

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	)	<b>NO. 3442-2010</b>
	)	
<b>v.</b>	)	
	)	
<b>LUIS NESTOR MARTINEZ,</b>	)	
	)	
<b>Defendant.</b>	)	

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<b>COMMONWEALTH OF PENNSYLVANIA</b>	)	<b>NO. 3447-2010</b>
	)	
<b>v.</b>	)	
	)	
<b>JEREMIAH NIEVES,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER OF COURT**

**AND NOW**, this 8th day of June, 2011, it is hereby **ORDERED**:

1. The Motion of the Commonwealth to Join Defendants, Luis Martinez and Jeremiah Nieves, Charged in Separate Informations for Trial is **GRANTED**. The above-captioned cases are **JOINED** for trial.

2. Luis Martinez's Habeas Corpus Petition is **DENIED**.

3. Defendants' Motions to Preclude Introduction of Statements Made by a Co-Defendant are **DENIED**. The Commonwealth is directed to submit the trial redaction by June 17, 2011.

4. Luis Martinez's Motion to Suppress Statements is **DENIED**.

5. Jeremiah Nieves's Motion to Suppress Statements shall be scheduled for hearing prior to jury selection.

6. The Commonwealth is directed to comply with its continuing discovery obligations.

## **STATEMENT OF REASONS**

### **Facts and Procedural History**

Defendant, Luis Nestor Martinez, is charged in a twenty-five count criminal information and Defendant, Jeremiah Nieves, is charged in a twenty-six count criminal information with a variety of charges stemming from a home invasion robbery occurring in Bethlehem, PA on June 20, 2010. The most serious charges include robbery, aggravated assault, burglary and kidnapping and conspiracy.

We note that the Commonwealth filed a motion for joinder on February 22, 2010, that remains pending before this Court. This Order joins the Defendants and consolidates their individual matters for trial. Therefore, we will discuss the facts of this case and address the pretrial motions of both Defendants together in this Order.

The Defendants allegedly entered a house at 218 East Market Street, Bethlehem, PA at some point in the morning on June 20, 2010. The two victims, an adult male and female, residing at the house encountered Mr. Martinez and Mr. Nieves after they entered the house. At some point, one of the Defendants brandished a handgun to intimidate/threaten the victims. The victims were restrained within the house and Mr. Nieves allegedly poured a liquid chemical over the male victim's head and sprayed him in one eye with an aerosol can while the male victim was bound in an effort to extract information regarding the location of valuables within the house. Mr. Martinez and Mr. Nieves allegedly unlawfully took a 2010 grey Lexus, two laptops, two BlackBerry Smart Phones, jewelry, bank cards, and other items. The bank cards allegedly were used to make two withdrawals from banks in Lehigh County totaling \$1000.

Later that day, Mr. Martinez and Mr. Nieves were arrested in Lehigh County after a

police pursuit. The Defendants were operating the victims' automobile at the time of their arrest and personal property belonging to the victims was still in the Defendants' possession. Mr. Nieves was shot in the chest and arm during his arrest. He allegedly displayed a handgun when the police attempted to detain him. Mr. Martinez and Mr. Nieves were charged and convicted for crimes committed in Lehigh County related solely to events occurring within Lehigh County. Mr. Martinez was sentenced from 2 1/2-5 years and Mr. Nieves was sentenced from 10-24 years on the Lehigh County charges.

While in custody at the Allentown Police Department, Mr. Martinez waived his Miranda rights and was interviewed by officers of both the Allentown and Bethlehem Police Departments. Mr. Martinez allegedly admitted his participation in the events that occurred on June 20, although he denied some of the facts giving rise to more serious charges against him.

While in police custody at St. Luke's Hospital in Bethlehem, PA, recovering from his gunshot wounds, Mr. Nieves waived his Miranda rights and was interviewed by detectives of both the Allentown and Bethlehem Police Departments on June 21 and 22, 2010. Mr. Nieves allegedly admitted his participation in the events that occurred on June 20.

Mr. Martinez had a preliminary hearing on October 1, 2010, after which all the charges against him were bound over for trial. No court reporter was present to make a record, but apparently the Commonwealth recorded the proceedings with an audio recording device.

Mr. Nieves waived his right to a preliminary hearing.

Alex Karam, Esq., was appointed to represent Mr. Martinez on October 6, 2010, and Mr. Martinez was formally arraigned on November 22, 2010. Brian Monahan, Esq., was appointed to represent Mr. Nieves on July 23, 2010, and Mr. Nieves was formally arraigned on November

18, 2010. The Commonwealth filed a motion to join the defendants on February 22, 2011. The matter was subsequently set for a trial date of July 11, 2011.

