

<p>COMMONWEALTH OF PENNSYLVANIA v. LOUIS DENAPLES</p>	<p>: IN THE COURT OF COMMON PLEAS : DAUPHIN COUNTY, PENNSYLVANIA : NO. 165 MD 2008 : : IN THE COURT OF COMMON PLEAS : DAUPHIN COUNTY, PENNSYLVANIA : NO. 166 MD 2008 : :</p>
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ORDER OF COURT

AND NOW, this ___ day of _____, 2008, upon consideration of the Motion of Louis A. DeNaples and Mount Airy # 1, LLC for Release to Movants of Grand Jury Minutes, Legal Instructions Given to Grand Jurors, Exculpatory Information and Witness Transcripts, and the response of the Commonwealth of Pennsylvania, it is hereby ORDERED AND DECREED that said Motion is GRANTED and the Commonwealth is ORDERED to immediately release:

- a. Attendance records for the grand jurors;
- b. A log of what evidence was presented to the grand jurors and the day on which it was presented;
- c. Legal instructions given to the grand jurors regarding the matter under investigation, including but not limited to:
 - i. Instructions given to grand jury at outset of the grand jury's term regarding any matter related to the conduct of the grand jury;
 - ii. Instructions given on perjury, including instructions on the requirement of falsity, the element of subjective knowledge of falsity, materiality and the requirement that perjury cannot be established on the uncorroborated testimony of one witness;
 - iii. Instructions given on corporate liability for the crime of perjury;

- iv. Instructions on the standard for a *prima facie* case;
 - iv. Instructions given on standards of law required for returning a Presentment;
 - v. Instruction given on standards of law required for returning a Report; and
 - vi. All legal instructions given to the jurors concerning a witness' invocation of the privilege against self-incrimination;
- d. Any request, and any records of the vote taken, by the grand jurors for the extension of the term of the Investigating Grand Jury as required by 42 Pa.C.S. §4548;
- e. The original notice of submission submitted by the attorney for the Commonwealth;
- f. Any reference by the Attorney for the Commonwealth to "The Godfather" or any other inflammatory reference to organized crime or *LaCosa Nostra* or the Mafia;
- g. The transcripts of testimony of the witnesses relied on by the Commonwealth, as well as any tape recordings of that testimony, including the testimony of William D'Elia, Thomas Joseph, Jeanne Stanton, Samuel Marranta, Salvatore DeFrancesco, Barry Shapiro, Eugene DeNaples, Dominick DeNaples, Patrick Walsh, Shamsud-din Ali, Jamie Brazil, John Minora, Samuel Staten, Sr., John Meighan, Roger Greenbank, John Street, Salvatore Avellino and Richard L. James;

- h. The transcripts of testimony of any witnesses that negate the Commonwealth's *prima facie* case;
- i. All parts of the record reviewed by the Supervising Judge of the Grand Jury in finding that Report No.1 "is based on facts received in the course of the various investigations authorized by this Court and is supported by a preponderance of the evidence;" and
- j. all exculpatory materials as to Movants under *Brady v. Maryland*, 373 U.S. 83 (1963), as well as a designation of what exculpatory materials were presented to the grand jurors and what exculpatory materials were not presented to the grand jurors, including, but not limited to any communications between the U.S. Attorney and William D'Elia and/or the Pennsylvania State Police or any representative of the Dauphin County District Attorneys' office and William D'Elia.

J

**IN THE COURT OF COMMON PLEAS
OF DAUPHIN COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE COURT OF
	:	COMMON PLEAS OF
v.	:	DAUPHIN COUNTY
	:	
LOUIS DENAPLES and	:	NOS. 165 and 166 MD 2008
MOUNT AIRY #1 LLC.	:	

**MOTION OF LOUIS DENAPLES AND MOUNT AIRY #1 LLC
FOR RELEASE TO MOVANTS OF GRAND JURY MINUTES, LEGAL
INSTRUCTIONS GIVEN TO GRAND JURORS, EXCULPATORY
INFORMATION AND WITNESS TRANSCRIPTS**

Movants, Louis DeNaples and Mount Airy #1 LLC, by and through their undersigned counsel, hereby move this Honorable Court for an Order directing the immediate release to Movants of grand jury minutes, legal instructions given to grand jurors, exculpatory information and witness transcripts. In support of this motion the following is averred:

1. Movants are Louis DeNaples and Mount Airy #1 LLC (hereafter “DeNaples” and Mount Airy” respectively).
2. Respondent is the Commonwealth of Pennsylvania (hereafter “Commonwealth”).

