

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
RICKY LAND	:	
	:	
	:	
Appellant	:	No. 1371 EDA 2025
	:	

Appeal from the PCRA Order Entered April 28, 2025
In the Court of Common Pleas of Pike County Criminal Division at No(s):
CP-52-CR-0000052-2021

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Appellant	:	No. 3010 EDA 2025
	:	

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CP-52-CR-0000053-2021

BEFORE: McLAUGHLIN, J., SULLIVAN, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED SEPTEMBER 21, 2026**

Appellant, Ricky Land, appeals *pro se* from the order of the Court of Common Pleas of Pike County that dismissed his first petition filed pursuant to the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546 ("PCRA"). He

* Retired Senior Judge assigned to the Superior Court.

presents three challenges to the effectiveness of his prior counsel and alleges that his constitutional rights were violated based on a lack of notice for an uncharged Vehicle Code violation and that a lack of jurisdiction resulted from the failure to charge him with that summary offense. Upon review, we affirm.

On direct review, we adopted the following summary of the facts of this case, prepared by the trial court:

On or about January 21, 2020, Pike County Detective Christian P. Robinson ("Detective Robinson") coordinated a controlled purchase of heroin through a Confidential Informant ("CI") and an undercover law enforcement officer ("ULO") from Ricky Land ("Appellant") and Kaylynn Doran ("Doran"), the Appellant's paramour and mother of his minor child ("Controlled Purchase 1"). Through the CI, and the assistance of Detectives [Michael] Myers and [Michael] Decker of the Port Jervis, New York, Police Department and the ULO, Detective Robinson conducted the controlled purchase of heroin at a public location in Westfall Township, Pike County, Pennsylvania. Doran arrived at the predetermined location in a blue Nissan Maxima operated by Appellant. Doran exited the Maxima and entered the rear passenger compartment of the vehicle operated by the ULO and occupied by the CI, after which the ULO observed the CI provide Doran with a specific amount of United States currency and Doran provide the CI with suspected heroin. Doran then exited the vehicle, returned to the Maxima, and departed the scene. Testing later confirmed that the substance provided by Doran was not heroin, but a mixture of cocaine and fentanyl.

On or about January 27, 2020, Chief Pike County Detective Michael Jones with the assistance of Detective Decker, a CI[,], and a ULO, coordinated a second controlled purchase from the Appellant and Doran at a predetermined location in Dingmans Township, Pike County, Pennsylvania ("Controlled Purchase 2"). After the Appellant contacted the CI by cellular phone to offer heroin for purchase, the ULO transported the CI to the predetermined location, where a blue Nissan had already arrived. The ULO then observed the CI enter the blue Nissan. The CI reported that a specific amount of United States currency was

provided to the Appellant and the Appellant provided suspected heroin to the CI. The CI then exited the blue Nissan, returned to the ULO's vehicle, and together the CI and ULO departed the location. Testing later confirmed that the substance provided by the Appellant was heroin.

While on patrol in the early morning hours of October 10, 2020, Pennsylvania State Trooper Brendan O'Connor ("Trooper O'Connor") and his partner, Trooper [Robert] Mikulak, observed a blue Chevrolet Trailblazer that appeared to be traveling faster than the posted speed limit ("Traffic Stop"). Shortly thereafter, the Trailblazer exited the westbound lanes of Interstate 84 onto State Route 6 northbound, disregarding a posted stop sign. After activating his emergency lights, Trooper O'Connor initiated a traffic stop. The sole occupant of the vehicle was identified as Ricky Land ("Appellant") and appeared nervous. When asked about his apparent distress, the Appellant indicated he was stressed out by issues with the mother of his child. Trooper Mikulak, who had taken [a] position on the passenger side of the Trailblazer indicated that the Appellant was attempting to conceal a bag apparently containing drugs behind his jacke[t] in his right hand. The Appellant was then ordered to exit his vehicle, but as Trooper O'Connor attempted to detain him, the Appellant pulled away and attempted to flee the scene on foot. While in pursuit of the Appellant, Trooper O'Connor observed him discard a plastic bag containing a white substance into the woods. After the Appellant was subdued, a search discovered five (5) bundles of unstamped glassine bags containing suspected heroin/fentanyl and \$2,254.00 in cash. After securing the Appellant in his patrol vehicle, Trooper O'Connor returned to the woods and recovered a clear plastic bag containing a baseball-sized rocky, white substance, like the item the Appellant was observed throwing into the woods while being pursued. After further investigation revealed that the Appellant's driving privileges were suspended, he was read **Miranda**¹ w]arnings and placed under arrest.

Commonwealth v. Land, 2024 WL 3102881, *1, *4-5 (Pa. Super., filed June 24, 2024) (unpublished memorandum) (992 & 1981 EDA 2023); Trial Court Opinion, 6/9/23, 1-3.

¹ **Miranda v. Arizona**, 384 U.S. 436 (1966).

