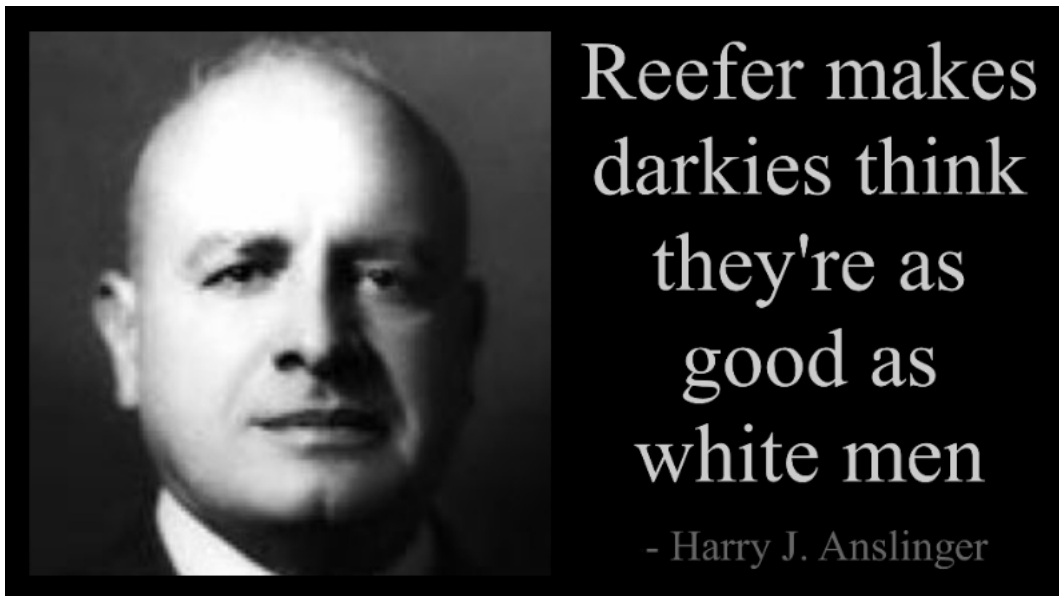


REDACTED VERSION

CW = ZEV M. LAPIDUS throughout this Document

THE DEFENDANT IN THIS CASE FOR SOME REASON THINKS HE IS A EQUAL





OFFICE OF THE MERCER COUNTY PROSECUTOR

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FILED UNDER SEAL
August 19, 2016

The Hon Anthony M. Massi, P.J.S.C.
New Jersey Superior Court
Mercer County Courthouse
400 North Warren Street
Trenton, NJ 08650

Re: State v. Edward Forchion
Indictment No. 16-08-0667
Prosecutor File No. 16-1706

Dear Judge Massi:

I am writing this letter brief to the Court in support of the State of New Jersey's Motion for a Protective Order in the above-referenced matter. The Motion is made pursuant to Court Rule 3:13(e) and this brief and attachments are filed under seal pursuant to same.

The State has provided the defendant with one-hundred and sixty-eight pages of initial discovery as well as a DVD containing over one-hundred photographs from the execution of the search warrants. Additional discovery in the form of videos of purchases of marijuana made by a cooperating witness from Forchion will also be available subject to the Court's ruling in this matter. Attached to this brief is the discovery packet. The proposed Protective Order covers the name, address and likeness of the cooperating witness.

The defendant in this matter, Edward Forchion is charged with violations of the Comprehensive Drug Reform Act of 1986, N.J.S.A. 2C:35-1, et seq. The investigation leading to the charges against the defendant included the use of a cooperating witness (“CW”) who made four (4) recorded buys of marijuana from within 320-322 East State Street (the premises operated by Forchion). CW bought marijuana directly from Forchion. On April 18, 2016, Your Honor issued warrants for the person of Edward Forchion (also known as “Weedman”), the premises of 320-322 East State Street, Trenton, New Jersey, a blue BMW bearing New Jersey registration E25DHX, a blue Toyota Matrix bearing New Jersey registration B45GHE, and the premises of 2186 South Olden Avenue, Hamilton, New Jersey. On April 27, 2016, members of the Mercer County Narcotics Task Force, with assistance from the Trenton Police, executed these warrants. The execution of these warrants resulted in the seizure of numerous items of evidence including a security system DVR (digital video recorder), and a computer hard drive.

In charging this matter, the State utilized both the audio/video recordings made by CW under the supervision of the Mercer County Narcotics Task Force and also the audio/video of the security system. In those recordings, there are times when CW’s face can clearly be seen and CW’s identity determined. While CW is in fact a cooperating witness, as opposed to a confidential informant, CW’s safety is directly tied to the knowledge of others that CW has cooperated. CW is aware that as a cooperating witness CW will face cross examination in court should CW’s testimony be required for motions or trials.

At this time, the State is concerned with the danger associated with sharing the identity of CW, CW’s likeness and/or CW’s address with the defendant. While the defendant has made no threats to CW, Forchion has a history of using social media and mass media to sway the public regarding his agenda of legalizing marijuana. The concern is that Forchion will share this

information in an effort to affect the prosecution of his case. In doing so, the safety of the cooperating witness will be at risk.

