

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
v. : DAUPHIN COUNTY, PENNSYLVANIA
TYRON ALI :
: CR 2009-4784, 2009-4785, 2009-4786;
: CR 2009-5898
:

MEMORANDUM OPINION
AND ORDER

This matter comes before the court on the Petition to Intervene and Motion to Unseal Transcripts of Trib Total Media, Inc. and Brad Bumsted (“Intervenors”). For the reasons set forth, the Petition and Motion are **GRANTED**. Inasmuch as we grant the unsealing, we discuss the filings relevant to the issue before the court.

Procedural History

The underlying criminal matter at the within dockets relates to charges against Tyron Ali (“Defendant”) of Tampering with Public Records or Information, 18 Pa.C.S.A. §4911(a)(1); Illegal Use of Computer, 18 Pa.C.S.A. §7611(a)(1); Forgery, 18 Pa.C.S.A. §4101(a)(2); Dealing in Proceeds of Unlawful Activity, 18 Pa.C.S.A. §5111(a)(1); Criminal Conspiracy Engaging-Forgery, 18 Pa.C.S.A. §9903; Theft by Unlawful Taking, 18 Pa.C.S.A. §3921(a); Theft by Deception, 18 Pa.C.S.A. 3922(a)(1); Theft by Failure to Make Required Disposition of Funds, 18 Pa.C.S.A. 3927 (a)(1); Tampering with Records or Identification, 18 Pa.C.S.A. 4104 (a); Receiving Stolen Property, 18 Pa.C.S.A. 3925 (a); Securing Execution of Documents by Deception, 18 Pa.C.S.A. §4114; and Bad Checks, 18 Pa.C.S.A. §4105. The Commonwealth, by the Office of Attorney General (“OAG”), filed the charges arising out of alleged fraudulent

business transactions concerning Defendant's operation of a child care center and his receipt and alleged mishandling of Pennsylvania Department of Education funds to be used for meals to eligible low income children and adults.

The OAG filed a Notice of Formal Arraignment on October 13, 2009. Defendant waived appearance at Formal Arraignment on November 19, 2009. The Commonwealth filed Informations at the various dockets on November 23, 2009. The case appeared on the court's docket from January 5, 2010 through October 1, 2012. The court granted unopposed requests for continuances.

On September 11, 2013, Defendant, through counsel, filed a Motion to Seal an impending Motion to Disqualify the Pennsylvania Office of Attorney General from All Matters Concerning Him Due to a Conflict of Interest and to Dismiss the Case Pursuant to the Terms of a Cooperation Agreement and Memorandum of Law. Defendant asserted that information contained in the pleadings, if disseminated or made public, could expose him and his family to danger or acts of retaliation. Based upon the averments implicating Defendant's safety, on September 12, 2013, the court granted the Motion to Seal.

In his September 11, 2013 Motion, Defendant sought disqualification of the OAG from further involvement in the pending cases against him based upon an asserted conflict of interest allegedly arising out of the change of administration at the OAG in January 2013. In his Memorandum in Support of the Motion, Defendant set forth at length the assertion that the former OAG administration, which had filed charges against him, entered into a Cooperation Agreement with him, whereby Defendant would provide all information about his involvement in the meal program, answer questions about his knowledge of other criminal activity, and serve

as an agent for the OAG in its investigation of active political corruption. (Memorandum of Law in Support of Defendant Tyron Ali's Motion to Disqualify the Pennsylvania Office of Attorney General from All Matters Concerning Him Due to a Conflict of Interest and to Dismiss the Case Pursuant to the Terms of a Cooperation Agreement, p. 1) Defendant also asserted that on November 30, 2012, Defendant and the OAG, by Frank Fina, Chief Deputy Attorney General, executed a Cooperation Agreement which provided for dismissal of all charges by the filing of a motion for *nolle prosequi* at a time mutually agreeable to the parties in exchange for Defendant's continued cooperation with the OAG.

In his September 2013 filings, Defendant asserted that, as a result of his actions as a confidential informant and operative for the OAG, he provided the OAG with detailed information of public corruption, some based upon transactions recorded with a device provided by the OAG. Defendant further alleged that upon the election of Kathleen Kane as Attorney General, Mr. Fina raised the issue of a conflict of interest for the incoming administration. Defendant asserted that Attorney General Kane's administration concluded that no conflict of interest existed. Defendant's counsel alleged that the defense became concerned that the OAG would not seek to prosecute the political corruption cases and would dishonor the Cooperation Agreement. Defendant asserted that he had, for 3 ½ years, conducted the investigatory work assigned to him pursuant to the Cooperation Agreement and sought enforcement of the agreement.

