

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-10,961
	:
	:
vs.	: CRIMINAL DIVISION
	: Pre-Trial Motion
ANTHONY WILLIAMS,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant’s Omnibus Pre-Trial Motion, filed January 14, 2002. A hearing on the Motion was held February 15, 2002. Certain discovery requests contained in the pre-trial motion have been addressed by separate Order. Remaining for decision are Defendant’s Motion to Suppress, his Petition for Writ of Habeas Corpus, and his Motion to Disqualify the District Attorney’s Office from prosecuting the instant matter. These will be addressed seriatim.

Defendant has been charged with criminal homicide, conspiracy, robbery, possessing an instrument of crime and two (2) firearms offenses, in connection with the killing of Kristopher Harris on November 18, 1999. One Abdul Clark was arrested in connection with the murder on November 19, 1999 but police believed a second individual was involved. Defendant was questioned by police on December 17, 1999 while incarcerated on other charges at the Lycoming County Prison. Defendant’s brother, Diandre Williams, was arrested as the second individual on June 27, 2000. Defendant was again questioned by police while incarcerated on other charges at SCI Camp Hill on October 16, 2000. Abdul Clark subsequently implicated Defendant as the second individual, rather than Diandre Williams, and Defendant was then arrested for the murder on April 26, 2001. In the instant Motion to Suppress, Defendant seeks to suppress the statements made by him on both

December 17, 1999 and October 16, 2000.

Initially, the Court notes the sole issue for decision is whether the questioning by police in either instance constitutes “interrogation”. The Commonwealth agrees Defendant was in custody during both interviews, and that he was not read his Miranda rights prior to questioning. The Commonwealth argues, however, that the questions were not “interrogation”.

“Interrogation” has been defined as police conduct “calculated to, expected to, or likely to evoke admission.” Commonwealth v Mannion, 725 A.2d 196 (Pa. Super. 1999). The Commonwealth contends in the instant matter that the questioning by police cannot be considered as interrogation as Defendant was not a suspect and therefore police were not seeking to evoke an admission. While the Court agrees with this contention with respect to the interview on December 17, 1999, the Court takes issue with the Commonwealth’s position with respect to the interview on October 16, 2000.

According to the testimony of Agent Sorage of the Williamsport Police Department, at the time of the interview on December 17, 1999, police believed that Abdul Clark and one other unidentified person were involved in the murder. They believed Defendant had been in Mr. Clark’s vehicle shortly after the murder and that the unidentified person had also been in the vehicle. They sought to question Defendant as a witness regarding who that other unidentified person was. Agent Gilson, also of the Williamsport Police Department, also testified that Defendant was not a suspect at the time, only a witness and that he and Agent Sorage interviewed Defendant seeking to learn who was in the car with Mr. Clark. The Court thus agrees with the Commonwealth that the interviews were not conducted with the expectation of evoking an admission from Defendant.

The interview on October 16, 2000 is seen by the Court in a different light, however. Agent Gilson testified that he, Agent Sorage, and Assistant District Attorney Kenneth Osokow went to SCI Camp Hill where Defendant was incarcerated on other charges to ask him to provide a palm print and to inquire about the bullet which wounded him on the day of the murder. By that time, Diandre Williams had been charged, but the police had received information from two (2) people that Defendant was actually the other individual involved, not Diandre Williams. The police were seeking

the palm print in order to compare it with a print found in the victim's vehicle. Although the officers testified they were seeking to eliminate Defendant as a suspect, rather than implicate him, the Court fails to seek the difference. It is noteworthy that the palm print of the person actually under arrest for the crime at that time, Diandre Williams, did not match the print found in the vehicle. The conclusion of the Court is that the Commonwealth sent the chief investigating officers and the prosecuting attorney to Camp Hill to exclude or include Defendant as a suspect. Since Defendant was not read his Miranda rights prior to questioning, the Court will suppress the statements made on October 16, 2000.

In his Petition for Writ of Habeas Corpus, Defendant seeks to have the matter remanded for a further preliminary hearing. Defendant indicates he was prevented from calling Curtis Robinson as a witness at the preliminary hearing, in violation of his absolute right to do so. The Court finds Defendant's argument misplaced. He does not have an absolute right to call all witnesses at the preliminary hearing, only those which will negate the Commonwealth's prima facie case. A review of the transcript from the preliminary hearing indicates the Commonwealth did present a prima facie case, in the form of Abdul Clark's testimony regarding the events surrounding the murder. Defendant made no offer of proof on the record at the preliminary hearing, nor at the hearing on his Petition for Writ of Habeas Corpus, which would show the Court that Curtis Robinson's testimony would have been offered to negate a prima facie case. The Court believes Defendant is merely fishing and the preliminary hearing is not to be used for discovery purposes.

Finally, with respect to the Motion to disqualify the District Attorney's Office, since the Motion is based upon Assistant District Attorney Kenneth Osokow's participation in the October 16, 2000 interview, and since any statements made during that interview will be suppressed, the Court considers the Motion to Disqualify moot.

### ORDER

AND NOW, this 11<sup>th</sup> day of March, 2002, for the foregoing reasons, Defendant's Motion to Suppress is hereby granted in part and denied in part. Any statements made by Defendant during the

interview on October 16, 2000 are hereby suppressed and may not be admitted into evidence at trial in this matter.

Defendant's Petition for Writ of Habeas Corpus is hereby denied.

Defendant's Motion to Disqualify the District Attorney's Office is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA  
George Lepley, Esq.  
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Gary Weber, Esq.  
Hon. Dudley N. Anderson