



93193876

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MARTIN YAVORCIK
Defendant

Case No: CR-14-585428-C

Judge: JANET R BURNSIDE

INDICT: 2923.32 ENGAGING IN PATTERN OF CORRUPT
ACTIVITY; FORFEITURE
2923.01 CONSPIRACY
2923.01 CONSPIRACY
ADDITIONAL COUNTS...

JOURNAL ENTRY

COURT'S JOURNAL ENTRY OF TODAY'S DATE IS CORRECTED TO READ: (NEW FINAL PARAGRAPH)
DEFT'S 2/23/16 MOTION TO SUPPRESS THE STATEMENTS OF CHS1 UNDER THE EXCLUSIONARY RULE IS DENIED.
UNDER THE COURT'S 2014 PRETRIAL ORDER, IT ESTABLISHED A DEADLINE FOR PRETRIAL MOTIONS AT 60 DAYS
FOLLOWING THE STATE'S FILING OF ITS INTENT TO USE EVIDENCE. THAT ORDER PLACED THE DEADLINE FOR
SUCH MOTIONS AT APPROXIMATELY 3/8/15. THERE IS NO APPARENT EXPLANATION FOR THE DEFT WAITING
UNTIL 2/15/16 TO FILE THE MOTION TO SUPPRESS SUCH TESTIMONY. THE IDENTITY OF CHS1 WAS KNOWN BY
THE DEFENDANT--AT THE LATEST--AFTER THE OCTOBER 2015 MOTION HEARING ON DISCOVERY SANCTIONS
WHICH HEARING DEFENDANT ATTENDED WITH HIS THEN COUNSEL OF RECORD. FURTHERMORE AT THE 1/15/16
PRETRIAL CONFERENCE, COUNSEL FOR DEFT PARTICIPATED IN THE SCHEDULING DISCUSSION FOR HEARINGS
ON DEFENSE MOTIONS IN LIMINE PRIOR TO THE 2/29/16 TRIAL DATE AND DID NOT MENTION OR ALERT THE
COURT TO ANY PLANNED MOTIONS FOR SUPPRESSION. AS A RESULT A HEARING DATE WAS SET ONLY FOR
MOTIONS IN LIMINE ON 2/26/16 IN ADVANCE OF THE 2/29/16 TRIAL DATE.

IN ANY EVENT, THE MOTION TO SUPPRESS MUST BE DENIED BECAUSE IT IMPROPERLY ATTEMPTS TO BASE USE
OF THE EXCLUSIONARY RULE ON NON-CONSTITUTIONAL GROUNDS SUCH AS R.C. 3517.21 AND FBI GUIDELINES
FOR "CONFIDENTIAL HUMAN SOURCES". THE EXCLUSIONARY RULE IS GENERALLY LIMITED TO
CONSTITUTIONAL VIOLATIONS. DEFT'S MOTION DOES NOT SET OUT ANY CONSTITUTIONAL VIOLATION. WHILE
THE MOTION SPEAKS OF ILLEGAL WIRETAPPING ACTIVITY, THERE IS NO EVIDENCE OF USE OF ANY WIRETAP.
TO THE CONTRARY, ACCORDING TO BOTH DEFT'S MOTION AND THE STATE'S BRIEF, AN INFORMANT MERELY
RECORDED HIS CONVERSATIONS WITH DEFT WITHOUT THE DEFT'S AWARENESS. NO LEGAL ISSUE IS RAISED
BY THAT ACTIVITY. (THE STATE DID AGREE IN ITS BRIEF THAT TO THE EXTENT THE INFORMANT RECORDED
THE INFORMANT'S CONVERSATION WITH AN INDIVIDUAL OTHER THAN DEFT IT WOULD NOT USE SUCH
RECORDING. THE HEARSAY RULE MIGHT WELL COMPEL THAT RESULT IN ANY EVENT.) IF ALL OF THE FACTS
DESCRIBED IN DEFT'S MOTION WERE PROVEN TRUE, DEFT WOULD NOT HAVE ESTABLISHED A POSSIBLE
FOURTH AMENDMENT VIOLATION OR OTHER BASIS FOR USE OF THE EXCLUSIONARY RULE.

