



DISTRICT ATTORNEY'S OFFICE OF CHESTER COUNTY

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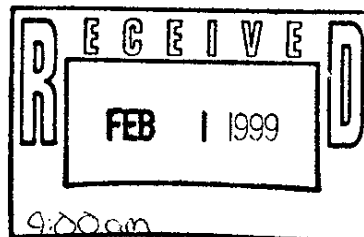
George P. March
Chief County Detective

Anthony A. Sarcione
District Attorney

Joseph W. Carroll
First Assistant
District Attorney

January 28, 1999

Local Government Commission
Attention: Virgil F. Puskarich
Executive Director
Senate Box 203078
Main Capital Building
Harrisburg, Pennsylvania 17120-3078



Re: Powers and Responsibilities of County Detectives

Dear Mr. Puskarich: *Virgil*

Pursuant to your request, enclosed please find a report outlining the powers and responsibilities of county detectives working under the jurisdiction of the District Attorney's Office. Attached to the end of the report are copies of the cases and statutes cited within the outline.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Anthony A. Sarcione
District Attorney of Chester County

POWERS AND RESPONSIBILITIES OF COUNTY DETECTIVES WORKING UNDER THE JURISDICTION OF THE DISTRICT ATTORNEY'S OFFICE

The appointment, responsibilities, and authority of county detectives working under the jurisdiction of the District Attorney's Office is governed by statute. The statutes are classified according to the class of the county. An addendum is attached which lists the classification of all the counties in Pennsylvania.

The following report is divided into three sections: Appointment of County Detectives, Training Requirements, and Powers and Duties of the County Detectives. Each section begins with a summary of the relevant statutes, and case law. Copies of the applicable statutes and case law are attached to the end of this report.

Appointment of County Detectives

- 16 P.S. §7741 - Counties of the First Class
- 16 P.S. §4440 - Counties of the Second Class
- 16 P.S. §1440(a) - Counties of the Third and Fourth Class
- 16 P.S. §1440(b) - Counties of the Fifth, Sixth, Seventh and Eighth Class.
- 16 P.S. §4441 - Special detectives

In Counties of the First Class, the district attorney may appoint a chief county detective, an assistant chief county detective, and up to twenty (20) special county detectives (Note: Philadelphia, a county of the First Class, does not follow this procedure. The district attorney of Philadelphia appoints the chief county detective. The other detectives within Philadelphia are hired pursuant to the Civil Service Act).

In Counties of the Second Class, the district attorney may appoint a chief county detective, an assistant chief county detective, and as many county detectives, sergeant, special county detectives and junior county detectives as the salary board shall fix.

In Counties of the Third and Fourth Classes, the district attorney may appoint a chief county detective, an assistant county detective, and such other county detectives as the salary board may authorize.

In Counties of the Fifth, Sixth, Seventh and Eight Classes, the district attorney may appoint one chief county detective and such other county detectives as the salary board may authorize.

The district attorney may appoint a special detective whose duty is shall be to assist in obtaining such evidence as shall be directed by the district attorney. The special detective may perform other duties as the court may direct. He must be approved by the court of quarter sessions, and by the salary board.

Training Requirements

- 53 Pa.C.S.A. §§2161-2171
- 53 Pa.C.S.A. §2161 establishes the Municipal Police Officers' Education and Training Program, which is administered by the Pennsylvania State Police.
- 53 Pa.C.S.A. §2164 establishes the Municipal Police Officers Education Training Commission, which manages the educational program and provides certifications to those officers who fulfill the requirements.
- 53 Pa.C.S.A. §2167 dictates which individuals must obtain the certification.

County detectives are subject to the same training requirements imposed on police officers. They must be trained pursuant Title 53, chapter 21, prior to their enforcing the laws of the Commonwealth under either the Crimes Code or the Vehicle Code, or being authorized to carry a firearm.

The Municipal Police Officers Education and Training Commission mandates that county detectives attend a 520-hour course that covers the essential topics required for police training. A list of the facilities, which provide this certified program, is attached.

A law enforcement officer who relocates to Pennsylvania from another state, who has been certified as an officer in the other state, may have a portion of the training requirement waived. However, the individual still must attend a course on Pennsylvania Law. The Commission is currently in the process of drafting a full waiver exam. The waiver exam will be able to be utilized to fully certify those who pass the exam without requiring the individual (whether they are out-of-state or from Pennsylvania) to attend the recruit training.

A police officer must complete all of the training requirements established by the commission and be duly certified as having met those requirements by the commission before receiving any salary, compensation or other consideration for the performance of duties as a police officer. Pursuant to Section 2167, any official who pays a salary to a person in violation of this provision commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100.00 or be imprisoned for a term not to exceed a period of 30 days. The Municipal Police Officers Education and Training Commission may stop payment of all funds paid or payable to municipalities for any violation of this subchapter.

Powers and Duties of County Detectives

- 16 P.S. §§1440, 1441, 4440, 4441 and 7741.
- Commonwealth v. Frombach, 420 Pa. Super. 498, 617 A.2d 15 (1992).
- Commonwealth v. Dieterick, 429 Pa. Super. 180, 631 A.2d 1347, appeal denied, 538 Pa. 608, 645 A.2d 1312 (1993).

County detectives shall be general police officers, and shall have all the powers now conferred on constables by existing laws of the Commonwealth, so far as they relate to crimes or criminal procedure. They shall investigate and make reports to the district

attorney as to the conduct in the office of magistrates, constables, deputy constables, and other officers connected with the administration of criminal justice.

County detectives shall make such investigation and endeavor to obtain such evidence as may be required by the district attorney in a criminal case. The district attorney may direct the county detective to perform other duties.

County detectives have the power to enforce the provisions of both the Crimes Code and the Vehicle Code.

The Supreme Court and the Superior Court of Pennsylvania have determined that the legislative provisions and relevant case law express a clear intent to classify county detectives as police officers who possess general police powers to enforce the laws of the Commonwealth. Additionally, our courts have determined that county detectives are not restricted to the powers bestowed upon constables. Rather, county detectives possess the powers of both general police officers and constables.

**PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION
CLASS OF COUNTY LIST**

	1ST	2ND	2A	3RD	4TH	5TH	6TH	7TH	8TH
COUNTY	Philadelphia	Allegheny	Bucks	Berks	Beaver	Blair	Adams	Juniata	Cameron
			Delaware	Chester	Butler	Centre	Armstrong	Perry	Forest
			Montgomery	Dauphin	Cambria	Franklin	Bedford	Pike	Fulton
				Erie	Cumberland	Lawrence	Bradford	Snyder	Montour
				Lackawanna	Fayette	Lebanon	Carbon	Union	Potter
				Lancaster	Schuylkill	Lycoming	Clarion	Wayne	Sullivan
				Lehigh	Washington	Mercer	Clearfield	Wyoming	
				Luzerne		Monroe	Clinton		
				Northampton		Northumberland	Columbia		
				Westmoreland			Crawford		
				York			Elk		
							Greene		
							Huntingdon		
							Indiana		
							Jefferson		
							McKean		
							Mifflin		
							Somerset		
							Susquehanna		
							Tioga		
							Venango		
							Warren		
	1	1	3	11	7	9	22	7	6

*13715 16 P.S. § 7741

**PURDON'S PENNSYLVANIA
STATUTES AND CONSOLIDATED
STATUTES ANNOTATED
PURDON'S PENNSYLVANIA
STATUTES ANNOTATED
TITLE 16. COUNTIES
CHAPTER 3. COUNTIES OF THE
FIRST CLASS
ARTICLE XII. DISTRICT
ATTORNEY, ASSISTANTS AND
DETECTIVES
(C) DETECTIVES**

Current through End of the 1997 Reg. Sess.

§ 7741. Appointment; powers and duties

In each and every county of the first class of this Commonwealth, the district attorney may appoint a chief county detective, an assistant chief county detective, and special county detectives not exceeding twenty in number, whose duties it shall be to investigate and make report to the district attorney as to the conduct in office of magistrates, constables, deputy constables, and other officers connected with the administration of criminal justice; to make such investigation and endeavor to obtain such evidence as may be required by the district attorney in any criminal case; and perform such other duties as the district attorney may direct. Said detectives shall be general police officers, and shall have all powers now conferred

on constables by existing laws of this Commonwealth so far as they relate to crimes or criminal procedure.

CREDIT(S)

1956 Main Volume

1919, June 3, P.L. 369, § 1; 1925, April 29, P.L. 352, § 1.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1956 Main Volume

Section 3 of the act of 1919 repeals all acts or parts of acts inconsistent therewith, so far as they affect any county within or coming within the provisions thereof.

REFERENCES

CROSS REFERENCES

Death benefits, law enforcement officers killed in line of duty, see 53 P.S. §§ 891, 892.
Municipal police officers' education and training program, see 53 P.S. § 740 et seq.
Peace officers, powers and duties, see 16 P.S. § 1216.

**LAW REVIEW AND JOURNAL
COMMENTARIES**

Arrest and search powers of special police in Pennsylvania: Do your constitutional rights change depending on the officer's uniform? 59 Temp.L.Q. 497 (1986).

