

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

FILED
JUDGE STEVEN J. GOEBEL 1984
MAY 14 2013

State Of Illinois,)
)
 Plaintiff,)
)
 v.)
)
 Annabel K. Melongo)
)
 Defendant,)

CLERK OF THE CIRCUIT COURT
CRIMINAL DIVISION

NO. 08CR10502

Judge Steven J. Goebel

Motion To Compel Discovery Per Illinois Supreme Court Rules 412 and 415

Now Comes, Annabel K. Melongo, Pro Se, and respectfully asks this Court to compel the state prosecutor to comply with Discovery per Illinois Supreme Court Rules 411 and 412. As grounds of this motion the defendant states:

1. The defendant is charged with three counts of Computer Tampering alleging unauthorized remote access of Save A Life Foundation computers and servers and removing and deleting files during the intrusion.
2. During the May 28th, 2008, Grand Jury indictment, the state prosecutor, Mr. Robert Podlasek told the grand jurors that experts hired by Save A Life Foundation were able to determine the defendant as the intruder and the author of the deletion.
3. However, the state has never complied with countless requests by the defendant to produce the names of the experts and related reports to support his allegations to the Grand Jury. To confuse matters further, to avoid producing the requested information, Mr. Podlasek is using a third party lawyer, Mr. Tom Dillon, who once complied with a subpoena sent to his client, as the avenue to comply with discovery, this contrary to Illinois Supreme Court's regulations stating that:

a. The State Is The Conduit Of Discovery Material

1. The Illinois Supreme Court has **NEVER** advocated complying with Discovery through the use of a proxy. If anything, that Court has clearly put the responsibility of Discovery on the State Prosecutor in making him the conduit which ensures that all material and information relevant to the accused be given to him, *People ex rel. Fisher v. Carey*, 77 Ill. 2d 259, 32 Ill. Dec. 904, 396 N.E.2d 17(1979). Furthermore, the prosecutor has a duty to maintain a flow of information between its office and investigating personnel to insure possession and control of all relevant information, *People v. Manley*, 19 Ill. App. 3d 365, 311 N.E.2d 593.

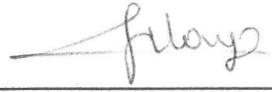
2. Therefore Mr. Podlasek can't use Mr. Tom Dillon, who complied with a subpoena sent to one of the experts in the case, as his mean to comply with Discovery. Mr. Dillon was a third party lawyer, unrelated to this case and not working with the state attorney. Under Supreme Court Rule 412, the state's compliance with defendant's discovery is mandatory, *People v. Moore*, 266 Ill. App.3d 791, 203 Ill. Dec.883, 640 N.E.2d 1256, 1994 Ill. App. LEXIS 1249.
3. The prosecutor's unwillingness to properly comply with Discovery is detrimental to the defendant in that there are pending pre-trial motions that need the requested documents or the lack thereof. Withholding that information denied her a fair trial because the evidence requested is favorable to the defendant and material to her defense, *People v. Carlson*, 224 Ill. App. 3d 1034, 167 Ill. Dec. 96, 586 N.E.2d 1368.

b. The Duty Of This Court Is To Issue Sanctions To Redress Prejudice

1. It is the duty of this court, under Illinois Supreme Court Rule 415(g)(i), to enforce Discovery by ordering a non-compliant party to permit the discovery of material and information not previously disclosed, grant a continuance, exclude such evidence, or enter such order as it deems just under the circumstances.
2. In general, the judgment of the trial judge in imposing sanctions for failure to comply with a discovery rule is given great weight, a reviewing court will find an abuse of discretion, however, when a defendant is prejudiced by the discovery violation and the trial court fails to eliminate that prejudice, *People v. Weaver*, 92 Ill. 2d 545, 65 Ill. Dec. 944, 442 N.E.2d 255(1982).
3. However, Judge Goebel has never redressed the prosecutor's attempt to comply with Discovery using an unrelated proxy lawyer, nor forced the disclosure of the experts' reports supporting the state's allegations to the Grand Jury nor compelled the state prosecutor to give the names of said experts in response to the defendant's additional Bill Of Particulars filed on April 15th, 2013. This has greatly prejudiced the defendant and put the entire case in a stalemate.
4. This court should sanction the state prosecutor to produce the experts' reports since sanctions should be designed to increase the evidence available to all parties, *People v. Brown*, 106 Ill. App. 3d 1087, 62 Ill. Dec. 670, 436 N.E.2d 696 or in the alternative, exclude such evidence when a party willfully violates discovery to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence, *People v. Elworthy*, 214 Ill. App. 3d 914, 158 Ill. Dec. 614, 574 N.E.2d 727.

WHEREFORE, the defendant is urging this court to redress the prejudice caused on to her by the state's prosecutor unwillingness to properly comply with Illinois Supreme Court Rule 412. In the event this court continues to disregard the proper compliance of Rule 412, the defendant will have no choice but to petition the Illinois Supreme Court for a Writ of Mandamus.

Respectfully Submitted,



Defendant's lawyer

Atty. No.: 99500

Attorney For: Annabel K. Melongo

Address: P.O. Box 4734

City/State/Zip: Chicago, IL 60680

Telephone: 708-422-2562