

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

IN RE: : SUPREME COURT OF PENNSYLVANIA
: ____ M.D. MISC. DKT. ____
THE THIRTY-THIRD :
STATEWIDE INVESTIGATING : DAUPHIN COUNTY COMMON PLEAS
GRAND JURY : NO. CP-22-CR-5164-2011
: NO. CP-22-CR-5165-2011
:
: NOTICE NO. 1

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

COMMONWEALTH OF :
PENNSYLVANIA, : SUPREME COURT OF PENNSYLVANIA
: ____ M.D. MISC. DKT. ____
:
: DAUPHIN COUNTY COMMON PLEAS
: NO. CP-22-CR-5164-2011
: NO. CP-22-CR-5165-2011
TIMOTHY M. CURLEY and :
GARY C. SCHULTZ, :
Defendants : NOTICE NO. 1

ORDER

AND NOW, to wit, this 12th day of April, 2012, after record argument held April 3, 2012, on application for disclosure of Grand Jury Testimony, it is ordered and directed that:

1. Defendant's written motion to release the Grand Jury Transcripts of Mike McQueary, John McQueary, Dr. Jonathan Dranov and Graham Spanier "forthwith" IS DENIED.
2. Defendant's oral motion to release the requested Grand Jury Transcripts no later than eight (8) weeks prior to the commencement of trial IS DENIED.

3. The Commonwealth's oral request that the Court consider an "appropriate time-frame" for the release of approximately 100 pages of Grand Jury Transcripts¹ is GRANTED.
4. Pa.R.Crim.P. 230(B)(3) provides that "upon appropriate motion of a defendant in a criminal case, the court shall order that the transcript of any testimony before an investigating grand jury that is exculpatory to the defendant, or any physical evidence presented to the grand jury that is exculpatory to the defendant, be made available to such defendant." While Rule 230(B)(3) does not provide any time-frame when the allegedly exculpatory transcript should be released, it is this Court's practice to utilize a rule of reasonableness in consideration of the particular facts of each case as to what falls within the realm of should be "timely disclosed." In this case, the court is persuaded that the rule of reasonableness and the interests of justice will be served by authorizing the release of the Grand Jury Transcripts at least ten (10) days prior to the commencement of the date certain set for trial.²
5. It is further ordered and directed that the release of the transcripts in advance of trial is subject to a Protective Order of Court which precludes the pre-release of any or all of the content of the transcripts prior to trial; to anyone other than to "counsel" for the Defendants and the Defendants.³

¹ Based on the Commonwealth assertions at the argument; there appear to be approximately 100 pages of testimony of various Grand Jury witnesses that need to be reviewed in advance of trial.

² For purposes of this order, trial is construed to begin as of the date that the first witness is sworn. Such is to preclude release in advance of the intent of this order (i.e., in the event of an early selection of jurors in advance of the commencement of trial or a continuation of the date set for trial.)

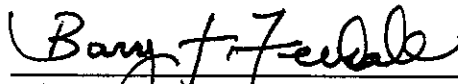
³ Neither defendant nor the trial court should construe this Court's early release of the transcripts requested under Rule 230(B)(3) as being a determination by this Court that the content of the Presentment, Transcripts or alleged testimony at the Preliminary Hearing, or other source of information; as being either exculpatory or inconsistent. Such, of course, falls within the purview of the fact finder.

In addition, contrary to Defendant's assertion at argument, the content and/or context of the Presentment does not require a verbatim rendition of the testimony or evidence gathered in support of a Presentment. There is no case law or statutory requirement that a Grand Jury Presentment include even a summary of the evidence and the law upon

6. This Court retains limited jurisdiction of this case for the sole purpose of facilitating compliance with its orders and pledges to the trial court that any issue that arises out of such will be resolved expeditiously, so as not to delay trial of this matter.

This order may be released to counsel and the trial court since it is procedural and not substantive and is also not deemed as falling within the ambit of secrecy.

BY THE COURT:



BARRY F. FEUDALE, S.J.

C: Hon. Todd Hoover, P.J.
Bruce R. Beemer, Esquire
Thomas J. Farrell, Esquire
Caroline M. Roberto, Esquire
Hon. John Cleland, S.J.
Frank Fina, Esquire,
Chief Deputy Attorney General
James P. Barker, Esquire,
Chief Deputy Attorney General

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which the Presentment is based. This Court presumes the Grand Jury acted in consideration of all the evidence it heard and/or considered. As always, a Grand Jury is charged that the standard for issuance of a Presentment is whether there is sufficient evidence to constitute probable cause that an individual committed a crime.