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DAUPHIN COUNTY
PENNA

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: OF DAUPHIN COUNTY
v. :
: NO. CP-22-CR-5165-2011
TIMOTHY M. CURLEY, :
Defendant : CHARGES: PERJURY; PENALTIES
: FOR FAILURE TO REPORT

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
: OF DAUPHIN COUNTY
v. :
: NO. CP-22-CR-5164-2011
GARY CHARLES SCHULTZ, :
Defendant : CHARGES: PERJURY; PENALTIES
: FOR FAILURE TO REPORT

COMMONWEALTH'S REPLY TO DEFENDANTS' MOTION FOR DISCOVERY

AND NOW, comes the Commonwealth of Pennsylvania by its attorneys, Attorney General Linda L. Kelly and Chief of Staff Bruce R. Beemer, who file this Commonwealth's Reply to Defendants' Motion for Discovery, and in support thereof aver as follows:

1. Admitted.
2. Admitted in part and denied in part. Admitted that defense counsel did send the five letters referenced in Defendants' Motion for Discovery ¶ 2 a-e. Denied

that any letter sent on November 22, 2011 and referenced as Defendants' 2a could constitute an effort to resolve discovery, inasmuch as it predated the Preliminary Hearing held in this matter on December 16, 2011, and pursuant to Pa.R.Crim.P. 573 and other applicable Rules of Procedure the defendants were not entitled to discovery at that time.

3. Admitted.

4. Admitted.

5. Admitted that defendants are apparently requesting materials listed in Pa.R.Crim.P. 573(B)(2). Denied that disclosure of such items is mandatory absent an Order of Court. It is further denied that all of the requests are material to the preparation of the defense and/or reasonable.

6. Admitted.

7. Admitted to the extent that this statement accurately recites Pa.R.E. 404 (b).

8. The Commonwealth will address the many alphabetized subparts of this averment in the same manner as outlined in the Defendants' Motion for Discovery.

a. Admitted in part and denied in part. The Commonwealth has and will continue to honor its discovery obligations as it relates to prepared interview statements by investigators. Any statement that is prepared during the course of this ongoing investigation has been or will be disclosed to the defense. This averment is denied to the extent that it seeks notes or other items utilized by

investigators in the preparation of any witness interview. See Commonwealth Reply filed in this matter on March 30, 2012.

- b. The Commonwealth has provided and will continue to provide these materials.
- c. The matter of Grand Jury testimony has been and continues to be dealt with pursuant to Pa.R.Crim.P. 230. To the extent that any requests in the Defendants' Motion for Discovery seeks otherwise protected Grand Jury materials, the appropriate remedy is to seek relief from the Supervising Grand Jury Judge. It is specifically denied that *Commonwealth v. Hemingway* provides relevant authority for an order of discovery.
- d. There are no reports meeting this description.
- e. Denied to the extent that this request asks for any material or communication under Pa.R.Crim.P. 230. To the extent any of the requested material should be disclosed, the appropriate remedy is to seek relief from the Supervising Grand Jury Judge.
- f. The Commonwealth specifically denies that this is an appropriate discovery request pursuant to Pa.R.Crim.P. 573 and 230. Even if the sought material was appropriate for discovery, however, the correct forum in which the defendants should seek relief is before the Supervising Grand Jury Judge.
- g. The Commonwealth has complied with the request for criminal records by providing information containing criminal histories of the

requested and relevant individuals. The Commonwealth is not in possession of any information regarding civil litigation involving the numerous individuals listed by defendants, and this information could in any event be obtained from numerous public sources upon reasonable investigation by the defense.

- h. The Commonwealth does not possess the items requested. This request is also denied to the extent that there has been no showing that this information would materially assist the defense in preparation for trial pursuant to Pa.R.Crim.P. 573 (B)(2).
- i. The Commonwealth has previously provided the items referred to in this request, including a file possessed, maintained, and controlled by Defendant Schultz. See Commonwealth Reply Brief to Motion to Quash Count I filed on June 11, 2011.
- j. The Commonwealth has provided or is currently providing any material in its possession relative to this request. This request does include items such as newspaper articles which are certainly not within the exclusive control of the Commonwealth and could be obtained from numerous public sources upon reasonable investigation by the defense.
- k. Any information referenced in this request has been or is being currently provided to the defense to the extent it is in the Commonwealth's possession. The Commonwealth has previously turned over dozens of pages of material related to this request that

are outlined in a letter sent to defense counsel on May 25, 2012. Any electronic correspondence relative to this request will be addressed in the answer to ¶'s v thru z.

- l. All material retrieved from any offices of the individuals listed in defendants' motion has been previously disclosed and is outlined in a letter sent to defense counsel on May 25, 2012.
- m. The Commonwealth does not possess the information requested.
- n. The Commonwealth has previously provided this information. The request for complete and unredacted copies of certain supplemental reports is denied to the extent that the redacted information contains Grand Jury matters, privileged information, or personal private information not relevant to credibility or is not material to the preparation of the defense in this case.
- o. The Commonwealth is not in possession of any requested material other than what has been previously disclosed.
- p. The Commonwealth is not in possession of the requested items. Again, this is certainly information that could be obtained by the defense upon reasonable investigation and is not the type of item that is within the exclusive control of the Commonwealth.
- q. The Commonwealth is disclosing the limited information it has in its possession relative to this request. The Commonwealth denies that the broad scope of this information is relevant or discoverable.

