

HANDOUT #7

**Brief Seeking Criminal History Records
Under CHRIA (PA)**

LAFHEY, BUCCI & KENT, LLP
By: Brian D. Kent, Esquire
Atty ID # 94221
1435 Walnut Street, 7th Floor
Philadelphia, PA 19102
(215) 399-9255

ATTORNEYS FOR PLAINTIFFS

Deanne and Toby Snyder, h/w	:	COURT OF COMMON PLEAS
	:	LEHIGH COUNTY
Plaintiffs	:	
	:	File No. 2013-C-417
	:	
vs.	:	Civil Action
	:	
The Estate of Geoffrey K. Sherman, M.A.	:	<u>The Honorable Carol K. McGinley</u>
and Cedar Crest Psychological	:	
Counseling, P.C.	:	
	:	
Defendants.	:	
	:	

**PLAINTIFFS' REPLY IN OPPOSITION TO THE
COMMONWEALTH'S MOTION TO QUASH THE SUBPOENA
DIRECTED TO DETECTIVE KEVIN SMITH**

Plaintiffs, DEANNA SNYDER and TOBY SNYDER, by and through their counsel Brian D. Kent, Esquire, of Laffey Bucci & Kent, LLP, hereby respond in opposition to the Commonwealth's Motion to Quash the Subpoena directed to Detective Kevin Smith, and in support thereof, respond as follows:

1-2. Admitted. See a true and correct copy of the subpoena issued to Detective Smith attached hereto as Exhibit "C."

3-5. Denied as stated. By way of further answer, see answers to #1-3 above. Further, it is admitted only that Deanne Snyder was a victim of crime by the hand of Geoffrey K. Sherman, her treating therapist. Specifically, by way of further answer, in July of 2011, Plaintiff, Deanne Snyder, a survivor of childhood sexual abuse, had a psychological

treatment session with Defendant, Geoffrey Sherman, her treating therapist. During that session, Sherman talked about his personal life and sex life with Deanne Snyder, asked Deanne Snyder whether she had divorced her husband Toby yet, encouraged her to divorce her husband, and showed Deanne Snyder naked pictures of his wife Gretchen that he had on his cell phone. In approximately August of 2011, Plaintiff Deanne Snyder again scheduled a treatment session with Dr. Sherman and Cedar Crest in order to confront Sherman about the treatment session in July of 2011. Sherman again engaged in inappropriate personal conversations with Deanne Snyder, kissed Deanne Snyder and put his hands on her breasts and down the pants of Mrs. Snyder, touching and fondling her genitals while also taking her hand and putting it on his genitals.

Following the incidents in July and August of 2011, several consensual phone calls between Plaintiff Deanne Snyder and Defendant Sherman were conducted by members of law enforcement in Lehigh County. It is believed that Detective Kevin Smith specifically listened in on these telephone conversations. During the consensual phone calls, Sherman admitted to engaging in the conduct complained of above. After learning that the phone call was being listened to by members of law enforcement, Sherman committed suicide. However, as the District Attorney's Office has not and will not disclose any information relating to the investigation into Mr. Sherman, Plaintiffs are without information to rebut or deny the extent of any criminal investigation regarding same and, therefore, Plaintiffs are forced to deny the within averment.

6. Denied as stated. For a true and correct statement of the Order, see Attached Order dated August 11, 2015 hereto as Exhibit "B."

7-8. Admitted.

9-10. Denied as stated. By way of further answer see answers to #1-8 above. Moreover the purpose behind the Pennsylvania Criminal History Record Information Act (hereafter "CHRIA") is to regulate, not completely restrict, the dissemination of "criminal history record information" collected by criminal justice agencies concerning the initiation of a criminal proceeding upon an individual. See 18 Pa.C.S. §§ 9101-06. Criminal history record information is not defined to include: "intelligence information, investigative information or treatment information, including medical and psychological information..." See 18 Pa. C.S. § 9102. Section 9102 of CHRIA defines investigative information as; "Information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information." Id.