AT TRIAL BEFORE THE JURY THE PARTIES ARE NOT PERMITTED TO INTRODUCE EVIDENCE OR ARGUMENT
SUGGESTING THE USE OF THIS INFORMANT AND THE SURREPTIOUS RECORDING IS SOMEHOW "UNFAIR" OR
OTHERWISE IN VIOLATION OF THE LAW. UNFAIRNESS AND VIOLATIONS OF LAW ARE NOT WITHIN THE
PROVINCE OF THE JURY TO CONSIDER OR DECIDE.

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NAILAH K. BYRD, CLERK



93193876

A handwritten signature in black ink, appearing to read "James R. Purvis". The signature is written in a cursive style with a large initial 'J'.

Judge Signature

03/08/2016

HEAR
03/07/2016

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NAJAH K. BYRD, CLERK

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93190268

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MARTIN YAVORCIK
Defendant

Case No: CR-14-585428-C

Judge: JANET R BURNSIDE

INDICT: 2923.32 ENGAGING IN PATTERN OF CORRUPT
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ADDITIONAL COUNTS...

JOURNAL ENTRY

IN RESPONSE TO THE 2/13/2016 MOTION TO EXTEND DISCOVERY WITH RESPECT TO FINANCIAL COMPENSATION OF CHS1 IS MOOT BECAUSE IT IS THE UNDERSTANDING OF THE COURT FROM 2/19 PT THAT STATE PROVIDED OR WAS IN THE PROCESS OF PROVIDING THIS INFORMATION.

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Judge Signature

03/08/2016

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03/07/2016

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NAHAI K. BYRD, CLERK



93189963

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MARTIN YAVORCIK
Defendant

Case No: CR-14-585428-C

Judge: JANET R BURNSIDE

INDICT: 2923.32 ENGAGING IN PATTERN OF CORRUPT
ACTIVITY; FORFEITURE
2923.01 CONSPIRACY
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ADDITIONAL COUNTS...

JOURNAL ENTRY

THE COURT ORDERS THAT AT TRIAL OF THIS ACTION THERE WILL BE NO MENTION IN THE PRESENCE OF THE JURY OF

1. ANY PRIOR INDICTMENT AGAINST ANY OF THE DEFENDANTS,
2. ANY PART OF ANY CRIMINAL PROCEEDINGS INSTITUTED BY THE MAHONING COUNTY INDICTMENT AGAINST ANY DEFENDANT PRIOR TO THE PRESENT ACTION. (SCIORTINO'S INDICTMENT THERE IS SUBSEQUENT TO THE PRESENT ACTION.)
3. ANY EIGHTH OR SEVENTH DISTRICT COURT OF APPEALS OR OF ANY OHIO SUPREME COURT PROCEEDINGS COLLATERAL (OR OTHERWISE) TO THIS ACTION OR INVOLVING ANY OTHER CIVIL OR CRIMINAL ACTION RELATED TO THE SUBJECT MATTER HEREOF OR RELATED TO ANY ALLEGED CO-CONSPIRATOR OF THE DEFENDANTS,
4. REFERENCE TO OR USE OF THE TERM, "SPECIAL PROSECUTOR" OR "APPOINTED PROSECUTOR", AND NO REFERENCE TO ANY INDIVIDUAL (WHETHER PRESENTLY SERVING AS COUNSEL IN THIS ACTION OR FORMERLY SERVING AS COUNSEL IN THIS ACTION OR THE PRIOR CRIMINAL PROCEEDINGS IN MAHONING COUNTY) AS A "SPECIAL PROSECUTOR" OR "APPOINTED PROSECUTOR", (THE COURT DOES NOT SEE A BASIS TO REFER TO DENNIS WILL AND HIS ASSOCIATE PROSECUTORS BUT IF SO HE SHALL BE REFERRED TO SIMPLY AS A PROSECUTOR.)
5. REFERENCE TO ANY PROSECUTOR USING ANY TERM EXCEPT AS "PROSECUTORS" OR "ASSISTANT COUNTY PROSECUTORS",
6. WHETHER A PROSECUTOR IS A MEMBER OF THE CUYAHOGA COUNTY PROSECUTOR'S OFFICE OR OF THE OHIO ATTORNEY GENERAL'S OFFICE OR OTHERWISE; AND NO PROSECUTOR SHALL BE REFERRED TO AS AN OHIO ATTORNEY GENERAL.
7. THE OHIO ATTORNEY GENERAL'S INVOLVEMENT IN THIS ACTION.

