

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-2055-2009

vs. :

KEVIN DWIGHT WEBSTER, :
Defendant :

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COMMONWEALTH :
: No. CR-2006-2009

vs. :

MICHAEL BROWN, :
Defendant :

* * * * *

COMMONWEALTH :
: No. 2066-2009

vs. :

ELDRICH BOBBY THOMPSON :
Defendant :

ORDER

Before the Court is the Commonwealth's Motion to Reconsider the Court's July 2, 2010 Order denying the Commonwealth's Motion to Amend and Motion to Consolidate.

The Commonwealth alleges in its Motion to Reconsider that at the May 28, 2010 hearing on the Motion to Consolidate it made numerous offers of proof, that for the last 30 years "as least" the Commonwealth used offers of proof in consolidation hearings, and

that if the Court has changed “this policy with no notice” the record should be re-opened to allow the Commonwealth to produce testimony and evidence showing the “criminal enterprise” of the Defendants in more detail.

Following receipt and review of the Commonwealth’s Motion to Reconsider, the Court directed that a transcript of the May 28, 2010 hearing be prepared. The Court reviewed in detail the transcript as well as the Court’s notes from the hearing and the law clerk’s notes from the hearing.

At the May 28, 2010 argument/hearing and contrary to what is asserted by the Commonwealth in its Motion to Reconsider, the Commonwealth made no offers of proof whatsoever. Assertions were made by the Commonwealth, however, in the context of argument and with respect to Paragraph three of the Commonwealth’s Motion to Reconsider, the Court will address each subparagraph separately.

With respect to Subparagraph 3 (a), this evidence was argued on May 28, 2010, was contained in the Affidavit of Probable Cause and considered by the Court.

With respect to Subparagraph 3 (b), this evidence was considered by the Court and referenced in the Court’s Opinion and Order.

With respect to Subparagraph 3 (c), the evidence argued at the hearing referenced the use of several cell phones but did not reference any specific cell phone numbers. Nonetheless, the general evidence was considered by the Court and referenced in the Court’s Opinion and Order.

With respect to Subparagraph 3 (d), the evidence was set forth in the Affidavit of Probable Cause and referenced in the Court's Opinion and Order.

With respect to Subparagraph 3 (e), substantially similar evidence was set forth in the Affidavit of Probable Cause and referenced in the Court's Opinion and Order.

With respect to Subparagraph 3 (f), the evidence was set forth in the Affidavit of Probable Cause and referenced in the Court's Opinion and Order.

With respect to Subparagraph 3 (g), the evidence was set forth in the Affidavit of Probable Cause and referenced in the Court's Opinion and Order.

With respect to Subparagraph 3 (i), the evidence was set forth in the Affidavit of Probable Cause and referenced in the Court's Opinion and Order.

With respect to the second Subparagraph 3 (g), and the evidence relating to a December 10, 2009 incident, the evidence was set forth in the Affidavit of Probable Cause and referenced in the Court's Opinion and Order.

With respect to the evidence set forth in Subparagraphs 3 (h), second 3 (i), 3 (j) and 3 (k), no offers of proof or references whatsoever were made on the record during the May 28, 2010 hearing. Furthermore, as far as the Court is aware, the proposed evidence was not set forth in the Affidavit of Probable Cause. Instead, the Commonwealth included this information in the legal memorandum it sent via email to the Court.

It is not, and to undersigned's knowledge never has been, the Court's policy to consider factual information contained in legal briefs or memoranda that has not been presented or proffered at the hearing on a motion. The Court did consider the Affidavits of

Probable Cause filed in the above-captioned cases and the proposed evidence as argued by the Commonwealth during the May 28, 2010 hearing.

The Court denies the Commonwealth's Motion to Reconsider the previously issued Order. The Court notes that even if the Commonwealth presented offers of proof as asserted by it, the Court would not have changed its Opinion regarding the consolidation issue due to the danger of confusion by jury and prejudice to Defendants Thompson and Brown.

AND NOW, this 13th day of July, 2010, for the reasons set forth herein, the Court denies the Commonwealth's Motion to Reconsider its Order issued on July 2, 2010.

By The Court,

Marc F. Lovecchio, Judge

cc: Mary Kilgus, Esquire (ADA)
Edward J. Rymysz, Esquire
James Protasio, Esquire
Andrea Pulizzi, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)