11-15. These are conclusions of law, not an averment of fact, to which no response is necessary. However by way of further answer, investigative information may be disseminated between criminal justice agencies¹, and Pennsylvania courts have long distinguished between the public use of criminal history information and investigative information and a private citizen's use of said information in a civil action. See Smith v. Auto Club of Southeastern Pa., 4 Pa. D. & C.4th 306, 308-09 (Pa. Ct. Com. Pl. 1989). When a criminal justice agency has information sought to be protected by CHRIA which may reasonably be calculated to lead to the discovery of admissible evidence in a civil

¹ CHRIA allows for the dissemination of investigative and criminal history information between criminal justice agencies:

Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.
18 Pa.C.S. § 9106(c)(4).

suit pursuant to the Pennsylvania Rules of Civil Procedure rule 4003.1, the court may allow discovery in a civil suit of investigative material. Smith, 4 Pa. D. & C.4th at 308. In Smith, the Plaintiff was the subject of a criminal investigation for theft from her prior employer and defendant. Id. at 307. Following an acquittal, the Plaintiff initiated a civil suit against her prior employer. Id. The matter before the court in Smith concerned a motion to quash the Defendant's subpoena of all records and documents relating to the investigation of Plaintiff. Id.

The Plaintiff argued that the police reports were prejudicial and unavailable pursuant to CHRIA. Id. The court reasoned that the Pennsylvania Rules of Procedure in regard to discovery are liberally construed, and that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved." Id. at 308, *citing* Einhorn v. Philadelphia Electric Company, 190 A.2d 569, 572 (Pa. 1963). The court held that CHRIA did not apply to the matter and the Defendant was entitled to **the requested records because the records will be given to the very person who generated the records in the first place**, and disclosure of the information would not violate the purpose of the act. Id. at 309 (emphasis added). The exact same situation is present in the case at issue. Plaintiff actively participated in the investigation of Geoffrey Sherman including giving statements and participating in consensual phone conversation with the target of the investigation.

16. Denied as stated. By way of further answer, "investigative information" is information assembled as a result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information. 18 Pa.C.S. § 9102. The statute does not explicitly prohibit the

testimony of Detective Smith concerning his opinions and conclusions regarding his interactions with Deanne Snyder and Geoffrey Sherman.

17-22. These are conclusions of law, not an averment of fact, to which no response is necessary. However, by way of further answer, in discovery disputes concerning investigative information in the Commonwealth's possession, the court must balance the private need for the information and the effective administration of justice. Caputo v. WYTV Television Station, 35 Pa. D. & C.3d 253, 255 (Pa. Ct. Com. Pl. 1982). The court reviewed the Plaintiff's and Commonwealth's motion to quash a subpoena requesting the investigative file assembled by Plaintiff in a prior investigation. Caputo, 35 Pa. D. & C.3d at 254. The Plaintiff objected claiming that the information was privileged under various statutes including the Wiretapping and Electronic Surveillance Control Act. Id. The court balanced the interests between the private need for the information and the effective administration of justice in holding that the government's privilege not to disclose the information was outweighed by the private interest to prepare for litigation. Id. at 257-58. The court reasoned: (1) that the file was **relevant to prepare a defense**; (2) **the Plaintiff denied all allegations made and the file is the only apparent source of evidence**; and (3) **that the commonwealth's interest in an ongoing investigation's confidentiality is much greater than a closed investigation**. Id. at 258 (emphasis added).

The Pennsylvania Superior Court recognizes the government interest in protecting and regulating the dissemination of investigative and criminal history information among criminal justice agencies and the public; however, the exclusion of certain documents from public examination does not mean that the legislature intended to bar the use of

investigative information in other judicial proceedings. Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992) (referencing the provisions of the Right to Know Act, 65 P.S. §§ 66.1-66.4 excluding information which would disclose the progress or result of an investigation, and stating that investigative information available for use in court proceedings involves different considerations). The Superior Court in Kauffman addressed the question: “Where the District Attorney has prosecuted a person successfully for a criminal act, may information in the prosecutor’s file thereafter be discovered by one or more parties to a civil action brought to recover damages for the same conduct?” Kauffman, 605 A.2d at 1244.

The Superior Court opined that no absolute privilege exists constituting a total bar to the discovery of relevant information contained in the file of a public prosecutor. Id. at 1246. “To hold otherwise, would insulate from discovery all information possessed by governmental agencies, no matter how relevant the information might be, unless the same information were also available upon to any and all citizens of the Commonwealth.” Id. The Court applied a similar balancing test applied in Caputo. The balancing test “requires the court to balance the government’s interest in ensuring the secrecy of the documents whose discovery is sought against the need of the private litigant to obtain discovery of relevant materials in possession of the government.” Id. at 1247.