THIS ORDER APPLIES TO ALL COUNSEL, ALL DEFENDANTS AND ALL WITNESSES AND IT WILL BE THE RESPONSIBILITY OF EACH PARTY OR ATTORNEY CALLING A WITNESS FOR TESTIMONY TO SPECIFICALLY ADVISE HIM/HER OF THIS ORDER IN ITS ENTIRETY AND PROVIDE SUCH PERSON WITH A COPY OF THIS ORDER TO READ AND INITIAL IN COUNSEL'S PRESENCE.

IN ADDITION (A) NO PARTY MAY QUOTE FROM OR DISPLAY ANY TEXT OF THE INDICTMENT OR OF ANY

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REVISED CODE SECTION DURING OPENING STATEMENT OR OTHERWISE. THE PARTIES MAY HAVE MORE LATITUDE DURING CLOSING ARGUMENT. IF A LITIGANT WANTS A PARTICULAR LEGAL OR INDICTMENT PROVISION NOTED OR EXPLAINED THE JURY, THEY CAN REQUEST THE COURT TO DO SO.

(B) NO RECORDING (AUDIO OR VIDEO) MAY BE PLAYED OR QUOTED DURING OPENING STATEMENT.

(C) NO EVIDENCE WHOSE ADMISSION RELIES ON RULE 801(D) AS TO CO-CONSPIRATOR STATEMENTS MAY BE QUOTED OR DESCRIBED IN DETAIL DURING OPENING STATEMENT.

(E) THE PARTY OR COUNSEL MAY NOT MAKE ANY STATEMENT OF PERSONAL BELIEF IN ANY FACT UNLESS THE PARTY IS TESTIFYING UNDER OATH BEFORE THE JURY.

(F) DURING OPENING STATEMENT, ALL SPEAKERS MUST BE CAREFUL TO PREFACE THEIR DESCRIPTIONS OF ANTICIPATED TRIAL EVIDENCE WITH "I EXPECT THE EVIDENCE TO SHOW:" OR SIMILAR WORDS. SPEAKERS MAY NOT SAY "I BELIEVE THE EVIDENCE IS;" OR "I BELIEVE THE EVIDENCE WILL BE:."

(G) WITNESSES MUST BE ASKED QUESTIONS; QUESTIONERS MAY NOT MAKE STATEMENTS OF FACT AND THEN WAIT FOR THE WITNESS TO RESPOND TO IT. VIOLATIONS WILL RESULT IN THE COURT STRIKING THE STATEMENT, INSTRUCTING THE JURY IT IS NOT EVIDENCE AND IT IS TO DISREGARD THE STATEMENT, AND ADMONISHING THE QUESTIONER THAT HE/SHE MUST ASK QUESTIONS OF THE WITNESS AND NOT MAKE STATEMENTS TO THE WITNESS.

THIS ORDER IS IN ADDITION TO OTHER, SIMILAR ORDERS ISSUED BY THE COURT IN THE ACTION.

VIOLATION OF THIS ORDER WILL BE SUBJECT TO DIRECT, CRIMINAL CONTEMPT OF COURT AGAINST THE VIOLATOR.

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Judge Signature

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93189905

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MARTIN YAVORCIK
Defendant

Case No: CR-14-585428-C

Judge: JANET R BURNSIDE

INDICT; 2923.32 ENGAGING IN PATTERN OF CORRUPT
ACTIVITY; FORFEITURE
2923.01 CONSPIRACY
2923.01 CONSPIRACY
ADDITIONAL COUNTS...

