

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

COMMONWEALTH OF PENNSYLVANIA, :
 :
 v. :
 : No. CP-22-CR-5164-2011
 GARY C. SCHULTZ, :
 :
 Defendant. :

ORDER

AND NOW, this _____ day of _____, 2012, IT IS
ORDERED that Count One of the Criminal Information is dismissed.

BY THE COURT:

_____, J.

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

COMMONWEALTH OF PENNSYLVANIA, DAUPHIN COUNTY
PENNA

v.

GARY C. SCHULTZ,

Defendant.

No. CP-22-CR-5164-2011

DEFENDANT GARY C. SCHULTZ' MOTION TO QUASH COUNT ONE

AND NOW, comes the defendant, Gary C. Schultz, by and through his attorney, Thomas J. Farrell, Esquire, and the law firm of Farrell & Reisinger, LLC, and respectfully files Motion to Quash Count One of the Information.

1. Defendant Gary Schultz is charged a two-count criminal information with, at count One, Perjury in violation of 18 Pa.C.S.A. § 4902(a), a felony third-degree, and at count Two, Persons Required To Report Suspected Child Abuse, in violation of 23 Pa.C.S.A. § 6319, a summary offense.

2. Co-defendant Timothy Curley has addressed the defects in Count Two of the criminal information in a previously filed Motion to Quash, which we joined. In addition, Mr. Schultz has filed a Petition for a Writ of Habeas Corpus to dismiss Count One. However, the Commonwealth's Combined Answer to our Habeas Petition and its Response to our Motion for a Bill of Particulars have made it evident that Count One is fatally defective on its face. Prompted by those Commonwealth pleadings, we file this Motion to Quash at this time.

3. Count One states, "The Defendant, in an official proceeding, namely testimony provided at the Thirtieth statewide investigating grand jury on

5.7.12
[Signature]

January 12, 2011, made a false statement or statements under oath or equivalent affirmation, or swore or affirmed the truth of any statement previously made, with the statement or statements were material and said defendant did not believe that to be true." It does not identify, specifically or generally, which of Mr. Schultz statements were false and how they were false (in other words, what was the true state of affairs).

4. The Commonwealth has refused to supply a Bill of particulars. Instead, it maintains that it may prove any or all or none of 18 listed statements in order to prove the perjury count. See Commonwealth's Response to Defendants' Motion for a Bill of Particulars (filed March 30, 2012).

5. The Information's failure to provide any description of the false statements or their falsity violates the requirement that that the defendant be given fair notice of the charge he must answer, as required by the Sixth Amendment to the United States Constitution; Article One, Section Nine of the Pennsylvania Constitution; and Pennsylvania case law on perjury as further described in our Memorandum of Law filed this same day.



6. "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).

7. This defect is apparent on the face of the criminal Information.

For the reasons set forth above and in the accompanying Memorandum of Law, Counsel respectfully requests that this Honorable Court quash Count One of the Information.

Respectfully submitted,

By:

 by 

Thomas J. Farrell, Esquire
Attorney for Defendant, Gary C.
Schultz

Pa. I.D. No. 48976

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CRIMINAL DIVISION

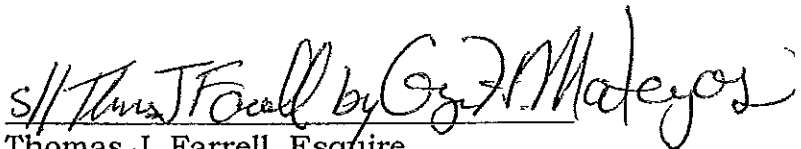
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Motion to Quash
Count One was delivered by U.S. Mail and email, this 4th day of May, 2012, to
the following:

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Attorney for Defendant, Gary C. Schultz