Examples of Forchion's numerous attempts to "try his case in the public eye" can be seen by simply GOOGLING his name. Moreover, attached to this filing are numerous videos and news articles of Forchion that clearly demonstrate this tactic.

Over the last years, numerous cases of witness tampering have occurred here in Mercer County and throughout the State of New Jersey. In fact, the Forfeiture by Wrongdoing law stemmed from a case that occurred here in Mercer (See State v. Byrd, 198 N.J. 319 (2009)). There, a witness for the State refused to take the oath or testify and told the prosecutor that he had been placed in situations that endangered him. During trial, the witness refused to testify and provided details of the circumstances and statements that made him fear for his safety and the safety of his family. The trial court allowed the out-of-court statement of the witness to be introduced after it concluded that he was unavailable due to intimidation by defendants. The Appellate Division reversed the conviction after determining that trial court improperly examined the witness outside the presence of defendants and their counsel, took testimony without placing the witness under oath, and denied defendants the opportunity to present evidence to rebut the evidence of intimidation. The Supreme Court affirmed the reversal and forwarded a forfeiture-by-wrongdoing exception to the hearsay rule for inclusion in the New Jersey Rules of Evidence to the New Jersey Senate and the New Jersey General Assembly, for their approval by resolution, and to the New Jersey Governor for his signature.

Moreover, State v. Anthony Kidd is another example of witness tampering wherein a witness was murdered because of her cooperation in a criminal case.

As can be seen from the attached videos, Forchion has a significant following. The State's concern is that publicizing this witness' identity will inspire others to seek CW out for retribution or harm. The State has serious concerns for the cooperating witness' safety and fears that, should the defendant learn the identity of the cooperating witness and/or CW's address, CW will be subjected to the harassment and witness tampering. Moreover, based on the attached videos, it is probable that Forchion's efforts will at the very least be aimed at affecting the jury pool in this matter.

To the best of the State's knowledge, Forchion is currently unaware of the identity of CW. The State has taken several steps to ensure that this remains the case. The State's proposed protective order is a continuation of these efforts.

The witness has been specifically informed that the decision to meet with the defense is a decision that the witness can make and that decision is the witness's alone. Moreover, if this Court so desires, the State will make the witness available for an *in camera* hearing with this Court in order for the Court to further delve into CW's concerns.

As the Court explained in State v. Postornino, 253 N.J. Super. 98, 105(1991).

Specific limitations upon disclosure of the name and address of witnesses have, under certain circumstances, been upheld, notwithstanding Smith v. Illinois. State v. Florez, 248 N.J. Super. 54, 589 A.2d 1382 (Law Div.1991) (substantial concern over safety of prosecutor's paid, professional informant who set up defendant's drug buy justified refusal to disclose informant's real name and address where other information was known about him and deemed sufficient to permit full cross-examination). See also Clark v. Ricketts, 886 F.2d 1152 (9th Cir.1989) (right of confrontation did not require government's "John Doe" to testify as to current address where his real identity and arrest record was disclosed, where that information was enough to give defendant the "avenues of in-court examination and out-of-court investigation" denied in Smith v. Illinois, where "John Doe" did give a general area of residence during trial testimony, and where in-camera proceeding revealed "John Doe" was a

Drug Enforcement Agency informant against whose life threats had been made and who was expected to provide testimony in other pending cases); U.S. v. Spector, 793 F.2d 932 (8th Cir.1986) cert. denied 479 U.S. 1031, 107 S.Ct. 876, 93 L.Ed.2d 830 (1987) (right to confrontation did not require informant to testify as to his address where cross-examination revealed his current address and where "a review of the wide-ranging cross-examination of [the informant] disclosed an extensive knowledge of his background" such as to give defendant an "ample opportunity to identify this witness with his environment," 793 F.2d at 938). Accord U.S. v. Chavez-Vernaza, 844 F.2d 1368, 1376-77 (9th Cir.1988); U.S. v. Mesa, 660 F.2d 1070, 1075 (5th Cir.1981).

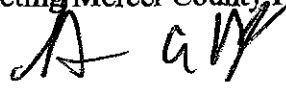
The State believes that the proposed Protective Order balances the defendant's need and right to review the discovery in this case with the need to protect the safety of witnesses who cooperate with police investigations. As was set forth in Postorino, the defense will be provided with enough identifying information to conduct a thorough and complete cross-examination of the witness. See Postrotino, supra. This information will include a redacted rap sheet. Hence, the proposed Protective Order will permit defense counsel to competently represent his client.

Should the Court be inclined to order the State to provide additional information regarding the cooperating witness to the defense, the State respectfully requests that only the name of said witness be provided. Providing the address of the witness subjects the witness to a greater likelihood of harm and the address is irrelevant for purposes of cross examination. Moreover, the State requests that said information be provided ONLY to defense counsel who, as an officer of the Court, will be responsible for preventing its disclosure. Same would be subject to a Protective Order preventing any and all disclosure of the information. For all of the foregoing reasons, the State respectfully requests that the Court enter the proposed Protective Order pursuant to Court Rule 3:13(e).