- r. All relevant and discoverable information involving this information has either been previously disclosed or is covered by the Commonwealth answer in other areas of this Answer.
- s. The Commonwealth is not in possession of minutes, notes or correspondence relating to the PSU Board of Trustees. The Defense is certainly free to obtain this information through other channels. Any electronic correspondence such as email communication is covered by the Commonwealth response to other requests for the disclosure of electronic communication.
- t. The Commonwealth notes the overly broad and vague nature of this and other requests contained in the Defendants' Motion for Discovery. The Office of Attorney General is not in possession of the requested documents.
- u. This request is specifically denied as vague and lacking any claim of materiality pursuant to Pa.R.Crim.P. 573.
- v-z. The information requested is contained in an external hard drive which is being provided to the defense. The information in electronic form contains large amounts of electronic data and is more expansive than even the defendants are requesting. The Commonwealth will note that discovery in this matter is an ongoing process, and will diligently continue to turn over relevant and requested information on a timely basis.

- aa. This request is denied to the extent that it is overbroad and lacks any showing of relevance or materiality. Any numbers or records that satisfy the criteria set forth in the Rules of Discovery have been or will be turned over.
- bb. The Commonwealth has disclosed information relative to this request.
- cc. The Commonwealth is not in possession of the requested items.
- dd. The response to this request can be found in Commonwealth's answer w thru z.
- ee. The Commonwealth is not in possession of any requested material, and this information is certainly not within the exclusive control of the Commonwealth. The Commonwealth makes no representation on the existence of any of the material requested in this paragraph.
- ff. The Commonwealth does not possess the requested information.
- gg. The Commonwealth does not possess the requested information, and is not making any representation as to whether or not this information exists.
- hh. The Commonwealth has provided an extensive copy of a Pennsylvania State Police Incident Report G07-1146135. Any information that is redacted has been withheld because it is protected Grand Jury information, privileged information, or personal private information not relevant to credibility or the material preparation of the defense in this case. The

Commonwealth will continue to provide additional police reports as they are generated.

- ii. To the extent that it is discoverable, this information has been provided in reports noted in discovery letters dated April 20 and May 25, 2012.
- jj. Relevant materials have been previously disclosed in electronic form. Additional videos and photographs are being disclosed to the defense in a CD format.
- kk. The Commonwealth has disclosed whatever materials it has in its possession in regard to this request.
- ll. Any information involving this request has been disclosed to the defense.
- mm. The Commonwealth specifically denies that this is an appropriate discovery request pursuant to Pa.R.Crim.P. 573. There has been absolutely no showing of materiality by the defense and this information, even if it existed, is wholly irrelevant to the instant matters. The Commonwealth also asks the Court to consider its position as outlined in its March 30, 2011 Answer to Defendants Motion to Dismiss.
- nn. The defense is well aware that there is no information indicating that there were any OAG "leaks" to the press. This is an inappropriate and unfounded request and is specifically denied.

- oo. The names of any and all eyewitnesses have been and will continue to be disclosed. The Commonwealth suggests that the defense provide specific information as to the addresses of any witness that they wish to have disclosed. The Commonwealth would note that the disclosure of this personal private information is discretionary with the Court pursuant to Pa.R.Crim.P. 573 (B).
- pp. The Commonwealth is providing a full copy of the materials from the 1998 investigation.
- qq. The Commonwealth does not possess the requested information other than what has been previously disclosed.
- rr. This request is not applicable at this time.
- ss. This request is denied to the extent that it is not required pursuant to Pa.R.Crim.P. 573. In the event that the Court at some future date believes this to be an appropriate request, the Commonwealth expressly requests a list of witnesses the defense intends to call at trial to be made available at the same time as the Commonwealth would be made to provide its list.
- tt. Reasonable notice pursuant to Pa.R.E. 404(b) can be provided through discovery materials. The Commonwealth avers that the defense has already been placed on notice through the providing of said material. If the Commonwealth files any such formal notice it will do so at a reasonable time in advance of trial.

uu. This material is being provided by the Commonwealth. See response to ¶¶ pp.

9. The Commonwealth will certainly make every attempt to accommodate a reasonable request to view and inspect evidence. This request at this point is too broad and vague to warrant any more of a response.

10. Admitted to the extent that the Commonwealth will continue to honor its obligations with regard to ongoing discovery.

11. Admitted.

12. Denied. This is a conclusion of law, and the Commonwealth specifically denies that the defendant is entitled to all materials listed in the Defendants' Motion for Discovery. The Commonwealth specifically relies on its representations in each numbered paragraph.

13. Denied to the extent that this constitutes a conclusion of law and a blanket declaration that all of the requested materials are necessary pursuant to the Pennsylvania Rules of Criminal Procedure and any constitutional guarantees afforded to the defendants.

14. Admitted to the extent that the Commonwealth will continue to timely provide discoverable materials to the defense. Denied in all other respects.

15. This is specifically denied as to the statement that it is the prosecution who has refrained from setting the parameters of the charges. In fact, the Commonwealth reiterates its concern that the conduct of the various parties involved in this ongoing investigation has prevented the timely disclosure of material and evidence to investigators. See Commonwealth's Reply Brief to Motion to Quash Count I filed on

June 11, 2012. The Commonwealth further notes that the rules of discovery are reciprocal and ongoing in nature, and to that end will be filing a Commonwealth Motion for Discovery in the near future.

Respectfully submitted,
LINDA L. KELLY
Attorney General

By:




BRUCE R. BEEMER
Chief of Staff
Attorney No. 76148

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Date: August 1, 2012

VERIFICATION

The facts recited in the foregoing Commonwealth's Reply to Defendants' Motion for Discovery are true and correct to the best of my knowledge and belief. This statement is made with knowledge that a false statement is punishable by law under 18 Pa. C.S. § 4904(b).

By: 

BRUCE R. BEEMER
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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving one copy of the foregoing Commonwealth's Reply to Defendants' Motion for Discovery upon the persons and in the manner indicated below:

*Via U.S. First-Class Mail,
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