeited Task Force vehicle to go on a fishing trip to

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[1] 18 Pa.C.S.A. §§ 4911, 5101, respectively.

Canada. The District Attorney conducted an internal investigation, during which [Appellant] admitted he drove a forfeited vehicle to Canada and he paid a sum equivalent to the fair market rental value of the vehicle as restitution to the drug forfeiture account. The District Attorney relieved [Appellant] of his duties as Task Force coordinator and sent a referral letter asking the Attorney General's office to investigate this incident to determine if a prosecution was warranted. The District Attorney noted the officers involved exercised a serious lapse of judgment, but he had no reason to believe this incident was part of a pattern of conduct.

During the course of the Attorney General's investigation, additional incidents of alleged misconduct were discovered. The incidents included allegations that: (1) [Appellant] completed or submitted false title documents for "sham" transactions to make it appear that third parties were purchasing forfeited vehicles when, in fact, [Appellant] was purchasing the vehicles for members of his family; (2) he removed or destroyed Task Force records; (3) he failed to remit to the Task Force funds from the sale or disposition of three vehicles and some exercise equipment; and (4) he obstructed the administration of law by asking or encouraging a witness to lie to the investigator from the Attorney General's Office.

A criminal complaint was filed on June 12, 2007, charging [Appellant] with five counts of tampering with public records or information, …one count of criminal conspiracy (tampering with public records), …four counts of theft by failure to make required disposition of funds, …one count of obstructing the administration of law or other governmental function, …and one count of conflict of interest…. All [of] the charges were bound over for court after a preliminary hearing.

On November 1, 2007, [Appellant] filed his Omnibus pretrial motion, which included a request for *habeas corpus* relief. Hearings on this motion were held before the [court]. On October 16, 2008, [the court] granted [Appellant's] request for *habeas corpus* relief with respect to counts 1, 2, 3, 4, and 7. [The court] also precluded the Commonwealth from introducing [Appellant's] oath of

> office at trial and denied the Commonwealth's motion to amend counts 7, 8, 9, and 10. The Commonwealth appealed this decision on October 27, 2008.
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> On October 25, 2010, the Superior Court affirmed the ruling regarding the inadmissibility of [Appellant's] oath of office, but it reinstated the dismissed counts and found the [trial] court erred in precluding the Commonwealth's request to amend the theft charges. The Superior Court remanded the case to Lycoming County on or about December [3], 2010.
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> On December 7, 201[0], [Appellant] filed a Motion to Dismiss pursuant to [Pa.R.Crim.P.] 600.[2] A hearing on this motion was held on April 29, 2011. The [c]ourt denied this motion in an Opinion and Order docketed on June 3, 2011.
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> A jury trial was held July 18-22, 2011. The jury found [Appellant] guilty of two counts of tampering with or fabricating public records and one count of obstruction of the administration of law.[1]
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> [1] The [c]ourt dismissed the conflict of interest charge on [Appellant's] motion for judgment of acquittal at the end of the Commonwealth's case-in-chief. The jury acquitted [Appellant] of three counts of tampering with public records and four counts of theft.
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> On October 12, 2011, the [c]ourt sentenced [Appellant] to 18 months' probation. That same day, [Appellant] filed his post-sentence motion.[2]

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[2] Also on December 7, 2010, Appellant's counsel filed a motion to withdraw representation, claiming Appellant wanted to proceed *pro se*. On April 29, 2011, Appellant executed a written waiver of counsel form. The court also conducted an oral colloquy. At the conclusion of the colloquy, the court determined Appellant had made a knowing, voluntary, and intelligent decision to waive his right to counsel, and it permitted Appellant to represent himself at trial.

> [2] [Appellant] filed a supplemental post-sentence motion on October 27, 2011; however, he subsequently indicated he was withdrawing the claim stated therein….

(Trial Court Opinion, filed March 9, 2012, at 1-3). On March 9, 2012, the court denied Appellant's post-sentence motions.

Appellant timely filed a *pro se* notice of appeal on March 13, 2012.[3] On March 19, 2012, the court ordered Appellant to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b). Appellant timely filed a *pro se* Rule 1925(b) statement on March 26, 2012.