The balance of interest may require a hearing and the court may conduct an in camera inspection of the evidence requested in order to determine which could be released. Id. at 1247, *citing 23 Am. Jur. 2d, Depositions and Discovery, § 78 at p. 420*. The Court held that the Commonwealth did not allege that any harm would result from the disclosure of relevant information in the District Attorney’s file and the information

discoverable. Id. at 1248. However, the Court ordered that if any non-relevant privileged information was in the file the court would enforce the privilege with regard to that specific information. Id.

The Pennsylvania Supreme Court reviewed the similar issue of whether an Order of Court of Common Pleas in Montgomery County, compelling the Bureau of Professional and Occupational Affairs to turn over its investigative file pertaining to claims made against a dentist, was appealable under the exception to the final order rule for collateral orders. Ben v. Schwartz, 729 A.2d 547, 549 (Pa. 1999). In its discussion, the Court addressed the issue of whether “release of the information would hinder the investigative powers of [the Bureau] because witnesses may not feel free to provide information which may later be ruled discoverable by a trial court in a related action.” Id. At 552.

The Bureau argued that its investigative files were privileged under the Right-To-Know Law and policy implications of the patient’s privacy interest. Id. at 553. The Supreme Court, adopting the balancing test in Kauffman, dismissed the Bureau’s argument because the review would be limited to the particular treatment afforded by the dentist to Plaintiffs and other patients; that the Plaintiffs were not seeking confidential information of third-party patients; the information sought was being used in a civil proceeding; thus, the public policy arguments limiting dissemination of investigative material were outweighed by the need of the Plaintiff. Id. at 553-54 (holding “The fact that the legislature excluded certain documents from public inspection does not mean that the legislature intended to bar the use of such information in judicial proceedings....

[S]uch a result would [] emasculate the discovery provisions of the rules of civil procedure.” Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992)).

In the instant case, the policy implications that support non-disclosure of investigative documents – i.e. reducing the risk of tampering with evidence, and the privacy interest of the investigation’s target – are not applicable with regard to the oral testimony of Detective Smith.

This Honorable Court must balance the Plaintiff’s private need for the information and the effective administration of justice. See Ben v. Schwartz, 729 A.2d 547, 553 (Pa. 1999); Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992); Caputo v. WYTV Television Station, 35 Pa. D. & C.3d 253, 255 (Pa. Ct. Com. Pl. 1982). After applying the facts to the balancing test, it is respectfully submitted that this court should only come to one conclusion – that the testimony of Det. Smith is not privileged or protected and is relevant and necessary to the Plaintiffs’ civil cause of action. First, like the private litigant’s need for the investigative information in Caputo, Plaintiffs needs the relevant investigative information to pursue their claims against the Defendant. Second, the Commonwealth’s case is closed and its interest in the confidentiality of the investigation is minimal compared to an open matter. Third, because of Geoffrey Sherman’s suicide and the Commonwealth’s closed criminal investigation, the Plaintiffs’ only avenue to pursue justice is through their civil suit and withholding relevant information is a miscarriage of justice. As stated in Kauffman, no absolute privilege exists to bar discovery of relevant information contained in a prosecutor’s file, and that a complete discovery bar would “not only emasculate the discovery provision of the rules of civil procedure, but would also represent an unsound

departure from established law.” Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992). Finally, the oral testimony of Detective Smith’s investigation would ensure that the evidence presented is narrowly tailored to the relevant matters of the investigation without turning over the entirety of the District Attorney’s investigative file.

WHEREFORE, Plaintiffs ask this Honorable Court to deny the Commonwealth’s Motion to Quash the subpoena requesting the oral testimony of Detective Smith.

LAFFEY, BUCCI & KENT, LLP

A handwritten signature in black ink, appearing to read 'B. D. Kent', with a long horizontal line extending to the right from the end of the signature.

