

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

CRIMINAL DIVISION

VS.

CC201404799

ALLEN WADE

MOTION TO QUASH
SUBPOENA DUCES TECUM

Judge Edward Borkowski

Filed on Behalf of the
Commonwealth of Pennsylvania

Counsel of Record for the
Commonwealth of Pennsylvania

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY

By

William A. Petulla
No. 88626
Assistant District Attorney

Office of the District Attorney
of Allegheny County
401 Courthouse
Pittsburgh, Pennsylvania 15219

(412) 350-4407

MOTION TO QUASH SUBPOENA DUCES TECUM

AND NOW, comes the Commonwealth of Pennsylvania by its attorneys, STEPHEN A. ZAPPALA, JR., District Attorney of Allegheny County, and WILLIAM A. PETULLA, Assistant District Attorney, and represents the following:

1. The defendant in the above-captioned case is charged with two counts of Criminal Homicide, two counts of Robbery, one count of Burglary, two counts of a Violation of the Uniform Firearms Act, four counts of Theft by Unlawful Taking, three counts of Receiving Stolen Property and one count of Access Device Fraud;

2. Trial of the matter is scheduled to proceed on February 16, 2016;

3. On or about December 7, 2015, counsel for the defendant caused a subpoena duces tecum, numbered PD 0403, to be served upon Doctor Mark Perlin. The subpoena directs Dr. Perlin to "[p]lease provide True Allele [sic] source code." A copy of the subpoena is attached as "Exhibit A";

4. Such a request is improper because it is analogous to a discovery request and is governed by Rule 573 of

Criminal Procedure. Due to the nature of the request, it falls within the discretionary request provision of Rule 573(B)(2). In keeping with the requirements for discretionary discovery as they apply to the instant case, counsel for the defense must be able to show that the requested information is material to their preparation of the defense, that their request is reasonable and that it would be in the interest of justice to require disclosure in this case;

5. Case law which has interpreted the discovery rule, formerly numbered Rule 305, has required, “[i]t is the defendant, however who has the burden of demonstrating to the trial court that the information sought is material and that the disclosure is in the interest of justice.” *Commonwealth v. Santiago*, 631 A.2d 1323 (1993) at 1327;

6. Moreover, in *Commonwealth v. Novasak*, 606 A.2d 477 (1992), the court stated, “[t]he simple fact is the language of Rule 305(B)(2)(D), requires the defendant to shoulder the burden of demonstrating to the trial court that the discovery information sought is material and that the request is reasonable, and that the disclosure is in the interest of justice.” *Id* at 484;

7. Lastly, the Commonwealth's position is also supported by Allegheny County Common Pleas Judge Jill Rangos' ruling in the *Commonwealth v. Michael Robinson*, CC201307777 on December 7, 2015 where she denied production of the very item being sought here, namely TrueAllele source code (See Commonwealth "Exhibit B").

WHEREFORE, the Commonwealth respectfully requests that the subpoena referred to in paragraph 3 of the within motion be quashed.

Respectfully submitted

STEPHEN A. ZAPPALA, JR.,
DISTRICT ATTORNEY

By: _____
WILLIAM A. PETULLA
ASSISTANT DISTRICT ATTORNEY

V E R I F I C A T I O N

I, Assistant District Attorney William A. Petulla, the undersigned, do hereby declare that the statements of fact set forth in the foregoing motion are true and correct to the best of my knowledge, information and belief and are made subject to the penalties related to unsworn falsification to authorities under Section 4904 of the Pennsylvania Crimes Code, 18 Pa. C.S. §4904.

William A. Petulla
Assistant District Attorney

Date

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PRELIMINARY ORDER

AND NOW, to-wit, this ____ day of _____, 2016,
it is hereby ORDERED, ADJUDGED and DECREED that the
Commonwealth's Motion to Quash Subpoena filed in the above-
captioned case shall be heard and disposed of on the ____ day
of _____, 2016, at ____ (a.m.)(p.m.) before the
undersigned.

BY THE COURT:

_____, J.

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ORDER OF COURT

AND NOW, to-wit, this _____ day of _____,
2016, it is hereby ORDERED, ADJUDGED, and DECREED that the
subpoena referred to in paragraph 3 of the within motion be and
is hereby QUASHED.

BY THE COURT:

_____, J.

CERTIFICATE OF SERVICE

I hereby certify that, on this _____ day of _____, 2016, I have caused to be served upon the persons listed below a true and correct copy of the within notification.

Service by first class mail or hand delivery addressed as follows:

Aaron Sonz, Esq.
Office of the Public Defender
County Office Building
Fourth Floor
Pittsburgh, PA 15219

Lisa Middleman, Esq.
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The Honorable Edward Borkowski
Allegheny County Courthouse
Fifth Floor
Pittsburgh, PA 15219

Thomas McCaffery, Court Administrator
5th Floor, County Courthouse

Pittsburgh, PA 15219

William A. Petulla
Assistant District Attorney