The Commonwealth charged Appellant in separate cases arising from the car stop incident and the controlled drug buys. In the “car stop” case at CP-52-CR-0000052-2021, the Commonwealth charged Appellant with possession of a controlled substance with intent to deliver (“PWID”), knowing or intentional possession of a controlled substance (“K&I”), possession of drug paraphernalia, tampering with or fabricating physical evidence, resisting arrest, driving while operating privilege is suspended or revoked, failing to obey stop signs, and driving at an unsafe speed.² **See** Criminal Complaint, CP-52-CR-0000052-2021, 10/10/20, 1-6. In the “controlled drug buy” case, the Commonwealth charged him with PWID and criminal conspiracy.³ **See** Criminal Complaint, CP-52-CR-0000053-2021, 10/14/20, 1-3. After Appellant waived a preliminary hearing in each of the underlying cases, the Commonwealth filed bills of information for all of the initial charges and, in the “car stop” case, included separate PWID and K&I charges for Appellant’s possession of cocaine and heroin/fentanyl. **See** Bills of Information, CP-52-CR-0000052-2021, 3/22/21, 1-3; Bills of Information, CP-52-CR-0000053-2021, 3/22/21, 1-2.

On April 20, 2021, Appellant filed a counseled omnibus pre-trial motion in which he challenged the existence of a *prima facie* case in his “controlled

² 35 P.S. § 780-113(a)(30), 35 P.S. § 780-113(a)(16), 35 P.S. § 780-113(a)(32), 18 Pa.C.S. § 4910(1), 18 Pa.C.S. § 5104, 75 Pa.C.S. § 1543(a), 75 Pa.C.S. § 3323(b), and 75 Pa.C.S. § 3361, respectively.

³ 35 P.S. § 780-113(a)(30) and 18 Pa.C.S. § 903/35 P.S. § 780-113(a)(30), respectively.

drug buy” case and the basis for the car stop in the other case, sought the suppression of statements that he made in police custody, and requested the severance of his pending criminal matters. **See** Omnibus Pre-Trial Motion, 4/20/21, 2-8. On the same date, Appellant also filed a counseled motion to compel pre-trial discovery in which Appellant sought, *inter alia*, the identity of the confidential informant in the “controlled drug buy” case. **See** Motion to Compel, 4/20/21, ¶¶ 27, 71. The trial court presided over a hearing on these motions on August 9, 2021, at which the Commonwealth presented live testimony from Trooper O’Connor. **See** N.T. Pre-Trial Hearing, 8/9/21, 5-30. The court subsequently deferred issuing a ruling so the parties could have the opportunity to file additional briefs. **See id.** at 32-33.

On September 7, 2021, the court granted Appellant’s discovery motion in part, denying his request “pertaining to the confidential informant,” and granting it “as to any non-confidential informant information.” Order (partial grant of Appellant’s discovery motion), 9/7/21, 1-3. After both parties filed briefs⁴ with respect to Appellant’s omnibus pre-trial motion, the court denied Appellant’s requests for suppression of the physical evidence obtained in the “car stop” case, dismissal of the “car stop” case, suppression of Appellant’s statements made to the police, and the severance of the two pending cases,

⁴ The pre-trial court granted a Commonwealth motion to strike a supplemental brief which was filed outside the time limitations set by the court without seeking leave of court for the filing of the supplemental brief. **See** Order (striking Appellant’s supplemental brief), 9/26/21, 1.

and the court also granted a hearing on Appellant's *habeas corpus* motion as to the sufficiency of the evidence for a *prima facie* case in the "controlled drug buy" case.⁵ **See** Order (denying in part and granting in part omnibus pre-trial motion), 12/29/21, 1. The pre-trial court presided over a hearing on the *habeas corpus* motion on May 2, 2022, and, following additional briefing by the Commonwealth, denied the motion on July 6, 2022. **See** Order (ordering post-hearing briefing and continuing scheduled trial date), 5/3/22, 1-2; Order (denying the motion for *habeas corpus* relief with respect to CP-52-CR-0000053-2021), 7/6/22, 1-5. The court also denied a motion for dismissal pursuant to Pennsylvania Rule of Criminal Procedure 600 on August 29, 2022, and denied, as untimely, a *pro se* motion for a "change of counsel" on September 7, 2022. **See** Order (denying Rule 600 motion), 8/29/22, 1; Order (denying *pro se* motion for "change of counsel"), 9/7/22, 1.

After conducting a colloquy with Appellant on September 7, 2022, the pre-trial court permitted Appellant to waive his right to counsel and proceed *pro se*; the court appointed his existing counsel as standby counsel for trial. **See** Order (permitting Appellant to proceed *pro se*/appointment of standby counsel), 9/7/22, 1. On September 7-9, 2022, Appellant proceeded, *pro se* with the assistance of standby counsel, to a joint jury trial in both criminal

⁵ The court subsequently denied Appellant's request to amend the court's order to include a statement pursuant to 42 Pa.C.S. § 702(b) to support an interlocutory appeal from the denial of Appellant's suppression motion. **See** Order (denying request for amendment of order partially denying omnibus pre-trial motion), 1/25/22, 1.

matters.⁶ **See** N.T. Trial, 9/7/22, 11-28 (colloquy of Appellant concerning, *inter alia*, the nature of his charges, the possible penalties for those charges, the burden of proof at trial, the deferral of summary offenses for a bifurcated non-jury proceeding, and consequences of Appellant's waiver of counsel). The Commonwealth presented testimony from Detective Jones, Detective Decker, Detective Robinson, Detective Myers, Doran, Trooper O'Connor, Trooper Mikulak, the ULO in the "controlled drug buy" matter who also testified that she heard Appellant and the CI having a phone conversation before a separate controlled drug buy on February 12, 2020 (Detective Molly Carson), the forensic scientists who analyzed the recovered controlled substances (Brandy Pulfer, Jennifer Libus, and Lauren Force), and a Vice Unit supervisor of the Pennsylvania State Police (Corporal Shawn Smith).

