

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 03-10,050  
:   
:   
vs. : CRIMINAL  
:   
RICHARD WAYNE ILLES, SR., : Second Supplemental Omnibus  
Defendant : Pretrial Motion

O R D E R

AND NOW, this \_\_\_ day of December 2003, upon consideration of Defendant's Second Supplemental Omnibus Pretrial Motion, it is ORDERED and DIRECTED as follows:

I. The Court DENIES Count I entitled Motion to Suppress Statements Made by the Defendant. The Defendant contends the police took statements from him in violation of his right to counsel and other constitutional rights. This Court cannot agree. It is unclear whether the defense is asserting a violation of the Sixth Amendment right to counsel or the right to counsel that arises through Miranda warnings. In either event, the Court finds no violation of the Defendant's rights. Essentially, the defense argues that since defense counsel told the police not to speak to Dr. Illes without counsel being present when they interviewed Dr. Illes in January and February 1999, the police could not thereafter ever speak to the Defendant without counsel being present or the Defendant waiving his rights to counsel after first speaking with counsel. This Court cannot agree. The

Sixth Amendment right to counsel attaches only at the time of arrest and cannot be invoked prior to that time. Commonwealth v. Karash, 513 Pa. 6, 13, 518 A.2d 537, 541 (Pa. 1986); Commonwealth v. Laney, 729 A.2d 598, 601 (Pa. Super. 1999). The Defendant was arrested in the state of Washington on or about December 17, 2002. At that time, he agreed to speak to the police without his attorney being present. Since defense counsel's attempt to invoke counsel on behalf on his client in 1999 occurred almost three years prior to his arrest, it was invalid and/or ineffective. The Defendant did not invoke his right to counsel at the time of his arrest and, in fact, waived his rights. Therefore, the police did not violate the Defendant's Sixth Amendment right to counsel.

Similarly, the Defendant's Miranda<sup>1</sup> right to counsel also was not violated. One can only invoke one's Miranda right to counsel in the context of a custodial interrogation; one cannot anticipatorily invoke his Miranda rights. Commonwealth v. Romine, 682 A.2d 1296, 1302 (Pa. Super. 1996), quoting McNeil v. Wisconsin, 501 U.S. 171, 182 n.3, 111 S.Ct. 2204, 2211 n.3, 115 L.Ed.2d 158 (1991). A person is in custody for Miranda purposes when the objective circumstances suggest that he was physically deprived of his freedom or was in a situation where he reasonably could have believed his freedom of movement was being restricted. Commonwealth v.

Gibson, 553 Pa. 648, 662-663, 720 A.2d 473, 486 (Pa. 1998),  
cert. denied 1999 U.S.Lexis 5519 (1999); Commonwealth v.  
Williams, 539 Pa. 61, 74, 650 A.2d 420, 427 (Pa. 1994). There  
is no evidence in this case to suggest that the Defendant was  
in custody when the police spoke to him in 1999. In fact, the  
exhibit attached to the Defendant's brief shows that the  
police contacted the Defendant at home and he and/or his  
attorney made arrangements for the police to speak to the  
Defendant at a mutually agreed upon time and place.<sup>2</sup>  
Therefore, the Defendant was not subject to custodial  
interrogation in 1999 and any attempt to invoke his Miranda  
right to counsel at this time was invalid and/or ineffective.  
Furthermore, there was an almost three year break between the  
initial interviews with the Defendant in January and February  
1999 and the time he was taken into custody in December 2002.

II. In Count II of his Second Supplemental Motion,  
the defense seeks production of grand jury testimony. In  
order to facilitate an efficient progression of the trial in  
this case, the Court DIRECTS the Commonwealth to provide

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1 Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

2 The exhibit attached to Defendant's brief is a page from Trooper  
Bramhall's police report. The entry dated Saturday, January 23, 1999 at  
1220 hours quotes the following voice mail message Defendant's counsel left  
with Trooper Bramhall:

"Hi Trooper, this is George LEPLEY again. Um, Richard told me that  
you wanted to speak with him to clear up a few things and that is  
absolutely fine with us. Um, I'm calling to find out if you want to  
try and do it this weekend Saturday or Sunday. If you do, um, let  
the doctor know or let me know and we'll make arrangements preferably  
to meet at my office at your convenience. Uh, I'm also gonna page  
you and when you call back to the doctor's house he'll relate the  
same information."

copies of the transcripts of the grand jury testimony of any witnesses it intends to call in its case-in-chief to defense counsel on or before January 12, 2003.

III. Count III is entitled Motion to Produce Map. The defense seeks an order directing the Commonwealth to provide a color copy of the cell phone map, because the map is color-coded and thus, a black and white copy is insufficient. The Court believes the Commonwealth has already provided a color copy of the map to the defense. If it has not, the Commonwealth shall do so on or before January 12, 2003.

IV. In Count IV, the defense seeks suppression of all items seized in the state of Washington. The Court has thoroughly reviewed the affidavits for the search warrants and finds that there was probable cause to search the Defendant's residence, office and vehicles located in the state of Washington. Therefore, the Court DENIES the defense motion.

By The Court,

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Kenneth D. Brown, Judge

cc: George Lepley, Esquire  
Craig Miller, Esquire  
Michael Dinges, Esquire (DA)  
Kenneth Osokow, Esquire (ADA)  
Work file