*12696 16 P.S. § 4440

**PURDON'S PENNSYLVANIA
STATUTES AND CONSOLIDATED
STATUTES ANNOTATED
PURDON'S PENNSYLVANIA
STATUTES ANNOTATED
TITLE 16. COUNTIES
CHAPTER 2. SECOND CLASS
COUNTY CODE
ARTICLE XIV. DISTRICT
ATTORNEY, ASSISTANTS AND
DETECTIVES
(C) COUNTY DETECTIVES**

Current through End of the 1997 Reg. Sess.

**§ 4440. Appointment; duties and
compensation of county detectives**

(a) The district attorney may appoint one chief county detective, an assistant chief county detective, and as many county detectives, sergeant, special county detectives and junior county detectives as the salary board shall fix.

(b) County detectives shall at all times be subject to the orders of the district attorney, and shall investigate and make report to the district attorney as to the conduct in office of magistrates, constables, deputy constables and other officers connected with the administration of criminal justice, to make investigations, and endeavor to obtain such evidence as may be required by the district attorney in any criminal case, and perform such other duties as the district attorney may direct. Said detectives shall be general police officers and shall have all powers now conferred on constables by existing laws of this Commonwealth, so far as they relate to crime or criminal procedure, and they shall serve subpoenas in cases in which the Commonwealth is a party in a court of record.

(c) Said chief county detective, assistant chief county detective, county detectives, sergeant, special county detectives and junior county detectives shall not be entitled to receive any fees

whatsoever, but shall each receive such salary as shall be fixed by the salary board, together with all necessary traveling expenses, which said salary and expenses, having been verified by affidavit of the chief county detective, assistant chief county detective, county detective, sergeant, special county detective or junior county detective incurring the same, and approved by the district attorney, shall be paid out of the treasury of the county, on a certificate issued by the district attorney directed to the controller of the county, who shall order warrants for said amounts according to law.

CREDIT(S)

1956 Main Volume

1953, July 28, P.L. 723, art. XIV, § 1440.

***12697 <<CHAPTER 2. SECOND
CLASS COUNTY CODE>>**

<<REPEALED IN PART>>

< Section 2104 of Act 1989, July 6, P.L. 169, No. 32 (35 P.S. § 6021.2104), a provision of the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101 to 6021.2104), repealed the Act of July 28, 1953, P.L. 723, No. 230, the Second Class County Code (16 P.S. § 3101 et seq.), insofar as it is inconsistent with the Storage Tank and Spill Prevention Act. However, section 2102 of Act 1989, July 6, P.L. 169, No. 32 (35 P.S. § 6021.2102) provides that the Act of July 28, 1953, P.L. 723, No. 230, is saved from repeal "to the extent that it provides authority for the regulation and prevention of fire or explosive hazards at above-ground or underground storage tanks." >

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1956 Main Volume

For similar provisions in The County Code, see § 1440 of this title.

Prior Laws:

- 1947, July 5, P.L. 1308, § 16.
- 1939, June 20, P.L. 466, § 1.
- 1931, June 9, P.L. 401, § 1.
- 1929, May 2, P.L. 1278, art. III, § 276.

REFERENCES**CROSS REFERENCES**

- Death benefits, law enforcement officers killed in line of duty, see 53 P.S. §§ 891, 892.
- Municipal police officers' education and training program, see 53 P.S. § 740 et seq.
- Peace officers, powers and duties, see 16 P.S. § 1216.

ANNOTATIONS**NOTES OF DECISIONS**

Collective bargaining 2
Construction and application 1

1. Construction and application

In accordance with section of county home rule charter setting forth powers and duties of county district attorney, this section authorizing district attorney to appoint county detectives and 16 P.S. § 3450 providing that appointees to county offices or positions other than to elected officers shall be subject to removal at pleasure of appointing power authorize and empower a district attorney to discharge a county detective. *Hazel v. D'Iorio*, 433 A.2d 162, 61 Pa.Cmwth. 126, Cmwth.1981, affirmed 466 A.2d 1346, 502 Pa. 469.

*12698 County district attorney's power to appoint and supervise employment of county detectives under county home rule charter includes power to discharge. *Hazel v. D'Iorio*, 433 A.2d 162, 61 Pa.Cmwth. 126, Cmwth.1981, affirmed 466 A.2d 1346, 502 Pa. 469.

Provisions of county home rule charter vesting county council with interim power to discharge county employees did not apply to county detective. *Hazel v. D'Iorio*, 433 A.2d 162, 61 Pa.Cmwth. 126, Cmwth.1981, affirmed 466 A.2d 1346, 502 Pa. 469.

Section of county home rule charter vesting county district attorney with power to oversee and supervise employment of county detectives and under which district attorney has power to discharge is exception to section of charter providing for all employees to continue in employment until succeeded or removed by action of county council. *Hazel v. D'Iorio*, 433 A.2d 162, 61 Pa.Cmwth. 126, Cmwth.1981, affirmed 466 A.2d 1346, 502 Pa. 469.

Control of county detectives is vested in the district attorney, and an arbitrator's decision under 43 P.S. § 217.1 providing, inter alia, that policemen employed by a political subdivision of the Commonwealth shall have the right to bargain collectively with public employers, cannot disturb that statutorily derived right. *Allegheny County v. Hartshorn*, 304 A.2d 716, 9 Pa.Cmwth. 132, Cmwth.1973, affirmed 333 A.2d 914, 460 Pa. 560.

2. Collective bargaining

County detectives who sought to conduct collective bargaining under 43 P.S. § 217.1, providing procedure for policemen to bargain with their employer were not required to seek initial determination from Pennsylvania Labor Relations Board as to whether they were policemen within meaning of the statute prior to instituting action in mandamus to compel arbitration. *Hartshorn v. Allegheny County*, 333 A.2d 914, 460 Pa. 560, Sup.1975.

County detectives were "policemen" and, therefore, had right to collective bargaining under 43 P.S. § 217.1, providing procedure for policemen to bargain with their employer. *Hartshorn v. Allegheny County*, 333 A.2d 914, 460 Pa. 560, Sup.1975.

A district attorney's right to appoint and control assistant county detectives pursuant to 16 P.S. § 4440 may not be denigrated by a provision in a collective-bargaining agreement that states that in all cases of promotions, transfers, demotions, shift scheduling and filling of vacancies or new positions, seniority shall be the primary factor. *Barkley v. Lawrence County*, 35 Pa. D. & C.3d 491 (1982).

*11545 16 P.S. § 1440

**PURDON'S PENNSYLVANIA
STATUTES AND CONSOLIDATED
STATUTES ANNOTATED
PURDON'S PENNSYLVANIA
STATUTES ANNOTATED
TITLE 16. COUNTIES
CHAPTER 1. THE COUNTY CODE
ARTICLE XIV. DISTRICT
ATTORNEY, ASSISTANTS AND
DETECTIVES
(C) COUNTY DETECTIVES**

Current through End of the 1997 Reg. Sess.

**§ 1440. Appointment; duties and
compensation of county detectives**

(a) In counties of the third and fourth classes, the district attorney may appoint one chief county detective, one assistant county detective and such other county detectives as the salary board may authorize.

(b) In counties of the fifth, sixth, seventh and eighth classes, the district attorney may appoint one chief county detective and such other county detectives as the salary board may authorize.

(c) County detectives shall, at all times, be subject to the orders of the district attorney, and shall investigate and make reports to him as to the conduct in office of magistrates, constables, deputy constables and other officers connected with the administration of criminal law, shall make investigations and endeavor to obtain evidence required by the district attorney in criminal cases, and shall perform such other duties as the district attorney may direct.

(d) County detectives shall be general police officers and shall have the powers conferred on constables by the laws of this Commonwealth, so far as they relate to criminal law and procedure.

(e) County detectives of every grade and rank, in addition to their annual salary, shall be allowed

their expenses actually and necessarily incurred in the performance of their duties. Such salaries and expenses shall be paid by the county as provided by law. No county detective shall be entitled to any fee whatsoever.

CREDIT(S)

1956 Main Volume

1955, Aug. 9, P.L. 323, § 1440.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1956 Main Volume

Prior Laws:

1947, July 5, P.L. 1308, §§ 17 to 20.
1939, June 19, P.L. 441, No. 252, §§ 1, 2.
*11546 1937, May 28, P.L. 941, § 1.
1931, June 9, P.L. 401, § 1.
1929, May 2, P.L. 1278, art. III, §§ 277 to 280.
1929, March 27, P.L. 75, § 1.
1927, May 10, P.L. 877, § 2.
1927, April 6, P.L. 128, No. 99, § 1.
1925, May 12, P.L. 592, §§ 1, 2.
1921, May 12, P.L. 535, § 1.
1921, April 21, P.L. 243, § 1.
1919, July 7, P.L. 727, § 1.
1919, April 2, P.L. 31, § 2.

REFERENCES

CROSS REFERENCES

Death benefits, law enforcement officers killed in line of duty,
see 53 P.S. §§ 891, 892.
Peace officers, powers and duties, see 16 P.S. § 1216.

ANNOTATIONS

NOTES OF DECISIONS

Arrest 4
Construction and application 1
Repeals 3
Special detectives 2

1. Construction and application

County detectives possess general police power to enforce laws of Commonwealth and are not limited to only those powers conferred upon constables. *Com. v. Dietterick*, 631 A.2d 1347, 429 Pa.Super. 180, Super.1993, appeal denied 645 A.2d 1312, 538 Pa. 608.