Doran testified that Appellant obtained the controlled substances in bulk to eventually be sold and that she acted as a "runner" for him, exchanging "the product" and the money for Appellant. **See** N.T. Trial, 9/7/22, 152-53. She also testified to the circumstances of the observed controlled drug sales in Appellant's presence on January 21st and 27th, and another observed controlled drug sale where she had been acting as a "runner" on Appellant's behalf on January 23rd. **See id.** at 157-58. The evidence presented by the Commonwealth included, *inter alia*, a video recording, without any audio

⁶ While Appellant operated as a *pro se* litigant through the evidentiary portion of the trial, he opted to have his standby counsel be reappointed as counsel on the morning of the last day of the trial so that counsel could present the closing argument on his behalf. **See** N.T. Trial, 9/9/22, 2-4.

record, taken from a camera in a hat worn by the CI during the January 21st controlled drug buy (Commonwealth Exhibit 2; **see also** N.T. Trial, 9/7/22, 104-08), a video recording, with recorded audio, of the January 27th controlled drug buy, taken with a camera that was imbedded into an E-ZPass transponder and a camera in the CI's hat (Commonwealth Exhibit 6; **see also** N.T. Trial, 9/7/22, 115-18), and a motor vehicle recording from the troopers' vehicle on October 20, 2020 (Commonwealth Exhibit 13; **see also** N.T. Trial, 9/8/22, 68-72). Appellant declined to present any witnesses. **See** N.T. Trial, 9/8/22, 135.

In the "controlled drug buy" case, the jury found Appellant guilty of criminal conspiracy to commit delivery of a controlled substance and found him not guilty of PWID. **See** Jury Verdict Slip, CP-52-CR-0000053-2021, 9/9/22, 1-2; N.T. Trial, 9/9/22, 74. In the "car stop" case, the jury found Appellant guilty of two counts each of PWID and K&I, and single counts of tampering with or fabricating physical evidence, resisting arrest, and possession of drug paraphernalia (specified by the jury to include plastic bags, glassine packets, and rubber bands). **See** Jury Verdict Slip, CP-52-CR-0000052-2021, 9/8/22, 1-2; N.T. Trial, 9/9/22, 74. In a bifurcated proceeding, the court found Appellant guilty of his three summary traffic offenses for driving while operating privilege is suspended or revoked, failing to obey stop signs, and driving at an unsafe speed. **See** Order (verdicts and sentencing scheduling), CP-52-CR-0000052-2021, 9/9/22, 1-2; N.T. Trial,

9/9/22, 81-82. Sentencing was deferred for the preparation of a pre-sentence investigation report. **See** N.T. Trial, 9/9/22, 84.

On November 4, 2022, the court sentenced Appellant to one hundred and eighty-three to three hundred and sixty-six months' imprisonment. **See** Order (sentencing), 11/4/22, 1-7. After the trial court denied a timely post-sentence motion for reconsideration of sentence filed by counsel, Appellant timely appealed. **See** Post-Sentence Motion, 11/14/22, 1-3; Order (denying post-sentence motion), 12/12/22, 1; Notice of Appeal, 1/10/23, 1. On direct review, Appellant challenged the denial of his motion to suppress evidence in the "car stop" case, the denial of his motion to sever the consolidation of his two cases, the trial court's rejection of his attempt to impeach Doran with evidence concerning the custody of their minor child, and the discretionary aspects of his sentence; Appellant also presented a claim alleging that the Commonwealth knowingly elicited perjury from Doran. **See Land**, 2024 WL 3102881, *1-2. On June 24, 2024, we affirmed the judgments of sentence. **See Commonwealth v. Land**, 323 A.3d 226 (Pa. Super. 2024) (table) (992 & 1981 EDA 2023). Appellant did not seek further review with our Supreme Court.

On February 13, 2025, Appellant filed the timely *pro se* PCRA petition that is the focus of this appeal. Therein, he alleged that his pre-trial counsel was ineffective for not seeking suppression of the physical evidence seized from him incident to his arrest because he was subject to an illegal arrest "pursuant to an invalid arrest warrant." *Pro Se PCRA Petition*, 2/13/25, §

6(A), (C). He asserted that the arrest was invalid because the affidavit of probable cause attached to his criminal complaint had not been signed by the issuing authority and the affidavit contained a misstatement as to the troopers' basis for stopping his car. **See id.** He noted that the affidavit of probable cause alleged that his failure to use a turn signal and a failure to obey a stop sign were the basis for the car stop whereas Trooper O'Connor's testimony at the hearing on his counseled suppression motion alleged that his vehicle's crossing over a fog line was the basis for the stop. **See id.** at supplemental 4(A)-4(C). Appellant alleged that his pre-trial counsel "did not do anything to hold the Commonwealth accountable for the Commonwealth's failure to correct Trooper O'Connor's misstatement in the affidavit of probable cause" and was ineffective for not pursuing a hearing under **Franks v. Delaware**, 438 U.S. 154 (1978), to challenge the factual allegations in the trooper's affidavit. **Id.** at supplement 4(C), 8(D)-8(E). Lastly, he alleged that "trial counsel was ineffective for failing to object, move for dismissal, or preserve for review [a claim] that the Commonwealth engaged in prosecutorial misconduct by ignoring the material misrepresentation in the affidavit of probable cause that violated [his] rights guaranteed under the 4th Amendment to the United States Constitution and Art[icle] 1, Section 8 of the Pennsylvania Constitution." **Id.** at 8(G)-8(K).

