

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

|                              |                     |
|------------------------------|---------------------|
| COMMONWEALTH OF PENNSYLVANIA | : NO. 02-10,585     |
|                              | :                   |
| vs.                          | : CRIMINAL DIVISION |
|                              | :                   |
| EARL R. KRAMER, III,         | :                   |
| Defendant                    | : Motion in Limine  |

**OPINION AND ORDER**

Before the Court are two motions in limine, both contained in a pleading captioned Motions in Limine/Miscellaneous Motions, filed February 18, 2004. Argument on the motions was heard February 24, 2004.

In his first of the two motions, Defendant seeks to exclude evidence of a January 26, 2001 FBI lab report which indicates that after examination of certain items seized from Defendant's vehicle in 1999,<sup>1</sup> "[a] chemical test for the possible presence of blood was positive" and that "[t]here was insufficient DNA recovered from the samples taken ... for analysis." Defendant argues the speculative nature of the test results renders such without relevance and further, that any possible relevance is outweighed by the clearly prejudicial nature of the evidence. The Commonwealth argues it is a matter of the weight of the evidence rather than admissibility.

The Court reads the report to say that a substance recovered from certain of the items examined is "possibly" blood. The report does not say whether it is human blood, whose blood it is, the age of the blood, or, indeed, if it is even really blood. The Court thus agrees with Defendant that so little weight can be given to the report as to render it inadmissible, especially when the prejudicial nature of such is considered. The motion will therefore be granted and evidence of the report will be excluded.

In the second motion, Defendant brings to the Court's attention the possibility that defense counsel, Nicole Spring, Esquire and a paralegal in defense

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<sup>1</sup> The murders with which Defendant is charged occurred in 1994.

counsel's office, Janis Holmes, may be called to testify at the trial in this matter, raising an issue under Rule of Professional Conduct 3.7. Defendant seeks an "appropriate Order", apparently anticipating an objection by the Commonwealth to his counsel's continuing representation once such witnesses are called.

Rule 3.7 provides:

**Rule 3.7. Lawyer as Witness**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

The Court believes that under both subsections of this rule, defense counsel may continue representation of Defendant even if Ms. Spring and/or Mrs. Holmes are called as witnesses.<sup>2</sup> While the matters about which Ms. Spring and/or Mrs. Holmes may testify are neither uncontested nor related to the nature and value of legal services rendered in the case, the Court believes disqualification of defense counsel at this point, almost two years into the process and on the eve of a capital murder trial, would indeed work substantial hardship upon Defendant. Further, since Ms. Spring appears to be acting as support counsel to Mr. Miele rather than as an active advocate, and Mrs. Holmes, while certainly a significant part of the defense team, is not a lawyer, continued representation appears appropriate under subsection (b).<sup>3</sup> The Court will therefore indicate in its Order that any objection to continued

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<sup>2</sup> While the motion also indicates District Attorney Michael Dinges and First Assistant District Attorney Ken Osokow may also be called as witnesses on the same issue, the Court is specifically NOT addressing any issues which may be raised should such occur. The Court notes that a defense request to disqualify the district attorney's office from continued representation of the Commonwealth at that juncture would fly in the face of Defendant's expressed intention to fulfill his right to a speedy trial.

<sup>3</sup> Neither Rule 1.7 nor 1.9 is implicated in the instant situation.

representation of Defendant by defense counsel for the reasons discussed herein, will be overruled.

**ORDER**

AND NOW, this 1<sup>st</sup> day of March 2004, for the foregoing reasons, Defendant's Motion in Limine regarding the January 26, 2001 FBI report is hereby GRANTED and evidence of such shall not be introduced at trial. With respect to the Motion in Limine regarding calling Ms. Spring or Mrs. Holmes as witnesses, any objection to continued representation of Defendant by defense counsel based on the calling of such witnesses, will be overruled.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
PD  
Gary Weber, Esq.  
Hon. Dudley Anderson