

**IN THE
SUPERIOR COURT OF PENNSYLVANIA,
EASTERN DISTRICT**

COMMONWEALTH	:	No. 1164 EDA 2016
OF PENNSYLVANIA,	:	
APPELLEE,	:	
	:	
V.	:	
	:	
KATHLEEN GRANAHAN KANE,	:	
APPELLANT.	:	

**COMMONWEALTH’S MOTION TO QUASH APPELLANT’S
PRETRIAL INTERLOCUTORY APPEAL**

TO THE HONORABLE JUDGES OF THE SUPERIOR COURT OF PENNSYLVANIA:

Appellee, the Commonwealth of Pennsylvania, by and through the Montgomery County District Attorney’s Office, requests that this Court quash the appeal of appellant Kathleen Granahan Kane (“defendant”) pursuant to Pa. R.A.P. 123(a) and Pa. R.A.P. 1972(a)(7):

1. Defendant is seeking to pursue a pretrial interlocutory appeal in her criminal case. She fails to cite any statute or rule in her notice of appeal that would justify such premature appellate

intervention. For the reasons discussed below, the Commonwealth respectfully requests that this Court quash her appeal.¹

2. On August 6, 2015, the Montgomery County District Attorney's Office filed a criminal complaint against defendant, charging her with perjury, false swearing-official proceeding, obstructing administration of law or other governmental function, official oppression, and conspiracy. These charges stem from defendant's orchestration of the illegal disclosure of confidential investigative information and secret grand jury information to the media, and her subsequent criminal acts designed to conceal and cover-up her crimes.

3. On March 4, 2016, defendant filed an omnibus pretrial motion. In it, she raised the following claims: (1) the entire bench of the Montgomery County Court of Common Pleas should be recused because of the alleged "close ties" that three members of the bench purportedly have to this case; (2) the charges should be quashed because the investigative grand jury proceedings were purportedly illegal; (3) the charges against her should be quashed

¹ Defendant has a related notice of appeal pending at 1166 EDA 2016. The Commonwealth will be filing a motion to quash that premature appeal as well.

because she was the victim of purported selective and vindictive prosecution; (4) the charges should be quashed because the Commonwealth did not provide a bill of particulars; and (5) the charges should be quashed because they are “duplicitous.”

Defendant’s Omnibus Pretrial Motions, ¶¶ 1-5. Defendant also requested this Court to direct the Commonwealth to produce “all recordings made through a joint investigation with Federal law enforcement” and “information on any threats, promises, inducements or benefits extended to witnesses or potential witnesses.” *Id.* at ¶¶ 6-7.

4. On the same day, defendant filed a memorandum of law in support of her omnibus motion. In it, she redacted out the claim concerning selective and vindictive prosecution. *Defendant’s Memorandum of Law*, at pp. 26-45.

5. On March 11, 2016, the Commonwealth filed a response to defendant’s omnibus pretrial motion. It argued that defendant was not entitled to relief on any of her claims.

6. On March 18, 2016, defendant filed a supplemental pretrial motion. She requested an evidentiary hearing to explore the “facts related to the leak of prejudicial recordings to the press” in an

attempt to pursue a claim of prosecutorial misconduct. *Defendant's Supplemental Pretrial Motions*, at ¶ 1. She also sought permission to file her selective and vindictive prosecution claim under seal. *Id.* at ¶ 2.

7. On March 22, 2016, the Honorable Wendy Demchick-Alloy, of the Court of Common Pleas, Montgomery County, Pennsylvania, heard argument on defendant's omnibus pretrial motion. The trial court did not rule on defendant's motion at this time. At the conclusion of the hearing, however, and without objection from the Commonwealth, the trial court scheduled an evidentiary hearing on the claim raised in defendant's supplemental petition regarding the purported leak of recordings to the press. The hearing was set for April 20, 2016.

8. On March 28, 2016, the trial court issued its order regarding defendant's omnibus motion. It deferred a ruling on defendant's selective and vindictive prosecution claim; it denied relief on the remaining issues.

9. On April 20, 2016, at the outset of the scheduled hearing on defendant's supplemental pretrial motion, defense counsel informed the trial court that defendant was withdrawing this claim,

as well as her request to file her selective and vindictive prosecution claim under seal. Counsel further advised that defendant would be filing a notice of appeal of the March 28, 2016, order denying relief on her omnibus pretrial motion. Defendant concurred with counsel's statements during an on-the-record colloquy.

