

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **NO. 1700-2012**
:
v. : **OTN: T256792-4**
:
BRYNN FREY, :
Defendant :

OPINION AND ORDER

Before the Court is the Defendant's Motion for Reconsideration of this Court's Order of November 15, 2012, which temporarily reassigned the preliminary hearing in the re-filed charges in the above captioned case from Magisterial District Judge (MDJ) James Sortman to MDJ Jerry Lepley. Upon consideration of the issues presented, the Court will VACATE the previous Order dated November 15, 2017 and allow the matter to remain before MDJ Sortman.

On August 18, 2012 the Defendant was arrested by the Pennsylvania State Police for the offense of Driving Under the Influence of Alcohol and/or Controlled Substance pursuant to 75 Pa. C.S. § 3802 (a)(1) and (c). After a summons was issued, a preliminary hearing was held on October 10, 2012 before MDJ Sortman (Sortman). Upon consideration of the evidence presented at the preliminary hearing, Sortman dismissed the second count of driving under the influence 75 Pa. C.S. §3802(c) and held the 3802(a)(1) charge for court along with the remaining motor vehicle summary offenses. Sortman found that the Commonwealth failed to present a *prima facie* case that the blood was drawn from the Defendant within two (2) hours of the vehicle being operated. The remaining charges, which were held for court, were scheduled for formal court arraignment on November 19, 2012. Subsequently, those charges of Driving Under the Influence, 3802(c), dismissed by Sortman were re-filed and again scheduled for preliminary hearing before Sortman at OTN T256792-4. The Commonwealth, believing that the interest of

justice would be served to have the matter transferred to a different MDJ based upon the outcome of the first preliminary hearing, requested the Court re-assign the matter. After reviewing the motion, this Court did not schedule a hearing and summarily granted the Commonwealth's request and reassigned the case to MDJ Lepley. At the time of the Defendant's formal court arraignment on the first set of charges, counsel for Defendant orally requested reconsideration of the Court's ruling as it had not provided notice to defense counsel as the rules required.

Under Pa.R.Crim.P. 544, when criminal charges are reinstated following dismissal by a MDJ, a request to transfer the refiled case from one issuing authority to another must establish sufficient grounds to justify the transfer. The authority to transfer the case is provided only to this Judge, as President Judge, to reassign the matter to another MDJ pursuant to Pa.R.Crim.P. 132.¹ Defense counsel's argument relies upon Thorpe in support of its position that the Defendant's matter should not be transferred to another MDJ. Commonwealth v. Thorpe, 701 A.2d 488 (Pa. 1996) (listing that a court shall consider fairness, impartiality, and Due Process). The Commonwealth, however, argues that the matter should be rescheduled before another issuing authority solely because MDJ Sortman dismissed the charge.

In consideration of Thorpe and the position of the Commonwealth, the Court believes that there is no fairness or impartiality consideration which would affect MDJ Sortman's ability to be a neutral magistrate or act in an impartial manner. In fact, the Court believes because of his prior experience with the case he would be in the best position to determine *prima facie*.

¹ "The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed: (1) to satisfy the requirements of Rule 117; (2) to insure fair and impartial proceedings; (3) to conduct a preliminary hearing pursuant to Rule 544(B); or (4) otherwise for the efficient administration of justice. Pa.R.Crim.P. § 132.

Therefore the Court believes that its original ruling was in error and this case should not be reassigned to another MDJ.

ORDER

And now this _____ day of December, 2012, after consideration of Defense Counsel's oral Motion for Reconsideration of this Court's Order granting the Commonwealth's request to reassign the Preliminary Hearing at OTN: T256792-4, its prior Order of November 15, 2012 is hereby VACATED and the Commonwealth's Motion to Transfer the proceeding from MDJ Sortman to another MDJ is hereby DISMISSED. This newly filed set of charges should be scheduled for a preliminary hearing before MDJ Sortman at the earliest available time.

BY THE COURT:

Honorable Nancy L. Butts, P.J.

cc: DA (AB)
Eileen Dgien, DCA
Peter Campana, Esquire
MDJ Sortman
MDJ Lepley
Court Administrator's Office