BRIAN D. KENT, ESQUIRE
Attorney for Plaintiffs

Date: October 5, 2015

LAFFEY, BUCCI & KENT, LLP
By: Brian D. Kent, Esquire
Atty ID # 94221
1435 Walnut Street, 7th Floor
Philadelphia, PA 19102
(215) 399-9255

ATTORNEYS FOR PLAINTIFFS

Deanne and Toby Snyder, h/w	:	COURT OF COMMON PLEAS
	:	LEHIGH COUNTY
Plaintiffs	:	
	:	File No. 2013-C-417
	:	
vs.	:	Civil Action
	:	
The Estate of Geoffrey K. Sherman, M.A. and Cedar Crest Psychological Counseling, P.C.	:	<u>The Honorable Carol K. McGinley</u>
	:	
Defendants.	:	
	:	

**PLAINTIFFS' OPPOSITION BRIEF IN REPLY TO THE COMMONWEALTH'S
MOTION TO QUASH THE SUBPOENA DIRECTED TO DETECTIVE KEVIN SMITH**

Plaintiffs, DEANNA SNYDER and TOBY SNYDER, by and through their counsel Brian D. Kent, Esquire, of Laffey Bucci & Kent, LLP, hereby respond in opposition to the Commonwealth's Motion to Quash the Subpoena directed to Detective Kevin Smith, and in support thereof, respond as follows:

I. MATTER BEFORE THE COURT

The Commonwealth's Motion to Quash the subpoena issued to Detective Kevin Smith.

II. QUESTIONS PRESENTED

- a. Should the Commonwealth's Motion to Quash the subpoena of Detective Smith be denied where the Pennsylvania Criminal History Record Information Act is not a complete bar to discovery of relevant investigative information and the court must balance the private need for the information and the effective administration of justice?

SUGGESTED ANSWER: YES

- b. Should the Commonwealth's Motion to Quash the subpoena of Detective Smith be denied where the Plaintiffs' need for the information for outweighs the Commonwealth's interest in withholding the information pursuant to the Criminal History Record Information Act?

SUGGESTED ANSWER: YES

III. FACTUAL HISTORY

In July of 2011, Plaintiff, Deanne Snyder, a survivor of childhood sexual abuse, had a psychological treatment session with Defendant, Geoffrey Sherman, her treating therapist. During that session, Sherman talked about his personal life and sex life with Deanne Snyder, asked Deanne Snyder whether she had divorced her husband Toby yet, encouraged her to divorce her husband, and showed Deanne Snyder naked pictures of his wife Gretchen that he had on his cell phone. In approximately August of 2011, Plaintiff Deanne Snyder again scheduled a treatment session with Dr. Sherman and Cedar Crest in order to confront Sherman about the treatment session in July of 2011. Sherman again engaged in inappropriate personal conversations with Deanne Snyder, kissed Deanne Snyder and put his hands on her breasts and down the pants of Mrs. Snyder, touching and fondling her genitals while also taking her hand and putting it on his genitals.

Following the incidents in July and August of 2011, several consensual phone calls between Plaintiff Deanne Snyder and Defendant Sherman were conducted by members of law enforcement in Lehigh County. It is believed that Detective Kevin Smith specifically listened in on these telephone conversations. During the consensual phone calls, Sherman admitted to engaging in the conduct complained of above. After learning that the phone call was being listened to by members of law enforcement, Sherman committed suicide. In May of 2015, Plaintiffs issued a subpoena directed to Detective Kevin Smith to appear to give oral testimony *and* produce documents relating to the matter at issue. See Exhibit "A." Said subpoena is at issue

in the Commonwealth's original Motion to quash (emphasis added). Defense counsel filed a Motion to Quash the Subpoena requesting the production of document and the Honorable Judge Carol K. McGinley granted Defense counsel's motion. See Order dated August 11, 2015 attached hereto as exhibit "B." Plaintiffs issued a second subpoena requesting the oral deposition testimony of Detective Smith with regard to his personal knowledge of the investigation relating to the matter at issue. See Exhibit "C," said subpoena is at issue in the Commonwealth's Motion to Quash the Oral Testimony of Detective Smith.

IV. ARGUMENT

The Commonwealth's Motion to Quash Plaintiffs' subpoena requesting the oral testimony of Detective Smith should be denied because the effect of the Pennsylvania Criminal History Record Information Act and similar statutes restricting the dissemination of information obtained during the course of a criminal justice agency's investigation must be distinguished between general public requests and private party requests in a civil action. The legislative intent behind the Criminal History Record Information Act and similar statutes cannot be construed to completely bar discovery of relevant investigative information in a civil action arising from the same incident.

