

Filed in Supreme Court

DEC 30 2014

Middle

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
THE THIRTY-FIVE STATEWIDE : NO. 197 MM 2014
INVESTIGATING GRAND JURY : MONTGOMERY COUNTY COMMON PLEAS
: M.D. 2644-2012
: NOTICE NO. 123

SEALING ORDER

AND NOW, this 30th day of December, 2014, it is hereby ORDERED, that the attached Opinion of December 30, 2014 be filed under seal with the Supreme Court of Pennsylvania until further Order of this Court.

BY THE COURT:



WILLIAM R. CARPENTER, J.
Supervising Judge

Received in Supreme Court

DEC 30 2014

Middle

FILED UNDER SEAL

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

IN RE:	:	
	:	
THE THIRTY-FIFTH STATEWIDE	:	SUPREME COURT DOCKET
INVESTIGATING GRAND JURY	:	NO. 197 MM 2014
	:	
	:	MONTGOMERY COUNTY
	:	COMMON PLEAS
	:	NO. 2644-2012

OPINION

CARPENTER J.

DECEMBER 30, 2014

FACTUAL AND PROCEDURAL HISTORY

On May 29, 2014, this Court in its capacity as Supervising Judge of the Thirty-Fifth Statewide Investigating Grand Jury, found that there were "reasonable grounds to believe a further more substantive investigation" into allegations that statewide Grand Jury secrecy may have been compromised was warranted, and on that date this Court appointed Thomas E. Carluccio, Esquire as Special Prosecutor.

Specifically, the May 29, 2014 Order followed an *in camera* proceeding which established that there was a leak of secret Grand Jury information and that the leak most likely came from the Office of the Attorney General. Accordingly, I determined that the appointment of a Special Prosecutor was necessary and appropriate.

ISSUES

- I. Whether the appointment of a Special Prosecutor was proper.
- II. Whether the Quo Warranto Action is now moot.

DISCUSSION

I. The appointment of a Special Prosecutor was proper.

Attorney General Kathleen Kane has filed a *Quo Warranto* Action, challenging my action as the Supervising Judge of the Thirty-Fifth Statewide Grand Jury, to appoint a Special Prosecutor by way of an Order dated May 29, 2014. On that date, Special Prosecutor Thomas E. Carluccio was appointed to conduct an investigation into allegations that statewide Grand Jury secrecy might have been compromised, after a preliminary investigation. My action in appointing Special Prosecutor Carluccio was proper. It did not exceed my authority.

My authority for the appointment of a special prosecutor is based upon the case of In re Dauphin County Fourth Investigating Grand Jury, 610 Pa. 296, 19 A.3d 491 (2014). This case dealt with the appointment of an special prosecutor in connection with alleged grand jury leaks, and the Court stated that, “[w]hen there are colorable allegations or indications that the sanctity of the grand jury process has been breached and those allegations warrant investigation, the appointment of a special prosecutor to conduct such an investigation is appropriate. And, even where the investigations of special prosecutors do not lead to prosecutable breaches of secrecy, they may provide insight into the often-competing values at stake, as well as guidance and context so that prosecutors and supervising judges conducting future proceedings may learn from the examples.” Id. at 504.

The Court explained the vital role a supervising judge in regard to the grand jury process and emphasized the “[t]he very power of the grand jury, and the secrecy in which it operates, call for a strong judicial hand in supervising the proceedings” Id. at 503. The Court further explained as follows:

We are cognizant that the substantial powers exercised by investigating grand juries, as well as the secrecy in which the proceedings are conducted, yield[] the potential for abuses. The safeguards against such abuses are reflected in the statutory scheme of regulation, which recognizes the essential role of the judiciary in supervising grand jury functions.

Id. at 503 – 504 (citing from In re Twenty-Fourth Statewide Investigating Grand Jury, 589 Pa. 89, 907 A.2d 505, 512 (2006)).

Thus, Pennsylvania's grand jury process is 'strictly regulated,' and the supervising judge has the singular role in maintaining the confidentiality of grand jury proceedings. The supervising judge has the continuing responsibility to oversee grand jury proceedings, a responsibility which includes insuring the solemn oath of secrecy is observed by all participants.

Id. at 504 (citations and internal quotation marks omitted).

The In re Dauphin County Court cited two cases that involved the appointment of a special prosecutor when there were allegations of grand jury leaks. The Court first cited to a Lackawanna Common Pleas Court case, In re County Investigating Grand Jury VIII (Lack. Com. Pl. 2005).