Appellant raises six issues for our review:

> WHETHER THE TRIAL COURT MISAPPLIED THE GOVERNING LAW BY FINDING THAT THE COMMONWEALTH, AT THE RULE 600 HEARING, PROVED ON THE RECORD WITH COMPETENT EVIDENCE THAT THE FILING OF APPELLANT'S PRETRIAL MOTION CAUSED A DELAY IN THE INITIATION OF TRIAL, AND THAT THE COMMONWEALTH WAS DILIGENT IN OPPOSING OR RESPONDING TO THE PRETRIAL MOTION.
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> WHETHER THE COURT MISAPPLIED THE GOVERNING LAW BY FINDING THAT THE COMMONWEALTH, AT THE RULE 600 HEARING, PROVED WITH COMPETENT EVIDENCE THAT ITS EFFORTS WERE DILIGENT DURING THE TIME PERIOD THAT THE COMMONWEALTH'S INTERLOCUTORY APPEAL WAS BEING PROCESSED FOR REVIEW BY THE SUPERIOR COURT.

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[3] Appellant also filed a motion to proceed *in forma pauperis* on appeal. On April 3, 2012, the court denied the request and also found Appellant's annual gross income exceeded the limit to qualify for appointment of a public defender.

> WHETHER THE TRIAL COURT MISAPPLIED THE GOVERNING LAW BY FINDING THAT THE COMMONWEALTH PROVIDED SUFFICIENT EVIDENCE AT TRIAL TO PROVE EACH ELEMENT OF THE CRIME OF OBSTRUCTING LAW OR OTHER GOVERNMENTAL FUNCTION BY FINDING THAT THE COMMONWEALTH PROVED APPELLANT COMMITTED AN INDEPENDENT UNLAWFUL ACT AND BY NOT APPLYING THE EXEMPTION FOUND AT TITLE 18 SECTION 904(b).
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> WHETHER THE TRIAL COURT MISAPPLIED THE GOVERNING LAW BY FINDING THAT THE COMMONWEALTH PROVIDED SUFFICIENT EVIDENCE AT TRIAL TO PROVE EACH ELEMENT OF THE CRIME OF TAMPERING WITH PUBLIC RECORDS OR INFORMATION, WHEN THE RECORD IS VOID OF ANY PROOF THAT THE FORM WAS MATERIALLY FALSE AND THAT APPELLANT BELIEVED THE RECORD TO BE FALSE.
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> WHETHER THE TRIAL COURT COMMITTED LEGAL ERROR BY NOT ORDERING A NEW TRIAL FOR REASONS OF MANIFEST NECESSITY AND IN THE INTEREST OF JUSTICE WHEN THE COMMONWEALTH'S ATTORNEY COMMITTED PROSECUTORIAL MISCONDUCT WHICH MAY HAVE PREJUDICED THE JURORS AGAINST APPELLANT.
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> WHETHER THE TRIAL COURT COMMITTED LEGAL ERROR BY NOT ORDERING A NEW TRIAL BASED ON THE FACT THAT THE JURY WAS NEVER INSTRUCTED ON THE LAW CONCERNING SOLICITATION AND HINDERING APPREHENSION OR PROSECUTION, ELEMENTS NECESSARY TO PROVE THE "OTHER UNLAWFUL ACT" IN ORDER TO RETURN A GUILTY VERDICT FOR THE CHARGE OF OBSTRUCTION, THEREBY LEAVING [THE] JURY TO MAKE A DETERMINATION OF LAW, WHICH IS A DUTY RESERVED FOR THE COURT AND BY NOT ORDERING A NEW TRIAL BECAUSE THE COURT MADE LEGAL ERROR IN PRESENTING THE INSTRUCTIONS TO THE JURY CONCERNING THE CHARGE OF TAMPERING WITH PUBLIC RECORDS OR INFORMATION.

(Appellant's Brief at 5-6).

