

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 03-11,273
 :
 vs. : CRIMINAL
 :
 CHRISTOPHER L. MARTIN, : Petition for Remand
 Defendant :

ORDER

AND NOW, this ___ day of May 2004, the Court DENIES the defendant's petition to remand for a preliminary hearing. The defendant waived his right to a preliminary hearing, but reached an agreement with the prosecutor that there would be no objection to a remand if the defendant was not present at the fire station at the time the pictures in question were downloaded. Defense counsel received the discovery materials marked as Defendant's Exhibits 10, 11, 12 and 13 on or about November 26, 2003. The petition for remand was not filed until March 25, 2004. Therefore, the Court finds that the motion is untimely. It also is not clear from the exhibits that the defendant was not present when the pictures were downloaded. At most, the exhibits show the date and time the pictures were e-mailed to another individual; they do not show the time the pictures were downloaded to Mr. Martin's computer. Furthermore, the agreement between defense counsel and the prosecutor regarding remand was not clear in that it did not indicate what the defense needed to submit to show that the defendant was not present. The defense primarily would offer testimony from the defendant. It is doubtful that this type of evidence is what was contemplated by the agreement, because Mr. Martin could have provided this evidence at the time he waived his preliminary hearing on August 25, 2003. Finally, there is no prejudice to the defense. If the Commonwealth does not have sufficient evidence to show that the defendant was present, the

defense can make an appropriate motion at the close of the Commonwealth's case-in-chief and/or at the close of all the evidence. The case was listed for trial prior to the motion for remand being filed and it does not make sense to remand the case for a preliminary hearing at this late date.

By The Court,

Kenneth D. Brown, P.J.

cc: Michael Morrone, Esquire
Kenneth Osokow, Esquire (ADA)
Work file
Gary Weber, Esquire (Lycoming Reporter)