JOURNAL ENTRY

DEFT'S 2/23/16 MOTION TO SUPPRESS THE STATEMENTS OF CHS1 UNDER THE EXCLUSIONARY RULE IS DENIED. UNDER THE COURT'S 2014 PRETRIAL ORDER, IT ESTABLISHED A DEADLINE FOR PRETRIAL MOTIONS AT 60 DAYS FOLLOWING THE STATE'S FILING OF ITS INTENT TO USE EVIDENCE. THAT ORDER PLACED THE DEADLINE FOR SUCH MOTIONS AT APPROXIMATELY 3/8/15. THERE IS NO APPARENT EXPLANATION FOR THE DEFT TO WAIT UNTIL 2/15/16 TO FILE THE MOTION TO SUPPRESS SUCH TESTIMONY. THE IDENTITY OF CHS1 WAS KNOWN BY THE DEFENDANT--AT THE LATEST--AFTER THE OCTOBER 2015 MOTION HEARING ON DISCOVERY SANCTIONS WHICH HEARING DEFENDANT ATTENDED WITH HIS THEN COUNSEL OF RECORD. FURTHERMORE AT THE 1/15/16 PRETRIAL CONFERENCE, COUNSEL FOR DEFT PARTICIPATED IN THE SCHEDULING DISCUSSION FOR HEARINGS ON DEFENSE MOTIONS PRIOR TO THE 2/29/16 TRIAL DATE AND DID NOT MENTION OR ALERT THE COURT TO ANY PLANNED MOTIONS FOR SUPPRESSION OF EVIDENCE UNDER CRIM R. 12. AS A RESULT A HEARING DATE WAS SET ONLY FOR MOTIONS IN LIMINE ON 2/26/16 IN ADVANCE OF THE 2/29/16 TRIAL DATE.

IN ANY EVENT, THE MOTION TO SUPPRESS MUST BE DENIED ON ITS MERITS BECAUSE IT IMPROPERLY ATTEMPTS TO BASE USE OF THE EXCLUSIONARY RULE ON NON-CONSTITUTIONAL GROUNDS SUCH AS R.C. 3517.21 AND FBI GUIDELINES FOR 'CONFIDENTIAL HUMAN SOURCES'. THE EXCLUSIONARY RULE IS GENERALLY LIMITED TO CONSTITUTIONAL VIOLATIONS. DEFT'S MOTION DOES NOT SET OUT ANY CONSTITUTIONAL VIOLATION, WHILE THE MOTION SPEAKS OF ILLEGAL WIRETAPPING ACTIVITY. THERE IS NO EVIDENCE OF USE OF ANY WIRETAP. TO THE CONTRARY, ACCORDING TO BOTH DEFT'S MOTION AND THE STATE'S BRIEF, AN INFORMANT MERELY RECORDED HIS CONVERSATIONS WITH DEFT WITHOUT THE DEFT'S AWARENESS. NO LEGAL ISSUE IS RAISED BY THAT ACTIVITY. THE STATE DID AGREE IN ITS BRIEF THAT TO THE EXTENT THE INFORMANT RECORDED THE INFORMANT'S CONVERSATION WITH AN INDIVIDUAL OTHER THAN DEFT IT WOULD NOT USE SUCH RECORDING. THE HEARSAY RULE MIGHT WELL COMPEL THAT RESULT IN ANY EVENT.) IF ALL OF THE FACTS DESCRIBED IN DEFT'S MOTION WERE PROVEN TRUE, DEFT WOULD NOT HAVE ESTABLISHED A POSSIBLE FOURTH AMENDMENT VIOLATION OR OTHER BASIS FOR USE OF THE EXCLUSIONARY RULE.

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John R. Burdick

Judge Signature

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93188415

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MARTIN YAVORCIK
Defendant

Case No: CR-14-585428-C

Judge: JANET R BURNSIDE

INDICT: 2923.32 ENGAGING IN PATTERN OF CORRUPT
ACTIVITY; FORFEITURE
2923.01 CONSPIRACY
2923.01 CONSPIRACY
ADDITIONAL COUNTS...

JOURNAL ENTRY

AT THE RULE 104 HRG SET FOR 3/10/16, TO THE EXTENT THE STATE SEEKS ADMISSION OF A STATEMENT (RECORDED OR OTHERWISE) UNDER EVID. R. 801(D)(2)(E), THE STATE IS ORDERED TO PRODUCE EVIDENCE AVAILABLE TO IT FOR TRIAL USE THAT WOULD ESTABLISH ADMISSIBILITY THE STATEMENT UNDER THAT RULE. ASSUMING ADMISSIBILITY UNDER EVID. R. 801(D)(2)(E), THE STATE SHOULD ALSO CONSIDER WHETHER CRAWFORD V WASHINGTON PERMITS INTRODUCTION OF THE STATEMENT.

AT THE COURT'S SUGGESTION, THE STATE EARLIER PROPOSED CERTAIN EXHIBITS AS ITEMS OF POSSIBLE STIPULATION AS TO AUTHENTICITY OR ADMISSIBILITY. THE PARTIES ARE ORDERED TO CONFER ON SUCH A LIST AND ADVISE THE COURT OF ANY EXHIBITS THAT MIGHT ENJOY SUCH STIPULATION. THE PURPOSE OF THIS EFFORT IS TO STREAMLINE TRIAL AND PRESERVE THE JURY'S TIME AND ATTENTION TO THE CRITICAL ISSUES THE LITIGANTS HAVE FOR IT.

