

FILED IN
SUPERIOR COURT
MAY 16 2016
EASTERN DISTRICT

IN THE
SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA

v. :
: :
: :
KATHLEEN KANE : DOCKETS #: 1164 EDA 2016
: 1166 EDA 2016

**APPELLANT’S ANSWER TO COMMONWEALTH’S
MOTION TO QUASH APPEAL**

Appellant, by and through her Attorney’s, Minora, Minora, Colbassani, Krowiak, Mattioli & Munley and Amil M. Minora, Esquire, hereby makes Answer to the Commonwealth’s Motion to Quash Appeal.

1. Denied. To the contrary, Appellant has filed an Appeal as of right pursuant to Pa. R.A.P. 313(b).
2. Denied as to all factual allegations.
3. Admitted.
4. Neither admitted nor denied as the record speaks for itself.
5. Neither admitted nor denied as the record speaks for itself.
6. Neither admitted nor denied as the record speaks for itself.
7. Neither admitted nor denied as the record speaks for itself.
8. Neither admitted nor denied as the record speaks for itself.
9. Neither admitted nor denied as the record speaks for itself.

10. Admitted.
11. Denied as a legal conclusion. To the contrary, Appellant has a right to appeal a Collateral Order pursuant to Pa. R.A.P. 313(b).
12. Denied as a legal conclusion. By way of further answer, Pa. R.A.P. 341 is inapplicable to appeals filed pursuant to Pa. R.A.P. 313(b).
13. Admitted in part; denied in part. It is admitted that Appellant has a right to appeal a collateral order pursuant to Pa. R.A.P. 313(b). All other allegations are deemed as a legal conclusion.
14. Denied as a legal conclusion. By way of further answer, Appellant meets all three prongs of the test for permitting the Appeal of the denied of a Collateral Order, as set forth below.
15. Denied as a legal conclusion. By way of further answer, Appellant meets all three prongs of the test for permitting the Appeal of the denied of a Collateral Order, as set forth below.
16. Denied as a legal conclusion. By way of further answer, Appellant meets all three prongs of the test for permitting the Appeal of the denied of a Collateral Order, as set forth below.
17. Denied as a legal conclusion. By way of further answer, Appellant meets all three prongs of the test for permitting the Appeal of the denied of a Collateral Order, as set forth below.

18. On May 29, 2014, Attorney Thomas Carluccio was appointed a Special Prosecutor by the supervising Judge of the Thirty-Fifth Statewide Grand Jury. (See Exhibit "A")

19. Said order confirmed broad powers on Carluccio which are not authorized by any statute or case law. In fact, the majority of the Pennsylvania Superior Court in the case of In re Thirty Statewide Grand Jury, 112 A.3d 624 (2015) agreed that Carluccio had neither the authority nor the lawful power to conduct a grand jury investigation, subpoena witnesses, or take sworn testimony.

20. Nevertheless, Carluccio performed all the above. He then sought and received a presentment from the Grand Jury. Justice Todd in In re Thirty-Fifth, supra, opined that "the supervising judge did not have the authority to grant the special prosecutor power and therefore the presentment is without authority."

21. Also, Justice Baer indicated several due process violations against Appellant. In re Thirty-Fifth, supra. He concluded his opinion, "if charges are ultimately brought against the Attorney General, due process in such proceedings will be required and, thus any violation through the prior proceedings will be rendered harmless." Id. at 636. Those due process violations, including, as Justice Baer noted, "I believe it is likely that Judge Carpenter and Mr. Carluccio's constant collusion, as well as *ex parte* hearings in prosecutorial rather than contempt matters

may have violated the Attorney General's due process rights," *id.* (italics in original), are now ripe to be heard.

22. Appellant has sought a judgment on the merits of whether or not the broad prosecutorial powers conferred on Carluccio can be sustained. She alleges that, under all Pennsylvania Statutes and case law, they cannot be sustained. Yet, testimony and evidence were obtained by the special prosecutor, who is not authorized under the Grand Jury Act 42 Pa. C.S. § 4542 to do so. This statute only allows for the District Attorney, Attorney General, or their designees to proceed with a Grand Jury investigation. *Id.*; see also In re Dauphin County Fourth Investigating Grand Jury, 19 A.3d 491 (2011); Independent Counsel Authorization Act 18 Pa. C.S. § 9301, et. seq. (expired in 2003).

23. Appellant's due process rights were violated starting on May 29, 2014, and those violations have not been addressed. In re Thirty-Fifth, supra. The Supreme Court narrowly ruled that a Supervising Judge can assign a Special Prosecutor or Master to inquire and advise the Court. It is that narrow issue, and that issue only, that the Supreme Court ruled upon in In re Thirty-Fifth. *Id.* Although there was great consternation and condemnation of the broad powers given to Carluccio, the Court ruled that those powers were not before the court and therefore did not decide the denial of Appellant's due process rights at that time.


24. Appellant's equal protection rights were violated, in that every person in Pennsylvania who is investigated by a Grand Jury is so investigated by a person authorized to do so under the Grand Jury Act. 42 Pa. C.S. § 4552. Each such person is responsible to the electorate for proper Administration of Criminal Justice. The Appellee will claim that he is the District Attorney of Montgomery County and responsive to the electorate for the Administration of Criminal Justice. However, the discovery material provided to Appellant consists almost entirely of material, documents, and testimony presented to the Grand Jury by Carluccio or acquired through questions raised by him. Therefore, virtually the entire case to be presented against Appellant will have been manufactured by an individual unauthorized to investigate or obtain evidence through a Grand Jury, and who did so in violation of Pennsylvania law in violation of Appellant's guarantee of equal protection.

25. If review of Appellant's Appeal is postponed until after a final judgment, and Appellant is convicted, Appellant will have been exposed to removal from her office to which she was duly elected. Her right to that office will be irreparably lost. She therefore has no adequate remedy on appeal from any judgment of conviction. Because Appellant has satisfied the requirements of Pa. R.A.P. 313(b), this appeal should not be quashed and should be heard on the merits.

WHEREFORE, the Appellant respectfully requests that this Honorable Court deny Appellee's Motion to Quash, hear Appellant's appeal on its merits, and quash the indictments against her, together with such other and further relief to Appellant as this Court deems just and proper.

Respectfully submitted:

**MINORA, MINORA, COLBASSANI,
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AFFIDAVIT OF SERVICE

Superior Court of Pennsylvania
Docket Nos.: 1166 EDA 2016

_____X

Commonwealth of Pennsylvania,
Appellee,

v.

Kathleen Granahan Kane ,
Appellant.

_____X

STATE OF PENNSYLVANIA

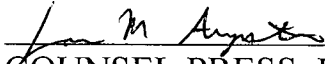
I, Jason M. Augustine, Esquire, being duly sworn according to law and being over the age of 18, upon my oath depose and say that on May 16, 2016, I served one copy of the within Appellant's Answer to Commonwealth's Motion to Quash Appeal in the above captioned matter upon via First Class Mail:

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Unless otherwise noted, filing with the Court has been perfected the same day.

May 16, 2016


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