

197 MM14

Filed in Supreme Court

JAN 7 2015

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FILED UNDER SEAL

IN THE COURT OF COMMON PLEAS MONTGOMERY COUNTY, PA

IN RE:

THE THIRTY-FIFTH STATEWIDE
INVESTIGATING GRAND JURY

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SUPREME COURT OF PENNSYLVANIA
NO. 176 M.D.D MISC. KT 2012

MONTGOMERY COUNTY COMMON PLEAS
M.D. 2644-2012

**ANSWER OF SPECIAL PROSECUTOR
TO THE QUO WARRANTO ACTION
OF ATTORNEY GENERAL KATHLEEN G. KANE, INDIV.**

Thomas E. Carluccio, Special Prosecutor to the Investigatory Grand Jury hereby answers the *Quo Warranto Action* filed by, Attorney General Kathleen G. Kane, indiv., and states in support thereof as follows:

1. Admitted.

2. Admitted in part and Denied in part. It is admitted that a Memorandum of Law in support of the aforesaid Quo Warranto Action is indeed attached to such Motion. However, any assertion that the Memorandum of Law represents law that is dispositive to the underlying issues: (i) that the Supervising Judge of the Thirty-Fifth Statewide Investigating Grand Jury maintains the requisite legal authority to establish an investigation into allegations that statewide grand jury secrecy might have been compromised; (ii) that such legal authority was unconstitutional because it violated the separation of powers inherent in the Pennsylvania Constitution; and/or (iii) that the Supervising Judge did not maintain the requisite legal authority to appoint a Special Prosecutor – are all denied. To the contrary THE INVESTIGATING GRAND

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JURY ACT, and specifically 42 Pa.C.S. §4548(a) and § 4542 thereunder are both conclusive to establishing the Supervising Judge maintains legal authority to undertake the subject Statewide Investigating Grand Jury, and to appoint a Special Prosecutor. By way of further answer, Attorney General Kane has voluntarily submitted herself to the jurisdiction of this Honorable Court through multiple actions, including without limitation: (i) her filing a Motion to Quash the Grand Jury Subpoena notably without reservation to question the propriety of appointing a Special Prosecutor, while merely challenging the procedure in making such appointment ¹; (ii) her making Application to the Supreme Court seeking three modes of relief- to quash the subpoena – vacate a standing Protective Order – and dismissal of the Grand Jury ²; and (iii) Attorney General Kane’s physical attendance before the Grand Jury under subpoena without any communication of a reservation of rights challenging the authority of the Supervising Judge, and appointment of a Special Prosecutor – and as such has effectively waived the right to pursue an argument challenging the legal authority of the Supervising Judge to establish a statewide investigating grand jury in this matter and appointing a Special Prosecutor thereto.

WHEREFORE, the *Quo Warranto Action* filed by Attorney General Kane, Indiv. should be

¹ Wherein Attorney Kane not only sought to quash a subpoena, but also sought production of the Order appointing the Special Prosecutor to determine if the subpoena served upon her by the Special Prosecutor her might be quashed "... arising from defects in the appointment" (See last sentence of page 2 of the Brief accompanying her Motion) without reservation of rights to a claim the Supervising Judge exceeded his authority and/or constitutionality of establishing a Statewide Investigating Grand Jury and/or appointment of the Special Prosecutor.

² The later application for relief to dismiss the grand jury was made by Attorney General Kane, not because of assertions the Supervising Judge exceeded his authority to institute a statewide grand jury investigation and/or the constitutionality of such action – but rather because of assertions that no breach of grand jury secrecy had occurred because upon independent investigation, the Attorney General believed the materials released to the press were not subject to grand jury secrecy protection, and that the unidentified person(s) releasing such materials had not signed an Oath of Secrecy. Parenthetically, we note how it can be determined a given individual did not sign an Oath of Secrecy, who remains unidentified is vexing to say the least.

denied, under law and for events which effectively render such arguments moot.

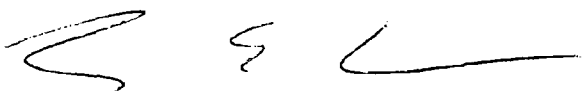


Thomas E. Carluccio, Esquire
Attorney I.D. No. # 81858
Plymouth Greene Office Campus
1000 Germantown Pike, Suite D-3
Plymouth Meeting, PA 19464-2484
(484) 674-2899
Special Prosecutor of Investigating Grand Jury No. #35

DATED: 11/2/15

VERIFICATION

I, Thomas E. Carluccio, Esq. as Special Prosecutor to the Investigating Grand Jury No #35 appointed by the Pennsylvania Supreme Court, hereby state that after due diligence and investigation into the operative events underlying the subject matter of the *Quo Warranto Action* filed of record with the Court by Attorney General Kathleen G. Kane, indiv., I hereby represent that the averments set forth in the foregoing Answer to the said Action are 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. §4904 relating to unsworn falsification to authorities.



Thomas E. Carluccio, Esquire
Attorney I.D. No. # 81858
Plymouth Greene Office Campus
1000 Germantown Pike, Suite D-3
Plymouth Meeting, PA 19464-2484
(484) 674-2899
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