

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

DEDHAM DISTRICT COURT
DOCKET NO. 2154CR00670

*Answered
JMC
1/13/23*

COMMONWEALTH

RECEIVED

v.

JAN 13 2023

THEODORE MCCARRICK

DISTRICT COURT
DEDHAM DIVISION

DEFENDANT'S ASSENTED-TO MOTION TO CONTINUE MOTION HEARING

Defendant Theodore McCarrick respectfully moves this Court, with the assent of the Commonwealth, to continue the motion hearing in this case, presently set for January 17, 2023, to February 27, 2023; March 1, 2023; or a date thereafter.

This motion is necessitated by concerns that have recently arisen about Mr. McCarrick's legal competency, which the parties agree should be addressed before this matter proceeds to any substantive pretrial motions. In further support of this Motion, Mr. McCarrick states as follows:

1. The pending complaint charges Mr. McCarrick, who is 92 years old, with three counts of indecent assault and battery on a person over 14 years in violation of G.L. c. 265, § 13H, all involving the same alleged victim, J.G., and arising from alleged incidents in Wellesley, Massachusetts, on June 8, 1974.

2. Given the extraordinary delay between the alleged incidents in 1974 and the criminal complaint in 2021, undersigned counsel for Mr. McCarrick is preparing a pretrial motion to dismiss the pending charges on the grounds that, in the unusual circumstances of this case, due process forbids his prosecution for misconduct that allegedly occurred nearly 50 years ago. *See Commonwealth v. George*, 430 Mass. 276 (1999); *Commonwealth v. Patten*, 401 Mass. 20 (1987). That motion addresses, among other issues, whether Mr. McCarrick has suffered "substantial,

actual prejudice to his defense,” *George*, 430 Mass. at 281, and thus, it implicates the deterioration of Mr. McCarrick’s mental state in the interim.

3. In connection with that planned motion to dismiss, counsel arranged for Mr. McCarrick to be thoroughly examined, in person at his residence in Missouri, by Dr. David Schretlen, a professor of psychiatry and behavioral science at the Johns Hopkins University School of Medicine who specializes in the cognitive and functional consequences of various neuropsychiatric disorders, including Alzheimer’s disease and other forms of dementia.

4. On December 5, 2022, over several hours, Dr. Schretlen administered an extensive battery of tests on Mr. McCarrick to assess his memory, cognition, and competence. Dr. Schretlen also interviewed staff at the facility where Mr. McCarrick currently resides. Despite his diligent efforts to analyze and memorialize the results of the recent testing, and due to other professional commitments, Dr. Schretlen needs additional time to prepare a report of his examination.

5. Based on preliminary discussions with Dr. Schretlen, counsel have developed serious concerns that Mr. McCarrick may no longer be legally competent to stand trial, because he would be unable to assist meaningfully in the preparation of his own defense or to consult effectively with counsel during trial with a reasonable degree of rational understanding. *See Abbott A. v. Commonwealth*, 458 Mass. 24 (2010); *Commonwealth v. Crowley*, 393 Mass. 393 (1984).

6. Counsel anticipates that a report from Dr. Schretlen will be available within the next 30 days and that it will provide evidence that Mr. McCarrick currently suffers from significant neuropsychological deficits. These deficits appear to have started relatively recently, to be worsening rapidly, and to impair both Mr. McCarrick’s cognition and his memory.

7. It has become necessary to address the competency issue, in advance of other anticipated motions, given that “a person whose mental condition is such that lacks the capacity to

understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial.” *Commonwealth v. Prater*, 420 Mass. 569, 574-75 (1995) (quoting *Drope v. Missouri*, 420 U.S. 162, 171 (1975)); see *Commonwealth v. Hill*, 375 Mass. 51 (1978) (citing 14th amend. to U.S. Const. and art. 12 of Mass. Decl. of Rights).

8. Because the Commonwealth bears the burden to establish that Mr. McCarrick is, in fact, competent to stand trial, see *Commonwealth v. Simpson*, 428 Mass. 646 (1999), it will need adequate time to review the report from Dr. Schretlen and, if necessary, to engage its own expert to evaluate Mr. McCarrick.

9. Counsel for Mr. McCarrick has conferred with counsel for the Commonwealth, and the parties agree that the competency issue should be addressed before any motion to dismiss the charges or other pretrial motions.

WHEREFORE, Defendant Theodore McCarrick respectfully moves this Court to continue the motion hearing, set for January 17, 2023, to February 27, 2023; March 1, 2023, or a later date, to commence the process of addressing whether Mr. McCarrick is competent to stand trial.

Respectfully submitted,

THEODORE MCCARRICK

By his attorneys,

/s/ Barry Coburn
Barry Coburn (admitted pro hac vice)
Marc Eisenstein (admitted pro hac vice)
Katherine Zimmerl (admitted pro hac vice)
Coburn and Greenbaum, PLLC
1710 Rhode Island Ave., NW, 2nd Fl.
Washington, D.C. 20036
Tel. (202) 643-9472
Fax (866) 561-9712
barry@coburngreenbaum.com
marc@coburngreenbaum.com
katherine@coburngreenbaum.com

/s/ Daniel N. Marx
Daniel N. Marx (BBO#674523)
William W. Fick (BBO#650652)
Fick & Marx LLP
24 Federal St., 4th Fl.
Boston, MA 02110
Tel. (857) 321-8360
Fax (857) 321-8361
dmarx@fickmarx.com
wfick@fickmarx.com

Date: January 12, 2023

RECEIVED
JAN 13 2023
DISTRICT COURT
DEDHAM DIVISION

CERTIFICATE OF SERVICE

I, Daniel N. Marx, counsel for Defendant Theodore McCarrick, certify that on January 12, 2023, I caused a copy of the foregoing document to be served by U.S. mail and email on ADAs Meagen Monahan, Lisa Beatty, and Alix Beamon.

/s/ Daniel N. Marx

Daniel N. Marx

RECEIVED

JAN 13 2023

DISTRICT COURT
JEDHAM DIVISION