PROCEDURAL HISTORY

3. On May 24, 2006, the District Attorney of Dauphin County filed an Application for Impanelment of an investigating Grand Jury pursuant to 42 Pa.C.S. § 4543(b) requesting an order of court to impanel an Investigating Grand Jury. The Application for Impanelment mechanically averred certain non-specific allegations about the existence of criminal activity within Dauphin County ostensibly to support the necessity of impaneling an investigating grand jury. A copy of the Application for Impanelment is attached hereto and incorporated herein as Exhibit "A."

4. Despite the facial defects in the Application for Impanelment, on June 2, 2006, The Honorable Richard A. Lewis issued an Order that the Fourth Dauphin County Investigating Grand Jury be summoned to use its powers to investigate criminal matters in Dauphin County, Pennsylvania. A copy of the Order of June 2, 2006 is attached hereto and incorporated herein as Exhibit "B."

5. Sometime after June 2, 2006, a Notice of Submission (hereinafter "original Notice of Submission") was filed by the District Attorney. Movants have been denied access to the original Notice of Submission.

6. On July 6, 2007, the Supervising Judge of the Investigating Grand Jury, the Honorable Todd A. Hoover, issued an Order directing that Petitioners be provided with a copy of an *amended* Notice of Submission. A copy of said Order is attached hereto and incorporated herein as Exhibit "C." This was the first notice to Petitioners that an "amended" Notice of Submission had been filed.

7. On July 6, 2007, counsel for Petitioners was supplied with a copy of an

amended Notice of Submission by the District Attorney. The amended Notice of Submission mechanically averred that the investigative resources of the Grand Jury are necessary for proper investigation of “false testimony and false statements made in connection with an application for a gaming license by Louis A. DeNaples and/or Mount Airy #1, LLC.” A copy of the Amended Notice of Submission is appended hereto as Exhibit “D.”

8. In or about November 2007, the Commonwealth petitioned for an extension of the term of the Investigating Grand Jury, and on November 30, 2007, Judge Hoover entered an Order extending the term of the investigating grand jury for a period not to exceed an additional six months.

9. On January 23, 2008, the Investigating Grand Jury issued Presentment No. 6 purporting to find that Louis DeNaples gave false testimony on August 16, 2006 and September 28, 2006. In Presentment No. 6, the Investigating Grand Jury alleges that it “received credible evidence demonstrating the falsity of sworn statements made by DeNaples on these occasions,” *See Exhibit “E,” Presentment No. 6 at 2, pertaining to the following matters:*

- A. Count One - Perjury Related to Dealings with William D’Elia;
- B. Count Two - Perjury Related to Dealings with Russell Bufalino;
- C. Count Three - Perjury Related to Dealings with Shamsud-din Ali; and
- D. Count Four - Perjury Related to Dealings with Ron White.

Based on the allegations, the Investigating Grand Jury recommended that the District Attorney or his designee, institute criminal proceedings against Louis A. DeNaples and charge him with four counts of perjury” *See Exhibit “E,” Presentment No. 6 at 23.*

10. Further, in Presentment No. 6, the Investigating Grand Jury recommended the

institution of criminal proceedings against Mount Airy #1, LLC and that Mount Airy #1, LLC be charged with four counts of perjury on the basis that, at the time of DeNaples' testimony, he "was acting on behalf of Mount Airy #1, LLC as a high managerial agent." See Exhibit "E," Presentment No. 6 at 22-23.

11. On January 28, 2008, Judge Hoover issued an Order accepting Presentment No. 6, and finding that "[t]he Presentment contains factual findings that as a matter of law establish a *prima facie* case of the charges recommended." He also appointed himself as the issuing authority in the matter. Judge Hoover's Order was entered on the docket on January 30, 2008. A copy of Judge Hoover's Order is appended hereto as Exhibit "F."

12. On January 23, 2008, the Investigating Grand Jury issued Report No. 1 which reiterated in full the factual allegations against DeNaples made in Presentment No. 6, and added additional factual allegations against DeNaples, including accusations that:

- a. Louis DeNaples had met with a known member of the Lucchese organized crime family, Salvatore Avellino;
- b. DeNaples escaped a potentially lengthy prison term by employing his organized crime contacts to fix a criminal trial on his behalf;
- c. DeNaples invoked his constitutional privilege against self-incrimination;
- d. DeNaples, through counsel, vigorously opposed any scrutiny by law enforcement agencies of the testimony in support of his gaming application;
- e. Freedom of Information Act documents obtained by DeNaples' attorneys were requested to be provided to the Bureau of Investigation and Enforcement, but were never provided; and

f. The *Philadelphia Inquirer* quoted Governor Rendell as stating that “if in fact a tie is found between Louis DeNaples and organized crime, I am confident that the gaming commission will strip him of his license.”

In addition, Report No. 1 made various other recommendations. A copy of Report No. 1 is appended hereto as Exhibit “G.”

