

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **No. 03-10,050**
:
:
vs. : **CRIMINAL**
:
: **Commonwealth's Motion for**
RICHARD WAYNE ILLES, SR., : **Reconsideration Re:**
Defendant : **Grand Jury Transcripts**

O R D E R

AND NOW, this ____ day of January 2004, upon consideration of the Commonwealth's Motion for Reconsideration regarding grand jury transcripts, the Court GRANTS the motion in part and DENIES the motion in part. Instead of requiring the Commonwealth to provide the grand jury transcripts of all the witnesses it intends to call in its case-in-chief by January 12, 2004, the Court will require the Commonwealth to provide the grand jury transcript of a witness by 5:00 p.m. on the business day prior to the witness being called at trial. This will avoid delay during trial, but not require the Commonwealth to provide the defense with its entire witness list prior to trial. In all other respects, the motion for reconsideration is denied.

The Court is mindful of the wording contained in Rule 230(B)(2) which indicates that the Court shall order that the Defendant be furnished with a copy of the transcript of the testimony of a witness who testified in front of a grand jury but such testimony may be made available only after the direct testimony of the witness at trial. Pa.R.Cr.P.

230(B)(2). However, the Court is extremely concerned that if these transcripts are only provided after the direct testimony of a trial witness, there will be inordinate trial delays. The Court, in all fairness to the defense, would need to recess after each such witness and allow defense counsel to review the grand jury transcript and then possibly compare it to any other transcripts or statements of the witness.

The Court believes that once a trial has started it has the inherent power to monitor the progression and flow of the case and to consider the inconvenience that would be caused to the jury by the need for recesses after the direct testimony of trial witnesses. Therefore, the Court believes it is reasonable to require production of grand jury testimony as required by this Order. The Court also believes this Order alleviates the Commonwealth's concerns raised in their objection to the prior Order because releasing the transcripts the day before the witness is called to testify will not create a significant possibility that the Commonwealth will produce transcripts of grand jury witnesses who are not actually called as witnesses in this trial.

By The Court,

Kenneth D. Brown, P.J.

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