The PCRA court appointed counsel for Appellant and, on March 13, 2025, that attorney filed a no-merit letter and a motion to withdraw as counsel pursuant to **Commonwealth v. Finley**, 550 A.2d 213 (Pa. Super. 1988) (*en*

banc). **See** Order (appointment of PCRA counsel), 2/14/25, 1-2; Motion to Withdraw as Counsel, 3/13, 25, 1-2; **Finley** Letter, 3/13/25, 1-3 (attached to Motion to Withdraw as Counsel). On March 14, 2025, the PCRA court issued notice of its intent to dismiss Appellant’s petition without a hearing pursuant to Pennsylvania Rule of Criminal Procedure 907. **See** Rule 907 Notice, 3/14/25, 1. Appellant thereafter filed three requests for continuances to respond to the court’s notice, with the first request alleging that PCRA counsel had failed to provide him with a copy of the no-merit letter. **See** Request for Continuance, 3/24/25, 1-2; Request for Continuance, 3/31/25, 1; Request for Continuance, 4/21/25, 1. The court granted the initial request and denied the subsequent requests. **See** Order (granting request for continuance), 3/25/25, 1; Order (denying request for continuance), 4/1/25, 1; Order (denying request for continuance), 4/21/25, 1. After Appellant failed to file any substantive response by the deadline originally extended by the court, the PCRA court dismissed the petition and granted counsel’s withdrawal motion on April 28, 2025. **See** Order (dismissing PCRA petition and granting motion to withdraw as counsel), 4/28/25, 1.

Appellant timely filed a *pro se* notice of appeal. **See** Notice of Appeal, 5/27/25, 1. The PCRA court and Appellant subsequently satisfied their obligations under Pennsylvania Rule of Appellate Procedure 1925.⁷ **See** Order

⁷ While this appeal was pending, the already-withdrawn PCRA counsel filed a motion for the appointment of “conflict counsel” that the PCRA court denied (*Footnote Continued Next Page*)

(Rule 1925), 6/5/25, 1; Rule 1925(b) Statement, 6/16/25, 1-2; PCRA Court Opinion, 7/21/25, 1-10.

Appellant presents the following questions for our review:

1. Did [A]ppellant receive ineffective assistance of counsel on his first PCRA petition when PCRA counsel failed to request a **Franks** hearing based on the inclusion of a material misrepresentation in the probable cause affidavit that invalidated the arrest warrant? The affidavit misled the issuing authority to believe the traffic stop was initiated after [A]ppellant's vehicle [allegedly] made a right turn (without signaling and without stopping at a stop sign).
2. Did [A]ppellant receive ineffective assistance of counsel on his first PCRA petition when PCRA counsel failed to raise ineffective assistance of trial counsel to challenge the validity of the unsigned invalid criminal complaint/affidavit of probable cause/arrest warrant?
3. Did [A]ppellant receive ineffective assistance of counsel on his first PCRA petition when PCRA counsel failed to take a position on the motion to sever at the omnibus pre-trial [motion] hearing; and for not objecting to the Commonwealth's request to defer the hearing for the motion to sever until further evidence could be gathered from the forthcoming *habeas corpus* [motion] proceeding?

without prejudice. **See** Motion for Appointment of Conflict Counsel, 7/1/25, 1-2; Order (denying motion for appointment of conflict counsel), 7/3/25, 1. After Appellant improperly included the docket numbers for both of his underlying criminal matters in the caption of his notice appeal, he filed separate amended notices of appeal in each of the underlying matters on November 19, 2025, in response to an order we issued on November 4, 2025. **See** Superior Court Order (notifying violation of **Commonwealth v. Walker**, 185 A.3d 969 (Pa. 2018)), 1371 EDA 2025; Amended Notices of Appeal, 11/19/25. On December 8, 2025, we *sua sponte* consolidated these appeals. **See** Superior Court Order (consolidation of appeals), 12/8/25; Pa.R.A.P. 513.

4. Were [A]ppellant's rights under the 5th, 6th, and 14th Amendments of the United States Constitution and Article 1, Section 9 of Pennsylvania Constitution violated when the Commonw[ea]lth failed to put [A]ppellant on notice that he was being accused of violating [section 3309 of the Vehicle Code and] did the trial court lack jurisdiction to convict [A]ppellant of the uncharged offense [for] driving on roadways laned for traffic [in violation of Section] 3309?

Appellant's Brief, 3-4 (suggested answers and unnecessary capitalization omitted).

Our "standard of review regarding an order denying a petition under the PCRA is whether the determination of the PCRA court is supported by the evidence of record and is free of legal error." **Commonwealth v. Davis**, 86 A.3d 883, 887 (Pa. Super. 2014). "The PCRA court's findings will not be disturbed unless there is no support for the findings in the certified record." **Id.**

Appellant's first three claims challenge the effectiveness of his prior counsel.⁸ To prevail on these claims, Appellant needed to establish: "(1) his underlying claim is of arguable merit; (2) counsel had no reasonable basis for his action or inaction; and (3) [he] suffered actual prejudice as a result."