AT TRIAL BEFORE THE JURY THE PARTIES ARE NOT PERMITTED TO INTRODUCE EVIDENCE OR ARGUMENT SUGGESTING THE USE OF THIS INFORMANT AND THE SURREPTIOUS RECORDING IS SOMEHOW 'UNFAIR' OR OTHERWISE IN VIOLATION OF THE LAW. UNFAIRNESS AND VIOLATIONS OF LAW ARE NOT WITHIN THE PROVINCE OF THE JURY TO CONSIDER OR DECIDE.

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93188326

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO
Plaintiff

MARTIN YAVORCIK
Defendant

Case No: CR-14-585428-C

Judge: JANET R BURNSIDE

INDICT: 2923.32 ENGAGING IN PATTERN OF CORRUPT
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2923.01 CONSPIRACY
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JOURNAL ENTRY

AS TO DEFT'S MTN FOR GRAND JURY TESTIMONY/DISMISSAL AND HIS MTN IN LIMINE AND FOR KASTIGAR HRG/DISMISSAL.

(1) THE COURT DENIES THE MOTION FOR GRAND JURY TESTIMONY AT THIS TIME. UNDER THE COURT'S 2014 PRETRIAL ORDER, IT ESTABLISHED A DEADLINE FOR PRETRIAL MOTIONS AT 60 DAYS FOLLOWING THE STATE'S FILING OF ITS INTENT TO USE EVIDENCE. THAT ORDER PLACED THE DEADLINE FOR SUCH MOTIONS AT APPROXIMATELY 3/8/15. THERE IS NO APPARENT EXPLANATION FOR THE DEFT WAITING UNTIL 2/15/16 TO FILE THE MOTION FOR SUCH TESTIMONY. THE MOTION IS NOT BASED ON RECENTLY DISCOVERED EVIDENCE. THE DEFT KNEW OF HIS INDICTMENT AND OF HIS PROFFERED AND HIS INTERVIEW STATEMENTS BY THE TIME OF HIS MAY 2014 ARRAIGNMENT. KASTIGAR AND IMMUNITY PRINCIPLES WERE WELL KNOWN BEFORE 2010 AND NO NEW LEGAL DEVELOPMENT IN THIS AREA EXPLAINS SUCH A LATE MOTION.

FURTHERMORE AT THE 1/15/16 PRETRIAL CONFERENCE, COUNSEL FOR DEFT PARTICIPATED IN THE SCHEDULING DISCUSSION FOR HEARINGS ON DEFENSE MOTIONS IN LIMINE PRIOR TO THE 2/29/16 TRIAL DATE AND DID NOT MENTION OR ALERT THE COURT OF ANY INTENDED MOTIONS FOR GRAND JURY TESTIMONY OR FOR SUPPRESSION OF EVIDENCE. AS A RESULT A HEARING DATE WAS SET ONLY FOR MOTIONS IN LIMINE.

(2) IN ANY EVENT THE COURT FINDS THAT THUS FAR DEFT HAS NOT SHOWN A PARTICULARIZED NEED FOR AN IN CAMERA INSPECTION OF GRAND JURY TESTIMONY. AS DISCUSSED BELOW, THE DEFT HAS NOT ALLEGED STATUTORY IMMUNITY FOR ANY STATEMENT HE MADE AND HIS APPARENT POCKET IMMUNITY FOR HIS THREE STATEMENTS DOES NOT NECESSARILY PROHIBIT THE USE OF HIS STATEMENTS BEFORE THE GRAND JURY. THE STATE ALLEGES, FOR EXAMPLE, THAT OTHER WITNESSES ARE AVAILABLE TO TESTIFY TO STATEMENTS THAT DEFTS MADE TO THEM OR IN THEIR PRESENCE, INDEPENDENT OF HIS STATEMENTS TO LAW ENFORCEMENT. THE STATE IN ITS OPPOSITION BRIEF SPECIFICALLY DESCRIBED OTHER WITNESSES WHOSE TESTIMONY ABOUT DEFT'S STATEMENTS WERE USED TO OBTAIN HIS INDICTMENT AND IT REPRESENTED DEFT'S OWN STATEMENTS TO LAW ENFORCEMENT WERE NOT USED FOR THIS PURPOSE BEFORE THE GRAND JURY.