In issues one and two, Appellant acknowledges he filed an omnibus pretrial motion, which the parties litigated prior to the commencement of trial. Appellant insists, however, there was no evidence that litigation of the pretrial motion actually delayed the start of trial. To the extent the court found litigation of the pretrial motion caused a period of excludable delay pursuant to Rule 600, Appellant argues the court based its finding on assumptions and speculation. Additionally, Appellant claims the Commonwealth created a lengthy delay by pursuing an interlocutory appeal from the order disposing of the pretrial motion. Appellant complains the Commonwealth did not act with due diligence while the interlocutory appeal was pending; consequently, none of the delay occasioned by the Commonwealth's appeal was excusable. Based upon the foregoing, Appellant concludes the court should have granted his Rule 600 motion. We disagree.

"In evaluating Rule 600 issues, our standard of review of a trial court's decision is whether the trial court abused its discretion." ***Commonwealth v. Hunt***, 858 A.2d 1234, 1238 (Pa.Super. 2004) (*en banc*), *appeal denied*, 583 Pa. 659, 875 A.2d 1073 (2005).

> The proper scope of review…is limited to the evidence on the record of the Rule 600 evidentiary hearing, and the findings of the trial court. An appellate court must view the facts in the light most favorable to the prevailing party.
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> Additionally, when considering the trial court's ruling, this Court is not permitted to ignore the dual purpose behind Rule 600. Rule 600 serves two

> equally important functions: (1) the protection of the accused's speedy trial rights, and (2) the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it. However, the administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth.
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> * * *
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> So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule 600 must be construed in a manner consistent with society's right to punish and deter crime.

Id. at 1238-39 (internal citations and quotation marks omitted).

Rule 600 sets forth the speedy trial requirements and provides in pertinent part:

> **Rule 600. Prompt Trial**
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> [(A)](3) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.
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> * * *
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> (C) In determining the period for commencement of trial, there shall be excluded therefrom:
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> (1) the period of time between the filing of the written complaint and the defendant's arrest, provided that

> the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;
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> (2) any period of time for which the defendant expressly waives Rule 600;
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> (3) such period of delay at any stage of the proceedings as results from:
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> (a) the unavailability of the defendant or the defendant's attorney;
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> (b) any continuance granted at the request of the defendant or the defendant's attorney.
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> * * *
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> [(D)](2) When an appellate court has remanded a case to the trial court, if the defendant is incarcerated on that case, trial shall commence within 120 days after the date of remand as it appears in the appellate court docket. If the defendant has been released on bail, trial shall commence within 365 days after the date of remand.

Pa.R.Crim.P. 600(A)(3), (C)(1)-(3), (D)(2). "Rule 600 generally requires the Commonwealth to bring a defendant on bail to trial within 365 days of the date the complaint was filed." ***Hunt, supra*** at 1240. To obtain relief, a defendant must have a valid Rule 600 claim at the time he files his motion for relief. ***Id.*** at 1243.

"The mechanical run date is the date by which the trial must commence under Rule 600." ***Commonwealth v. McNear***, 852 A.2d 401, 406 (Pa.Super. 2004).

> It is calculated by adding 365 days (the time for commencing trial under Rule 600) to the date on which the criminal complaint is filed. The mechanical run date can

> be modified or extended by adding to the date any periods of time in which delay is caused by the defendant. Once the mechanical run date is modified accordingly, it then becomes an adjusted run date.

Id.

In the context of Rule 600, "excludable time" is differentiated from "excusable delay" as follows:

> "Excludable time" is defined in Rule 600(C) as the period of time between the filing of the written complaint and the defendant's arrest, …any period of time for which the defendant expressly waives Rule 600; and/or such period of delay at any stage of the proceedings as results from: (a) the unavailability of the defendant or the defendant's attorney; (b) any continuance granted at the request of the defendant or the defendant's attorney. "Excusable delay" is not expressly defined in Rule 600, but the legal construct takes into account delays which occur as a result of circumstances beyond the Commonwealth's control and despite its due diligence.

Commonwealth v. Brown, 875 A.2d 1128, 1135 (Pa.Super. 2005), *appeal denied*, 586 Pa. 734, 891 A.2d 729 (2005) (quoting ***Hunt, supra*** at 1241).