⁸ Appellant does not raise any issues with respect to the process by which his PCRA counsel was permitted to withdraw pursuant to **Finley**. Accordingly, we will address Appellant's substantive claims without *sua sponte* addressing the adequacy of counsel's no-merit letter. **See Commonwealth v. Rykard**, 55 A.3d 1177, 1184 n.2 (Pa. Super. 2012) ("it is improper for an appellate court to *sua sponte* address the sufficiency of a no-merit letter filed before the PCRA court"); **see also Commonwealth v. Pitts**, 981 A.2d 875, 879 (Pa. 2009) ("To the extent [**Commonwealth v. Friend**, 896 A.2d 607, 612 (Pa. Super. 2006),] stands for the proposition that an appellate court may *sua sponte* review the sufficiency of a no-merit letter when the defendant has not raised such issue, we disavow such holding.").

Commonwealth v. Spatz, 84 A.3d 294, 311 (Pa. 2014). The failure to satisfy any prong of the test for ineffectiveness will cause the claim to fail. **See Commonwealth v. Chmiel**, 30 A.3d 1111, 1128 (Pa. 2011). To establish prejudice, “the petitioner must show that there is a reasonable probability that the outcome of the proceedings would have been different but for counsel’s ineffectiveness.” **Id.** at 1127-28. “Pennsylvania law presumes counsel has rendered effective assistance.” **Commonwealth v. Mullen**, 267 A.3d 507, 512 (Pa. Super. 2021).

In his first issue, Appellant asserts that his pre-trial counsel was ineffective for not requesting a **Franks** hearing to challenge an alleged misrepresentation in Trooper O’Connor’s affidavit of probable cause that was attached to Appellant’s criminal complaint.⁹ **See** Appellant’s Brief, 23-29. He argues that the trooper made a knowing and reckless misrepresentation in the affidavit as to the reason the troopers stopped his car. **See id.** at 23. He notes that Trooper O’Connor’s affidavit alleged that the basis for the car stop was a failure to use a turn signal and obey a stop sign while the same trooper’s testimony from the suppression hearing stated that the stop was initiated after the vehicle drifted “far” over a fog line. **See id.** at 25-26, **comparing** Affidavit of Probable Cause, 10/10/20, 1 (“The vehicle turned right onto Route 6 without signaling and without stopping at the stop sign.”), with N.T. Omnibus

⁹ The focus of this claim is supposedly the inaction of “trial counsel” but, given Appellant’s election to proceed *pro se* at trial and the fact that **Franks** addresses a hearing that would be held prior to trial, we will construe this as a claim directed at alleged inaction by Appellant’s pre-trial counsel.

Pre-Trial Motion Hearing, 8/9/21, 10 (“It was at the point where the vehicle drifted so far over the right fog line, I knew I had to make a traffic stop[.]”). He also suggests that the vantage point of the troopers’ motor vehicle recording and Trooper O’Connor’s suppression hearing testimony called into question the contents of the trooper’s affidavit. **See id.** at 26-27. He reasons that a request for a **Franks** hearing would have resulted in his arrest warrant being voided and the suppression of the evidence seized in the “car stop” case. **See id.** at 29. We disagree that Appellant was entitled to a **Franks** hearing such that counsel was ineffective.

In **Franks**, the United States Supreme Court held that, where a defendant demonstrates that an affiant in a warrant affidavit made a false statement knowingly and intentionally, or with reckless disregard for the truth, the search warrant must be voided unless the affidavit’s remaining content is sufficient to establish probable cause. **See Franks**, 438 U.S. at 155-56. In that case, the Supreme Court emphasized the defendant’s attack on the affidavit must be “more than conclusory and must be supported by more than a mere desire to cross-examine”; the defendant must allege deliberate falsehood or reckless disregard for the truth, accompanied by an offer of proof. **Id.** at 171.

The PCRA court denied the instant claim under all three prongs of the ineffectiveness standard because Appellant failed to demonstrate a misrepresentation in Trooper O’Connor’s affidavit where the trooper’s

testimony, which the pre-trial court found to be credible, demonstrated multiple traffic violations justifying the car stop:

Appellant has not demonstrated that the affidavit contained any such misrepresentation. Trooper O'Connor testified that he personally observed Appellant commit multiple traffic violations, including running a stop sign, failing to signal, crossing the fog line, and showing signs of impairment. These independent observations justified the stop, regardless of the challenged language in the affidavit. Because there was no arguable merit to the **Franks** claim, counsel was not ineffective for failing to pursue it. Further, the record reflects that trial counsel actively contested the [t]rooper's ability to observe Appellant's vehicle making the turn—highlighting obstructions such as a concrete barrier. This demonstrates a reasoned trial strategy, not an omission. Because trial counsel had a reasonable basis and no prejudice resulted, the claim fails under [**Commonwealth v. Pierce**, 527 A.2d 973 (Pa. 1987)].

PCRA Court Opinion, 7/21/25, 8-9.