The purpose behind the Pennsylvania Criminal History Record Information Act (hereafter "CHRIA") is to regulate, not completely restrict, the dissemination of "criminal history record information" collected by criminal justice agencies concerning the initiation of a criminal proceeding upon an individual. See 18 Pa.C.S. §§ 9101-06. Criminal history record information is not defined to include: "intelligence information, investigative information or treatment information, including medical and psychological information...." See 18 Pa. C.S. § 9102. Section 9102 of CHRIA defines investigative information as; "Information assembled as a

result of the performance of any inquiry, formal or informal, into a criminal incident or an allegation of criminal wrongdoing and may include modus operandi information.” Id.

Although investigative information may be disseminated between criminal justice agencies¹, Pennsylvania courts have long distinguished between the public use of criminal history record information and investigative information and a private citizen’s use of said information in a civil action. See Smith v. Auto Club of Southeastern Pa., 4 Pa. D. & C.4th 306, 308–09 (Pa. Ct. Com. Pl. 1989). When a criminal justice agency has information sought to be protected by CHRIA which may reasonably be calculated to lead to the discovery of admissible evidence in a civil suit pursuant to the Pennsylvania Rules of Civil Procedure rule 4003.1, the court may allow discovery in a civil suit of investigative material. Smith, 4 Pa. D. & C.4th at 308. In Smith, the Plaintiff was the subject of a criminal investigation for theft from her prior employer and defendant. Id. at 307. Following an acquittal, the Plaintiff initiated a civil suit against her prior employer. Id. The matter before the court in Smith concerned a motion to quash the Defendant’s subpoena of all records and documents relating to the investigation of Plaintiff. Id.

The Plaintiff argued that the police reports were prejudicial and unavailable pursuant to CHRIA. Id. The court reasoned that the Pennsylvania Rules of Procedure in regard to discovery are liberally construed, and that “a party may obtain discovery regarding a matter, not privileged, which is relevant to the subject matter involved.” Id. at 308, citing Einhorn v. Philadelphia Electric Company, 190 A.2d 569, 572 (Pa. 1963). The court held that CHRIA did not apply to

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Investigative and treatment information shall not be disseminated to any department, agency or individual unless the department, agency or individual requesting the information is a criminal justice agency which requests the information in connection with its duties, and the request is based upon a name, fingerprints, modus operandi, genetic typing, voice print or other identifying characteristic.

18 Pa.C.S. § 9106(c)(4).

the matter and the Defendant was entitled to **the requested records because the records will be given to the very person who generated the records in the first place**, and disclosure of the information would not violate the purpose of the act. *Id.* at 309 (emphasis added).

In discovery disputes concerning investigative information in the Commonwealth's possession, the court must balance the private need for the information and the effective administration of justice. *Caputo v. WYTV Television Station*, 35 Pa. D. & C.3d 253, 255 (Pa. Ct. Com. Pl. 1982). The Court reviewed the Plaintiff's and Commonwealth's motion to quash a subpoena requesting the investigative file assembled by Plaintiff in a prior investigation. *Caputo*, 35 Pa. D. & C.3d at 254. The Plaintiff objected claiming that the information was privileged under various statutes including the Wiretapping and Electronic Surveillance Control Act. *Id.* The court balanced the interests between the private need for the information and the effective administration of justice in holding that the government's privilege not to disclose the information was outweighed by the private interest to prepare for litigation. *Id.* at 257-58. The court reasoned: (1) that the file was **relevant to prepare a defense**; (2) **the Plaintiff denied all allegations made and the file is the only apparent source of evidence**; and (3) **that the commonwealth's interest in an ongoing investigation's confidentiality is much greater than a closed investigation**. *Id.* at 258 (emphasis added).