County detectives had authority, pursuant to warrants issued by magistrate, to arrest and prosecute defendant. *Com. v. Dietterick*, 631 A.2d 1347, 429 Pa.Super. 180, Super.1993, appeal denied 645 A.2d 1312, 538 Pa. 608.

County detective is "police officer" with authority to investigate possible Vehicle Code violations and otherwise enforce provisions of Code. *Com. v. Frombach*, 617 A.2d 15, 420 Pa.Super. 498, Super.1992.

*11547 District attorney and register of wills and clerk of orphans' court were entitled to preliminary injunction restraining county commissioners from excluding them from bargaining on new labor contract with county employees with respect to the employees of their offices. *Fischer v. Rzymek*, 324 A.2d 836, 15 Pa.Cmwth. 105, Cmwth.1974.

County detectives appointed under former law were not public officers within meaning of Art. 3, § 13 of constitution prohibiting increase or decrease in salaries after appointment. *Trestrall v. Drewes*, 25 Del. 497, 1935.

Acts 1874, May 19, P.L. 218; 1876, April 13, P.L. 28, and 1913, May 8, P.L. 157 (all repealed), relating to county detectives, were not to be construed together. Act of 1913 superseded and repealed former acts in counties to which it applied, without destroying current terms or changing compensation of incumbents who held under appointments made prior to May 8, 1913. One appointed prior to act of 1913 was required to look for compensation in accordance with previous acts. *Commonwealth v. Hendershot*, 18 Luz. 269, 1915.

2. Special detectives

District attorney of county of sixth class could, whether he

had appointed county detective or not, appoint special detective for special service only; compensation of special detective being measured by value of special service rendered. *Shattuck, Com. ex rel., v. Salary Board of McKean County*, 185 A. 278, 322 Pa. 138, Sup.1936.

District attorney of county of sixth class was not empowered to appoint special detective for yearly term. *Shattuck, Com. ex rel., v. Salary Board of McKean County*, 185 A. 278, 322 Pa. 138, Sup.1936.

3. Repeals

Since former § 2298 of this title (1947, June 25, P.L. 973, § 1), fixing the number of assistant county detectives and their salaries, and the 1947 amendment to section, former 276 et seq., of this title (July 5, P.L. 1308, § 16 et seq.), giving to the salary board the right to fix the number and salaries of such assistant county detectives, were irreconcilable, the later act, was under § 565, of Title 46 to prevail, even though such 1947 amendment, which was last enacted was first effective. *Kotch v. Westmoreland Co.*, 65 Pa. D. & C. 174, 30 Wes.C.L.J. 139 (1949).

Former § 2298, of this title (1947, June 25, P.L. 973, § 1), fixing the number of assistant county detectives in counties of the third class at five and their annual salaries at \$2,860.00 each, was repealed by the 1947 amendment to former § 277 of this title (1947, July 5, P.L. 1308, § 17) vesting in the Salary Board of the county the power to fix the number of assistant county detectives and their annual salaries in counties of the third class. *Kotch v. Westmoreland Co.*, 65 Pa. D. & C. 174, 30 Wes.C.L.J. 139 (1949).

*11548 4. Arrest

Since a county detective is a general police officer and has the power conferred on constables in the commonwealth, a county detective has the right to execute a lawful arrest warrant. *Com. v. Gaudette*, 1 Pa. D. & C.4th 292 (1987), affirmed 548 A.2d 639, 381 Pa.Super. 654.

*12699 16 P.S. § 4441

1956 Main Volume

**PURDON'S PENNSYLVANIA
STATUTES AND CONSOLIDATED
STATUTES ANNOTATED
PURDON'S PENNSYLVANIA
STATUTES ANNOTATED
TITLE 16. COUNTIES
CHAPTER 2. SECOND CLASS
COUNTY CODE
ARTICLE XIV. DISTRICT
ATTORNEY, ASSISTANTS AND
DETECTIVES
(C) COUNTY DETECTIVES**

1953, July 28, P.L. 723, art. XIV, § 1441.

**<<CHAPTER 2. SECOND CLASS
COUNTY CODE>>**

<<REPEALED IN PART>>

Current through End of the 1997 Reg. Sess.

**§ 4441. Appointment of special detective
with approval of court**

The district attorney of the county may, with the approval of the salary board, whenever the court of quarter sessions and district attorney may deem it necessary for a particular and temporary assignment, appoint a special detective, whose duty it shall be to assist in obtaining such evidence as shall be directed by the district attorney for the Commonwealth, and perform such other duties as the court may direct. He shall be allowed expenses necessarily and actually incurred in the performance of his duties.

Such special detective officer shall be a general police officer and shall have all the powers that are conferred on constables by the existing laws of this Commonwealth, so far as they relate to crimes or criminal procedure.

CREDIT(S)

< Section 2104 of Act 1989, July 6, P.L. 169, No. 32 (35 P.S. § 6021.2104), a provision of the Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101 to 6021.2104), repealed the Act of July 28, 1953, P.L. 723, No. 230, the Second Class County Code (16 P.S. § 3101 et seq.), insofar as it is inconsistent with the Storage Tank and Spill Prevention Act. However, section 2102 of Act 1989, July 6, P.L. 169, No. 32 (35 P.S. § 6021.2102) provides that the Act of July 28, 1953, P.L. 723, No. 230, is saved from repeal "to the extent that it provides authority for the regulation and prevention of fire or explosive hazards at above-ground or underground storage tanks." >

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1956 Main Volume

For similar provisions in The County Code, see § 1441 of this title.

Prior Laws:
1947, July 5, P.L. 1308, § 21.
1929, May 2, P.L. 1278, art. III, § 281.

*86606 53 Pa.C.S.A. § 2161

**PURDON'S PENNSYLVANIA
STATUTES AND CONSOLIDATED
STATUTES ANNOTATED
PURDON'S PENNSYLVANIA
CONSOLIDATED STATUTES
ANNOTATED
TITLE 53. MUNICIPALITIES
GENERALLY
PART III. GOVERNMENT AND
ADMINISTRATION
SUBPART C. EXECUTIVE
DEPARTMENTS, OFFICERS AND
EMPLOYEES
CHAPTER 21. EMPLOYEES
SUBCHAPTER D. MUNICIPAL
POLICE EDUCATION AND
TRAINING**

Current through End of the 1997 Reg. Sess.

§ 2161. Establishment of program and scope of subchapter

(a) Municipal police officers' education and training program.--The commission shall establish a municipal police officers' education and training program in accordance with the provisions of this subchapter. The administration of this program shall be the responsibility of the Pennsylvania State Police.

(b) Scope of subchapter.--This subchapter applies to all municipalities.

CREDIT(S)

1997 Main Volume

1996, Dec. 19, P.L. 1158, No. 177, § 1, effective in 60 days.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

Prior Laws:

1974, June 18, P.L. 359, No. 120, § 1 (53 P.S. § 740).

REFERENCES

PENNSYLVANIA CODE REFERENCES

Administration of the program, see 37 Pa. Code § 201.1 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Arrest and search powers of special police in Pennsylvania: Do your constitutional rights change depending on the officer's uniform? 59 Temp.L.Q. 497 (1986).

LIBRARY REFERENCES

1997 Main Volume

Municipal Corporations ⇔ 180(1).
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations § 563 et seq.
P.L.E. Municipal Corporations § 187.

*86611 53 Pa.C.S.A. § 2164

**PURDON'S PENNSYLVANIA
STATUTES AND CONSOLIDATED
STATUTES ANNOTATED
PURDON'S PENNSYLVANIA
CONSOLIDATED STATUTES
ANNOTATED
TITLE 53. MUNICIPALITIES
GENERALLY
PART III. GOVERNMENT AND
ADMINISTRATION
SUBPART C. EXECUTIVE
DEPARTMENTS, OFFICERS AND
EMPLOYEES
CHAPTER 21. EMPLOYEES
SUBCHAPTER D. MUNICIPAL
POLICE EDUCATION AND
TRAINING**

Current through End of the 1997 Reg. Sess.

§ 2164. Powers and duties of commission

The powers and duties of the commission shall be as follows:

(1) To establish and administer the minimum courses of study for basic and in-service training for police officers and to revoke an officer's certification when an officer fails to comply with the basic and in-service training requirements or is convicted of a criminal offense or the commission determines that the officer is physically or mentally unfit to perform the duties of his office.

(2) To approve or revoke the approval of any school which may be utilized to comply with the educational and training requirements as established by the commission.

(3) To establish the minimum qualifications for instructors, to approve or revoke the approval of any instructor and to develop the requirements for continued certification.

(4) To promote the most efficient and economical program for police training by utilizing existing facilities, programs and

qualified Federal, State and local police personnel.

(5) To make an annual report to the Governor and to the General Assembly concerning the administration of the Municipal Police Officers' Education and Training Program and the activities of the commission, together with recommendations for executive or legislative action necessary for the improvement of law enforcement and the administration of justice.

(6) To require every police officer to attend a minimum number of hours of in-service training as provided for by regulation, unless the officer's employer files a show cause document with the commission requesting additional time for the officer to comply with the in-service training requirements. Approval of this request shall be made by the commission on a case-by-case basis.