13. On January 28, 2008, Judge Hoover entered an Order accepting Report No. 1 and finding that “the Report is based on facts received in the course of the various investigations authorized by this Court and is supported by a preponderance of the evidence.” A copy of Judge Hoover’s order is appended hereto as Exhibit “H.”

14. On January 30, 2008, respondent Commonwealth filed a criminal complaint against DeNaples charging him with four counts of perjury in violation of 18 Pa.C.S. 4902(a). A copy of the Criminal Complaint is appended hereto as Exhibit “I.” The four counts parallel the four counts recommended by the Investigating Grand Jury, and each count expressly incorporates by reference “[t]he facts stated in Presentment No. 6 of the Dauphin County Investigating Grand Jury” See Exhibit “I,” Criminal Complaint against Louis DeNaples at 2-3. Further, the Affidavit of Probable Cause in support of the Criminal Complaint relies exclusively on “Presentment No. 6 issued by the 4th Dauphin County Investigating Grand Jury.” See Exhibit “I,” Criminal Complaint against Louis DeNaples at 5.

15. On January 30, 2008, respondent Commonwealth also filed a criminal complaint against Mount Airy #1 LLC charging Mount Airy with four counts of perjury in violation of 18 Pa.C.S. §4902(a) corresponding to the charges against DeNaples. A copy of the Criminal Complaint is appended hereto as Exhibit “J.” The four counts parallel the four counts

recommended by the Investigating Grand Jury, and each count expressly incorporates by reference “[t]he facts stated in Presentment No. 6 of the Dauphin County Investigating Grand Jury” *See* Exhibit “J,” Criminal Complaint against Mount Airy #1 LLC at 2-3. Further, the Affidavit of Probable Cause in support of the Criminal Complaint relies exclusively on “Presentment No. 6 issued by the 4th Dauphin County Investigating Grand Jury.” *See* Exhibit “J” Criminal Complaint against Mount Airy #1 LLC at 5.

16. DeNaples and Mount Airy were preliminarily arraigned on the charges in the Criminal Complaints on Wednesday, February 6, 2008.

MOTION FOR RELEASE TO MOVANTS

17. With respect to the Fourth Dauphin County Investigating Grand Jury, Movants request the following documents:

- a. Attendance records for the grand jurors;
- b. A log of what evidence was presented to the grand jurors and the day on which it was presented;
- c. Legal instructions given to the grand jurors regarding the matter under investigation, including but not limited to:
 - i. Instructions given to grand jury at outset of the grand jury’s term regarding any matter related to the conduct of the grand jury;
 - ii. Instructions given on perjury, including instructions on the requirement of falsity, the element of subjective knowledge of falsity, materiality and the requirement that perjury cannot be established on the uncorroborated testimony of one witness;

- iii. Instructions given on corporate liability for the crime of perjury;
 - iv. Instructions on the standard for a *prima facie* case;
 - iv. Instructions given on standards of law required for returning a Presentment;
 - v. Instruction given on standards of law required for returning a Report; and
 - vi. All legal instructions given to the jurors concerning a witness' invocation of the privilege against self-incrimination;
- d. Any request, and any records of the vote taken, by the grand jurors for the extension of the term of the Investigating Grand Jury as required by 42 Pa.C.S. §4548;
- e. The original notice of submission submitted by the attorney for the Commonwealth; and
- f. Any reference by the Attorney for the Commonwealth to "The Godfather" or any other inflammatory reference to organized crime or *LaCosa Nostra* or the Mafia.¹

¹This is not an idle request. Movants represent that they have been informed that a witness before the Investigating Grand Jury was being questioned by Mr. Chardo, the Attorney for the Commonwealth, about an annual dinner event in the 1970s and early 1980s arranged by an organization called the Italian Civic Association. The witness testified that he attended the event on two occasions and that he went because there were good entertainers. The witness specifically mentioned Jerry Vale and Al Martino. When the witness mentioned Al Martino, Mr. Chardo turned to the grand jurors and exclaimed: "Al Martino, that's the guy from the Godfather!" Obviously, such a comment can have no legitimate purpose and the very fact that it was made entitles Movants to explore whether other remarks of this nature were made in an attempt to inflame the grand jurors.

18. The documents referenced in ¶ 17 *supra* are administrative records of the grand jury are matters of public record, which are not confidential and as to which Petitioners have a right of access and production, or are otherwise essential to enable Movants to protect their rights, and as to which Movants have a right to disclosure in order to protect their liberty and reputational interests under the United States and Pennsylvania Constitutions.

19. The documents referred to in ¶ 17 *supra* are necessary to Movants' defense and Movants are entitled to production of these documents under the due process clauses of the United States and Pennsylvania Constitutions. Disclosure of these documents at this stage is required so that Movants can make challenges to the grand jury proceedings that otherwise may be waived if not brought prior to the preliminary hearing in this matter.