In the Lackawanna Common Pleas Court case there were allegations made, including, that e-mail communications had been exchanged between the Lackawanna District Attorney's Office and a newspaper reporter that divulged grand jury information, that a grand jury witness had been contacted by the reporter a short time after the witness appeared before the grand jury and was questioned about private matters that had been disclosed only to the grand jury. In re Dauphin County, 19 A.3d at 504. A preliminary review by the common pleas court judge verified only the existence of the emails that were exchanged between the reporter and a member of the District Attorney's office during the time the grand jury was conducting the relevant investigation. It was based upon this review that the common pleas court judge appointed a special prosecutor to investigate the allegations of a grand jury leak. Id.

The Pennsylvania Supreme Court in In re Dauphin County cited an additional example involving a special prosecutor in connection with alleged grand jury leaks and the complex interest and values implicated in an appointment of a special prosecutor. The Court cited to Castellani v. Scranton Times, 598 Pa. 283, 956 A.2d 937 (2008). In Castellani, the supervising judge appointed a special prosecutor to investigate allegations of grand jury leaks in connection with a statewide investigating grand jury tasked with investigating allegations of abuse of the county prisoners by the prison guards. In re Dauphin County, 19 A.3d at 506.

Not only is there strong precedent that permits a supervising judge to appoint a special prosecutor when there are allegations of grand jury leaks; but also, at the time I appointed the Special Prosecutor on May 29, 2014, by way of a court order, which was delivered to Chief Justice Ronald D. Castille, I wrote a letter to Chief Justice Castille. In that letter, I explained what I had done and I ended the letter with the following language, "Please advise if you feel that I am in error or have exceeded my authority as the Supervising Grand Jury Judge." See, Exhibit "A", Letter dated May 29, 2014 to Chief Justice Castille. All of my letters to Chief Justice Castille have concluded with similar language. I have never been informed that I erred or exceeded my authority.

The Supervising Judge of a Statewide Investigating Grand Jury must have inherent authority to investigate a grand jury leak, when there is a conflict of interest as there is here. Clearly, Attorney General Kane could not investigate herself. Otherwise potentially serious violations of grand jury secrecy could go unaddressed.

Accordingly, Attorney General Kane's *Quo Warranto* Action lacks merit, and should be denied.

II. The Quo Warranto Action is now moot.

Further, I believe that this *Quo Warranto* Action is now moot. On December 18, 2014, the Thirty-Fifth Statewide Investigating Grand Jury issued Presentment No. #60, finding

that there were reasonable grounds that Attorney General Kane was involved in violations of criminal law of our Commonwealth. See, Exhibit "B", Presentment No. #60, dated December 18, 2014; specifically, Perjury, 18 Pa.C.S.A. §4902, False Swearing, 18 Pa.C.S.A. §4903, Official Oppression, 18 Pa.C.S.A. §5301 and Obstruction Administration of Law or Other Governmental Function, 18 Pa.C.S.A. §5101. Subsequently, on December 19, 2014, I entered an Order Accepting Presentment No. #60. See, Exhibit "C", Order Accepting Presentment No. #60, dated December 19, 2014. Furthermore, I referred the entire matter to the District Attorney of Montgomery County for any prosecution. Therefore, this Quo Warranto Action has been rendered moot.

Finally, the Attorney General has requested to "unseal this filing" See, Attorney General Kane's Memorandum of Law in Support of *Quo Warranto* Action, December 17, 2014, p. 2, n. 1. If her filing is unsealed then, in fairness to the public, the members of the Grand Jury, and members of The Office of Attorney General, my Opinion and Exhibits should also be unsealed.

CONCLUSION

I respectfully submit that Attorney General Kane's *Quo Warranto* Action lacks merit and should be denied. In addition, it has been rendered moot.

BY THE COURT:



WILLIAM R. CARPENTER J.
SUPERVISING JUDGE OF THE THIRTY-
FIFTH STATEWIDE INVESTIGATING
GRAND JURY

EXHIBIT "A"

COURT OF COMMON PLEAS



MONTGOMERY COUNTY
THIRTY-EIGHTH JUDICIAL DISTRICT
NORRISTOWN, PENNSYLVANIA
19404

PRESIDENT JUDGE
WILLIAM J. FURBER, JR.
ASSOCIATE JUDGES
JOSEPH A. SMYTH
STANLEY R. OTT
BERNARD A. MOORE
WILLIAM R. CARPENTER
RHONDA LEE DANIELE
EMANUEL A. BERTIN
THOMAS M. DELRICCI
R. STEPHEN BARRETT
THOMAS C. BRANCA
STEVEN T. O'NEILL
THOMAS P. ROGERS
GARRETT D. PAGE
KELLY C. WALL
CAROLYN TORNETTA CARLUCCIO
WENDY DEMCHICK-ALLOY
PATRICIA E. COONAHAN
LOIS EISNER MURPHY
GARY S. SILOW
RICHARD P. HAAZ
CHERYL L. AUSTIN
GAIL A. WEILHEIMER
STEVEN C. TOLLIVER, SR.

