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DAUPHIN COUNTY
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COMMONWEALTH OF PENNSYLVANIA	: IN THE COURT OF COMMON PLEAS
	: OF DAUPHIN COUNTY
v.	:
	: No. CP-22-CR-5164-2011
GARY CHARLES SCHULTZ,	:
Defendant	: CHARGES: PERJURY; PENALTIES
	: FOR FAILURE TO REPORT

COMMONWEALTH'S NOTICE OF SUPPLEMENTAL AUTHORITY

TO THE HONORABLE TODD A. HOOVER, PRESIDENT JUDGE OF SAID COURT:

AND NOW, comes the Commonwealth of Pennsylvania by its attorneys, Linda L. Kelly, Attorney General, and Bruce R. Beemer, Chief of Staff, who files this Commonwealth's Notice of Supplemental Authority, and in support thereof represents as follows:

BACKGROUND:

On November 7, 2011, agents with the Pennsylvania Office of Attorney General filed criminal complaints charging the Defendant, Gary Charles Schultz, and his Co-Defendant, Timothy M. Curley, with one count each of Perjury and Penalties for Failure to Report or to Refer in violation of 18 Pa.C.S. § 4902(a) and 23 Pa.C.S. § 6319,

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respectively. The charges were held for court at the conclusion of a preliminary hearing on December 16, 2011.

DISCUSSION:

Previously, the Commonwealth filed an Answer to Defendant Curley's Motion to Quash Count 2 of the Criminal Information. In responding to an assertion that the statute of limitations had expired, the Commonwealth argued as follows:

Denied. Defendant was a public employee at the time of the offense and the crime was committed in the course of or in connection with his employment, such that the statute of limitations was tolled for a period of eight years. 42 Pa.C.S. § 5552(c)(2). Because the offense was committed in March, 2002, the statute did not begin to run until March, 2010, and would not expire until March, 2012. The criminal complaint, filed on November 7, 2011, was timely.

Answer to Motion to Quash Count 2 at 4 ¶ 13.

Since the filing of that Answer, the Commonwealth has learned that the events underlying the offense occurred in February of 2001, not March of 2002. As such, assuming that no other tolling provision applies, the statute of limitations as computed above would have expired in February, 2011, before the filing of the criminal complaint.

However, Penalties for Failure to Report is a continuing offense.

In 2001, Penalties for Failure to Report was graded as a summary offense. As such, the statute of limitations would be two years. 42 Pa.C.S. § 5552(a).¹ A preliminary question is the date of an offense for purposes of the statute of limitations.

(d) Commission of offense.--An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the complicity

¹ Under 42 Pa.C.S. § 5553(a), summary offenses under the Vehicle Code have a statute of limitations of thirty days. This provision does not apply to non-traffic summary offenses such as Penalties for Failure to Report.

of the defendant therein is terminated. Time starts to run on the day after the offense is committed.

42 Pa.C.S. § 5552(d). The Legislature need not recite the words "This statute is intended to prohibit a continuing course of conduct" before an offense will be deemed a continuing one. Thus, Interference with Custody of Children under 18 Pa.C.S. § 2904 constitutes a continuing offense because the statute is intended to prohibit interruption of custody, so that the offense continues throughout the maintenance of the child outside of the custodian's dominion. *Commonwealth v. Stewart*, 375 Pa. Super. 585, 592-594, 544 A.2d 1384, 1387-1388 (1988).

More analogous to the facts of this case is a statute criminalizing a failure to act. Under 42 Pa.C.S. § 9795.2, certain sex offenders and sexually violent predators are required to register with the Pennsylvania State Police. Failure to do so constitutes an offense. The Superior Court has held that failure to register is a continuing offense for purposes of the statute of limitations. *Commonwealth v. Stitt*, 947 A.2d 195, 197-198 (Pa. Super. 2008), *alloc. denied*, 606 Pa.664, 995 A.2d 353 (2010) (table). The Court reasoned:

What Stitt fails to recognize is that the commission of an offense, the triggering mechanism for the statute of limitations, can also be an ongoing course of conduct, in which case it is the termination of the conduct that triggers the running of statute. See 42 Pa.C.S. § 5552(d). The purpose of the registration statute is to allow the proper authorities to keep track of sexual offenders to protect the safety of the citizens of the Commonwealth. While compliance with this statute is accomplished with the discrete act of appearing at the proper place and informing the proper authorities of one's residence, the failure to register represents the ongoing act of preventing the purpose of registration. Thus, it would be the termination of failing to register that triggers the running of the statute of limitations.

Id.

Similarly, the purpose of the Failure to Report statute is to allow the proper authorities to investigate possible child abuse and, if necessary, take action to remedy and/or punish the abuse. To paraphrase the Superior Court:

The purpose of the [reporting] statute is to allow the proper authorities to [investigate suspected child abuse] to protect the safety of the citizens of the Commonwealth. While compliance with this statute is accomplished with the discrete act of ... informing the proper authorities of [potential abuse], the failure to [report] represents the ongoing act of preventing the purposes of [reporting].

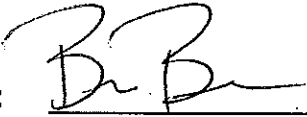
The rationale and holding of *Stitt* plainly apply to this case, and Penalties for Failure to Report is a continuing offense.

To date, Defendants still have not notified the proper authorities that they had information that Sandusky was abusing children. While it can be said that the purpose of the Failure to Report statute was satisfied when the victims notified investigators in this case, that notification would not apply to the Department of Public Welfare or to Children and Youth Services of Centre County. See 42 Pa.C.S. § 6313(b), (c). Regardless, the purpose of the statute was not fulfilled even as to law enforcement until the Grand Jury investigation began in 2008, well within the ten-year period allowed under § 5552(a), (c)(2).

Based on this additional authority, the statute of limitations has not expired and quashing the Criminal Information in this case is not warranted.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court enter an Order denying Defendant's Motion to Quash Count Two.

Respectfully submitted,
LINDA L. KELLY
Attorney General


By: 

BRUCE R. BEEMER
Chief of Staff
Attorney No. 76148

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Date: August 15, 2012

VERIFICATION

The facts recited in the foregoing Commonwealth's Notice of Supplemental Authority are true and correct to the best of my knowledge and belief. This statement is made with knowledge that a false statement is punishable by law under 18 Pa. C.S. § 4904(b).

By: 

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing Commonwealth's Notice of Supplemental Authority upon the persons and in the manner indicated below:

*Via U.S. First-Class Mail,
Postage pre-paid:*

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