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IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,

v.

No. CP-22-CR-5165-2011

TIMOTHY MARK CURLEY

Defendant.

MOTION TO QUASH
COUNT 2 OF THE CRIMINAL INFORMATION

AND NOW, comes the defendant, Timothy M. Curley, by and through his attorney, Caroline M. Roberto, Esquire, and respectfully submits the following Motion to Quash Count 2 of the Criminal Information:

1. Mr. Timothy Mark Curley is charged in a two count criminal information with, at Count 1, Perjury in violation of 18 Pa.C.S.A. § 4902(a) a felony of the third degree and at Count 2, Persons Required to Report. Suspected Child Abuse in violation of 23 Pa.C.S.A. § 6319, a summary offense.

2. Mr. Curley has addressed the defects of the criminal information with regard to Count 1 Perjury in his Request for a Bill of Particulars.

3. With regard to Count 2, the criminal information alleges the following:

The Attorney General of the Commonwealth of Pennsylvania, by this information, further charges that on or about March of 2002, in Centre

County, Pennsylvania, and various other locations the above-named Defendant did commit the following offense:

COUNT 2: PERSONS REQUIRED TO REPORT SUSPECTED CHILD ABUSE

23 Pa. C.S. §6319 – (SUMMARY)

The Defendant, a person who, in the course of employment, occupation or practice of a profession, did have reasonable cause to suspect, on the basis of medical, professional or other training and experience, that a child under the care, supervision, or guidance or training of the Defendant or an agency, institution, organization or other entity with which the Defendant is affiliated has been the victim of child abuse, and that Defendant failed to report or cause a report to be made in accordance with 23 Pa. C.S. § 6313.

4. Two clear defects in the information with regard to Count 2 require that it be quashed.
5. First, although the Attorney General alleged that the violation occurred “on or about March of 2002”, the Attorney General employed statutory language which came into effect in May of 2007, over five years later.
6. That language reads, in relevant part:

A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when the person has reasonable cause to **suspect**, on the basis of medical, professional or other training and experience, that a child under the care, supervision, guidance or training of that person or of an agency, institution, organization or other **entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator.**

§6311 (effective May 29, 2007)(emphasis added).

7. In contrast with the language used in the criminal information, the actual language of the statute in effect at the time of the alleged failure to report provides:

Persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when they have reason to **believe**, on the basis of their medical, professional or other training and experience, **that a child coming before them in their professional or official capacity is an abused child**. The privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

§6311 (effective July 1, 1995)(emphasis added).

8. The version in effect in 2007 had been amended to provide for liability for a much broader group of persons than those liable under the previous version of the statute. Thus, there are meaningful differences in the statute allegedly applicable to defendant in 2002 and the amended statute which was used to write the criminal information.

9. "A motion to quash may be used to raise defects apparent on the face of the criminal information or other defects that would prohibit prosecution." *Commonwealth v. Meoli*, 452 A.2d 1032, 1033 (Pa.Super. 1982).

10. This defect is apparent on the face of the criminal information.

11. The Attorney General is without authority to prosecute and this Honorable Court, without jurisdiction to try the defendant based on a statute which was not in effect at the time of the alleged illegal conduct. *Commonwealth v. Estman*, 915 A.2d 1191 (Pa. 2007)(in keeping with ex post facto clause of Pennsylvania and United States

Constitutions, statute may not be applied retroactively to conduct occurring prior to its effective date).

12. The facts alleged would not establish the essential elements of the crime as defined by law at the time of the alleged offense and thus, the facts alleged do not constitute an offense.

13. The second defect, also apparent on the face of the criminal information, is that the statute of limitations has expired.

14. The criminal information alleges crimes occurred in March 2002. However, the Attorney General did not bring this information until January 2012, well beyond the applicable two-year statute of limitations. 42 Pa.C.S.A. § 5552(a).

15. "It is well settled that where an indictment charges a crime beyond the statute of limitations, it must alleged facts which bring it within one of the exceptions to the statute of limitations." *Commonwealth v. Fiume*, 419 A.2d 1364 (Pa.Super. 1980).

For the reasons set forth above, counsel respectfully requests that this Honorable Court quash Count 2 of the criminal information.

Respectfully submitted,

By: 

Caroline M. Roberto, Esquire
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IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA,

v.

TIMOTHY MARK CURLEY,

Defendant.

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No. CP-22-CR-5165-2011

ORDER

AND NOW, to-wit, this _____ day of _____, 2012,

upon due consideration of the Motion to Quash Count 2 of the Criminal Information, it is

hereby ORDERED and DECREED as follows: _____

BY THE COURT:

_____, J.