SENIOR JUDGES
WILLIAM T. NICHOLAS
S. GERALD CORSO
CALVIN S. DRAYER, JR.
KENT H. ALBRIGHT
ARTHUR R. TILSON

May 29, 2014

The Honorable Ronald D. Castille
Chief Justice of Pennsylvania
Supreme Court of Pennsylvania
1818 Market Street, Suite 3730
Philadelphia, PA 19103

Re: Statewide Investigating Grand Juries

Dear Chief Justice:

Enclosed you will find an Order appointing a Special Prosecutor to investigate an allegation that secret Grand Jury information from a prior Grand Jury was released by someone in the Attorney General's Office.

As the current supervising Grand Jury Judge, this matter was brought to my attention. My preliminary review included in camera sealed testimony from two individuals with knowledge.

I have decided that the matter is important enough to appoint a Special Prosecutor, Thomas E. Carluccio, Esquire. He is a former prosecutor, served in the Department of the Attorney General in Delaware for fourteen years and a Special Assistant United States Attorney. In addition Tom has done Grand Jury work, and is honest, capable and reliable.

Please call me if you would like to discuss this matter further.

Please advise if you feel that I am in error or have exceeded my authority as the Supervising Grand Jury Judge.

Sincerely

William R. Carpenter, J.
Supervising Judge

WRC/cns
Cc. Thomas E. Carluccio, Esquire

EXHIBIT A

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: NO. 171 M.D.D MISC. KT 2012
THE THIRTY-FIFTH STATEWIDE :
: MONTGOMERY COUNTY COMMON PLEAS
: M.D. 2644-2012
INVESTIGATING GRAND JURY :
: NOTICE No # 123
:

TO THE HONORABLE WILLIAM R. CARPENTER, SUPERVISING JUDGE:

PRESENTMENT No. # 600

We, the Thirty-Fifth Statewide Investigating Grand Jury, duly charged to inquire into offenses against the criminal laws of the Commonwealth, have obtained knowledge of such matters from witnesses sworn by the Court and testifying before us. We find reasonable grounds to believe that various violations of the criminal laws have occurred. So finding with no fewer than twelve concurring, we do hereby make this Presentment to the Court.



Foreperson – The Thirty-Fifth Statewide
Investigating Grand Jury

DATED: The 18 day of December, 2014

EXHIBIT "C"

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: NO. 171 M.D. MISC DKT. 2012
THE THIRTY-FIVE STATEWIDE :
: MONTGOMERY COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : M.D. 2644-2012
:
: NOTICE NO. 123

ORDER ACCEPTING PRESENTMENT NO #60

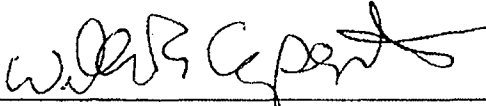
A. The Court finds Presentment No #60 of the Thirty-Fifth Statewide Investigating Grand Jury is within the authority of said Grand Jury and is in accordance with the provisions of this Investigating Grand Jury Act, 42 Pa.C.S. §4541, *et seq.* Further I find that the determination of the Thirty-Fifth Statewide Investigating Grand Jury is supported by Probable Cause and establishes a Prima Facie case against Attorney General Kathleen Kane. Accordingly, this Presentment is accepted by the Court.

B. The County conducting the trial of all charges pursuant to this Presentment shall be Montgomery County.

C. The District Attorney for Montgomery County, or her designee, is hereby authorized to prosecute as recommended in the Presentment by instituting appropriate criminal proceedings in the aforesaid County.

SO ORDERED this 19th day of December, 2014.

BY THE COURT:



WILLIAM R. CARPENTER, J.
Supervising Judge

EXHIBIT C

**IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, PENNSYLVANIA**

IN RE: : SUPREME COURT OF PENNSYLVANIA
: NO. 197 MM 2014
THE THIRTY-FIVE STATEWIDE :
: MONTGOMERY COUNTY COMMON PLEAS
INVESTIGATING GRAND JURY : M.D. 2644-2012
:
: NOTICE NO. 123

CERTIFICATE OF SERVICE

I, William R. Carpenter, Supervising Judge of the 35th Statewide Investigating Grand Jury, certify that a true and correct copy of the attached Opinion was forwarded to the persons set forth below via First Class Mail on December 30, 2014.



WILLIAM R. CARPENTER, J.
Supervising Judge
Montgomery County Court of Common Pleas
P.O. Box 311
Norristown, PA 19404

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Supreme Court of Pennsylvania
Pennsylvania Judicial Center
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P.O. Box 62575
Harrisburg, PA 17106

Chief Justice Ronald D. Castille
Supreme Court of Pennsylvania
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