10. At the conclusion of the scheduled hearing, defendant filed a notice of appeal of the March 28, 2016 order.

11. The instant appeal should be quashed. "The jurisdiction of this court is limited to appeals from final orders of the court of common pleas. An order is not a final order unless it serves to put the litigant out of court either by ending the litigation or disposing of the case entirely. *Generally, a criminal defendant may appeal only from the judgment of sentence.* This rule prevents undue delay and avoids the disruption of criminal cases by piecemeal appellate review." *Commonwealth v. Swartz*, 579 A.2d 978, 980 (Pa. Super. 1990) (emphasis added) (citations omitted).

12. The trial court's order denying defendant's pretrial claims is not a "final order" as defined in Pa. R.A.P. 341(b). The order did not "dispose of all claims and of all parties," Pa. R.A.P. 341(b)(1), because it did not dispose of the criminal charges filed against

defendant. The orders are not “expressly defined as a final order by statute,” Pa. R.A.P. 341(b)(2). Further, defendant has no right to appeal the interlocutory order as of right under Pa.R.A.P. 311.

13. The only possible avenue for a pretrial appeal is under the “collateral order” doctrine codified in Pa. R.A.P. 313. That rule permits a “narrow exception to the general rule that only final orders are appealable.” *Commonwealth v. Wells*, 719 A.2d 729, 730 (Pa. 1998). It is construed “narrowly” to avoid “piecemeal determinations and the consequent protraction of litigation.” *Commonwealth v. Sabula*, 46 A.3d 1287, 1291 (Pa. Super. 2012) (quoting *Rae v. Funeral Directors Ass’n*, 977 A.2d 1121, 1129 (Pa. 2009)).

14. Under the collateral order doctrine, an immediate appeal of an otherwise unappealable interlocutory order is permissible if it meets the following three requirements:

- (1) the order must be separable from, and collateral to, the main cause of action;
- (2) the right involved must be too important to be denied review;
- and (3) the question presented must be such that if review is postponed until after final judgment, the claim will be irreparably lost

Commonwealth v. Harris, 32 A.3d 243, 248 (Pa. 2011) (citations omitted). “All three prongs of Rule 313(b) must be met before an

order may be subject to a collateral appeal; otherwise, the appellate court lacks jurisdiction over the appeal.” *Id.*

15. Importantly, the third prong “requires that the matter must effectively be unreviewable on appeal from final judgment.” *Wells*, 719 A.2d 730. In even stronger language, the Pennsylvania Supreme Court has explained that a collateral order appeal is permissible only if “denial of immediate review would render impossible any review whatsoever of [the] individual’s claim.” *Commonwealth v. Myers*, 322 A.2d 131, 133 (Pa. 1974) (quoting *United States v. Ryan*, 402 U.S. 530, 533 (1971)).

16. Even assuming for the sake of argument that defendant’s claims could meet the first two prongs of the collateral order doctrine, she clearly cannot meet the third prong: her claims will not be irreparably lost if postponed until after final judgment. Her claims would be rendered moot by an acquittal or, if she is convicted, reviewed by this Court in an appeal following final judgment. She clearly is not in a “now or never” situation, as required by the third prong of the collateral order doctrine.

17. In sum, this criminal defendant has yet to be tried, convicted, and sentenced. Her premature appeal should be quashed

to “avoid piecemeal determinations and the consequent protraction of litigation.” *Sabula*, 46 A.3d at 1291 (quoting *Rae*, 977 A.2d at 1129).

WHEREFORE, the Commonwealth respectfully requests that the Court quash defendant’s improper interlocutory appeal.

RESPECTFULLY SUBMITTED:



KEVIN R. STEELE
DISTRICT ATTORNEY

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v.	:	
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KATHLEEN GRANAHAN KANE,	:	
APPELLEE.	:	

VERIFICATION

I, Kevin R. Steele, District Attorney of Montgomery County, Pennsylvania, swear and affirm that the matters contained in the attach Commonwealth's Motion to Quash Appellant's Pretrial Interlocutory Appeal is true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Sec. 4909, related to unsworn falsification to authorities.



KEVIN R. STEELE
DISTRICT ATTORNEY

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APPELLEE.	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.Crim.P. 576 (B) (2):

PERSONAL SERVICE

The Honorable Wendy Demchick-Alloy
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KEVIN R. STEELE
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NORRISTOWN, PA 19404

Dated: May 2, 2016