Even where a violation of Rule 600 has technically occurred, we recognize:

> [T]he motion to dismiss the charges should be denied if the Commonwealth exercised due diligence and…the circumstances occasioning the postponement were beyond the control of the Commonwealth.
>
> Due diligence is a fact-specific concept that must be determined on a case-by-case basis. Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a **reasonable** effort has been put forth.

> Reasonable effort includes such actions as the Commonwealth listing the case for trial prior to the run date to ensure that [defendant] was brought to trial within the time prescribed by Rule [600].

Id. at 1138 (quoting ***Hunt, supra*** at 1241-42) (emphasis in original). "The only occasion requiring charges to be dismissed occurs if the Commonwealth fails to bring the defendant to trial within three hundred sixty-five days, taking into account all excludable time and excusable delay." ***Commonwealth v. Murray***, 879 A.2d 309, 314 (Pa.Super. 2005).

Instantly, the Commonwealth filed the criminal complaint on June 12, 2007. That same day, Appellant posted bail. Therefore, the initial mechanical run date was June 12, 2008. On November 1, 2007, Appellant filed an omnibus pretrial motion, seeking a writ of *habeas corpus* for all counts in the criminal information. On December 26, 2007, Appellant filed a supplement to the omnibus pretrial motion, asking the court to sever his case from that of his co-defendant. On February 29, 2008, the court scheduled an evidentiary hearing.

The court conducted the evidentiary hearing on April 16, 2008. On April 30, 2008, the court ordered the parties to submit briefs on the issues raised at the hearing.[4] Following the submission of briefs, the court conducted another evidentiary hearing on October 16, 2008. At the

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[4] Prior to the submission of the briefs, on July 14, 2008, the court entered the first order scheduling a trial date. In it, the court announced jury selection would commence on November 3, 2008.

conclusion of the hearing, the court granted Appellant's pretrial motion in part. Specifically, the court granted *habeas corpus* relief on the charges of tampering with public records or information and theft by failure to make required disposition of funds.[5] The delay between November 1, 2007 and October 16, 2008 constituted 350 days of excludable delay. ***See Commonwealth v. Wallace***, 804 A.2d 675 (Pa.Super. 2002) (stating filing of pretrial motion by defendant renders him unavailable where filing of motion caused delay in commencement of trial). The adjusted trial run date for Rule 600 purposes became May 18, 2009.

On October 21, 2008, the Commonwealth filed a *praecipe* for the entry of an appealable order on the docket. On October 23, 2008, the court formally entered an order to memorialize the pretrial rulings. On October 27, 2008, the Commonwealth timely filed a notice of appeal from the pretrial order, certifying that the order would terminate or substantially handicap the prosecution pursuant to Pa.R.A.P. 311(d). On October 25, 2010, this Court reversed the order in part, affirmed in part, and remanded the matter for trial. As the Commonwealth had no control over the timing of this Court's disposition of the appeal, the delay between October 27, 2008 and October 25, 2010, constituted 728 days of excusable delay. ***See Commonwealth v.***

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[5] The court also denied a Commonwealth motion to amend the criminal information, and the court issued an evidentiary ruling that precluded the Commonwealth from introducing certain evidence.

Dixon, 589 Pa. 28, 907 A.2d 468 (2006) (explaining interplay between Pa.R.A.P. 311 and Pa.R.Crim.P. 600 protects Commonwealth's ability to seek review of adverse trial court rulings without facing loss of prosecutions under Rule 600); ***Commonwealth v. Matis***, 551 Pa. 220, 710 A.2d 12 (1998) (confirming pretrial appeal by Commonwealth can serve as proper basis to extend period for commencement of trial). This delay yielded an adjusted trial run date of May 16, 2011. On December 7, 2010, Appellant filed his Rule 600 motion.

