

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 05-613
	:	
DEBORAH MORRIS	:	

MEMORANDUM AND ORDER

Stengel, J.

December 19, 2006

Deborah Morris (“Defendant”) was charged with thirty-four counts of health fraud, fourteen counts of mail fraud, and one count of false statement. Her jury trial began November 27, 2006, and on December 8, 2006, the jury returned a guilty verdict against the Defendant on all forty-nine counts. During the course of the trial, the Government called Donna Roye-Morton, Defendant’s daughter, as a witness. Ms. Morton’s attorney filed a motion to strike her testimony for “prosecutorial misconduct.” I held a hearing on the motion on December 6, 2006 and denied the motion. This memorandum confirms the findings I made on the record and states my reasons for denying this patently silly claim of “prosecutorial misconduct.”

I. DISCUSSION

Deborah Morris operated a business called D.N. Morris & Associates (“DNMA”). Through this entity the Defendant submitted false claims to Medicare for psychotherapy and psychiatric services that were never rendered. The Defendant hired her daughter, Ms. Morton, to assist her with the services she provided at DNMA. Although Ms. Morton’s

identification information and signature appear on documents that were submitted as part of the scheme to defraud, Ms. Morton has denied having any knowledge of her mother's fraudulent activities. The Government has never considered Ms. Morton to be a target of its investigation and confirmed at the December 6, 2006 hearing that no charges have been contemplated against Ms. Morton and none will be filed.

The Government subpoenaed Ms. Morton to testify against the Defendant at the trial for the health care fraud, mail fraud, and false statement charges. Out of concern for her own criminal liability, Ms. Morton requested the appointment of counsel. A. Michelle Campbell, Esquire was appointed Ms. Morton's counsel by United States Magistrate Judge Linda Caracappa prior to Ms. Morton's grand jury testimony. The parameters of the appointment are far from clear. From the appointment order, it appears that Ms. Campbell was appointed to represent Ms. Morton for her grand jury appearance.¹ It is not clear that she was appointed to represent Ms. Morton beyond the grand jury stage. Ms. Campbell contacted Assistant U.S. Attorney Manisha Sheth to advise Ms. Sheth of her appointment to represent Ms. Morton at trial. Ms. Campbell remained in the case for Ms. Morton's trial testimony.

On November 20, 2006, Ms. Morton and Ms. Campbell met with Ms. Sheth and two United States Postal Inspectors to prepare for Ms. Morton's trial testimony. The preparation lasted for approximately two hours and Ms. Campbell was present the entire

¹Ms. Morton testified at the grand jury that indicted the Defendant on the forty-nine counts. Ms. Morton was assisted by a different attorney at her grand jury testimony.

time. Ms. Campbell did not indicate in the motion under consideration, or at the hearing on said motion, that Ms. Sheth asked Ms. Morton anything objectionable or anything likely to incriminate Ms. Morton during the preparation session.

The Government scheduled Ms. Morton to testify on November 30, 2006. Ms. Campbell accompanied Ms. Morton to the courthouse on the day of her trial testimony. On that day, the Government called nine witnesses, including Ms. Morton. Although the Government attempted to predict the approximate time of Ms. Morton's testimony, several of the Government's witnesses took less time than expected. As a result, the Government called Ms. Morton earlier than it anticipated.

When the Government called Ms. Morton to the stand, Postal Inspector James Wilson stepped outside the courtroom to get Ms. Morton from the witness room. At that time Ms. Campbell was not in the courtroom, outside the courtroom, or in the witness room with her client. Since Ms. Morton was by herself, Inspector Wilson spoke with Ms. Morton and inquired twice as to Ms. Morton's ability to testify. Both times Ms. Morton informed Inspector Wilson that she was "okay" and that "she just wanted to get it [the testimony] over with."

Ms. Morton's testimony mirrored the trial preparation session of November 20, 2006. Ms. Sheth did not ask Ms. Morton any question she was not already asked in front of Ms. Campbell. Ms. Morton was cross-examined by Ms. Morris' defense counsel, but Ms. Morton did not incriminate herself in any way. Ms. Campbell did not appear in the

courtroom at any time during Ms. Morton's testimony.