Attorney Karam filed an Omnibus Pretrial Motion on March 11, 2011, raising three issues: a motion to dismiss in the nature of habeas corpus, a motion to sever defendants, and a motion to compel discovery regarding statements made by Defendant at the Allentown Police Department. Attorney Monahan filed a Reply to the Commonwealth Motion to Join on March 25, 2011, requesting that this Court deny the Commonwealth's motion. The Reply also included a motion to preclude the introduction of statements made by co-defendants Luis Martinez and Jeremiah Nieves.

A pretrial conference took place before the undersigned on March 25, 2011, where this Court issued an agreed order requiring the Commonwealth to produce discovery, directing the filing of any supplemental pretrial motions, and we scheduled a hearing on May 6, 2011, to make a record for disposition of all pretrial motions. Mr. Martinez's counsel filed a letter brief in support of his habeas petition on April 1. The Commonwealth filed a brief opposing Mr. Martinez's request for a habeas corpus hearing on April 8, 2011.

Mr. Nieves filed an Omnibus Pretrial Motion on April 27, 2011, and Mr. Martinez filed an "Amended Omnibus Pretrial Motion" on April 28, 2011. Both motions included seven distinct motions: a motion to suppress statements made to police, a motion to preclude statements made by a co-defendant, a motion to sever defendants, a motion to compel discovery, a motion for disclosure of exculpatory evidence, a motion for disclosure of inventory of all physical evidence in the Commonwealth's possession and a motion to extend time for filing of supplemental pretrial motions. Additionally, Mr. Martinez made a motion for habeas corpus

challenging the sufficiency of the evidence presented at his preliminary hearing. A hearing was scheduled for May 6, 2010, to consider both Defendants' pretrial motions.

At the May 6 hearing, this Court overruled the Commonwealth's objection to Mr. Martinez's request for a habeas corpus hearing. Mr. Nieves's counsel then indicated that Mr. Nieves wanted to plead guilty to the charges contained in his information and counsel requested a delay in prosecuting his pretrial motions so that he would have time to attempt to negotiate a sentence bargain with the Commonwealth. Upon the agreement of the Commonwealth, we continued the Nieves hearing. The hearing on Mr. Martinez's pretrial motions then proceeded.

The Commonwealth introduced the testimony of Detective Sergeant Andy Kehm of the Bethlehem Police Department. Detective Kehm testified he spoke with Mr. Martinez on June 20 at the Allentown Police Department. Before questioning Mr. Martinez, Detective Kehm verified that Mr. Martinez had been read his Miranda rights by another police officer. Mr. Martinez admitted to participating in the incident that occurred on the morning of June 20, 2010. The audio recording and transcripts of both interviews Mr. Martinez gave to police were admitted into evidence.

The Commonwealth also called Detective Kevin Mriss of the Allentown Police Department to testify. Detective Mriss testified he read Mr. Martinez his Miranda rights from a Miranda form, which was introduced into evidence, on June 20, 2010. Investigator Louis Tallerico from the Lehigh County Homicide Task Force was also present during the interview. Detective Mriss further testified Mr. Martinez was willing to speak, was not hesitant and did not seem to be in distress. Mr. Martinez had his legs shackled during the interview, but he was not in handcuffs. Detective Mriss also stated a small amount of time elapsed after he left the room

before the Bethlehem Police detectives, including Detective Kehm, entered the room to interview Mr. Martinez.

Near the end of the hearing, Mr. Martinez's counsel indicated that Mr. Martinez also desired to plead guilty to the charges contained in his information and negotiate a sentence bargain with the Commonwealth. The Court noted Mr. Martinez's request, but it completed the hearing in order to make a complete record on Mr. Martinez's pretrial motions.

Apparently, a successful resolution could not be reached. Neither Defendant has pleaded guilty.

Both the Commonwealth and Defendants were directed to file briefs on the pretrial motions by May 16, 2011. Mr. Nieves submitted a brief on May 16, 2011, and Mr. Martinez submitted his brief on May 20, 2011.

### **Discussion**

Although the Commonwealth filed a motion to join the Defendants, this Court has not yet formally ruled on that motion. We will first address the joinder issue. Next, we will address Mr. Martinez's habeas corpus petition to determine whether the Commonwealth established a *prima facie* case against Mr. Martinez. We will then discuss the remaining issues contained within both Defendants' Omnibus Pretrial Motions.