The following chart summarizes the delays as follows:

DATES	ACTIVITY	DAYS DELAY	EXCLUDABLE OR EXCUSABLE	ADJUSTED RUN DATE
6/12/07-11/1/07	Complaint filed; Appellant pled not guilty	152	No	6/12/08
11/1/07-10/16/08	Appellant filed omnibus pretrial motion; court conducted hearings; parties submitted briefs	350	Excludable; Appellant's pretrial filing created delay	**5/18/09**
10/16/08-10/27/08	Commonwealth filed *praecipe* to enter appealable order; court entered order memorializing pretrial rulings	11	No	5/18/09
10/27/08-10/25/10	Commonwealth filed notice of appeal from order granting Appellant's pretrial motion in part; this Court ultimately affirmed in part, reversed in part, and remanded for trial	728	Excusable; Commonwealth had no control over timing of this Court's disposition of appeal	**5/16/11**

Appellant filed the Rule 600 motion on December 7, 2010, before the date we have calculated as the adjusted run date. Therefore, Appellant did not have a viable speedy trial claim when he filed his motion to dismiss, and the motion was premature. ***See Hunt, supra***. Moreover, Rule 600(D)(2) required trial to commence within 365 days after the date of remand from this Court. This Court remanded the certified record on December 3, 2010, and trial commenced on July 18, 2011. Thus, the court complied with the mandates of Rule 600(D)(2).

Additionally, the court determined the Commonwealth acted with due diligence throughout the pretrial period:

> The transcripts, orders and other documents filed of record also show that the Commonwealth exercised due diligence in opposing or responding to [Appellant's pretrial] motion. The pretrial motion was not continued by either party. Both parties appeared on April 16, 2008 and the pretrial motions were heard by [the court]. The Order entered on April 16, 2008 setting a briefing schedule required the Commonwealth to file its reply brief ten days after [Appellant's] brief was filed. The Commonwealth, however, filed its brief within three days. When the parties appeared before [the court] in October 2008, [it] made…rulings on [Appellant's] omnibus pretrial motion on the record. The Commonwealth did not have any control over the amount of time that it took [the court] to decide [Appellant's] omnibus pretrial motion.
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> * * *
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> [A]ssuming for the sake of argument that the Commonwealth had an obligation of due diligence during the pendency of the appeal, the [c]ourt believes that the only delay that arguably would not be excusable is the delay between November 19, 2008 and January 26, 2009 related to the filing of the transcript. If the

> Commonwealth had promptly paid the court reporter or informed her that it did not believe payment was required before the transcript could be released, the transcript would have been filed on or about November 19, 2008. As previously discussed, however, the Prothonotary's delay in transmitting the record was not within the Commonwealth's control. The [c]ourt also does not believe the Commonwealth's requests for extensions of the briefing schedule and continuances of the oral argument date showed a lack of due diligence. Due diligence does not require perfect vigilance or punctilious care, but merely a showing that the Commonwealth has put forth a reasonable effort.

(***See*** Trial Court Opinion at 5, 9-10.) We conclude the court properly denied Appellant's Rule 600 motion. ***See Hunt, supra***.

In his third and fourth issues, Appellant asserts the Commonwealth failed to establish he had committed an "independent unlawful act" that obstructed the administration of law. Although the Commonwealth demonstrated that Appellant had met with a witness and encouraged him not to cooperate with the Attorney General's investigator, Appellant argues such conduct did not support a conviction under Section 4911. Regarding his conviction for tampering with public records, Appellant contends he used the proper Pennsylvania Department of Transportation ("PennDOT") forms to transfer the titles of the vehicles at issue. Appellant insists he did not know the forms contained false information, and the Commonwealth presented no evidence to the contrary. Absent more, Appellant concludes the Commonwealth presented insufficient evidence to support his convictions. We disagree.

When examining a challenge to the sufficiency of evidence, our standard of review is as follows:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [trier] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Hansley, 24 A.3d 410, 416 (Pa.Super. 2011), *appeal denied*, ___ Pa. ___, 32 A.3d 1275 (2011) (quoting ***Commonwealth v. Jones***, 874 A.2d 108, 120-21 (Pa.Super. 2005)).

