

continued and did not allege any prejudice in receiving the statement two months prior to trial?

2. Did the Court, in determining the sanction to be imposed for an alleged Discovery violation, err in considering alleged Discovery violations in other cases when no record was addressed in this case pertaining to those violations and when, in fact, many if not most of the alleged violations in those other cases did not constitute Discovery violations?
3. Did the Court err in precluding the testimony of Darryl Franklin from being introduced in rebuttal, should the testimony constitute proper rebuttal for the reasons set forth in paragraph 1 herein?

The relevant procedural background in this case is outlined in this Court's Opinion dated December 19, 2013.

Discussion

In the nineteen (19) years that this Judge has been on the bench, this case has presented the first and only time that evidence has been precluded as a result of discovery violations. Mistakes and occasional discovery issues are the part of almost every criminal docket within this Commonwealth, whether caused by defense counsel or the District Attorney's Office. Generally, hundreds of cases are concluded within this judicial district without any judge having to deal with a single alleged failure to provide discovery or alleged discovery violation.

In the very recent past, homicide cases have distinguished themselves from other cases in their typical discovery practices within this County. Within this specific case, this Court dealt with repeated discovery issues on almost a weekly basis that are rarely seen once a year in *all* the rest of the cases in Lycoming County. The Commonwealth has repeatedly failed to communicate with defense counsel, failed to provide discovery in a timely manner, and failed to follow the orders of this Court.

After giving serious consideration of all the options available to it, this Court felt it was no longer in a position where its orders directed respect from the Commonwealth and that attempting to solve the numerous discovery issues was futile. This Court's decision to preclude

the testimony of Franklin was not solely the result of a single discovery violation in this case. The decision was the result of the cumulative effect of all of the discovery issues presented in this case and being at a loss to rule in any other way to gain the Commonwealth's attention.

This Court did not make the decision to preclude discovery lightly; it was done as a last resort and believed to be completely warranted. As a result of the ruling in this case, this Court has observed a dramatic improvement in the discovery practices of the Commonwealth. None of the Judges have had to deal with a single alleged discovery issue in any of the major cases since its decision. Whether the Superior Court of Pennsylvania disagrees with this Court's ruling and decides accordingly is always a possibility when any case is appealed. This Court, however, believes it did not abuse its discretion and would respectfully request that its decision be upheld.

The Court will address each of the issues raised by the Commonwealth individually:

Whether the Court erred in precluding testimony of a statement by the Defendant to Darryl Franklin in the Commonwealth's case-in-chief.

The first issue alleged by the Commonwealth is whether this Court properly precluded the testimony of Franklin in the Commonwealth's case-in-chief. The Commonwealth specifically alleged that the Court erred because the Franklin violation was inadvertent,¹ the Defendant never requested a continuance, and the Defendant was not prejudiced.² For purposes

¹ As discussed previously in this Opinion and in this Court's Opinion dated December 19, 2013, the decision to preclude Franklin's testimony was based on numerous considerations.

² The Court is unaware of the Commonwealth's accusation that the Defendant never requested a continuance or alleged prejudice. This Court recalls Attorney Miele discussing a continuance and prejudice many times:

MIELE: In this case I think there is prejudice though. The prejudice is if, in fact, you allow this back in then quite candidly we are going to have to ask for a continuance. We're going to have to address the motions. You saw where Mr. Martino was going with his questioning, that's a motion there about the admissibility of it, not to mention everything else. And as far as Mr. Linhardt mentioned that we can get Mr. Franklin's crimen falsi, well, trial is January, jury selection is January 7th, trial is January 13th, we don't have anything on Mr. Franklin regarding his criminal record as of this moment. So, you know, as far as us using it we can't because we don't have it.

N.T., December 17, 2013, p.42. Further, the Defendant stated in his Motion in Limine filed on November 21, 2013, that "[t]he Defense is unable to prepare for or investigate the statement of Mr. Franklin in time to properly prepare for trial."

of this issue, the Court will rely on its Opinion and Order dated December 19, 2013, which addressed this Court's reasoning for precluding the testimony of Franklin.

Whether the Court, in determining the sanction to be imposed for an alleged Discovery violation, improperly consider alleged Discovery violations in other cases when no record was addressed in this case pertaining to those violations.

The second issue alleged by the Commonwealth is whether this Court properly considered other cases when determining the sanction.³ For purposes of this issue, the Court will rely on its Opinion and Order dated December 19, 2013, which addressed this Court's reasoning for precluding the testimony of Franklin.

Whether the Court erred in precluding the testimony of Franklin from being introduced in rebuttal.

The third issue contends that the Court erred by precluding Franklin's testimony from rebuttal. For purposes of this issue, the Court will rely on its Opinion and Order dated December 20, 2013, which found that the Commonwealth was precluded from introducing Franklin's testimony as rebuttal evidence by the Commonwealth unless used for the purpose of contradicting alleged false statements made by the Defendant while testifying.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: Eric Linhardt, Esq.
Ken Osokow, Esq.
William Miele, Esq.
Nicole Spring, Esq.

³ The Defendant and the Commonwealth have raised past cases during argument on this issue. See N.T., December 17, 2013, p. 30-32, 34. The docket sheets of other cases were also admitted to the record by the Defendant.