The Pennsylvania Superior Court recognizes the government interest in protecting and regulating the dissemination of investigative and criminal history record information among criminal justice agencies and the public; however, the exclusion of certain documents from public examination does not mean that the legislature intended to bar the use of investigative information in other judicial proceedings. *Commonwealth v. Kauffman*, 605 A.2d 1243, 1246 (Pa. Super. 1992) (referencing the provisions of the Right to Know Act, 65 P.S. §§ 66.1-66.4

excluding information which would disclose the progress or result of an investigation, and stating that investigative information available for use in court proceedings involves different considerations). The Superior Court in Kauffman addressed the question: "Where the District Attorney has prosecuted a person successfully for a criminal act, may information in the prosecutor's file thereafter be discovered by one or more parties to a civil action brought to recover damages for the same conduct?" Kauffman, 605 A.2d at 1244.

The Superior Court opined that no absolute privilege exists constituting a total bar to the discovery of relevant information contained in the file of a public prosecutor. Id. at 1246. "To hold otherwise, would insulate from discovery all information possessed by governmental agencies, no matter how relevant the information might be, unless the same information were also available upon to any and all citizens of the Commonwealth." Id. The Court applied a similar balancing test applied in Caputo. The balancing test "requires the court to balance the government's interest in ensuring the secrecy of the documents whose discovery is sought against the need of the private litigant to obtain discovery of relevant materials in possession of the government." Id. at 1247.

The balance of interest may require a hearing and the court may conduct an in camera inspection of the evidence requested in order to determine which could be released. Id. at 1247, citing *23 Am.Jur.2d, Depositions and Discovery, § 78* at p. 420. The Court held that the Commonwealth did not allege that any harm would result from the disclosure of relevant information in the District Attorney's file and the information discoverable. Id. at 1248. However, the Court ordered that if any non-relevant privileged information was in the file the court would enforce the privilege with regard to that specific information. Id.

The Pennsylvania Supreme Court reviewed the similar issue of whether an Order of Court of Common Pleas in Montgomery County, compelling the Bureau of Professional and Occupational Affairs to turn over its investigative file pertaining to claims made against a dentist, was appealable under the exception to the final order rule for collateral orders. Ben v. Schwartz, 729 A.2d 547, 549 (Pa. 1999). In its discussion, the Court addressed the issue of whether “release of the information would hinder the investigative powers of [the Bureau] because witnesses may not feel free to provide information which may later be ruled discoverable by a trial court in a related action.” Id. At 552.

The Bureau argued that its investigative files were privileged under the Right-To-Know Law and policy implications of the patient’s privacy interest. Id. at 553. The Supreme Court, adopting the balancing test in Kauffman, dismissed the Bureau’s argument because the review of the information would be limited to the particular treatment afforded by the dentist to Plaintiffs and other patients; that the Plaintiffs were not seeking confidential information of third-party patients; the information sought was being used in a civil proceeding; thus, the public policy arguments limiting dissemination of investigative material were outweighed by the need of the Plaintiff. Id. at 553-54 (holding “The fact that the legislature excluded certain documents from public inspection does not mean that the legislature intended to bar the use of such information in judicial proceedings.... [S]uch a result would [] emasculate the discovery provisions of the rules of civil procedure.” Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992)).

The policy implications that support non-disclosure of investigative documents – i.e. reducing the risk of tampering with evidence, and the privacy interest of the investigation’s target – are not applicable with regard to the oral testimony of Detective Smith.

This Honorable Court must balance the Plaintiff's private need for the information and the effective administration of justice. See Ben v. Schwartz, 729 A.2d 547, 553 (Pa. 1999); Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992); Caputo v. WYTV Television Station, 35 Pa. D. & C.3d 253, 255 (Pa. Ct. Com. Pl. 1982). After applying the facts to the balancing test, this should respectfully come to the conclusion that the testimony of Det. Smith is not privileged or protected and is relevant and necessary to the Plaintiffs' civil cause of action. First, like the private litigant's need for the investigative information in Caputo, Plaintiffs needs the relevant investigative information to pursue their claims against the Defendant. Second, the Commonwealth's case is closed and its interest in the confidentiality of the investigation is minimal, if not non-existent, compared to an open matter. Third, because of Geoffrey Sherman's suicide and the Commonwealth's closed criminal investigation, the Plaintiffs' only avenue to pursue justice is through their civil suit and withholding relevant information is a miscarriage of justice. As stated in Kauffman, no absolute privilege exists to bar discovery of relevant information contained in a prosecutor's file, and that a complete discovery bar would "not only emasculate the discovery provision of the rules of civil procedure, but would also represent an unsound departure from established law." Commonwealth v. Kauffman, 605 A.2d 1243, 1246 (Pa. Super. 1992). Finally, the oral testimony of Detective Smith's investigation would ensure that the evidence presented is narrowly tailored to the relevant matters of the investigation without turning over the entirety of the District Attorney's investigative file.