The Pennsylvania Crimes Code defines tampering with public records or information as follows:

> **§ 4911. Tampering with public records or information**
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> **(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….
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> * * *

18 Pa.C.S.A. § 4911(a)(1), (2).

Section 5101 of the Crimes Code provides:

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

18 Pa.C.S.A. § 5101.

Instantly, the trial court determined sufficient evidence supported Appellant's conviction for obstructing administration of law or other governmental function:

> In February 2004, [Appellant] approached Adrian Heffley about taking one of the forfeited Task Force vehicles, a 1996 Chevrolet Lumina, and initially putting it in Heffley's name, but after he received the title to the vehicle,

transferring the title to [Appellant] and his step-son, Stefan June. These transactions were documented on [PennDOT] MV-4ST forms, which were introduced into evidence…. The PennDOT forms indicated that Heffley paid $250.00 to purchase the vehicle from the Task Force and that [Appellant] paid Heffley $600.00 to purchase the vehicle from him. Mr. Heffley testified that he never took possession of the vehicle, he did not insure the vehicle, he did not pay $250.00 to the Task Force, and [Appellant] did not pay him $600.00 for the vehicle. [Appellant's] trial testimony also showed that Heffley did not pay $250.00 to the Task Force for the Chevrolet Lumina and he did not pay Heffley $600.00 for the vehicle. Instead, [Appellant] testified that he paid the money to the Task Force, but he did not directly title any of the vehicles to himself because it would have looked awkward.

During the Attorney General's investigation, [Appellant] went to Heffley's place of business and asked him what he was going to say if someone from the Attorney General's office contacted him. To make the transaction appear legitimate, [Appellant] wanted Heffley to tell the investigators that Heffley got the car, did some work on it to fix it up a bit, and then sold it to [Appellant] after it was repaired.

When Agent Anthony Fiore spoke to Heffley about these transactions, Heffley told Agent Fiore the story [Appellant] wanted him to say. Heffley, however, almost immediately became very upset and worried about not having told the truth. He contacted an attorney, who telephoned Agent Fiore either later that day or the next day and told him the truth. Agent Fiore, however, was unable to speak with Heffley to confirm what the attorney told him until days or weeks later.

Sometime after Heffley spoke to Agent Fiore but prior to him testifying before the grand jury, [Appellant] told or encouraged Heffley to tell the truth.

From this evidence, a jury could reasonably infer that [Appellant] had the intent to obstruct the Attorney General's investigation into this vehicle transaction. [Appellant's] actions of requesting, encouraging, or

> entering into an agreement with Heffley that he would lie to the investigators was an unlawful act, as it constituted the crime of solicitation or conspiracy to hinder a prosecution.

(***See*** Trial Court Opinion at 12-14) (internal citations and footnote omitted).

Likewise, the court determined sufficient evidence supported Appellant's convictions for two counts of tampering with public records or information:

> Count 2 concerned the "back end" of the transaction transferring the title of a 1993 Pontiac Grand Am, which had been forfeited to the Drug Task Force. This vehicle was transferred from the Task Force to [Appellant's] brother-in-law, Brent June, who then transferred it to [Appellant].
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> On February 27, 2003, title for the Grand Am was transferred…from the Lycoming County Office of the District Attorney to Brent June. The PennDOT MV-4ST form for this "front end" of the transaction…listed the purchase price as $300.00.
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> On April 3, 2003, Brent June transferred the title to the Grand Am to [Appellant]. The PennDOT MV-4ST form for this "back end" of the transaction, which was admitted into evidence as Commonwealth's Exhibit 20, listed Brent June as the seller, [Appellant] as the purchaser, and the purchase price as $400.00.
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> Brent June testified that he did not pay $300.00 to the District Attorney's for the vehicle, nor did he receive $400.00 from [Appellant]. Mr. June also testified that he never purchased, possessed, insured, or drove the vehicle. [Appellant] testified that he paid $300.00 to the Task Force, but he never paid any money to Brent June.
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> The testimony presented at trial also showed that it was [Appellant's] idea to acquire this vehicle for the use of his stepson, Stefan June, but to initially title the vehicle in Brent June's name, rather than [Appellant's] name, so that

the transaction would look more legitimate. Brent June testified that he would not have titled this vehicle in his name if [Appellant] had not asked him to do so.