(7) To require all police officers to undergo a background investigation to determine the individual's suitability for employment as a police officer. This investigation shall be completed prior to the employment of the officer and shall include a criminal history check, a credit check, personal interviews and any other applicable means of determining eligibility. An applicant who has been convicted of a felony or serious misdemeanor shall not be eligible for employment as a police officer.

*86612 (8) To require minimum standards for physical fitness, psychological evaluation and education as prerequisites to employment as a police officer.

(9) To appoint an executive director to administer the training program established by this subchapter. The position of executive director shall be filled by the commission which shall select the best qualified person from a list of three persons nominated by the chairman. The person who receives a simple majority of those members present and voting shall become the executive director. If the commission rejects all nominees, then the process shall be repeated until a person is selected. The executive director shall be directly responsible to the commission and may be dismissed only by two-thirds vote of the commission. The executive director shall employ a sufficient staff, including professional,

administrative and clerical personnel, to perform the tasks of the office, including the preparation of an annual budget.

(10) To consult and cooperate with universities, colleges, community colleges and institutes for the development of specialized courses for police officers.

(11) To consult and cooperate with departments and agencies of this Commonwealth and other states and the Federal Government concerned with police training.

(12) To certify police officers who have satisfactorily completed basic educational and training requirements as established by the commission and to issue appropriate certificates to those police officers.

(13) To visit and inspect approved schools at least once a year.

(14) To make such rules and regulations and to perform such other duties as may be reasonably necessary or appropriate to implement the education and training program for police officers.

(15) To grant waivers of mandatory basic training to police officers who have successfully completed previous equivalent training or who have acceptable full-time police experience, or both.

CREDIT(S)

1997 Main Volume

1996, Dec. 19, P.L. 1158, No. 177, § 1, effective in 60 days.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

Prior Laws:

1993, June 28, P.L. 174, No. 35, § 2.

1988, Dec. 21, P.L. 1865, No. 180, § 3.

1974, June 18, P.L. 359, No. 120, § 5 (53 P.S. § 744).

*86613

REFERENCES

LIBRARY REFERENCES

1997 Main Volume

Municipal Corporations ¶ 181.

WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 564.

P.L.E. Municipal Corporations § 191.

ANNOTATIONS

NOTES OF DECISIONS

Revocation of certification 1

Serious misdemeanors 2

1. Revocation of certification

Municipal Police Officers' Education and Training Commission's revocation of municipal police officer's certification because of officer's wiretapping conviction in which jury found officer guilty prior to effective date of statutory amendment authorizing Commission to revoke an officer's certification did not constitute impermissible retroactive application of statutory amendment where sentencing occurred after statutory amendment's effective date. *Saccol v. Municipal Police Officers' Educ. & Training Com'n*, 613 A.2d 122, 149 Pa.Cmwlth. 343, Cmwlth.1992.

Refusal of Municipal Police Officers' Education and Training Commission to grant municipal police officer hearing after revocation of his municipal police certification did not constitute violation of officer's right to due process where Commission conducted hearing prior to the revocation. *Saccol v. Municipal Police Officers' Educ. & Training Com'n*, 613 A.2d 122, 149 Pa.Cmwlth. 343, Cmwlth.1992.

"Convicted" in statute authorizing Municipal Police Officers' Education and Training Commission to revoke municipal police officer's certification where officer is convicted of criminal offense means return of verdict of guilty accompanied by sentencing. *Saccol v. Municipal Police Officers' Educ. & Training Com'n*, 613 A.2d 122, 149 Pa.Cmwlth. 343, Cmwlth.1992.

2. Serious misdemeanors

Where person commits a misdemeanor and said violation is the cause of a death, such misdemeanor is, per se, a "serious misdemeanor" within meaning of statute specifying that applicant for certification as a police officer who has been convicted of felony or serious misdemeanor is not eligible for employment as a police officer. *Certo v. Municipal Police Officers' Educ. and Training Com'n*, 650 A.2d 1186, 168 Pa.Cmwlth. 455, Cmwlth.1994, reargument denied, appeal denied 663 A.2d 695, 541 Pa. 643.

*86614 Homicide by vehicle is a "serious misdemeanor" disqualifying person convicted of such offense from employment as a police officer under statute. *Certo v. Municipal Police Officers' Educ. and Training Com'n*, 650 A.2d 1186, 168 Pa.Cmwlth. 455, Cmwlth.1994, reargument denied, appeal denied 663 A.2d 695, 541 Pa. 643.

Statutory provision disqualifying applicant from employment as a police officer if applicant has been convicted of serious misdemeanor was not applied retroactively to applicant; although at time of applicant's homicide by vehicle conviction in 1985, and following his training course in 1986 with municipal police academy, statute did not contain provision prohibiting police officer certification based on

criminal conviction, disqualifying provision of statute was in force at time of his application for certification in 1991. *Certo v. Municipal Police Officers' Educ. and Training Com'n*, 650 A.2d 1186, 168 Pa.Cmwlth. 455, Cmwlth.1994, reargument denied, appeal denied 663 A.2d 695, 541 Pa. 643

*86617 53 Pa.C.S.A. § 2167

**PURDON'S PENNSYLVANIA
STATUTES AND CONSOLIDATED
STATUTES ANNOTATED
PURDON'S PENNSYLVANIA
CONSOLIDATED STATUTES
ANNOTATED
TITLE 53. MUNICIPALITIES
GENERALLY
PART III. GOVERNMENT AND
ADMINISTRATION
SUBPART C. EXECUTIVE
DEPARTMENTS, OFFICERS AND
EMPLOYEES
CHAPTER 21. EMPLOYEES
SUBCHAPTER D. MUNICIPAL
POLICE EDUCATION AND
TRAINING**

Current through End of the 1997 Reg. Sess.

§ 2167. Police training

(a) General rule.--All municipalities of this Commonwealth or groups of municipalities acting in concert and all colleges and universities shall be required to train all members of their police departments pursuant to this subchapter prior to their enforcing criminal laws, enforcing moving traffic violations under Title 75 (relating to vehicles) or being authorized to carry a firearm.

(b) Ineligibility for compensation.--Any person hired as a police officer by any municipality or group of municipalities acting in concert or by any college or university shall be ineligible to receive any salary, compensation or other consideration for the performance of duties as a police officer unless the person has met all of the requirements as established by the commission and has been duly certified as having met those requirements by the commission.

(c) Penalty.--Any official of any municipality or of any college or university who orders, authorizes or pays as salary to a person in violation of the

provisions of this subchapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100 or be imprisoned for a term not to exceed a period of 30 days. The commission may stop payment of all funds paid or payable to municipalities under this subchapter for any violation of this subchapter. It shall notify the State Treasurer to discontinue disbursement of any State funds until a municipality is in compliance with this subchapter.

CREDIT(S)

1997 Main Volume

1996, Dec. 19, P.L. 1158, No. 177, § 1, effective in 60 days.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

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1988, Dec. 21, P.L. 1865, No. 180, § 5.

1974, June 18, P.L. 359, No. 120, § 9 (53 P.S. § 748).

***86618**

REFERENCES

CROSS REFERENCES

Lethal Weapons Training Act, see 22 P.S. § 41 et seq.

Summary offense defined, see 18 Pa.C.S.A. § 106.

LIBRARY REFERENCES

1997 Main Volume

Municipal Corporations  190.

WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 549.

ANNOTATIONS

NOTES OF DECISIONS

In general 1

Certification 2

Unauthorized pay 3

1. In general

Combined charges of neglect of duty failure to comply with Police Training Act, and conduct unbecoming an officer in letter notifying township police officer of his dismissal from police force were sufficiently specific and supported by substantial evidence to warrant officer's discharge. *Skrzysowski v. Attardo*, 438 A.2d 1031, 63 Pa.Cmwlth. 636, Cmwlth.1982.

2. Certification

Requirement that police chief be qualified for service through certification by Municipal Police Officers' Education and Training Commission was more than mere technicality and thus supported suspension of police chief by borough council for lack of certification. *Dougherty v. Borough of Meshoppen*, 612 A.2d 595, 149 Pa.Cmwlth. 89,

Cmwlth.1992.

3. Unauthorized pay

Award of unauthorized back pay to suspended police chief could be surcharged against borough council members who voted to approve payment; back pay was financial loss to borough that would have been avoided if council had followed proper procedure. *Dougherty v. Borough of Meshoppen*, 612 A.2d 595, 149 Pa.Cmwlth. 89, Cmwlth.1992.

Award of back pay to police chief during period of suspension for lack of certification was illegal expenditure by borough council. *Dougherty v. Borough of Meshoppen*, 612 A.2d 595, 149 Pa.Cmwlth. 89, Cmwlth.1992.

*15 617 A.2d 15

420 Pa.Super. 498

COMMONWEALTH of Pennsylvania, Appellant,

v.

John F. FROMBACH, Appellee.

Superior Court of Pennsylvania.

Argued June 16, 1992.

Filed Nov. 18, 1992.

Evidence was suppressed in prosecution for driving while under influence of alcohol and disorderly conduct, in the Court of Common Pleas, Erie County, Criminal Division, No. 959 of 1991, Connelly, J., and Commonwealth appealed. The Superior Court, No. 1748 Pittsburgh 1991, Wieand, J., held that county detective was "police officer" with authority to investigate possible Vehicle Code violations and otherwise enforce provisions of Code.