WHEREFORE, Plaintiffs respectfully request that the Motion to Quash the Deposition of Detective Smith pertaining to the records in the possession of the District Attorney's Office be denied. The information sought would be returned to a party who participated in the original criminal investigation. The Commonwealth's confidentiality interest is minimal when a case is

closed as compared to an active investigation. The oral testimony can be narrowly tailored to the relevant investigative information rather than exposing the entirety of the District Attorney's file. The information requested is necessary to pursuing Plaintiffs' claims and the civil case is the only avenue of justice available for Plaintiffs. Finally, withholding the relevant information would result in a miscarriage of justice. Therefore, this Honorable Court should find that the Plaintiffs' private need for the investigative information far outweighs the Commonwealth's interest in the effective administration of justice.

LAFFEY, BUCCI & KENT, LLP

A handwritten signature in black ink, appearing to read "B. D. Kent", written over a horizontal line.

BRIAN D. KENT, ESQUIRE
Attorney for Plaintiffs

Date: October 5, 2015

VERIFICATION

The averments or denials of fact contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of the 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'B. D. Kent', with a long horizontal line extending to the right from the end of the signature.

BRIAN D. KENT

Date: October 5, 2015

EXHIBIT "A"



BRIAN D. KENT, ESQUIRE
DIRECT DIAL: (215) 399-9256
E-MAIL: BKENT@LBK-LAW.COM

May 19, 2015

VIA PROCESS SERVER

Detective Kevin Smith
Lehigh County Detectives
c/o Lehigh County District Attorney's Office
Lehigh County Courthouse
455 W. Hamilton Street, Room 307
Allentown, PA 18101

**RE: SNYDER V. ESTATE OF GEOFFREY K. SHERMAN, MA
CCP, Lehigh County No. 2013-C-417**

Dear Detective Smith:

Enclosed please find a Subpoena requiring your testimony with regard to the above-captioned matter on June 3, 2015 at 10:00 a.m. at the offices at Marshall, Dennehey, Warner, Coleman & Goggin, 4905 West Tilghman Street, Suite 300, Allentown, PA. Also enclosed is a witness fee.

If this date and time is not suitable for your schedule, please contact my office and we will attempt to reschedule at a time that is more convenient.

Very truly yours,

LAFFEY, BUCCI & KENT, LLP

BRIAN D. KENT, ESQUIRE

BDK/ac
Enclosures

cc: Jill M. Persico, Esquire
Paul G. Lees, Esquire
(via email w/ enclosure)

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LEHIGH

DEANNE AND TOBY SNYDER

v.

ESTATE OF GEOFFREY K. SHERMAN, MA

FILE NO. 2013-C-417

CIVIL DIVISION

CIVIL SUBPOENA TO ATTEND AND TESTIFY

TO: DETECTIVE KEVIN SMITH

1. You are ordered by the court to come to Marshall Dennehey Warner Coleman & Goggin
4905 West Tilghman Street, Ste. 300, (City/Town or other place)

at Lehigh County, Pennsylvania, on JUNE 3, 2015

at 10:00 a.m./p.m., to testify on behalf of PLAINTIFFS

in the above case, and to remain until excused.

2. And bring with you the following: any documents in your possession pertaining
to the matter of Comm v. Geoffrey K. Sherman

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

REQUESTED BY:

NAME: Brian D. Kent, Esquire

ADDRESS: 1435 Walnut St., 7th Floor

Philadelphia, PA 19102

TELEPHONE: (215) 399-9255

SUPREME COURT ID # 94221

BY THE COURT: Andrea E. Naugle
Clerk of Judicial Records

DATE: May 18, 2015

Gregory Steffen
Deputy

SEAL OF THE COURT

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable under Rule 234.1, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc.. To require the production of documents or things in addition to testimony, complete paragraph 2.

EXHIBIT "B"

FILED 8/11/2015 11:06:51 AM, Clerk of Judicial Records, Civil Division, Lehigh County, PA
2013-C-0417 /s/C B

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION

DEANNE SNYDER and TOBY SNYDER,
Plaintiffs

v.