Clearly, the PennDOT MV-4ST form for the "back end" of the transaction contained several false entries. It listed Brent June as the owner or seller of the vehicle and the purchase price as $400.00 when, in fact, Brent June never bought the vehicle or possessed the vehicle and [Appellant] never paid $400.00 to June or anyone else. [Appellant] knew this information was false, since he admitted in his own trial testimony that he paid $300.00 to the Task Force, but $400.00 was not paid to anyone for the transfer between [Appellant] and June. In reality, [Appellant] purchased the vehicle from the Task Force for $300.00, but initially had the vehicle titled in Brent June's name because a transfer directly into his name from the Task Force would have looked awkward or inappropriate. [Appellant] also knew this form would be submitted to PennDOT and kept in their records for a period of time.

This same evidence shows that [Appellant] made, presented or used the MV-4ST form to record a sham transaction, knowing that the form was false and with the intent that it be taken as a genuine part of information or records kept by PennDOT, a government agency.

Count 4 concerns the transaction which transferred title of the 1996 Chevrolet Lumina from Adrian Heffley to [Appellant] and Stefan June. As previously discussed regarding the obstruction conviction, [Appellant] transferred the vehicle from the Task Force to Adrian Heffley, and the purchase price was listed as $250.00. Then, when Heffley received the title to the vehicle, he transferred it to [Appellant] and Stefan June. The PennDOT MV-4ST form for the transfer back end of this transaction listed Heffley as the seller, [Appellant] and Stefan June as the purchasers and the purchase price as $600.00. Heffley testified that he never took possession of the vehicle, he did not insure the vehicle, he did not pay $250.00 to the Task Force, and [Appellant] did not pay him $600.00 for the vehicle. [Appellant] testified that he paid the $250.00 to the Task Force and no money, other than reimbursement for the sales tax, exchanged hands

> between Heffley and [Appellant]. Rather, [Appellant] purchased the Chevrolet Lumina from the Task Force, but had the vehicle initially titled in Heffley's name to make the transaction look more legitimate.
>
> As with the transactions involving the 1993 Pontiac Grand Am, there were false entries on the PennDOT MV-4ST form. Heffley never was the owner of the vehicle and never sold it to [Appellant] for $600.00. [Appellant] knew this information was false, but he provided it to…PennDOT nonetheless. The reason for doing this was so it would look like a third party had purchased the vehicle from the Task Force and would not appear that he was transferring the title from the Task Force to himself.
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> * * *
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> Clearly, [Appellant's] own testimony establishes not only that entries on the MV-4ST form were false, but also that: (1) [Appellant] knew they were false; (2) [Appellant] knew the form [was] submitted to PennDOT for its records; and (3) [Appellant] wanted it to look like a third party was buying the vehicles from the Task Force and that he was buying the vehicle from a third party when, in fact, he was the person purchasing the vehicles from the Task Force. Therefore, the evidence was sufficient to support [Appellant's] convictions for tampering with public records.

(***Id.*** at 21-24) (internal citations omitted). In light of the applicable standard of review and the relevant statutes, we agree with the trial court that sufficient evidence supported Appellant's convictions. ***See*** 18 Pa.C.S.A. §§ 4911, 5101. Thus, Appellant is not entitled to relief on his third and fourth issues.

In his fifth issue, Appellant asserts the prosecutor committed misconduct by asking improper questions during the Commonwealth's cross-examination of Appellant. Specifically, Appellant contends the prosecutor's

questions implied that Appellant, as a police officer, "had a higher duty than an ordinary citizen to tell a witness not to lie to the investigators." (Appellant's Brief at 86). Appellant argues the prosecutor knew the form of the questions would cause Appellant to suffer prejudice. Moreover, Appellant insists he objected to the questions, but the court failed to act on the objection. Appellant concludes the prosecutor committed misconduct, which necessitates a new trial. Appellant's claim is waived.

"Issues not raised in the [trial] court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). "[I]t is axiomatic that issues are preserved when objections are made timely to the error or offense." ***Commonwealth v. Baumhammers***, 599 Pa. 1, 23, 960 A.2d 59, 73 (2008), *cert. denied*, ___ U.S. ___, 130 S.Ct. 104, 175 L.Ed.2d 31 (2009). "The purpose of contemporaneous objection requirements respecting trial-related issues is to allow the court to take corrective measures and, thereby, to conserve limited judicial resources." ***Commonwealth v. Sanchez***, ___ Pa. ___, ___, 36 A.3d 24, 42 (2011), *cert. denied*, ___ U.S. ___, 133 S.Ct. 122, 184 L.Ed.2d 58 (2012). "[A] party may not remain silent and afterwards complain of matters which, if erroneous, the court would have corrected." ***Commonwealth v. Strunk***, 953 A.2d 577, 579 (Pa.Super. 2008) (quoting ***Commonwealth v. Clair***, 458 Pa. 418, 423, 326 A.2d 272, 274 (1974)). "Even where a defendant objects to specific conduct, the

failure to request a remedy such as a mistrial or curative instruction is sufficient to constitute waiver." ***Strunk, supra*** at 579.