Reversed and remanded.

1. CRIMINAL LAW ⇨ 1158(4)

110 —

110XXIV Review

110XXIV(O) Questions of Fact and Findings

110k1158 In General

110k1158(4) Reception of evidence.

Pa.Super. 1992.

When factual findings of suppression court are supported by record, Superior Court may reverse only if legal conclusions drawn therefrom are erroneous.

2. AUTOMOBILES ⇨ 349(11)

48A —

48AVII Offenses

48AVII(B) Prosecution

48Ak349 Arrest, Stop, or Inquiry; Bail or Deposit

48Ak349(11) Who may arrest, stop, or inquire.

Pa.Super. 1992.

County detective is "police officer" with authority to investigate possible Vehicle Code violations and otherwise enforce provisions of Code. 75 Pa.C.S.A. § 6308(b); 13 P.S. § 45; 16 P.S. § 1440(d).

See publication Words and Phrases for other judicial constructions and definitions.

3. AUTOMOBILES ⇨ 349(9)

48A —

48AVII Offenses

48AVII(B) Prosecution

48Ak349 Arrest, Stop, or Inquiry; Bail or Deposit

48Ak349(9) Roadblock, checkpoint, or routine or random stop.

Pa.Super. 1992.

County detective possessed reasonable suspicion that defendant was violating Vehicle Code, and therefore was authorized to make stop of vehicle for further investigation, where detective observed defendant attempt to avoid sobriety checkpoint by abruptly making turn and fleeing at high rate of speed. 75 Pa.C.S.A. § 6308.

*16 [420 Pa.Super. 499] Anthony R. Himes, Asst. Dist. Atty., Erie, for Com., appellant.

David G. Ridge, Erie, for appellee.

Before WIEAND, DEL SOLE and HESTER, JJ.

WIEAND, Judge:

John F. Frombach was arrested and charged with driving while under the influence of alcohol and disorderly conduct after he attempted to avoid a sobriety checkpoint set up by police in Erie County. The trial court suppressed evidence obtained following the stop of Frombach's vehicle by a County Detective on grounds that the County Detective lacked authority to enforce the provisions of the Vehicle Code. The Commonwealth, certifying that the suppression order substantially[420 Pa.Super. 500] handicapped its prosecution of Frombach, filed the instant appeal. (FN1)

[1] The Pennsylvania Supreme Court has recently discussed the standard of review to be applied in deciding an appeal taken by the Commonwealth from an order suppressing evidence in the following manner:

We begin by noting that where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible. Pa.R.Crim.P. 323(h). See *Commonwealth v. Iannaccio*, 505 Pa. 414, 480 A.2d 966 (1984), cert. denied, 474 U.S. 830, 106 S.Ct. 96, 88 L.Ed.2d 78 (1985). In reviewing the ruling of a suppression court, our task is to determine whether the factual findings are supported by the record. *Commonwealth v. Monarch*, 510 Pa. 138, 147, 507 A.2d 74, 78 (1986). If so, we are bound by those findings. *Commonwealth v. James*, 506

Pa. 526, 533, 486 A.2d 376, 379 (1985). Where, as here, it is the Commonwealth who is appealing the decision of the suppression court, we must consider only the evidence of the defendant's witnesses and so much of the evidence for the prosecution as read in the context of the record as a whole remains uncontradicted. *Commonwealth v. James*, 506 Pa. at 532-33, 486 A.2d at 379; *Commonwealth v. Hamlin*, 503 Pa. 210, 216, 469 A.2d 137, 139 (1983).

Commonwealth v. DeWitt, 530 Pa. 299, 301-302, 608 A.2d 1030, 1031 (1992) (footnote omitted). See also: *Commonwealth v. Lagana*, 517 Pa. 371, 375-376, 537 A.2d 1351, 1353-1354 (1988); *Commonwealth v. Bagley*, *17 08 Pa.Super. 188, 193, 596 A.2d 811, 813 (1991). Where the factual findings of the suppression court are supported by the record, we may reverse only if the legal conclusions drawn therefrom are erroneous. See: *Commonwealth v. Whitney*, 511 Pa. 232, 239-240, 512 A.2d 1152, 1156 (1986); *Commonwealth v. Agnew*, 411 Pa.Super. 63, 71, 600 A.2d 1265, 1269 (1991).

The suppression court found the facts to be as follows:

[420 Pa.Super. 501] Larry Dombrowski is a County Detective in the Erie County District Attorney's Office and the DUI Coordinator therein. The District Attorney's Office has instituted written guidelines and policy for the establishment and operation of sobriety checkpoints (DUI roadblocks) in Erie County, which are in accordance with state and federal law.

On March 23, 1991, a DUI roadblock, requested by Chief Belden of the Albion Police Department, was approved and instituted at the intersection of East State Street and Orchard Street in Albion. Mr. Dombrowski, Erie County Sheriff's Deputy Robert Merski and Chief Belden were among those manning the roadblock. Approximately 600 to 700 feet prior to the roadblock was a well lit sign (at East Second and Orchard) announcing the roadblock ahead.

Testimony at the hearing, which this Court accepts as truthful, revealed that the defendant approached the sign announcing the checkpoint at a high rate of speed, stopped in the middle of the intersection and abruptly made a right turn without a proper signal upon observing the roadblock and sign. The vehicle immediately thereafter accelerated at a high

rate of speed. County Detective Larry Dombrowski and Deputy Sheriff Robert Merski immediately activated the lights on the marked enforcement vehicle, pursued and pulled the defendant over.

....

Upon stopping the vehicle Dombrowski testified it appeared the driver and passenger (a Betty Jo Chapman) were attempting to switch seats, observing that the defendant, although now in the passenger seat, still had his legs in the driver's well and vice versa [as to] Ms. Chapman.

When the defendant was asked to get out of the car he became uncooperative, loud and obnoxious. He refused to take a field sobriety test and threatened Deputy Merski with violence. When the deputy attempted to frisk the defendant for his own safety [the defendant] fled. County Detective Dombrowski testified he had to assist the deputy (who upon attempting capture had been put in a headlock [420 Pa.Super. 502] by the defendant). Dombrowski then placed the defendant under arrest for disorderly conduct. Dombrowski further related that the defendant had the strong odor of alcohol about his person and that he had observed empty beer bottles in the passenger compartment of the vehicle.

Chief Belden testified he originally observed the actions of the vehicle as it approached and then attempted to evade the DUI roadblock. A short time later when the defendant was arrested for disorderly conduct and brought to him at the roadblock he noted that the defendant had a strong odor of alcohol on his breath, bloodshot eyes, that he alternated yelling obscenities with crying (and other mood swings), that he once again refused to take any field sobriety tests and that he (Chief Belden) placed him under arrest for DUI.

Based upon these findings of fact, which are fully supported by competent evidence, the suppression court concluded that there had been reasonable suspicion to support a *Terry* stop of appellee's vehicle after he had attempted to avoid the sobriety checkpoint. The court also concluded that appellee's subsequent actions gave County Detective Dombrowski probable cause to arrest him, and that the county detective had legal authority to make an arrest for disorderly conduct. Additionally, the suppression court found that appellee's subsequent arrest for drunk driving, made by Police Chief

Belden, was also supported by probable *18 cause and in all other respects was legally proper. Nevertheless, the suppression court determined that County Detective Dombrowski lacked legal authority to enforce the provisions of the Vehicle Code. Therefore, the court held, his initial stopping of appellee's vehicle was unlawful. Based upon this conclusion, the court ordered the suppression of all evidence relevant to the charge of drunk driving which had been obtained between the time of the stop of appellee's vehicle and the time of his subsequent arrest for disorderly conduct. (FN2)

[420 Pa.Super. 503] [2] The issue which is squarely before this Court, therefore, is whether a county detective has the authority to investigate possible Vehicle Code violations and otherwise enforce the provisions of the Vehicle Code. Recently, in *Commonwealth v. Leet*, 401 Pa.Super. 490, 585 A.2d 1033 (1991), *allocatur granted*, 529 Pa. 647, 602 A.2d 857 (1992), the Superior Court, sitting en banc, considered whether a deputy sheriff had the authority to make a warrantless arrest for a Vehicle Code violation which had occurred in his presence. A majority of the Court held that only police officers had been vested with authority to enforce the provisions of the Vehicle Code. In support of this holding, the Court reasoned as follows:

The language of the statute in this case is explicit. Enforcement of the Vehicle Code has been vested by the legislature in police officers. Sheriffs and deputy sheriffs are not police officers. Cf. *Veneri v. County of Allegheny*, 12 Pa.Comm. 517, 316 A.2d 120 (1974). A deputy sheriff has not been authorized to stop a motorist and make an arrest for a Vehicle Code violation, whether or not the violation has been committed in the deputy sheriff's presence.

....

The Commonwealth would nevertheless have us revert to the common law to find general peacekeeping duties in the sheriff. Based on authority vested in sheriffs and deputy sheriffs by the common law, the Commonwealth argues that sheriffs and deputy sheriffs have inherent power and authority to arrest without a warrant for all crimes, however defined, committed in their presence, including Vehicle Code violations. We are unable to accept this reasoning. In the first place, an attempt to imply power where the same has not been granted by statute would be in direct violation of the legislature's mandate that sheriffs and deputy

sheriffs shall perform the duties imposed by statute.

