

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

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: No. 5165 CR 2011; 3614 CR 2013

: CHARGE(S): Endangering the
: Welfare of Children (2 Counts);
: Obstructing the Administration of
: Law or Other Governmental
: Function; Criminal Conspiracy (To
: Commit Obstructing the
: Administration of Law or Other
: Governmental Function); Criminal
: Conspiracy (To Commit Perjury);
: Criminal Conspiracy (To Commit
: Endangering the Welfare of Children)

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Defendant Curley's Motion for Production of Notes of Proffers, Interviews or Other Reports Related to Cynthia A. Baldwin

201 AND NOW, comes the defendant, Timothy M. Curley, by and through his
attorney, Caroline M. Roberto, Esquire and respectfully files the following Motion:

1. On November 7, 2011, defendant Timothy Mark Curley was charged with one count of Perjury, a violation of 18 Pa.C.S.A. §4902 and a felony of the third degree, and one count of Failure to Report in violation of 23 Pa.C.S.A. §6319, a summary offense. On January 19, 2012, a criminal information was returned.

2. On November 1, 2012, Mr. Curley was charged by Complaint with two counts of Endangering Welfare of Children in violation of 18 Pa.C.S.A. §4304, a felony of the third degree, and Obstruction of Justice, a violation of 18 Pa.C.S.A. §5101, a

misdemeanor of the second degree and Conspiracy, 18 Pa.C.S.A. §903, to commit the same. On September 19, 2013, a criminal information was returned.

3. On November 21, 2013, defendant filed a Motion to Suppress His Grand Jury Testimony, To Dismiss Charges and To Incorporate Prior Motions Addressing Same. The purpose of the Motion was to gather into one document which is filed at the current docket numbers issues contained in previous pleadings, including issues before the Grand Jury Supervising Judge that address matters related to Cynthia A. Baldwin's representation of Mr. Curley and her subsequent Grand Jury testimony.

4. Grand Jury testimony has been provided relevant to these issues, however, Mr. Curley hereby requests production of any notes of interviews and police reports relating to the proffer of or interview with Ms. Baldwin. These interviews are necessary and material to the defense and are reasonably requested.

5. Defense counsel for Mr. Curley anticipates an evidentiary hearing related to Ms. Baldwin's violations of his right to counsel, attorney-client and work-product privileges, and breaches of the statutorily-protected grand jury secrecy. Production of these documents is necessary for preparation and litigation of the matter.

6. On October 16, 2013, the OAG produced voluminous discovery in this matter but did not provide notes of interviews or police reports related to Ms. Baldwin. Additionally, Grand Jury transcripts have been unsealed and provided to the defense. It is apparent from the material produced that the OAG conducted interviews of Ms. Baldwin and was engaged in proffer sessions with her attorney during the weeks prior to the taking of her testimony before the grand jury.

7. Defense counsel for Mr. Curley therefore respectfully requests those notes of interviews and police reports.

8. These reports and notes of interviews constitute information which defense counsel deems necessary to disposition of the issues relating to Ms. Baldwin's representation of defendants at the grand jury and her later testimony against the defendants at the grand jury.

9. These notes of interviews and police reports may reveal whether Ms. Baldwin asserted the attorney-client privilege or work product doctrine at any point, whether there was discussion of her representation of Messrs. Curley, Schultz and Spanier and whether these interviews violated the attorney-client privilege or work product doctrine.

10. This Honorable Court, pursuant to Pa.R.Cr.P., Rule 573(B)(1) and (2), is authorized to order the disclosure of the notes of interviews and reports. According to that rule, if defendant files a motion for pretrial discovery, the court may order the Commonwealth make available certain items for the defense, including "written or recorded statements" of witnesses to be called at trial or co-defendants, co-conspirators, and accomplices, whether such individuals have been charged or not. Rule 573(B)(2)(ii) and (iii). Additionally, the court may order provision, upon defense request, of "any other evidence...provided the defendant can additionally establish that its disclosure would be in the interests of justice." Pa.R.Cr.P., Rule 573(B)(2)(iv).

11. Generally, the purpose of discovery is to "permit parties in a criminal matter to be prepared for trial." ***Commonwealth v. Shelton***, 640 A.2d 892, 895 (Pa.

1994). The interests of fairness and preparation all weigh in favor of the disclosure of the notes of interviews and reports of interviews at this time rather than down the line.

12. Failure to disclose these notes of interviews and reports now for the purposes of the pretrial hearing for which they are absolutely necessary may result in a re-litigation of the issue once the additional information becomes available to the defense. Rather than deal with the issue again or at trial, defense counsel submits that it is in the interests of justice to order disclosure now, which will allow for a more just and efficient decision regarding the issues surrounding Ms. Baldwin's representation of the defendants at the grand jury and any abrogation of the attorney client privilege or violation of the work-product doctrine.

13. The notes of these interviews and any police reports relating to Ms. Baldwin are necessary to the litigation of the issues surrounding Ms. Baldwin's violations of attorney-client and work-product privileges.

14. Counsel for Mr. Curley continues to assert the attorney-client and work-product privileges regarding Ms. Baldwin's representation of him at the grand jury and this request shall not be construed as a waiver of the privilege.

Conclusion

WHEREFORE, for the reasons stated, Defendant Curley respectfully requests this Honorable Court enter an Order that the OAG must disclose to defense counsel for Mr. Curley any notes of proffers, interviews and other reports relating to Attorney Baldwin.

Respectfully submitted,

By:  _____

Caroline M. Roberto, Esquire
Attorney for Defendant,
Timothy M. Curley
Pa. I.D. No. 41524
429 4th Avenue, Suite 500
Pittsburgh, PA 15219
(412) 391-4071

COMMONWEALTH OF PENNSYLVANIA

v.

TIMOTHY MARK CURLEY

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

:
: No. 5165 CR 2011; 3614 CR 2013

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion was hand
delivered, this 9th day of December, 2013, to the following:

The Honorable Todd A. Hoover
President Judge
Dauphin County Courthouse
101 Market Street
Harrisburg, PA 17101

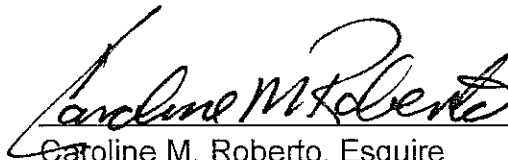
District Court Administrator
Dauphin County Courthouse
Court Administrator's Office
101 Market Street, Suite 300
Harrisburg, PA 17101

Bruce Beemer
Deputy Attorney General
Office of the Attorney General

Strawberry Square
Harrisburg, PA 17120
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Farrell & Reisinger
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tfarrell@farrellreisinger.com

A handwritten signature in cursive script, reading "Caroline M. Roberto", written over a horizontal line.

Caroline M. Roberto, Esquire
Attorney for Defendant, Timothy M. Curley

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SEALING ORDER

AND NOW, to-wit, this ____ day of ____, 2013, it is hereby ORDERED that
the enclosed Motion and Order be filed under seal with the Clerk of Courts of Dauphin
County until further order of this Court.

BY THE COURT:

_____, J.

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ORDER

AND NOW, to-wit, this ____ day of ____, 2013, upon due consideration of the foregoing Motion for Production of Notes of Proffers, Interviews or Other Reports of Cynthia A. Baldwin, it is hereby ORDERED and DECREED that the motion is GRANTED. The Pennsylvania Office of the Attorney General (OAG) must disclose to defense counsel any notes of interviews and police reports relating to Attorney Baldwin.

BY THE COURT:

_____, J.
