

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

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

**O R D E R**

AND NOW, this \_\_\_ day of January 2004, upon consideration of Defendant's Sixth Supplemental Omnibus Pretrial Motion, it is ORDERED and DIRECTED as follows:

1. The first portion of this motion is a request to exclude various pieces of evidence that the defense contends is inadmissible evidence of other crimes, wrongs or bad acts. The Court will address these items in the order listed in the motion.

A. Evidence that the Defendant was in possession of weapons in which the barrel had been cut - The barrel of the alleged murder weapon was cut off. The Commonwealth contends that evidence that the Beretta also had a cut barrel is relevant and admissible to show knowledge and preparation. This Court agrees. There is some question whether this evidence would even fall within Pa.R.E. 404(b). Even assuming that it would, however, this evidence appears probative to show that the Defendant had the knowledge and ability to cut off the barrel of a weapon. The Court does not believe the introduction of such evidence would be unduly prejudicial to

the Defendant. Therefore, the Court finds this evidence would be admissible and DENIES the Defendant's request to exclude it.

B. Evidence that the victim was accusing the Defendant of obtaining prescription drugs illegally by writing prescriptions for the victim and her son which were neither requested nor retained by the victim and her son - The Court has reviewed the portion of the Defendant's testimony from the divorce case, number 98-20,477, relating to this issue. Without additional testimony to show that the victim had reported the Defendant's activities to a medical board or similar entity or that she threatened the Defendant with reporting him, the Court believes that the probative value of this evidence is outweighed by its prejudicial effect. Therefore, the Court would GRANT the Defendant's motion to preclude this evidence.

C. Evidence of providing false information on his marriage certificate - The Commonwealth does not intend to utilize this information in its case-in-chief. Rather, the Commonwealth only intends to utilize this information if the Defendant puts his character in issue. For this purpose, the evidence is clearly admissible under Pa.R.E. 404(a)(1).

D. Evidence of conduct and actions that the Defendant demonstrated malice and ill will toward the victim including but not limited to statements of the Defendant that he wished his wife were dead and/or statements to the effect that he would like to kill his wife - At oral argument,

defense counsel did not have an argument on this issue as long as the statements the Commonwealth intended to introduce were made by the Defendant. This evidence is not hearsay as it can be classified as an admission of a party under Pa.R.E. 803(25). This is also classic evidence of motive, ill-will and/or intent. The Court finds the probative value of this evidence outweighs any prejudice. Thus, the Court DENIES the Defendant's request to exclude this evidence.

E. Evidence of statements of the victim concerning her belief that the Defendant was a danger to her based on his actions and conduct that the Defendant had threatened her and hired a hit man - This type of evidence could be relevant to show the relationship between the victim and the Defendant and the malice and/or ill-will the victim perceived, see Commonwealth v. Stallworth, 566 Pa. 349, 362-364, 781 A.2d 110, 111-118 (2001), but the Court cannot determine whether it actually is relevant or whether the probative value of this evidence is outweighed by its prejudicial effect without knowing the content and context of the victim's statements and how the Commonwealth intends to introduce it. The Commonwealth shall provide the Court with copies of the statements and/or documents and a brief explanation of how it intends to introduce this evidence at trial on or before January 15, 2004.

F. Evidence that the Defendant failed to report when seeking employment that he received a settlement in a carpal tunnel lawsuit he had filed - The Court does not

believe that the mere fact that the Defendant failed to disclose to employers or potential employers that he received a settlement in a carpal tunnel lawsuit without more provides a motive for the Defendant to commit this crime. If there is additional evidence that the carpal tunnel surgery affected the Defendant's ability to be a cardiac surgeon and evidence that the victim disclosed or was going to disclose this information to employers, potential employers, medical boards or the like, perhaps that would supply motive.

G. Evidence that the Defendant was in possession of a gun belonging to Joe Kowalski that he had reported stolen - After argument on this issue, the Court believes the Commonwealth and the defense can reach a stipulation that Defendant was in possession of a gun belonging to Joe Kowalski without having to reference that it was reported stolen. This evidence is relevant because the Commonwealth believes the alleged murder weapon was a Savage Model 23D .22 hornet caliber rifle, Joe Kowalski owned a rifle of this model and the Defendant received household/personal property of Joe Kowalski.