[420 Pa.Super. 504] Moreover, although "the sheriff's power at early common law was indeed formidable, [] it is not tenable to carry over such a broad base of authority in the present [day]." *Veneri v. County of Allegheny*, *supra* at 523 n. 2, 316 A.2d at 124 n. 2. The encroachment of other institutions, including the expertise and technology of modern law enforcement agencies, has greatly diminished the authority of the office of sheriff. Today, the sheriff's principal function is as an arm of the court, which is the duty specifically assigned to the office of sheriff by the legislature.

Commonwealth v. Leet, *supra* 401 Pa.Super. at 496-498, 585 A.2d at 1037.

The suppression court, in the instant case, determined that a county detective is not a police officer, but a law enforcement officer and, as such, is not empowered to enforce the Vehicle Code. In reaching this conclusion, the suppression court relied upon the decision of the Supreme Court in *Commonwealth v. Galloway*, 525 Pa. 12, 574 A.2d 1045 (1990), where the Court determined that a special agent of the State Attorney General's office was not authorized to make arrests for violations of the Vehicle Code. The Court held that the sole powers of the Attorney General are set *19 forth in the Commonwealth Attorney's Act, (FN3) which permits the Attorney General to investigate and prosecute only certain enumerated offenses. These enumerated offenses do not include Vehicle Code violations. *Commonwealth v. Galloway*, *supra* at 15-19, 574 A.2d at 1046-1048.

Galloway, however, is not controlling of the instant case. We cannot look for the authority of county detectives in the Commonwealth Attorney's Act. The question before this Court, rather, is whether a county detective has been designated by the legislature as a police officer so as to be authorized to enforce provisions of the Vehicle Code. (FN4)

[420 Pa.Super. 505] "It is well settled that '[w]hen vesting a group with police powers and duties, the Legislature does so with specificity.' " *Allegheny County Deputy Sheriff's Association v. Pennsylvania Labor Relations Board*, 95 Pa.Cmwlth. 132, 135, 504 A.2d 437, 439 (1986), quoting *Commonwealth v. Pennsylvania Labor Relations Board*, 64 Pa.Cmwlth. 525, 532, 441 A.2d 470, 475 (1982), *affirmed in part and reversed in part*, 502 Pa. 7, 463 A.2d 409 (1983). See also: *Commonwealth v. Leet*, *supra* 401

Pa.Super. at 493, 585 A.2d at 1035. With respect to county detectives, the legislature has provided that they "shall be general police officers and shall have the powers conferred on constables by the laws of this Commonwealth, so far as they relate to criminal law and procedure." Act of August 9, 1955, P.L. 323, § 1440, 16 P.S. § 1440(d) (governing counties of the third through eighth class). (FN5) By the Act of June 4, 1897, P.L. 121, § 1, 13 P.S. § 45, the legislature has conferred upon constables the power to, "without warrant and upon view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any ordinances of said borough, for the violation of which a fine or penalty is imposed."

The Supreme Court has concluded that county detectives, having been classified by the legislature as policemen, possess the same collective bargaining rights as other policemen throughout the Commonwealth. See: *Hartshorn v. County of Allegheny*, 460 Pa. 560, 333 A.2d 914 (1975). See also: *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985). *D & C*, 4th 292, 293 (Northumberland County 1987), *aff'd*, 381 Pa.Super. 654, 548 A.2d 639 (1988) ("[A]s a general police officer, a county detective would have the right to execute a lawful arrest warrant."); Comment, Arrest And Search Powers Of Special Police In Pennsylvania: Do Your Constitutional Rights Change Depending On The Officer's Uniform?, 59 Temp.L.Q. 497, 498 and 507-508 (1986) ("Traditional police are government employees empowered by statute to enforce all commonwealth laws.... Today, traditional police in Pennsylvania include state police, municipal police, township police, borough police, and county district attorneys' detectives.") (emphasis added and footnotes omitted).

[3] After careful review of the relevant legislative provisions and applicable case law, it appears that the legislature has expressed a clear intent to classify county detectives as police officers who possess *20. general police power to enforce the laws of this Commonwealth. Therefore, we hold that county detectives are authorized to enforce the provisions of the Vehicle Code. It follows that the suppression court was in error when it held that County Detective Dombrowski lacked authority to stop appellee's

vehicle after observing appellee attempt to avoid the sobriety checkpoint by abruptly making a right turn and fleeing at a high rate of speed. Dombrowski possessed reasonable suspicion that appellee was violating the Vehicle Code; and, therefore, pursuant to 75 Pa.C.S. § 6308, he was authorized to make a Terry stop of the vehicle for further investigation. See: *Commonwealth v. Metz*, 412 Pa.Super. 100, 602 A.2d 1328 (1992).

Order reversed. Case remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

FN1. The appeal is proper pursuant to *Commonwealth v. Dugger*, 506 Pa. 537, 486 A.2d 382 (1985).

FN2. All evidence obtained after appellee's arrest for disorderly conduct was deemed by the suppression court to be admissible because County Detective Dombrowski had the legal authority to make an arrest for disorderly conduct, and his actions in doing so were supported by probable cause. Moreover, Police Chief Belden had both legal authority and probable cause to arrest appellee for drunk driving.

FN3. Act of October 15, 1980, P.L. 950, No. 164, § 101 et seq., 71 P.S. § 732.101 et seq.

FN4. The Vehicle Code, at 75 Pa.C.S. § 6308(b), provides as follows:

(b) Authority of police officer.--Whenever a police officer is engaged in a systematic program of checking vehicles or drivers or has articulable and reasonable grounds to suspect a violation of this title, he may stop a vehicle, upon request or signal, for the purpose of checking the vehicle's registration, proof of financial responsibility, vehicle identification number or engine number or the driver's license, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

FN5. Erie County is a county of the third class. The same powers have been conferred upon county detectives in counties of the first and second class by the Act of July 28, 1953, P.L. 723, art. XIV, § 1440, 16 P.S. § 4440(b) (2nd class counties) and by the Act of June 3, 1919, P.L. 369, § 1, as amended, 16 P.S. § 7741 (1st class counties).

*1347 631 A.2d 1347

429 Pa.Super. 180

COMMONWEALTH of Pennsylvania

v.

G. Scott DIETTERICK, III, Appellant.

Superior Court of Pennsylvania.

Argued June 24, 1993.

Filed Oct. 14, 1993.

Defendant was convicted in the Court of Common Pleas, Luzerne County, Criminal Division, No. 2191 & 3161 of 1989, O'Malley, J., of tampering with public records or information, unsworn falsification to authority, and forgery. Defendant appealed. The Superior Court, No. 2971 Philadelphia 1992, Cercone, J., held that: (1) Commonwealth was not required to disclose identity of witnesses, who were not eyewitnesses, to defense during informal discovery or to prospective jurors during voir dire, and (2) trial court adequately charged jury as to elements of forgery.

Judgment of sentence affirmed.

1. CRIMINAL LAW ⇨65

110 —

110VII Parties to Offenses

110k63 Principals in Second Degree

110k65 Presence.

Pa.Super. 1993.

County detectives had authority, pursuant to warrants issued by magistrate, to arrest and prosecute defendant. 16 P.S. § 1440(d).

2. COUNTIES ⇨81.1

104 —

104III Officers and Agents

104k81 Authority and Powers

104k81.1 In general.

Pa.Super. 1993.

County detectives possess general police power to enforce laws of Commonwealth and are not limited to only those powers conferred upon constables. 16 P.S. § 1440(d).

3. CRIMINAL LAW ⇨629(3.1)

110 —

110XX Trial

110XX(A) Preliminary Proceedings

110k629 List of Witnesses and Disclosure of Other Matters

110k629(3) List or Disclosure of Prosecution Witnesses

110k629(3.1) In general.

[See headnote text below]

3. JURY ⇨131(6)

230 —

230V Competency of Jurors, Challenges, and Objections

230k124 Challenges for Cause

230k131 Examination of Juror

230k131(6) Bias and prejudice.

Pa.Super. 1993.

Commonwealth was not required to disclose identity of witnesses, who were not eyewitnesses, to defense during informal discovery or to prospective jurors during voir dire. Rules Crim.Proc., Rule 305, 42 Pa.C.S.A.

4. CRIMINAL LAW ⇨1153(1)

110 —

110XXIV Review

110XXIV(N) Discretion of Lower Court

110k1153 Reception of Evidence

110k1153(1) In general.

Pa.Super. 1993.

Admissibility of evidence is matter left to sound discretion of trial court, and appellate court may reverse only upon showing that trial court abused its discretion.

5. CRIMINAL LAW ⇨338(1)

110 —

110XVII Evidence

110XVII(D) Facts in Issue and Relevance

110k338 Relevancy in General

110k338(1) In general.

Pa.Super. 1993.

Evidence is admissible if, and only if, it is "relevant": evidence must logically or reasonably tend to prove or disprove material fact in issue, to make such fact more or less probable, or afford basis or support for reasonable inference or presumption regarding existence of material fact.

See publication Words and Phrases for other judicial constructions and definitions.