Subsequent to Ms. Morton's testimony, Ms. Campbell sent this court a letter with broad allegations that her client's constitutional rights had been violated and Ms. Sheth was guilty of prosecutorial misconduct. Ms. Campbell then placed her accusations in a motion to strike Ms. Morton's testimony, which she filed. A hearing was held on December 6, 2006 on Ms. Campbell's motion. At the hearing, Ms. Campbell, Ms. Sheth, Ms. Morton, and Inspector Wilson testified. Based on the hearing I made certain findings on the record and I confirm and supplement those findings in the section to follow.

First, Ms. Campbell was appointed to represent Ms. Morton for her grand jury testimony. (See Order appointing Ms. Campbell.) Ms. Campbell satisfied that role and the Government did not interfere with her performance of that function. It appears that Ms. Campbell remained in the case to assist Ms. Morton. No party objected to her continuing this representation of Ms. Morton.

Second, Ms. Morton was never a target of criminal charges in relation to her role at DNMA. She has not faced and will not face criminal charges arising from the Government's investigation. The Government confirmed this fact to Ms. Campbell and Ms. Morton and to this court.

Third, based on her role at DNMA, Ms. Morton has no Fifth Amendment issues. It is even questionable as to whether Ms. Morton needed an attorney in relation to her grand jury or trial testimony, but Judge Caracappa appointed counsel apparently in an excess of

caution. Ms. Campbell's reliance on the Supreme Court case Michigan v. Jackson, 475 U.S. 625 (1986), on this point is misplaced.² The case discusses an individual's right to counsel under the Fifth Amendment and Sixth Amendment at a postarrest custodial interrogation. "The Fifth Amendment protection against compelled self-incrimination provides the right to counsel at custodial interrogations." Id. at 629 (citing Edwards v. Arizona, 451 U.S. 477, 482 (1981); Miranda v. Arizona, 384 U.S. 436, 470 (1966)). The Sixth Amendment guarantee of the assistance of counsel attaches at "the initiation of adversary judicial proceedings" against the accused. Id. (internal citations omitted). Here, no custodial interrogation of Ms. Morton took place and no adversary judicial proceedings were initiated against Ms. Morton.

Fourth, the Government did not have a duty to seek out Ms. Campbell prior to calling Ms. Morton to the stand. The Government offered courtesies to Ms. Campbell and Ms. Morton by attempting to predict the time of Ms. Morton's testimony. Ms. Campbell had a duty to her client to be available when Ms. Morton was called to testify before this court. If there was any failure, it was Ms. Campbell's to her client. The Government did not fail either Ms. Campbell or Ms. Morton. Ms. Campbell tries to hold the Government responsible for her absence. The fact that the Government may have known Ms. Campbell's cell phone number does not impose any obligation upon the Government. If

²Ms. Campbell referred several times to this case as "Michigan v. Michigan" at the December 6, 2006 hearing. Based on the citation she offered the court, "106 Supreme Court 1404," however, the case Ms. Campbell referenced is captioned Michigan v. Jackson, 475 U.S. 625 (1986).

the Government was required to call every attorney that represented a witness in a criminal case, a two-week trial would turn into a two-month trial.

Fifth, the trial testimony of Ms. Morton was consistent with her trial preparation testimony conducted in front of Ms. Campbell. Ms. Morton has no criminal exposure based on her trial testimony.

Sixth, Ms. Morton did not feel any undue pressure from the Government to waive her attorney's presence during her trial testimony. Ms. Morton testified to that fact at the December 6, 2006 hearing.

Finally, Ms. Sheth conducted herself appropriately. She did not subject Ms. Morton to any self-incrimination. Ms. Sheth limited her questioning of Ms. Morton to what was discussed during the trial preparation session. She always advised Ms. Morton she was a witness and not a target. In a case with over thirty witnesses and hundreds of pages of documents, Ms. Sheth accommodated Ms. Campbell and Ms. Morton as best she could. That Ms. Sheth's trial schedule did not meet with Ms. Campbell's approval is not grounds for charges of prosecutorial misconduct. This was the overreaction of an inexperienced lawyer attempting to excuse her own lapse in attention by accusing the prosecutor of misconduct.

Accordingly, for all of the reasons stated above, Donna Roye-Morton's Motion to Strike Testimony (Docket No. 59) is denied. No prosecutorial misconduct occurred. An appropriate Order follows.

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ORDER

AND NOW, this 19th day of December, 2006, upon consideration of Petitioner, Donna Roye-Morton's Motion to Strike Testimony (Docket No. 59) and the hearing held before this Court on December 6, 2006, it is hereby **ORDERED** that the motion is **DENIED**.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.