In its analysis, the PCRA court correctly appreciated that Trooper O'Connor's suppression hearing testimony referencing the crossing of the fog line was not a misrepresentation with respect to his affidavit. Rather, the trooper's testimony addressed all three of the alleged traffic violations, any one of which justified the traffic stop. **See** N.T. Omnibus Pre-Trial Motion Hearing, 8/9/21, 9 ("Defendant's vehicle ... appeared to be travelling over the posted speed limit ... I then continued on the exit ramp, and observed the vehicle not stop, come to a complete stop at the stop sign ... I then continued following the vehicle at which point I saw the vehicle's right tires drift over the fog line on a few occasions."). That the trooper mentioned the crossing of the fog line as an additional basis for the car stop in the suppression hearing

testimony did not negate the trooper's assertions about Appellant speeding and failing to obey a stop sign in the affidavit or otherwise prove that the contents of the affidavit were misrepresentations. Having failed to demonstrate any misrepresentation by the trooper, Appellant was unable to plead and prove that his prior counsel's failure to request a **Franks** hearing constituted ineffective assistance.

In his second issue, Appellant asserts that his pre-trial counsel was ineffective for failing to challenge the validity of his arrest warrant on the basis that Trooper O'Connor's affidavit of probable cause did not include a signature by a magistrate district judge.¹⁰ **See** Appellant's Brief, 30-34. He argues that the lack of a signature from the magistrate on the trooper's affidavit violated his constitutional rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution. **See id.** at 32. He reasons that, if his counsel had asserted that the trooper's affidavit was defective for the lack of that signature, "then case Docket No. 052-CR-2021 would have been dismissed." **Id.** at 30, 33.

¹⁰ As with his first claim, Appellant alleges that this claim concerns ineffectiveness by "trial counsel." Appellant's Brief, 30. Because any challenge to the validity of the arrest warrant would have been an issue for review prior to the conclusion of a preliminary hearing, we will address this claim as if Appellant had properly addressed it as a challenge to the effectiveness of his pre-trial counsel. **See** Pa.R.Crim.P. 109 ("A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint ... or warrant ... unless the defendant raises the defect ... before the conclusion of the preliminary hearing in a court case, and the defect is prejudicial to the rights of the defendant.").

The PCRA court denied this claim because Appellant's argument "d[id] not rise to the level of a constitutional violation or establish prejudice." PCRA Court Opinion, 7/21/25, 9. The court notes in its opinion that "[t]here is no evidence that that procedural irregularity in the documents had any impact on the case." ***Id.***

Here, the magistrate district judge signed a certification on the last page of the criminal complaint. ***See*** Criminal Complaint, 10/10/20, 6. On the bottom of the first page of Trooper O'Connor's affidavit of probable cause, a form section in which the magistrate district judge could indicate the date that the affidavit of probable cause was "sworn" to was left unexecuted:

Sworn to me and subscribed before me this ___ day of ___

Date ___

My commission expires first Monday of January, ___

(Signature of Affiant)

Magisterial District Judge

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Affidavit of Probable Cause, 10/10/20, 1.

In a recent unpublished memorandum, this Court addressed, in a direct appeal, an identical allegation that the lack of a signature from a magistrate district judge on an affidavit of probable cause constituted a "defect ... of constitutional proportions" that supposedly violated our Rules of Criminal Procedure, even though the magistrate signed the last page of the criminal complaint. ***See Commonwealth v. Noble***, 2026 WL 1897427, *2-3 (Pa.

Super., filed June 30, 2026) (unpublished memorandum cited for persuasive support pursuant to Pa.R.A.P. 126(b)(2)) (1025 WDA 2025). Defendant Noble in that case and Appellant in the instant case were similarly situated in that both were already in custody at the time their criminal complaints were filed. **See id.** at *3; Affidavit of Probable Cause, 10/10/20, 1 (noting that Appellant was “handcuffed and searched incident to arrest” at the scene of the car stop). Importantly, Noble, like Appellant, based his claim on caselaw addressing the lack of a magistrate district judge’s signature on an affidavit of probable cause for a *search warrant*, rather than an affidavit of probable cause for a *criminal complaint*. **See Noble**, 2026 WL 1897427, *3; Appellant’s Brief, 31, **citing Commonwealth v. McAfee**, 326 A.2d 522, 523 (Pa. Super. 1974) (holding that the lack of a signature by a magistrate issuing a search warrant on the supporting affidavit of probable cause was a defect fatal to the search warrant), and **Commonwealth v. Crawley**, 223 A.2d 885, 887-90 (Pa. Super. 1966) (addressing the existence of probable cause for the issuance of a search warrant).

The unanimous panel in **Noble** rejected, for lack of arguable merit, the identical claim that Appellant now raises and leaves no doubt for this panel that the alleged “defect” would not have required a dismissal as Appellant suggests:

Acting *pro se*, [Noble’s] ignorance of and unfamiliarity with the typical workings of legal filings leads to the failure of his argument on this issue. It is common local practice for a magistrate to sign only the last page of a complaint which contains the affidavit of probable cause for arrest. ...

[Noble] cites cases for the proposition that a *search warrant* that is not signed by a judge is void and does not establish probable cause. Those cases implicate different constitutional concerns than the instant situation. Here, [Noble] was already in custody, and the police filed the complaint setting forth the facts as required by [Pennsylvania Rule of Criminal Procedure] 502, justifying [Noble's] arrest. The reviewing authority certified on the complaint that the complaint had been properly completed and executed as required by [Pennsylvania Rule of Criminal Procedure] 508. This provided sufficient notice to [Noble] as to the reason for his arrest, thereby satisfying the requirements of subject matter jurisdiction. This is unlike an unsigned search warrant which fails to grant the police authority to search and seize property under the Fourth Amendment.