6. CRIMINAL LAW ⇨629(3.1)

110 —

110XX Trial

110XX(A) Preliminary Proceedings

110k629 List of Witnesses and Disclosure of Other Matters

110k629(3) List or Disclosure of Prosecution Witnesses

110k629(3.1) In general.
Pa.Super. 1993.

Commonwealth is under no obligation to disclose names of all its witnesses to defendant. Rules Crim.Proc., Rule 305, 42 Pa.C.S.A.

7. CRIMINAL LAW ⇔ 1088.11

110 —
110XXIV Review
110XXIV(G) Record and Proceedings Not in Record
110XXIV(G)2 Scope and Contents of Record
110k1088.11 Instructions.

Pa.Super. 1993.

Superior Court would not consider on appeal defendant's contentions that trial court erred in failing to give defendant's requested points of charge, which were not part of certified record on appeal, although requested points of charge were included in reproduced record.

8. CRIMINAL LAW ⇔ 1114.1(1)

110 —
110XXIV Review
110XXIV(G) Record and Proceedings Not in Record
110XXIV(G)15 Questions Presented for Review
110k1113 Questions Presented for Review
110k1114.1 Limitation by Scope of Record
110k1114.1(1) In general.

Pa.Super. 1993.

Superior Court is limited to considering only facts which have been duly certified in record on appeal.

9. CRIMINAL LAW ⇔ 1114.1(1)

110 —
110XXIV Review
110XXIV(G) Record and Proceedings Not in Record
110XXIV(G)15 Questions Presented for Review
110k1113 Questions Presented for Review
110k1114.1 Limitation by Scope of Record
110k1114.1(1) In general.

Pa.Super. 1993.

For purposes of appellate review, what is not of record does not exist.

10. CRIMINAL LAW ⇔ 822(1)

110 —
110XX Trial
110XX(G) Instructions: Necessity, Requisites, and Sufficiency
110k822 Construction and Effect of Charge as

a Whole

110k822(1) In general.
Pa.Super. 1993.

In reviewing jury instructions for prejudicial and reversible error, charge must be read and considered as a whole.

11. CRIMINAL LAW ⇔ 822(1)

110 —
110XX Trial
110XX(G) Instructions: Necessity, Requisites, and Sufficiency
110k822 Construction and Effect of Charge as a Whole
110k822(1) In general.

Pa.Super. 1993.

Prejudicial and reversible error in jury instructions cannot be based upon isolated excerpts; it is general effect of charge that controls.

12. CRIMINAL LAW ⇔ 1172.1(1)

110 —
110XXIV Review
110XXIV(Q) Harmless and Reversible Error
110k1172 Instructions
110k1172.1 In General
110k1172.1(1) Instructions in general.

Pa.Super. 1993.

If Superior Court concludes that jury charge is erroneous, Court will grant new trial unless error is deemed harmless.

13. CRIMINAL LAW ⇔ 1172.1(1)

110 —
110XXIV Review
110XXIV(Q) Harmless and Reversible Error
110k1172 Instructions
110k1172.1 In General
110k1172.1(1) Instructions in general.

Pa.Super. 1993.

Error in jury charge is deemed harmless only if appellate court is convinced beyond a reasonable doubt that error is harmless.

14. CRIMINAL LAW ⇔ 769

110 —
110XX Trial
110XX(G) Instructions: Necessity, Requisites, and Sufficiency
110k769 Duty of judge in general.

Pa.Super. 1993.

Jury instruction will be upheld if it adequately and accurately reflects law and is sufficient to guide jury through its deliberations.

15. FORGERY ☞4

181 —

181k3 Elements of Offenses

181k4 In general.

Pa.Super. 1993.

Elements of forgery are that there must be false writing, instrument must be capable of defrauding, and it must have been intended to defraud. 18 Pa.C.S.A. §§ 4101, 4101(a)(2).

16. CRIMINAL LAW ☞1130(1)

110 —

110XXIV Review

110XXIV(I) Briefs

110k1130 In General

110k1130(1) Necessity.

Pa.Super. 1993.

Although issue may be contained in written posttrial motions, unless it is briefed or argued during posttrial proceedings, issue is waived for purposes of appellate review.

*1349 [429 Pa.Super. 183] Stephen K. Urbanski, Kingston, for appellant.

Scott Gartley, Asst. Dist. Atty., Wilkes-Barre, for Com., appellee.

Before CAVANAUGH, HUDOCK and CERCONE, JJ.

CERCONE, Judge.

This is an appeal from the judgment of sentence entered by the trial court on July 17, 1992. For the reasons set forth below, we affirm.

Appellant was arrested and charged with thirteen counts of tampering with public records or information, five counts of unsworn falsification to authority, and one count of forgery. The trial court concisely summarized the history of this case as follows:

In October 1990, a jury found the defendant guilty of each and every charge filed against him, which totaled 19 in all.

The prosecution charged that from 1984-1987 the defendant fraudulently presented bogus certificates of insurance to several school districts. The school districts involved were Nanticoke Area School District, Wyoming Valley West School District and Wilkes-Barre Area School District. The essence of the charges was that the defendant falsely [429

Pa.Super. 184] represented to the school districts that they were covered by One Million Dollars (\$1,000,000.00) worth of liability insurance when in fact they were grossly underinsured. The following chart displays the various representations of the defendant:

	1984*85	1985*86	1986*87
At School District	Nanticoke	Nanticoke	Nanticoke
Wilkes*Barre	\$1,000,000.00	\$1,000,000.00	
West		Wyoming	Valley
At Insurance Company	\$500,000.00	0	\$350,000.00

In addition, the defendant told the Auditor General's Office that he had no idea where one certificate bearing the signature of Mary Sumption came from. The FBI determined that, in fact, the defendant had forged Mary Sumption's name.

In addition to the above, the defendant was charged with forgery in Count 1 of Criminal Action 3161 of 1989 for issuing a certificate of insurance with the forged name of Mary Sumption.

Trial Court Opinion dated 5/29/92 at 1-2. After a jury trial, appellant was convicted on all counts. Appellant timely filed post-verdict motions which the trial court denied. This appeal followed.

Appellant raises the following issues for our review:

[I.] Was the arrest and all subsequent proceedings illegal and in violation of [appellant's] rights due to the fact that the affiants, arresting officers, and prosecutors were Luzerne County Detectives?

[II.] Did the trial court err in failing to dismiss the charges against [appellant or in not granting] a mistrial in the case due *1350 to prosecutorial misconduct involving a subpoenaed defense witness, Harvey Nielsen?

[III.] Did the trial court err in failing to grant a mistrial due to the irrelevant and prejudicial testimony of Vincent [429 Pa.Super. 185] Lapinski and his mother, Darlene Mitchell relating to a bus accident and Vincent Lapinski's injuries?

[IV.] Did the trial court err in allowing Vincent

Lapinski, Darlene Mitchell, Donald Bailey (the former Auditor General) and Richard Angstadt to testify as Commonwealth's witnesses where their identity was not disclosed to the defense during informal discovery nor to the prospective jurors during voir dire?

[V.] Did the trial court err in failing to sustain [appellant's] demurrer?

[VI.] Did the trial court err in failing to properly instruct the jury on the law and in failing to properly instruct the jury on the numerous points for charge as requested by [appellant]?

[VII.] Were the verdicts contrary to the law and against the weight of the evidence?

We have reviewed the parties' briefs and certified record and find that the trial court's resolution of Issues II, III, V and VII is correct. We therefore, affirm on the basis of the trial court opinion filed June 2, 1992 with regard to these issues. We will address appellant's remaining issues in the order raised above.

[1] In his first issue, appellant argues that his arrest and prosecution were illegal "due to the fact that the affiants in the Criminal Complaints, the arresting officers and the Prosecutors in the Informations are Luzerne County Detectives." Appellant's Brief at 9. In this regard, appellant contends that by statute, county detectives have no right to arrest and prosecute. Appellant maintains that 16 P.S. § 1440(d) restricts the powers of county detectives to the same powers vested in constables. After reviewing the plain language of section 1440(d) as well as our holding in *Commonwealth v. Frombach*, 420 Pa.Super. 498, 617 A.2d 15 (1992), we disagree.

"It is well settled that '[w]hen vesting a group with police powers and duties, the Legislature does so with specificity.' " *Id.* at 505, 617 A.2d at 19 (quoting *Allegheny County Deputy Sheriff's Assoc. v. Pennsylvania Labor Relations Board*, 95 [429 Pa.Super. 186] Pa.Cmwlth. 132, 135, 504 A.2d 437, 439 (1986); in turn quoting *Commonwealth v. Pennsylvania Labor Relations Board*, 64 Pa.Cmwlth. 525, 532, 441 A.2d 470, 475 (1982), *affirmed in part and reversed in part*, 502 Pa. 7, 463 A.2d 409 (1983)). Section 1440 of title 16 provides that county detectives:

shall be general police officers *and* shall have the powers conferred on Constables by the laws of this Commonwealth, so far as they relate to criminal law

and procedure.

16 P.S. § 1440(d) (emphasis added). The rules of statutory construction mandate that where the words of a statute are clear and unambiguous, the letter of the statute is not to be disregarded in order to pursue its spirit. 1 Pa.C.S.A. § 1921. Moreover, every statute is to be construed, if possible, so as to give effect to all its provisions. *Id.* § 1921(a).