Instantly, the prosecutor cross-examined Appellant regarding his interactions with Mr. Heffley as follows:

> [PROSECUTOR]: When you talked to [Mr. Heffley] you encouraged him to lie to the investigators when they talked to him, right?
>
> [APPELLANT]: No, sir. What I remember is I agreed with him. He said that he was going to say that I agreed with him.
>
> [PROSECUTOR]: That was his idea?
>
> [APPELLANT]: He interrupted me. The way I remembered him and Mr. Noviello were in there. I went in and said I believe they were going to come talk to him. One of them said I don't think they'll come here and I said I believe they will and then [Mr. Heffley] said if they do this is what I'm going to tell them. It was obvious to me that those two had discussed it also.
>
> [PROSECUTOR]: And right then when he says that you as a police officer you say wait, wait, wait this is criminal—
>
> [APPELLANT]: Objection, Your Honor.
>
> THE COURT: Wait a minute. Let's just ask the question.
>
> [APPELLANT]: He—he—
>
> THE COURT: Just a moment.
>
> [PROSECUTOR]: At that moment you as a police officer say wait a minute.
>
> [APPELLANT]: I was not a police officer at that time. I was suspended, sir.

> THE COURT: Okay. Just a moment. Let's get the question out.
>
> [PROSECUTOR]: You as a suspended police officer you say to him hold on a second this is a law enforcement investigation if they come talk to you you can't be making up stories like that. Is that what you said to him?
>
> [APPELLANT]: No.
>
> [PROSECUTOR]: You said that sounds good to me go ahead and tell them that?
>
> [APPELLANT]: Something along those lines.

(***See*** N.T. Trial, 7/21/11, at 125-26; R.R. at 651-52.)

Here, Appellant objected when the prosecutor first referred to Appellant's status as a police officer. The court immediately acted upon the objection and asked Appellant to allow the prosecutor to finish the question. Appellant permitted the prosecutor to finish the question, and then Appellant elaborated on the basis for the objection. Specifically, Appellant emphasized that he was suspended at the time of his meeting with Mr. Heffley. In light of Appellant's objection, the prosecutor rephrased the question to reflect the fact that Appellant was suspended. Thereafter, Appellant answered the question without objection, and the prosecutor proceeded with the cross-examination.

Significantly, Appellant failed to object to the prosecutor's rephrased question. Thus, it appeared that Appellant had no further complaints after the prosecutor rephrased the initial inquiry. Absent any additional objection, Appellant deprived the court of the opportunity to correct the perceived

error. ***See Sanchez, supra***; ***Baumhammers, supra***. Moreover, Appellant did not request a mistrial or curative instruction. ***See Strunk, supra***. Therefore, Appellant waived his fifth issue for purposes of appellate review.

In his sixth issue, Appellant argues the court failed to instruct the jury on each element of obstructing administration of law or other governmental function. Appellant further argues that the court provided inaccurate instructions for the offense of tampering with public records or information. Appellant, however, waived these claims by failing to object to the instructions.[6] ***See Commonwealth v. Moury***, 992 A.2d 162 (Pa.Super. 2010) (explaining appellant's failure to make specific and timely objection to jury instruction waives challenge to instruction on appeal). Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

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[6] Prior to deliberations, the court asked the parties whether they wanted to raise exceptions to the jury charge. (***See*** N.T. Trial, 7/22/11, at 18; R.R. at 671.) At that time, Appellant did not advance the claims he now presents on appeal. Instead, Appellant raised one exception, regarding an unrelated count of tampering with public records or information, for which the jury ultimately acquitted him.