

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-527-2010
 :
 KARRIE CROUCHER, :
 Defendant : Motion for Discovery

OPINION AND ORDER

Before the Court is a Motion for Discovery filed by the Commonwealth on March 7, 2014.

The trial in this matter is scheduled for March 12, 13 and 14 of 2014.

On March 7, 2014, defense counsel notified the Commonwealth that its expert was performing additional tests including “conducting x-rays.”

While the Commonwealth has apparently been provided with “two photographs”, the Commonwealth was not provided with any report, x-rays or the results of any tests.

The Commonwealth seeks an Order requiring Defendant’s expert to generate a report in accordance with the applicable Rules of Discovery.

Rule 573 of the Pennsylvania Rules of Criminal Procedure governs pretrial discovery. If an expert whom the Defendant intends to call in any proceeding has not prepared a report of examination or tests, the Court, upon motion, may order that the expert prepare and the defense disclose a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert’s opinions and the grounds for each opinion. Rule 573 (C) (2).

In exercising its discretion to grant or deny a request for discretionary discovery, the Court is guided by the principle to allow as much discovery prior to trial as will, consistent with the protection of persons, effective law enforcement and the adversary system, provide adequate information for informed pleas, expedite trials, minimize surprise, afford an opportunity for effective cross-examination and meet the requirements for due process. Commonwealth v. Theil, 323 Pa. Super. 92, 470 A.2d 145, 148 (1983).

This case has been scheduled for some time. The jury was selected on February 11. The case has already been tried once before a jury unfortunately resulting in a mistrial because of the failure of the jury to reach a verdict. Experts were extensively utilized in the first jury and are expected to be utilized again.

The Defendant will undoubtedly call Dr. Burzynski as he did during the first trial. Dr. Burzynski's testimony was critical to a portion of Defendant's case. Clearly, the Commonwealth is entitled to information regarding any "additional tests on the child victim in this case" that Dr. Burzynski has conducted. As well, the Commonwealth is entitled to a report stating the subject matter on which Dr. Burzynski is expected to testify, the substance of the facts to which he is expected to testify and a summary of his opinions and the grounds for each opinion. Such discovery at this time is clearly consistent with the principles of providing adequate information to expedite the trial, minimize surprise, afford the opportunity for effective cross-examination and to meet the requirements of due process. Indeed, the Commonwealth has had no prior opportunity to cross-examine Dr. Burzynski in connection with these additional tests or to even obtain rebuttal testimony if available.

ORDER

AND NOW, this 10th day of March 2014, upon consideration of the Commonwealth's Motion for Discovery, said Motion to Compel said Motion for Discovery is **GRANTED**.

No later than 9:00 a.m. on March 11, 2014, the Defendant shall notify the Commonwealth of who it intends to utilize as its expert and shall provide an expert report that complies with Rule 573 (C) (2). Alternatively, the Defendant shall provide to the Commonwealth a written summary that complies with said Rule and is adopted and/or signed by the expert. The Defendant shall also provide to the Commonwealth copies of all x-ray reports and other diagnostic studies performed as part of the "additional tests" by Dr. Burzynski.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Robert Cronin, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)