#### **I. Joinder and Motion for Severance**

The Commonwealth filed a motion to join the case of Commonwealth v. Martinez, No. 2010-3442 and Commonwealth v. Nieves, No. 2010-3447 on February 22, 2010. Both Defendants filed a motion to sever their individual cases from the other. Because the cases have not been formally joined, the motions to sever are premature. However, we will treat

Defendants' motions to sever as a response opposing the Commonwealth's joinder motion. We will now dispose of the joinder and severance issues raised by the parties.

The Defendants allege generally that they will have antagonistic defenses where the jury, in order to believe the testimony offered on behalf of one defendant, must disbelieve the testimony offered by each co-defendant and that they will be prejudiced should their individual cases be joined.

Defendants charged in separate informations may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Pa.R.Crim.P. 582(A)(2). Generally, joint trials are encouraged when judicial economy will be promoted by avoiding the expensive and time-consuming duplication of evidence. Com. v. Patterson, 546 A.2d 596, 600 (Pa. 1988). Joint trials are preferred when defendants are charged with conspiracy. Com. v. Jones, 668 A.2d 491 (Pa. 1995).

A decision on whether to grant a motion for severance is within the sound discretion of the trial court. Com. v. Marinelli, 690 A.2d 203, 212 (Pa. 1997). It may be proper to sever when the defendant can show he will be prejudiced by a joint trial, but the mere fact that hostility exists between the defendants or that one defendant may try to save himself at the expense of the other are insufficient grounds for severance. Id. at 213. A defendant can show prejudice if the defenses of the joined defendants are antagonistic meaning the jury, in order to believe the essence of testimony offered for one defendant, must disbelieve the testimony of the co-defendant. Com. v. Chester, 587 A.2d 1367, 1373 (Pa. 1991).

Luis Martinez and Jeremiah Nieves are charged with twenty-five and twenty-six counts,

respectively. Among those charges include conspiracy to commit robbery, theft by unlawful taking, kidnapping, burglary, criminal trespass and unlawful restraint. Because these two defendants are charged with conspiracy, joinder of the two defendants in the same case is preferred. See Jones, 668 A.2d 491.

The Defendants continue to insist they will be prejudiced if they are tried together. However, neither Defendant specifies how they will be prejudiced, nor do they show how their respective defenses would be antagonistic to the other defendant's defense. After reviewing the statements made by the Defendants, each freely admitted that he participated in the alleged criminal acts, although they may disagree as to the extent of their participation. This is not an antagonistic defense.

The Defendants fail to adequately show how they would be prejudiced by the joinder of their cases. It would be judicially economical to try these two defendants together. Therefore, we will join Luis Martinez and Jeremiah Nieves and order that they be tried together.

## **II. Habeas Corpus Petition**

Mr. Martinez argues that the Commonwealth did not provide sufficient evidence tending to identify Mr. Martinez as one of the individuals that committed the alleged criminal acts that occurred on June 20, 2010. Mr. Martinez seeks dismissal of the charges pursuant to a habeas corpus petition.

A defendant tests a finding of a *prima facie* case prior to trial by a writ of habeas corpus. Com. v. Kowalek, 647 A.2d 948, 949 (Pa. Super. 1994). The Commonwealth is entitled to present additional evidence at the habeas corpus hearing to establish at least a *prima facie* case against the defendant. Com. v. Morman, 541 A.2d 356, 359 (Pa. Super. 1988). The

Commonwealth carries the burden of showing probable cause that the defendant committed an offense. Com. v. Hock, 728 A.2d 943, 945 (Pa. 1999). “A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense.” Com. v. Santos, 876 A.2d 360, 363 (Pa. 2005) (citations omitted).

In this case, Mr. Martinez did not dispute that the Commonwealth presented a *prima facie* case that a crime had been committed, rather, Mr. Martinez only challenges the sufficiency of the evidence identifying Mr. Martinez as the person committing the acts charged in the information. The Commonwealth produced the testimony of Detective Kehm who testified that Defendant admitted to participating in the incident that occurred on June 20, 2010. The transcript of this interview was admitted into evidence. This evidence clearly establishes a *prima facie* case that Mr. Martinez was present with Mr. Nieves on June 20, 2010, and he participated in the incidents charged in the twenty-five count information.

We deny Mr. Martinez’s habeas corpus motion and hold the Commonwealth established a *prima facie* case against Mr. Martinez.

### **III. Suppression Motion**

We will separately address the statements each Defendant challenges.