If the Court has any questions regarding the above, please feel free to contact me at 989-6432.

Respectfully submitted,

ANGELO J. ONOFRI
Acting Mercer County Prosecutor

Handwritten signature of Angelo J. Onofri in black ink, appearing as 'A J Onofri'.

By: STEPHANIE A. KATZ
Special Deputy Attorney General/
Acting Assistant Prosecutor



OFFICE OF THE MERCER COUNTY PROSECUTOR

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ROBERT DISPOTO

Deputy Chief of County Detectives

**FILED UNDER SEAL
SUPPLEMENTAL BRIEF
September 15, 2016**

The Hon Anthony M. Massi, P.J.S.C.
New Jersey Superior Court
Mercer County Courthouse
400 North Warren Street
Trenton, NJ 08650

**Re: State v. Edward Forchion
Indictment No. 16-08-0667
Prosecutor File No. 16-1706**

Dear Judge Massi:

I am writing this supplemental letter brief to the Court in support of the State of New Jersey's Motion for a Protective Order in the above-referenced matter. The Motion is made pursuant to Court Rule 3:13-3(e) and an initial brief and attachments were filed under seal pursuant to same. This supplemental filing is necessary for the State to provide additional information to the Court describing relevant incidents that have occurred since the initial brief was filed under seal. This filing is also made under seal pursuant to Court Rule 3:13-3(e).

On August 19, 2016, the State filed a Motion for a Protective Order with an Affidavit. A Brief was filed under seal. The defense attorney was served a copy of the Motion and Affidavit.

A copy was shared with the defendant by the defense attorney. Since that date, the defense attorney and the defendant have been on notice of this pending motion. Yet, rather than abide by the Court's scheduling of the motion, both have attempted to skirt the pending motion and anticipated outcome by publishing photographs and accompanying information about the person whom they believe to be the cooperator. While they do not know for certain that this is the cooperating witness, they have tampered with a person they believe to be a witness and placed that person in danger by publishing his likeness and name and labeling him a "rat." The attached postings from FaceBook are just some of the defendant's attempts to tamper with the witness and to circumvent the judicial process.

In addition to seeking the help of the public to identify this person, both Forchion and Mr. Heyburn have sought the help of the media. (See Attached Exhibits). This action is both unethical and unprofessional. R.P.C 3.6, R.P.C. 3.4. Not only did the defendant seek the media's help to maintain his campaign against the person that he *believes* to be the cooperator, but Mr. Heyburn, an officer of the Court did the same, copying the media and other unknown parties as well as the defendant. This is unheard of.

On September 8, 2016, I received an email from defense counsel which was also copied to his client and to numerous members of the press and public. This email was meant to publicize the name of the person believed to be the cooperator. (See Exhibit A) I have also received emails from Forchion directly as a result of defense counsel sharing my email address. (See Exhibit B). As can be seen from the email and FaceBook posts, Forchion has repeatedly indicated that he will not abide by any Court orders with regard to the identity of the cooperator. (See Exhibit C). As a result of the communications and the actions undertaken by defense

counsel and defendant, it is immediately apparent that neither the defendant nor counsel will follow any Order of the Court and hence the safety of the cooperator and his family is at risk.

As the Court is aware, the State is also awaiting the return of the audio/video recordings that were taken to the New Jersey State Police for review and copying. At this time, the publishing of that information is not an imminent concern because it is not yet available even to the State. However, it remains the State's position that providing same to the defendant will cause harm to the cooperator and also affect the judicial process. The State expects to have the recordings back from the New Jersey State Police in November. The previously filed motion addressed these recordings.

The State hereby respectfully requests that the Court address the issue of the protection of the cooperator. It is the State's position that confirming or denying the identity of the cooperator at this juncture will negatively affect the on going tampering investigation and also create additional danger for the cooperator and others.

The State respectfully requests that the Court order that the State not be required to confirm or deny the informant's identity in any fashion. Clearly, providing any identifying information will place the informant, CW's family and those around CW at great risk. As it was explained in the case of State v. Florez, 248 N.J.Super. 54, 63 (1991), and as also described in State v. Postorino, 253 N.J.Super. 98 (1991), "the safety of the cooperator cannot be understated. A balancing of all the factors compels the conclusion that the necessity for nondisclosure of CI's true name and address far outweighs the necessity for disclosure." *Citations omitted.*

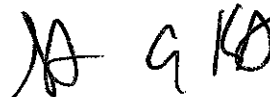
For all of the foregoing reasons, the State respectfully requests that the Court enter the proposed Protective Order pursuant to Court Rule 3:13-3(e).

If the Court has any questions regarding the above, please feel free to contact me at 989-

6432.

Respectfully submitted,

ANGELO J. ONOFRI
Acting Mercer County Prosecutor

Handwritten signature of Stephanie A. Katz in black ink, consisting of stylized initials 'SAK'.

By: STEPHANIE A. KATZ
Special Deputy Attorney General/
Acting Assistant Prosecutor