On October 4, 2013, the OAG filed a Motion to Seal and Impound its Response in Opposition to Defendant Ali's Motion to Disqualify and to Dismiss Case, on the basis that, if made public, criminal investigations would be prematurely exposed and their continued viability seriously threatened. (Motion to Seal and Impound Office of Attorney General's Response in Opposition

to Defendant Ali's Motion to Disqualify and to Dismiss Case) The court granted the Motion to Seal on October 4, 2013. On that date, the OAG filed a Response in Opposition to Defendant Ali's Motion to Disqualify and to Dismiss Case. The OAG asserted that the new administration undertook a diligent review of the corruption investigation and Defendant's criminal case. (Office of Attorney General's Response in Opposition to Defendant Ali's Motion to Disqualify and to Dismiss Case, p. 4) The OAG disputed the period of time over which Defendant acted as a confidential informant, asserted that he avoided his obligation to cooperate, and that no conflict of interest existed or could be imputed to the Attorney General. The OAG asserted that until criminal charges in the corruption case were brought and resolved, Defendant's obligation had not ended. (*Id.*, p. 8) The OAG submitted that under the terms of the agreement, dismissal of the charges was premature. (*Id.*, p. 10)

On October 15, 2013, Defendant filed a Reply to the Attorney General's Response regarding the alleged conflict of interest and renewed his assertion that his cooperation created concerns for his safety.

On November 8, 2013, the OAG and Defendant presented to the court an agreed-upon Order which provided that Defendant would be permitted to withdraw his September 12, 2013 motions, and that the OAG would execute the terms of the Cooperation Agreement of November 30, 2012, including the entry of a *nolle prosequi* for all charges at the within dockets. The Order further provided that based upon the interests of any ongoing investigations by any agency or entity and Defendant's individual interests, all pleadings would be sealed and impounded, and any party or individual with knowledge of the material contained in the pleadings prohibited from disclosure to any third party without first obtaining court permission. The court executed the agreed-upon Order on November 8, 2013.

Also on November 8, 2013, the OAG filed an Application for *Nolle Prosequi*. The court executed the Order of *Nolle Prosequi* on November 8, 2013.

On March 13, 2014, in compliance with the November 8, 2013 Sealing Order, the OAG filed a Motion to Seal an anticipated filing, which the court granted. The OAG then filed a Motion to Permit Disclosure and Unseal Pleadings. In that Motion, the OAG asserted that it learned that a reporter from the Philadelphia Inquirer had obtained a large volume of information contained in the pleadings, that the reporter intended to run an article reflecting this knowledge on Sunday, March 16, 2014, and had asked the OAG for responses to the allegations. (Motion to Permit Disclosure and Unseal Pleadings, paragraphs 8-9) The OAG asserted in its Motion that unless the court unseal the pleading, the OAG would be prejudiced in its ability to respond to matters contained in the article. (*Id.*, para. 10) The OAG requested the court's expedited review of the Motion. The OAG's Motion reflected Defense Counsel's opposition to the request for unsealing at that time. (*Id.*, para. 12)

Following consultation with counsel and the court, the OAG presented an Order on March 14, 2014, which provided for limited comment by parties, affiants or prosecutorial authorities, and the prohibition of identification of the confidential informant. The court executed and entered the Order on March 14, 2014.

On March 18, 2014, Defendant filed a Motion to Permit Disclosure and Unseal Pleadings. Defendant asserted that shortly after entry of the March 14, 2014 Order, the OAG provided a statement to the Philadelphia Inquirer which included allegedly inaccurate information regarding the charges against him, and the withdrawal thereof. (Defendant Tyron Ali's Motion to Permit Disclosure and Unseal Pleadings, paragraphs 9-12) Defendant also asserted that the OAG gave a one-hour interview to the Associated Press, and released a statement via its website, which

Defendant asserted contained inaccurate information directed to Defendant. (*Id.*, paragraphs 12-13) Defendant asserted that he would have lodged strenuous objection to the proposed Order had he been made aware of the OAG's intentions with regard to public comment in relation to the terms of the court's Order allowing limited disclosure. (*Id.*, paragraphs 14-15) Defendant requested that the court rescind its November 8, 2013 Sealing Order to allow Defendant to speak publicly about the matter. (*Id.* paragraph 16)

On March 19, 2014, the court granted Defendant Tyron Ali's Motion to Permit Disclosure and ordered that all pleadings relative to the within matter be unsealed.

On March 20, 2014, the court entertained an oral motion of Defense Counsel to vacate the unsealing Order of March 19, 2014. Defense Counsel represented on the record that, after entry of the unsealing Order, Defendant received threats to his personal safety, which information law enforcement acted upon. The Commonwealth took no position on Defendant's request, and deferred to the court's judgment regarding the issue raised as to threats to Defendant's safety.