(3) THE COURT MAKES NO RULING AT THIS TIME ON THE RELATED MOTION IN LIMINE AND FOR KASTIGAR HEARING/DISMISSAL BUT WILL CONDUCT AN EVID. R. 104 HRG AS EXPLAINED HERE. DEFT CITES A 3/10/10 STATEMENT, A 12/4/10 STATEMENT AND A 2/5/11 STATEMENT. (THE STATE'S BRIEF REFERS TO DEFT'S 3/2/10 STATEMENT BUT DEFT DOES NOT.) DEFT DOES NOT CONTEND THAT HE HAD STATUTORY IMMUNITY WHEN HE GAVE THESE STATEMENTS AND HE DOES NOT CONTEND THE STATEMENTS WERE COMPELLED. THEREFORE THE COURT CONCLUDES FROM THAT HE IS NOT ENTITLED TO A KASTIGAR HEARING UNDER OHIO LAW. THE 3/10/10 STATEMENT WAS MADE UNDER AN ORAL PROFFER AGREEMENT THAT SPECIFICALLY PERMITTED LAW ENFORCEMENT TO USE ANY DERIVATIVE EVIDENCE. DEFT MADE THE 12/4/10 STATEMENT UNDER A WRITTEN PROFFER AGREEMENT WITH THE FBI AND IN IT, DEFT SPECIFICALLY WAIVED ANY RIGHT TO A KASTIGAR HEARING AND ACKNOWLEDGED LAW ENFORCEMENT COULD USE DERIVATIVE EVIDENCE. DEFT'S 2/5/11 STATEMENT WAS GIVEN UNDER THE SAME WRITTEN PROFFER AGREEMENT.

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THE COURT UNDERSTANDS POCKET IMMUNITY TO PERMIT THE STATE TO IMPEACH A DEFENDANT SHOULD HE TESTIFY AT TRIAL OR HEARING CONTRARY TO HIS STATEMENTS UNDER SUCH POCKET IMMUNITY. AT BEST DEFT WAS GIVEN INFORMAL OR POCKET IMMUNITY FOR THESE 3 STATEMENTS. THE STATE NOW ARGUES THAT DEFT'S RECOURSE WOULD BE LIMITED TO CONTRACT PRINCIPLES SHOULD THE STATE BE SHOWN TO HAVE VIOLATED THE TERMS OF HIS POCKET IMMUNITY. BUT IT DOES NOT ELABORATE ON THE REMEDY OR REMEDIES DEFT WOULD HAVE UNDER CONTRACT LAW. THE COURT ASSUMES THE REMEDY COULD WELL DEPEND UPON THE NATURE OF THE VIOLATION AND THEREFORE THE REMEDY WOULD BE DETERMINED AFTER AN EVIDENTIARY HEARING. SINCE THE STATE CONCEDES DEFT ENJOYS POCKET IMMUNITY FOR THESE THREE STATEMENTS, THE UPCOMING RULE 104 HRG MUST GIVE DEFT THE OPPORTUNITY TO PROVE A VIOLATION OF THAT POCKET IMMUNITY BY THE STATE AND TO PROVE THE APPROPRIATE REMEDY. IF THE DEFT WISHES TO PRESENT EVIDENCE TO ESTABLISH STATUTORY IMMUNITY FOR THESE THREE STATEMENTS, HE MAY DO AT THE UPCOMING RULE 104 HRG.

THE RULE 104 HEARING NOW SET FOR 3/10/16 IS A NOT AN INVITATION TO RE-ARGUE THE MOTIONS, BUT A FORUM TO ESTABLISH WITH EVIDENCE DEFT'S ENTITLEMENT TO RELIEF. THIS RULE 104 HEARING WILL NOT INVOLVE DEFT'S COMPLAINT THAT THE TERM DERIVATIVE EVIDENCE WAS NOT EXPLAINED TO HIM AT THE TIME OF 3/10/10 ORAL PROFFER AGREEMENT HOWEVER.

THE PARTIES SHOULD NOTE THAT BY EVIDENCE IN THE ABOVE, THE COURT DOES NOT MEAN EVIDENCE MEETING ALL THE REQUIREMENTS OF THE RULES OF EVIDENCE SINCE RULE 104 HEARINGS ARE NOT GOVERNED BY THE RULES.