Under the plain language of the statute, county detectives are specifically granted the powers of both general police officers *and* constables. To interpret this statute as granting county detectives only those powers conferred upon constables would totally negate the preceding phrase which grants county detectives "general police powers." Clearly, this interpretation would not give effect to all provisions of 16 P.S. § 1440(d) and would constitute a strained interpretation of the plain language of the statute. This interpretation is supported by our decision in *Commonwealth v. Frombach*, *supra*.

[2] In *Frombach*, this court was asked to determine whether county detectives had *1351 the authority to enforce the Vehicle Code. In addressing this issue, we stated:

After careful review of the relevant legislative provisions and applicable case law, it appears that the legislature has expressed a clear intent to classify county detectives as police officers who possess general police power to enforce the laws of this Commonwealth.

Commonwealth v. Frombach, 420 Pa.Super. at 506, 617 A.2d at 20. Guided by our reasoning in *Frombach*, we find that county detectives possess general police power to enforce the laws of the Commonwealth, and are not limited to only those powers conferred upon constables. Accordingly, we find that [429 Pa.Super. 187] the county detectives in this case had the authority, pursuant to the warrants issued by a magistrate, to arrest and prosecute appellant.

[3][4][5][6] Next, appellant argues that the trial court improperly permitted Vincent Lapinski, Darlene Mitchell, Donald Bailey (the former Auditor General) and Richard Angstadt to testify as Commonwealth's witnesses where their identity was not disclosed to the defense during informal discovery nor to the prospective jurors during voir dire. It is well-settled that the admissibility of evidence is a matter left to the sound discretion of the trial court, and an appellate

court may reverse only upon a showing that the trial court abused its discretion. *Commonwealth v. Wallace*, 522 Pa. 297, 309 n. 15, 561 A.2d 719, 725 n. 15 (1989). Evidence is admissible if, and only if, it is relevant: the evidence must logically or reasonably tend to prove or disprove a material fact in issue, to make such a fact more or less probable, or afford a basis or support for a reasonable inference or presumption regarding the existence of a material fact. *Commonwealth v. Ingram*, 404 Pa.Super. 560, 576, 591 A.2d 734, 742 (1991), *allocatur denied*, 530 Pa. 631, 606 A.2d 901 (1992). *Accord Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975). Here, appellant does not contend that the evidence was irrelevant. Instead, appellant argues that the trial court should not have admitted the testimony from these witnesses because the Commonwealth failed to identify them prior to trial. We disagree. The Rules of Criminal Procedure require only that the Commonwealth disclose the identity of eyewitnesses. Pa.R.Crim.P., Rule 305, 42 Pa.C.S.A. None of the witnesses listed by appellant was an eyewitness to the alleged criminal activity. The Commonwealth is under no obligation to disclose the names of all its witnesses to the defendant. *Commonwealth v. Colson*, 507 Pa. 440, 463, 490 A.2d 811, 823 (1985), *cert. denied*, 476 U.S. 1140, 106 S.Ct. 2245, 90 L.Ed.2d 692 (1986); *Commonwealth v. Bey*, 294 Pa.Super. 229, 237, 439 A.2d 1175, 1179 (1982). Because none of the witnesses named by appellant were eyewitnesses, even the discretionary provision was inapplicable. [429 Pa.Super. 188] Accordingly, we find no error on the part of the trial court in denying appellant relief on this basis.

[7][8][9] Finally, appellant argues that the trial court did not fully and adequately charge the jury. In his brief, appellant contends that the trial court did not instruct the jury on his requested points for charge Nos. 19 through 34. However, appellant's requested points of charge, while included in the Reproduced Record, are not part of the certified record on appeal. We are limited to considering only those facts which have been duly certified in the record on appeal. *Commonwealth v. Osellanie*, 408 Pa.Super. 472, 476, 597 A.2d 130, 131 (1991). For purposes of appellate review, what is not of record does not exist. *Frank v. Frank*, 402 Pa.Super. 458, 463 n. 5, 587 A.2d 340, 342-43 n. 5 (1991).

We note that appellant's post-trial motions raise only a general allegation that the trial court:

erred in failing to inform the jury in the Court's charge of the exact charges involved in the

informations and in failing to explain the exact charges involved in the informations. The Court should have read the informations to the jury and should have explained the elements of the charges set forth in the informations.

*1352 Appellant's Post-trial Motions filed October 12, 1990. The trial court, in its opinion filed June 2, 1992, stated that the appellant's requested points for charge referred to the standard instructions and that it covered these points. Trial Court Opinion at 7. However, the trial court opinion vaguely addressed appellant's concerns regarding its explanation of the elements of forgery. Accordingly, we will address appellant's allegation of error in this regard.

[10][11][12][13][14] In reviewing jury instructions for prejudicial and reversible error, the charge must be read and considered as a whole. *Commonwealth v. Woodward*, 483 Pa. 1, 4, 394 A.2d 508, 510 (1978). *Accord Commonwealth v. Rivera*, 409 Pa.Super. 120, 127, 597 A.2d 690, 694 (1991). Error cannot be based upon isolated excerpts; it is the general effect of the charge that controls. *Id.* If we conclude that a charge is erroneous, [429 Pa.Super. 189] we will grant a new trial unless the error is deemed harmless. *Commonwealth v. Rivera*, 409 Pa.Super. at 128, 597 A.2d at 694. An error is deemed harmless only if the appellate court is convinced beyond a reasonable doubt that the error is harmless. *Commonwealth v. Story*, 476 Pa. 391, 405-06, 383 A.2d 155, 164 (1978). Moreover, a jury instruction will be upheld if it "adequately and accurately reflects the law and is sufficient to guide the jury through its deliberations." *Commonwealth v. Rivera*, 409 Pa.Super. at 128, 597 A.2d at 694 (citing *Commonwealth v. Early*, 377 Pa.Super. 219, 227, 546 A.2d 1236, 1240 (1988)).

Appellant contends that the trial court inadequately instructed the jury on the elements of forgery by failing to advise the jury that the writing must be capable of "working an injury" to another. Appellant cites this court's decisions in *Commonwealth v. DiPiero*, 205 Pa.Super. 312, 208 A.2d 912 (1965), *cert. denied*, 382 U.S. 992, 86 S.Ct. 574, 15 L.Ed.2d 479 (1965), and *Commonwealth v. Bollinger* 274 Pa.Super. 112, 418 A.2d 320 (1979) in support. However, we find that these cases summarized the law regarding forgery, as defined in 18 P.S. 5014 (repealed). The essential elements of the crime of forgery, as defined in 18 P.S. § 5014 (repealed), consist of: "(1) the false making of some instrument in writing, (2) the instrument must be apparently capable of effecting a fraud and working an injury to another, and (3) there must be a fraudulent intent."

Commonwealth v. DiPiero, 205 Pa.Super. at 317, 208 A.2d at 914. Here, however, appellant was arrested and charged with forgery under section 4101 of the Crimes Code.

[15] Section 4101 of the Crimes Code, effective June 6, 1973, sets forth a broader definition of forgery:

A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

(2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize the act[.]

[429 Pa.Super. 190] 18 Pa.C.S.A. § 4101(a)(2). At trial, the trial court instructed the jury as follows:

Now, this one is the first count of criminal action No. 3161 of 1989, and this charges[:]

The District Attorney of Luzerne County charges that between June, 1985 and June of 1986, this defendant, in said County did, with the intent to defraud the Greater Nanticoke Area School District with knowledge that he was facilitating a fraud to be perpetrated, by anyone, did make, complete, execute, authenticate, issue or transfer a writing, to wit, a certificate of insurance for Harvey and Jacqueline Nielsen regarding a National Indemnity policy number BP180953 issued between June of 1985 and June of 1986, and did sign the forged signature of Mary Sumption to the said certificate of insurance so that it purported to be the act of Mary Sumption, who did not authorize the said act.

*1353. Now, members of the jury, that charges the crime of forgery.

I am now going to touch on each one of those various crimes.

* * * * *

Now, I have already discussed briefly with you the crime of forgery.

One, there must be a false writing;

Two, the instrument must be capable of defrauding; and,

Three, it was intended to defraud.

N.T. 9/24/90 through 10/5/90 at 12771, 1273 (emphasis added).

We find that this instruction adequately summarizes the elements of forgery as set forth in 18 Pa.C.S.A. § 4101.

[16] It is unclear whether appellant detailed his remaining allegations of error before the trial court. Although an issue may be contained in written post-trial motions, unless it is briefed or argued during post-trial proceedings, the issue is waived for purposes of appellate review. *Commonwealth v. Holzer*, 480 Pa. 93, 389 A.2d 101 (1978). See also *Commonwealth v. Manigault*, 501 Pa. 506, 462 A.2d 239 (1983) (where [429 Pa.Super. 191] issues stated in post-trial motions are not briefed or argued in the lower court, issues are waived on appeal). Moreover, because appellant has not included his requested points for charge in the certified record, we are unable to determine whether appellant preserved these issues at trial, or whether the requested points for charge, if issued, would have cured the alleged error. We find, however, that the trial court adequately reviewed the elements of the offenses charged and that its charge as a whole, "adequately and accurately reflects the law and [was] sufficient to guide the jury through its deliberations." *Commonwealth v. Rivera, supra*.

Judgment of sentence affirmed.