Based upon those representations, the court entered an Order on March 20, 2014 which rescinded the March 19, 2014 Order, and reinstated all previous orders relating to sealing.

Petition to Intervene an Motion to Unseal Transcripts

On March 31, 2014, Trib Total Media, Inc., and Brad Bumsted filed a Petition to Intervene and Motion to Unseal Transcripts.¹ On April 1, 2014, the court directed the filing of responses by the Commonwealth and Defendant.

On April 2, 2014, Philadelphia Media Network, LLC, The Associated Press, PA Media Group, PG Publishing Co., Lancaster Newspapers, The Morning Call, LLC, NBC Subsidiary

¹ March 31, 2014, Adam Klein, Esq., entered his appearance on behalf of Trib Total Media, Inc., and Brad Bumstead. Mr. Klein filed a Motion to Withdraw as Counsel on April 2, 2014, which the Court granted.

(WCAU-TV), LLC and the Pennsylvania Freedom of Information Coalition filed a Petition to Intervene for the Limited Purpose of Seeking Judicial Access to Public Records. We rule upon that Petition by separate Order.

In the instant Petition, Intervenors assert that the dockets contain entries beginning September 11, 2013, identified as "Sealed Entry". Petitioners seek permission to intervene and request unsealing of those entries.

On April 7, 2014, Defendant filed his Response to the Petition to Intervene filed on Behalf of Trib Total Media, Inc., and Brad Bumsted. Defendant stated in his Response that, based upon widespread release of information about him, and after consultation with counsel and law enforcement officials, he did not believe unsealing the case would create any more risk than that already presented. (Tyron Ali's Response to the Petition to Intervene filed on Behalf of Trib Total Media, Inc., and Brad Bumsted, paragraph 4)Therefore, Defendant did not object to granting intervenor status or unsealing of the record.

On April 7, 2014, the OAG filed Commonwealth's Response in Full Support of Motions Filed By Various Media Groups to Intervene and Unseal All Judicial Records. Inasmuch as the Response contained factual averments which, in and of themselves, revealed sealed matters, the court ordered the filing maintained under seal under further order.

Upon review of the Commonwealth's Response, we find that numerous paragraphs contain factual averments, argument, and conclusions regarding matters not at issue before the court in the Petition to Intervene and Motion to Unseal. For the instant Petition and Motion, we need not consider or resolve factual disputes, or reach conclusions, as to what the filings may indicate. We need to look beyond that which appears on the face of the record.

We find that the OAG's Response constitutes an affirmative pleading which does not comply with the court's Order of April 1, 2014 directing a responsive pleading. It is, therefore, subject to preliminary objection. Pennsylvania Rule of Civil Procedure 1028 provides that preliminary objections may be raised for failure of a pleading to conform to rule of law or court, or the inclusion of impertinent matters. Pa. R.Civ. P. 1028(a)(2). The court may raise preliminary objections *sua sponte*. See, e.g. *Ellenbogen v. PNC Bank*, 731 A.2d 175 (1999)

Accordingly, we strike as irrelevant and nonconforming paragraphs 2 through 15 of the OAG's Response. We consider only paragraphs relevant to the matter before the court which are devoid of factual averments, argument and conclusions: Namely, the OAG's position on the Intervenor's request as set forth in paragraph 1, paragraph 16, and the Wherefore clause.

Based upon those paragraphs, and the Defendant's Response, we conclude that no party objects to the granting of intervenor status or unsealing of the record.

Finally, we remain cognizant that unnecessary disclosure of sensitive personal information may expose Defendant to safety concerns. We grant the motion to unseal the record, but redact limited personal information.

For all of the foregoing reasons, we enter the following:

ORDER

AND NOW, this 10th day of April, 2014, upon consideration of the Petition to Intervene and Motion to Unseal Transcripts of Trib Total Media, Inc. and Brad Bumsted, Tyron Ali's Response to the Petition to Intevene filed on Behalf of Trib Total Media, Inc., and Brad

Burnsted, and the Commonwealth's Response in Full Support of Motions Filed By Various Media Groups to Intervene and Unseal All Judicial Records, it is hereby **ORDERED** that:

1. Paragraphs 2-15 of the Commonwealth's Response in Full Support of Motions Filed By Various Media Groups to Intervene and Unseal All Judicial Records are **STRICKEN**;
2. The Petition to Intervene and Motion to Unseal Transcripts of Trib Total Media, Inc. and Brad Burnsted are **GRANTED**;
3. The within dockets are unsealed, with narrow exception set forth herein.

BY THE COURT:

Todd Hoover
TODD A. HOOVER
PRESIDENT JUDGE

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