Accordingly, [Noble's] argument that the Court of Common Pleas lacked subject matter jurisdiction because the magistrate signed and sealed only the final page of the complaint is specious and meritless. The Court of Common Pleas of Erie County clearly had jurisdiction to hear this case, which occurred in Erie County, and [Noble] was given sufficient notice. Accordingly, the requirements for subject matter jurisdiction have been met and the court had the authority to accept a plea in [Noble's] case.

Noble, 2026 WL 1897427, *3 (record citations omitted; emphasis in original).

We adopt this apposite analysis in ***Noble*** as our own and conclude that Appellant's instant ineffectiveness claim was properly denied for lack of arguable merit by the PCRA court.

In his third issue, Appellant asserts that his pre-trial counsel was ineffective for failing to argue in favor of his motion to sever his criminal cases at the hearing on his omnibus pre-trial motion and for failing to object at that hearing to the Commonwealth's request for the court to defer a ruling on his severance motion until a subsequent hearing on his pre-trial *habeas corpus*

motion.¹¹ **See** Appellant's Brief, 34-47. He argues that his cases should have been tried separately because they arose from separate criminal information based upon different acts, which occurred on different dates, and where the two cases did not share any of the same witnesses that would be presented by the Commonwealth. **See id.** at 36-42. He concludes that pre-trial counsel's failure to take a position on the severance motion at the hearing on his omnibus pre-trial motion "cost [him] the opportunity to get the two cases severed" and that he was prejudiced by the consolidation of the two cases for trial. **Id.** at 43-44. He also asserts that pre-trial counsel's failure to object to the Commonwealth's request for a deferral on a ruling on the severance motion deprived him of an opportunity for severance of his cases where the severance motion was ultimately denied prior to the subsequent hearing scheduled for his pre-trial *habeas corpus* motion. **See id.**

While the PCRA court explains that it denied this claim for lack of arguable merit, **see** PCRA Court Opinion, 7/21/25, 9 ("Appellant cannot demonstrate that different handling of the severance issue ... would have altered the outcome"), we reach a different conclusion that this claim is waived for lack of preservation before the PCRA court. Here, our careful review of Appellant's *pro se* PCRA petition, including the hand-written supplemental pages for sections 6(a) and 15, fail to show that Appellant presented the PCRA

¹¹ As with his preceding claims, Appellant nominally alleges that his claim concerns inaction by "trial counsel," however, we will review the claim as if it addresses inaction by pre-trial counsel because it addresses pre-trial counsel's representation at the hearing on Appellant's omnibus pre-trial motion.

court with any ineffective assistance of counsel claim concerning his pre-trial motion for severance. We also note that no amended PCRA petition was ever filed either by Appellant or his appointed counsel. Thus, as Appellant failed to raise this issue before the PCRA court, it is waived for our purposes.¹² **See** Pa.R.A.P. 302(a) (providing that issues not raised in the trial court are waived and cannot be raised for the first time on appeal); **Commonwealth v. Ousley**, 21 A.3d 1238, 1242 (Pa. Super. 2011) (holding that issues not raised in a PCRA petition cannot be considered on collateral appeal).

In his last issue, Appellant points out that, while Trooper O'Connor's testimony from the suppression hearing reflected that the car stop was based,

¹² This Court may affirm the PCRA court's decision as long as there is any basis in the record to do so. **See Commonwealth v. Smith**, 194 A.3d 126, 135 n.4 (Pa. Super. 2018). Even assuming *arguendo* that Appellant had preserved this claim for our review, we note that, on direct review, we adopted the trial court's opinion, finding, *inter alia*, that the denial of Appellant's severance motion was not an abuse of discretion. **See Land**, 2024 WL 3102881, *4, *9-10. Given our prior review of the denial of the motion to sever, we would not find arguable merit for the instant ineffectiveness claim even if it had been preserved in Appellant's PCRA petition. While ineffectiveness claims are distinct from those claims that are raised on direct appeal, **see Commonwealth v. Collins**, 888 A.2d 564, 573 (Pa. 2005), our prior merits holding as to the denial of the motion to sever would remain binding on us as the law of this case for purposes of any assessment of the arguable merit prong of the ineffectiveness standard for the instant claim. **See Commonwealth v. Reed**, 971 A.2d 1216, 1220 (Pa. 2009) (holding that Superior Court's prior holding of waiver and alternative holding on the merits was law of the case); **Commonwealth v. Starr**, 664 A.2d 1326, 1331 (Pa. 1995) (explaining that the "law of the case" doctrine "refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of the that same court or by a higher court in the earlier phases of the matter").

at least in part, on his car improperly crossing a fog line, he was never charged with a summary traffic offense under 75 Pa.C.S. § 3309 which addresses a driver's duties on roadways laned for traffic. **See** Appellant's Brief 47-48. He asserts that, resting the probable cause for his car stop on an uncharged summary traffic offense violated his constitutional rights because a defendant "has a constitutional right to be informed of the nature and cause of the accusation made against him in a criminal prosecution." **Id.** at 49-50. Moreover, he alleges that "the trial court was without authority/jurisdiction to try, convict[,], or make a determination on the summary charge[] of Driving on Roadways Laned for Traffic ([75 Pa.C.S. § 3309]), because that specific offense was not included in the criminal complaint or information." Appellant's Brief, 50-51. He therefore reasons that he was not given proper notice to prepare a defense for a Section 3309 violation or an allegation that he was suspected of driving while impaired, and also maintains that the allegations in the trooper's affidavit about him speeding and disregarding a stop sign were incredible. **Id.** at 50-55. He concludes that his criminal complaint is "invalid" and that his "entire prosecution of the ["car stop"] case would have been the fruit of poisonous tree." **Id.** at 55.

