

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-11,465
vs. :
BRIAN YASIPOUR, SR., : CRIMINAL DIVISION
Defendant :
: Motion for Continuance

OPINION AND ORDER

Brian Yasipour has been incarcerated for four years without a trial and without bail. He is charged with one count of criminal homicide in connection with the death of his daughter on August 24, 2001. At his request, prosecution of his case has been delayed so that he could undergo competency and mental evaluations and receive mental health intervention.

Mr. Yasipour has been ruled competent to stand trial and such trial is scheduled to begin on September 6, 2005. In preparation for trial, the Court has set aside one month of trial time and has mailed hundreds of jury notices. The trial schedule has been set for nearly five months. On July 26, 2005, Mr. Yasipour filed the instant motion for continuance, which was unopposed by the District Attorney's Office. A hearing on the motion was held August 3, 2005.

The basis of the motion for continuance lies in counsel's representation (which the Court accepts) that Mr. Yasipour has for the first time been cooperating with counsel and counsel has learned of the existence of a brother. Mr. Yasipour, who is presently 57 years old, was born in Iran and immigrated to the United States approximately 30 years ago. Defendant's brother remains in Iran and Mr. Yasipour has not had contact with him for at least ten years. He is believed to be living in Tehran, but no address is available. Counsel believes Defendant's brother may be crucial to his defense in two respects: First, he is the older brother and may have some knowledge of medical treatment received by Brian Yasipour in his early years. Counsel opines this information might be helpful to buttress an insanity defense, if

used.¹ Secondly, defense counsel points out that Mr. Yasipour is entitled to the testimony of family members in the penalty phase and his brother is the only member of his immediate family. Counsel argues defendant's brother's testimony, as his closest living relative, would be critical in the penalty phase of the trial and Mr. Yasipour is entitled to it.

In analyzing counsel's argument, the Court finds the first point to be unpersuasive but will concede that defendant's brother's testimony may have relevancy during the penalty phase should the trial reach that point.

The difficulty lies in obtaining the brother's testimony. No one has spoken to defendant's brother, no one has an address, and therefore, the content of his testimony is at this time uncertain. If alive, defendant's brother is in Iran, a country in which the United States has limited diplomatic relations. Counsel concedes they cannot travel to Iran and it is highly unlikely that defendant's brother would be able to travel to the United States. Counsel's plan, if the continuance is granted, is to find defendant's brother through a law office in Chicago. This law office maintains contacts in Iran. If found, defense counsel feels that arrangements can be made through the Pakistani Embassy to obtain a Visa for defendant's brother to travel to Dubai in the United Arab Emirates. Counsel would then either arrange for some type of video conferencing or, as a last resort, proceed to Dubai to take his deposition for trial.

The Court is keenly aware, and is sensitive to the fact this is a death penalty case and, accordingly, wishes to proceed in a manner that is cautious and accommodating to the defense. But, while the Court applauds defense counsel for leaving no stone unturned, the logistics of this particular situation are far beyond speculative. There is no assurance that anything can be accomplished by this intricate and costly procedure; no one can represent to the Court what the testimony of defendant's brother will be, or even that he can be found. Accordingly, the motion for continuance must be denied.

ORDER

¹ Defense counsel is considering an insanity defense, but has yet to make a final decision as to

AND NOW, this day of August, 2005, for the foregoing reasons, Defendant's Motion for Continuance is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
 William Miele, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson
 Hon. Kenneth D. Brown

the defense that will be presented at the time of trial.