H. Forgery on a malpractice settlement - The Court will permit the Commonwealth to introduce evidence that the victim was making a claim to a portion of the carpal tunnel settlement. The Court has concerns about evidence regarding forgery. There is a real danger that these allegations will create a mini-trial on whether the document was forged, and if so, who forged it. The Court asked the prosecutor whether

there was evidence that the Defendant forged the signature. The prosecutor did not really answer this query; he simply stated that during the divorce proceedings each party obtained expert reports on this issue, the results of which were the victim's expert indicated the signature was not the victim's and the Defendant's expert indicated that it was. The Commonwealth has not provided the Court with the paperwork from the carpal tunnel settlement or the expert reports on the forgery. Without this information, the Court's inclination is that the potential prejudice from these allegations outweighs the probative value. Before finalizing its ruling on this matter, however, the Court will give the Commonwealth the opportunity to supply the paperwork, the expert reports and any additional information regarding the evidence it intends to present on this issue and how it intends to present it.

2. In Count II the defense seeks to preclude the Commonwealth from entering evidence contrary to the alibi defense because the Commonwealth did not file its reciprocal alibi notice in a timely manner and the Commonwealth did not give sufficient information regarding the witnesses and their addresses. The Court DENIES the defense request. The defense had reciprocal alibi information well prior to the filing of the Commonwealth's notice. The defense also did not give sufficient information in its alibi notice and the Court did not preclude the defense, but instead required the defense to supplement its information. The Court believes the parties have resolved or are going to resolve by stipulation or

otherwise any issue regarding the weather and occurrence of accidents on the route allegedly traveled by the Defendant on January 15, 1999. At oral argument the defense indicated Ms. Prokop and Mr. Allen were the witnesses in dispute and the main problem was the information the defense received in discovery either did not have their addresses or the witnesses addresses had changed. The Court believes the defense now has both witnesses' current addresses. If the defense counsel does not, they shall notify the Commonwealth's attorney, who shall provide the current addresses.

3. In Count III, the defense wants the Court to compel the Commonwealth to provide a written report from Brian Allen. The Court DENIES this request. Mr. Allen is simply being called to testify regarding the coverage area of the cell phone tower through which the Defendant's call to his sister was transmitted. He is not being called to pinpoint the exact location the Defendant was in when the call was placed. The Commonwealth has already provided the defense with a map from the cell phone company and the police report of Trooper Clark pertaining to this issue.

4. Count IV is a motion in limine regarding a report from National Medical Services. National Medical Services performed tests to try to determine whether the head hair of the Defendant's son contained any drugs. The report indicates the results should not be admitted at trial, as a second confirmatory test is required and there was insufficient quantity of specimen to conduct further analysis.

The Commonwealth, however, does not intend to introduce the results. Rather, the Commonwealth only intends to show that tests were attempted, but a result could not be reached. The Court would permit the Commonwealth to utilize the report in this manner.

5. In Count VI the defense seeks to preclude the testimony of Supervisory Special Agent James R. Fitzgerald. The Court GRANTS this motion in part and DENIES it in part. The Court would preclude Agent Fitzgerald from offering explanations regarding the motives of the writer and from offering opinions or conclusions that the Defendant is the author of the anonymous letters sent to defense counsel. The Court would, however, permit Agent Fitzgerald to point out the similarities between the anonymous letters and the known writings of the Defendant and whether the writing habits are common or unique in Agent Fitzgerald's experience.

6. Count VII is a motion to produce, allow inspection and/or observation of a replica of the "silencer." As part of this request, the defense seeks an order directing the Commonwealth to list the components of the replica, identify the creator, provide a report regarding the replica's fabrication and/or allow defense counsel and their experts to review, observe and/or inspect the replica. The Court GRANTS the request to observe the replica. The Commonwealth shall make the replica available to the defense and their expert 24 hours before the Commonwealth uses the replica in court. This access is for observation only.

By The Court,

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Kenneth D. Brown, P.J.

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