To the extent that Appellant alleges that resting the basis for the car stop in CP-52-CR-0000052-2021, at least in part, on an uncharged violation of Section 3309 caused constitutional violations, that portion of his claim is unreviewable for multiple reasons. First, an issue that is not raised in the Rule 1925(b) statement with specificity is deemed waived. **See Commonwealth**

v. Bonnett, 239 A.3d 1096, 1106 (Pa. Super. 2020); **see also** Pa.R.A.P. 1925(b)(4)(vii). In his Rule 1925(b) statement, Appellant identified an entirely different claim, one which asserted a layered ineffective assistance of counsel claim for the PCRA court's review, and which was silent with respect to an uncharged Section 3309 violation resulting in a constitutional violation:

That PCRA counsel was ineffective for failing to raise ineffective assistance of trial counsel for trial counsel's failure, at the suppression hearing, to object to or move to dismiss for the Commonwealth's use of information outside the affidavit to establish the initiation of the traffic stop. This was in violation of [Appellant's] right to due process as said information was not mentioned in the affidavit nor criminal complaint.

See Rule 1925(b) Statement, 6/16/25, ¶ 4. Having failed to identify an uncharged traffic offense as the thing that he was referring to as "outside the affidavit" in the Rule 1925(b) statement, Appellant did not specifically identify the constitutional violation alleged on appeal. As a result, he waived that portion of the claim. **See Commonwealth v. Dowling**, 778 A.2d 683, 686-87 (Pa. Super. 2001) (explaining when a Rule 1925(b) statement "is too vague to allow the court to identify the issues raised on appeal[, it] is the functional equivalent to no Concise Statement at all.>").

The second reason the present claim is waived for review is because Appellant failed to preserve it for our review by including it in his PCRA petition. **See** Pa.R.A.P. 302(a); **Ousley**, 21 A.3d at 1242; **see also Commonwealth v. Strunk**, 953 A.2d 577, 579 (Pa. Super. 2008) (stating,

“Even issues of constitutional dimension cannot be raised for the first time on appeal.”).

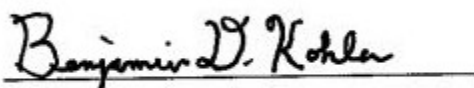
With respect to Appellant’s assertion that the trial court lacked jurisdiction because an uncharged violation of Section 3309 was considered as a basis for the car stop, that portion of this claim is not subject to waiver as it is well settled that an objection to lack of subject matter jurisdiction can never be waived. **See Commonwealth v. Jones**, 929 A.2d 205, 208 (Pa. 2007), **citing Commonwealth v. Little**, 314 A.2d 270, 272 (Pa. 1974) (“An objection to lack of subject-matter jurisdiction can never be waived; it may be raised at any stage by the parties or by a court in its own motion.”). However, the only claim Appellant raises on appeal that bears on the question of the trial court’s jurisdiction is an assertion that, because the Commonwealth did not charge him with a Section 3309 violation, the court “was without authority/jurisdiction to try, convict or make a determination on [a Section 3309 charge] because that specific offense was not included in the criminal complaint or information.” Appellant’s Brief, 50-51. Appellant is correct that he could not be convicted of an offense that he was not charged with committing. Indeed, he was not convicted of any summary charge under Section 3309. On the other hand, his vague assertion that the court could not make “a determination” as to whether he violated that traffic offense in its review of the legality of the car stop in Case 52-2021 is incorrect.

Contrary to Appellant’s reasoning for this jurisdictional claim, for there to be a valid traffic stop by police, “[t]here is no requirement that an actual

[Vehicle Code] violation be established, only that there be a reasonable basis for the officer's action in stopping the vehicle." ***Commonwealth v. Vincett***, 806 A.2d 31, 33 (Pa. Super. 2002) (holding that potential defenses to traffic violations do not affect the validity of the stop). Instantly, the Commonwealth did not need to charge Appellant with a Section 3309 violation in order for the pre-trial court to factor in whether the officer's observation of a possible Section 3309 violation was an additional factor justifying the stop. In any event, there were multiple observed motor vehicle violations in this case that justified the car stop and Appellant was convicted of two of those summary offenses. In this circumstance, we struggle to precisely understand the basis for Appellant's jurisdictional claim and nevertheless deny it as undeveloped and meritless.¹³

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/21/2026

¹³ Appellant's ability to prove that the trial court somehow lacked jurisdiction for the "car stop" case based on its pre-trial consideration of an uncharged violation of Section 3309 is also hampered by the fact that this Court, on direct review, already noted that we "discern[ed] no error in the trial court's consideration of the suppression hearing testimony of Trooper O'Connor in determining the legality of that stop." ***Land***, 2024 WL 3102881, *3.