20. In addition, Presentment No. 6 and Report No. 1 reveal that the Commonwealth relies on the testimony of a large number of witnesses in accusing Movants of perjury, including William D'Elia, Thomas Joseph, Jeanne Stanton, Samuel Marranca, Salvatore DeFrancesco, Barry Shapiro, Eugene DeNaples, Dominick DeNaples, Patrick Walsh, Shamsud-din Ali, Jamie Brazil, John Minora, Samuel Staten, Sr., John Meighan, Roger Greenbank, John Street, Salvatore Avellino and Richard L. James.

21. Under Pennsylvania law, 42 Pa.C.S. §4551(e) provides a defendant with a statutory right to a preliminary hearing when an attorney for the Commonwealth has proceeded on the basis of a presentment.

22. The preliminary hearing is a critical stage of the criminal proceedings against Movants at which Movants are entitled to the effective representation of counsel.

23. In order to effectively prepare for the preliminary hearing, and in order to

effectively cross-examine the Commonwealth's witnesses at the preliminary hearing, due process of law requires that Movants be provided with copies of the transcripts of testimony of the witnesses relied on by the Commonwealth as well as any tape recordings of that testimony, including the testimony of William D'Elia, Thomas Joseph, Jeanne Stanton, Samuel Marranca, Salvatore DeFrancesco, Barry Shapiro, Eugene DeNaples, Dominick DeNaples, Patrick Walsh, Shamsud-din Ali, Jamie Brazil, John Minora, Samuel Staten, Sr., John Meighan, Roger Greenbank, John Street, Salvatore Avellino and Richard L. James. Movants also request the transcripts of testimony of any witnesses that negate the Commonwealth's *prima facie* case. Because of the large number of witnesses, Movants' counsel requires the transcripts of the testimony of the witnesses designated by the Commonwealth in advance.

24. In addition, Report No. 1 contains accusations against Movants that are not included in Presentment No. 6, including accusations that are false, malicious and prejudicial to Movants. Movants have not been afforded any opportunity to challenge these accusations as is their right under the due process clause of both the United States and Pennsylvania Constitutions.

25. In order to challenge these accusations, Movants require access to all parts of the record reviewed by Judge Hoover in finding that "the Report is based on facts received in the course of the various investigations authorized by this Court and is supported by a preponderance of the evidence."

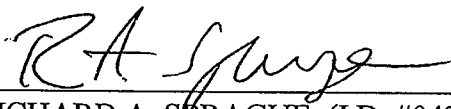
26. Finally, Movants request copies of all exculpatory materials as to Movants under *Brady v. Maryland*, 373 U.S. 83 (1963), as well as a designation of what exculpatory materials were presented to the grand jurors and what exculpatory materials were not presented to the grand jurors. For example, this would include any communications between the U.S. Attorney

and William D'Elia and/or the Pennsylvania State Police or any representative of the Dauphin County District Attorneys' office and William D'Elia.

WHEREFORE, Movants, Louis DeNaples and Mount Airy #1 LLC, request this Honorable Court to enter an Order directing that copies of the requested materials be immediately released to counsel for Movants prior to the preliminary hearing.

Respectfully submitted,

SPRAGUE & SPRAGUE

BY: 
RICHARD A. SPRAGUE (I.D. #04266)
THEODORE J. CHYLACK (I.D. #30608)
GEOFFREY R. JOHNSON (I.D. #36685)
Suite 400, Wellington Building
135 South 19th Street
Philadelphia, PA 19103
(215) 561-7681

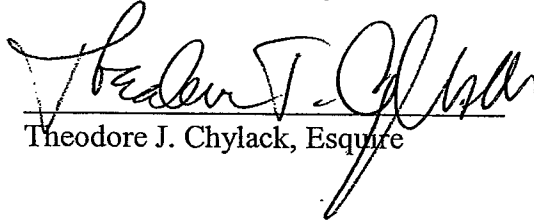
Counsel for Louis DeNaples and Mount Airy #1 LLC

CERTIFICATION OF SERVICE

I, Theodore J. Chylack, Esquire, hereby certify that on this date I served a true and correct copy of the foregoing Motion of Louis DeNaples and Mount Airy #1, LLC for Release to Movants of Grand Jury Minutes, Legal Instructions Given to Grand Jurors, Exculpatory Information and Witness Transcripts, along with accompanying Memorandum of Law, upon the following persons *via* hand delivery:

Francis T. Chardo, Esquire
First Assistant District Attorney
Dauphin County
Front and Market Streets
Harrisburg, PA 17101

SPRAGUE & SPRAGUE


Theodore J. Chylack, Esquire

Date: February 20, 2008