#### **1. Luis Martinez’s June 20, 2010 Statement to Detective Sergeant Kehm**

Mr. Martinez challenges statements he made to Bethlehem Detective Sergeant Andy Kehm on June 20, 2010 at the Allentown Police Department, arguing he did not knowingly, voluntarily and intelligently waive his Miranda rights because Detective Kehm did not read him his Miranda rights prior to the interrogation. Apparently, Mr. Martinez wants to suppress

statements made to Detective Kehm because the reference to earlier Miranda warnings was not sufficient.

Allentown Police Detective Kevin Mriss testified at the May 6, 2010 hearing. Detective Mriss testified he first provided Mr. Martinez his Miranda rights at the beginning of the interrogation and asked Mr. Martinez if he understood the rights and still wished to speak with the detectives. The transcript of the June 20 interrogation indicates Mr. Martinez replied “Yeah” to the questions of whether he understood his rights and whether he wanted to speak with the police officers with his Miranda rights in mind. Detective Mriss also read Mr. Martinez his Miranda rights from the Allentown Police Department Rights Warning and Waiver form, which Mr. Martinez signed at approximately 5:58 PM. Lehigh County Investigator Louis Tallerico was present when Detective Mriss read Mr. Martinez his Miranda rights.

During the interview, Mr. Martinez freely discussed the incident that occurred in Bethlehem. Mr. Martinez indicated that he and another individual entered the house through the basement window, waited for someone to come downstairs, and restrained the two occupants of the house. He also indicated that he had a gun and ski mask at points during the incident. The recording ends at approximately 6:18 PM when Mr. Martinez is allowed to take a break.

Detective Kehm also testified at the May 6 hearing. The transcript indicates the interview begins at 7:39 PM on June 20, 2010. He interviewed Mr. Martinez in the same room that Detective Mriss and Investigator Tallerico had interviewed Mr. Martinez. He further testified that Investigator Tallerico was present when he interrogated Mr. Martinez. Detective Kehm first asked whether Mr. Martinez had been advised of his Miranda warnings, to which Mr. Martinez responded “Yes.” Mr. Martinez also indicated that he was willing to talk with

Detective Kehm. Mr. Martinez recounted the Bethlehem incident in more detail than in the interview with Detective Mriss. Mr. Martinez admitted he had a gun during the incident and described restraining the two occupants of the house. In this interview, he specifically implicates Mr. Nieves as assisting him during the alleged robbery. The interview concluded at approximately 7:56 PM.

Miranda warnings are required when a suspect is subject to a custodial interrogation. Com. v. Ford, 650 A.2d 433, 438 (Pa. 1994). A defendant's waiver of his Miranda rights must be voluntary, knowing and intelligent. Com. v. Cost, 362 A.2d 1027, 1033 (Pa. Super. 1976). The courts must determine whether a defendant validly waived his Miranda rights in a two-pronged inquiry: 1) was the waiver voluntary, and 2) was the waiver knowing and intelligent. Com. v. Brown, 583 A.2d 805, 810 (Pa. Super. 1990).

The court must consider the totality of the circumstances attending the waiver of rights to determine if it was voluntary. Com. v. Goodwin, 333 A.2d 892, 894-5 (Pa. 1975). The waiver must be an explicit outward manifestation of a waiver. Com. v. Bussey, 404 A.2d 1309, 1314 (Pa. 1979). When determining whether the waiver was knowing and intelligent, the court's focus is on whether the defendant was aware of the nature of the choice that he made in relinquishing his Miranda rights. Com. v. Ellis, 700 A.2d 948, 955 (Pa. Super. 1997).

In this case, Mr. Martinez challenges the sufficiency of the waiver of his Miranda rights. Specifically, he alleges that he was without the benefit of counsel and "was in a nervous state at the time of the interview." (Defendant's Brief, p. 3). Upon reviewing the transcript of the June 20, 2010, interview conducted by Detective Mriss, it is clear that Mr. Martinez was read his Miranda rights twice before discussing the Bethlehem incident. Mr. Martinez also signed and

dated a form waiving his Miranda rights. The signing of a form waiver supplies evidence of waiver. See Cost, 362 A.2d at 1034. Mr. Martinez responded “Yeah” when Detective Mriss asked if he understood his Miranda rights and if he still wished to speak with the police. There is no doubt that Mr. Martinez waived his Miranda rights prior to speaking with Detective Mriss and Investigator Tallerico. The ultimate question becomes whether those Miranda warnings became stale prior to Detective Kehm’s interview.