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Judge Signature

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93186964

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO
Plaintiff

MARTIN YAVORCIK
Defendant

Case No: CR-14-585428-C

Judge: JANET R BURNSIDE

INDICT: 2923.32 ENGAGING IN PATTERN OF CORRUPT
ACTIVITY; FORFEITURE;
2923.01 CONSPIRACY
2923.01 CONSPIRACY
ADDITIONAL COUNTS...

JOURNAL ENTRY

DEFT'S SECOND MOTION IN LIMINE FILED 3/2/16 IS NOT YET RIPE FOR DECISION BUT WITH TRIAL TO COMMENCE IN ONE WEEK, THE COURT ADDRESSES GENERALLY SOME ITS ISSUES. (1) AS TO DRUGS AND ALCOHOL USE, IT WILL BE THE BURDEN OF THE STATE TO ESTABLISH THE RELEVANCY OF SUCH INFORMATION AND THE 3/10/16 RULE 104 HEARING SHOULD BE USED FOR THAT PURPOSE. (2) THE COURT CANNOT GRANT THE MOTION'S REQUEST THAT THE COURT "REQUIRE THE ENTIRE RECORDING TO BE PLAYED AT [THE TIME OF ITS INTRODUCTION BY THE STATE]." THE PARTIES ARE LIMITED TO PRODUCING RELEVANT, NON-CUMULATIVE EVIDENCE AND EVERY PART OF A RECORDING MAY NOT MEET THAT STANDARD. FURTHER THE COURT AND THE PARTIES NEED TO RESPECT THE JURY'S TIME AND ATTENTION SPAN AND RESERVE BOTH FOR THE CRITICAL ISSUES THE LITIGANTS HAVE FOR IT. FURTHER SUCH A PRACTICE COULD CONCEIVABLY DILUTE THE IMPACT OF A LITIGANT'S EVIDENCE WITHOUT ANY CORRESPONDING BENEFIT TO THE OTHER PARTY OR THE FACT-FINDING PROCESS. OHIO LAW GENERALLY PERMITS AN ADVERSARY PARTY TO INTRODUCE OTHER PARTS OF A PARTIALLY PLAYED RECORDING BUT THOSE OTHER PARTS ARE CHOSEN BY THE ADVERSARY PARTY AND THOSE OTHER PARTS MUST STILL BE ESTABLISHED AS RELEVANT AND NOT MERE CUMULATIVE EVIDENCE.

(3) THAT SAID, THE COURT WILL NOT PERMIT ANY RECORDING TO BE PLAYED OR ITS CONTENTS READ TO THE JURY DURING OPENING STATEMENT. (4) THE MOTION IS NOT SPECIFIC ENOUGH WHEN IT MOVES TO EXCLUDE ALL HEARSAY AND OTHER INADMISSIBLE EVIDENCE FROM RECORDINGS PLANNED TO BE INTRODUCED BY THE STATE. IT IS DEFT'S OBLIGATION ON A MOTION IN LIMINE TO BRING TO THE COURT'S ATTENTION ANY SPECIFIC PORTIONS OF ANY EVIDENCE THAT IS INADMISSIBLE UNDER THE EVIDENCE RULES. THE COURT AT THIS LATE DATE IS IN NO POSITION TO LISTEN TO THE EIGHT (8) RECORDINGS (OR READ THEIR TRANSCRIPTS) LOOKING FOR POSSIBLE RULE VIOLATIONS. IF THE DEFT DOES NOT KNOW WHAT PORTIONS OF THE RECORDINGS THE STATE INTENDS TO USE, IT SHOULD REQUEST SUCH INFORMATION AND BY THAT MEANS DETERMINE IF ANY EVIDENCE RULE VIOLATIONS ARE ARGUABLY CONTAINED THEREIN. THE DEFENDANT CAN THEN MOVE IN WRITING WITH SPECIFICS. (5) THE COURT DID NOT UNDERSTAND THE MOTION'S REFERENCE TO A RECORDING THAT "DEALS WITH INDIVIDUALS NOT ON THE STATES WITNESS LIST". AGAIN THE MOTION IS NOT SPECIFIC ENOUGH.

03/07/2016
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Judge Signature

03/08/2016

HEAR
03/07/2016

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