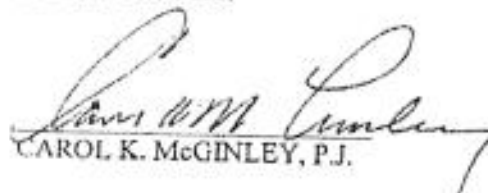
No. 2013-C-0417

THE ESTATE OF GEOFFREY K. SHERMAN,
M.A., AND CEDAR CREST PSYCHOLOGICAL
COUNSELING, P.C.,
Defendants

ORDER

And now, this 11th day of August, 2015, upon consideration of the Lehigh
County District Attorney's Motion to Quash Subpoena filed with the Clerk of Judicial
Records – Civil Division on June 19, 2015, Plaintiffs' response thereto and argument
thereon, IT IS ORDERED that said Motion to Quash Subpoena is GRANTED as to the
request for documents only.¹

BY THE COURT:


CAROL K. MCGINLEY, P.J.

¹ The District Attorney's Office is asking us to quash a subpoena for the deposition of Detective Kevin Smith; the subpoena includes a request to bring "any documents in your possession pertaining to the matter of Comm v. Geoffrey K. Sherman" to the deposition. The District Attorney's Office opposed the request for documents and we agree that the documents in the investigative file of the Lehigh County District Attorney's Office constitute "investigative material" and are protected from dissemination pursuant to the Criminal History Record Information Act. The District Attorney's Office did not raise, brief or argue the issue of Detective Smith attending and/or testifying pursuant to the subpoena. Therefore, Detective Smith shall appear for deposition at a future date and time in accordance with a new subpoena to testify regarding his knowledge of the above matter unless a subsequent motion to quash is filed that directly addresses such deposition testimony.

EXHIBIT "C"



BRIAN D. KENT, ESQUIRE
DIRECT DIAL: (215) 399-9256
E-MAIL: BKENT@LBK-LAW.COM

September 8, 2015

VIA PROCESS SERVER

Detective Kevin Smith
Lehigh County Detectives
c/o Lehigh County District Attorney's Office
Lehigh County Courthouse
455 W. Hamilton Street, Room 307
Allentown, PA 18101

**RE: SNYDER V. ESTATE OF GEOFFREY K. SHERMAN, MA
CCP, Lehigh County No. 2013-C-417**

Dear Detective Smith:

Enclosed please find a Subpoena requiring your testimony with regard to the above-captioned matter on September 22, 2015 at 11:00 a.m. at the offices at Office Quarters, 1275 Glenlivet Drive, Suite 100, Allentown, PA.

Very truly yours,

LAFFEY, BUCCI & KENT, LLP

BRIAN D. KENT, ESQUIRE

BDK/ac
Enclosure

cc: Jill M. Persico, Esquire
Paul G. Lees, Esquire
(via email w/ enclosure)

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LEHIGH

DEANNE AND TOBY SNYDER :
V. :
ESTATE OF GEOFFREY K. SHERMAN, MA :

FILE NO. 2013-C-0417

CIVIL DIVISION

CIVIL SUBPOENA TO ATTEND AND TESTIFY

TO: DETECTIVE KEVIN SMITH

1. You are ordered by the court to come to OFFICE QUARTERS, 1275 GLENLIVET DRIVE,
SUITE 100 (Specify courtroom or other place)
at ALLENTOWN, LEHIGH County, Pennsylvania, on SEPTEMBER 22, 2015
at 11:00 a.m./p.m., to testify on behalf of PLAINTIFFS

in the above case, and to remain until excused.

2. And bring with you the following: _____

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

REQUESTED BY:

NAME: BRIAN D. KENT, ESQUIRE
ADDRESS: 1435 WALNUT ST. 7TH FLOOR
PHILA., PA 19102
TELEPHONE: (215) 399-9255
SUPREME COURT ID # 94221

BY THE COURT: Andrea E. Naugle
Clerk of Judicial Records

DATE: 9/4/15

[Signature]
Deputy

SEAL OF THE COURT

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable under Rule 234.1, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc.. To require the production of documents or things in addition to testimony, complete paragraph 2.