Every renewal of an interrogation does not require the repetition of Miranda warnings. Com. v. Kohler, 737 A.2d 225, 235 (Pa. 1999). The court must consider the circumstances of each case to determine whether previously provided Miranda warnings have become stale. Id. When considering whether Miranda warnings have become stale, the court should review: 1) the length of time between the warnings and the challenged interrogation; 2) whether the interrogation was conducted at the same place where the warnings were given; 3) whether the officer who gave the warnings also conducted the questioning; 4) whether the statements obtained are materially different from other statements that may have been made at the time of the warnings. Com. v. Bennett, 282 A.2d 276, 280 (Pa. 1971).

Mr. Martinez was read his Miranda warnings and waived them at approximately 6:00 PM. The interview by Detective Kehm began around 7:39 PM and ended before 8:00 PM the same day. In total, no more than two hours passed between the time Mr. Martinez was read his Miranda rights and the time he made the challenged statements. This is a reasonable amount of time. See Com. v. Gray, 374 A.2d 1285, 1289 (Pa. 1977) (warnings not stale when given a little over two hours before incriminating statement); Bennett, 282 A.2d 276 (warnings not stale when given under five hours before interrogation began). Mr. Martinez was interviewed by Detective

Kehm in the same room where he was read his Miranda warnings. The statements made by Mr. Martinez immediately after he was given his Miranda warnings and the statements made a little over one and one half hours later were similar. Mr. Martinez discussed the incident in Bethlehem in more detail during the second interview, but the substance of the two statements were substantially similar. Notably, Mr. Martinez admitted during both interviews that he possessed a gun during the alleged robbery.

The only factor that may weigh against the Commonwealth is the fact that the officer who gave Mr. Martinez his Miranda warnings was not present during the interview with Detective Kehm. However, the mere fact that a different officer interviewed Mr. Martinez does not compel a finding that the officers were required to re-warn Mr. Martinez of his Miranda rights. See Com. v. Scott, 752 A.2d 871 (Pa. 2000). The ultimate concern in determining whether a defendant must be re-warned of his Miranda rights is whether there was a “clear continuity of interrogation.” Id. at 875. In this case, there was a clear continuity of interrogation. Mr. Martinez was aware of his Miranda rights and Detective Kehm even reminded Defendant that he had been advised of his Miranda rights. Additionally, Investigator Tallerico was present during both interviews. This factor further supports a finding that there was a clear continuity of interrogation. The Miranda warnings were not stale prior to Detective Kehm’s interview.

As a result, we deny Mr. Martinez’s motion to suppress statements made to Detective Kehm at the Allentown Police Department on June 20, 2010.

**2. Jeremiah Nieves’s June 22, 2010 Statement to Detectives Diluzio and Kehm**

Mr. Nieves apparently gave a statement regarding the June 20 incident to Detective Kehm and Detective Lieutenant Mark Diluzio on June 22, 2010, while hospitalized in St. Luke’s

Hospital in Bethlehem, PA. Mr. Nieves argues he did not voluntarily, knowingly, or intelligently waive his Miranda rights because he suffered a gunshot wound to his arm and chest, suffered from a collapsed lung, and was under the influence of painkilling medication on June 22, 2010.

At the May 6, 2011 hearing, this Court did not take testimony on Mr. Nieves's motion because Mr. Nieves indicated a desire to plead guilty. At this time, there is no record on which we can make a determination as to whether the June 22 statement should be suppressed. It is appropriate to hold our decision in abeyance until such time that a record can be made to rule on this motion. Therefore, we will not make a decision on Mr. Nieves's motion.

#### **IV. Preclusion of a Co-Defendant's Statement**

We will address each Defendant's motion to preclude the statement of a co-defendant separately.

##### **1. Luis Martinez's Motion to Preclude the Statement of Jeremiah Nieves Made on June 22, 2010**

Mr. Martinez next argues that the statements co-Defendant Jeremiah Nieves made to Detective Lieutenant Mark Diluizo and Detective Kehm on June 22, 2010, are inadmissible because they violate the rule laid out in Bruton v. U.S., 391 U.S. 123, 88 S.Ct. 1620 (1968). He alleges that the Commonwealth will be unable to adequately redact Mr. Nieves's statement to conform with the rule in Bruton.

A defendant is guaranteed the opportunity to confront witnesses against him pursuant to the Sixth Amendment, but that right is deprived when a non-testifying co-defendant's confession naming the defendant as a participant in the crime is introduced at their joint trial. Bruton v.

U.S., 391 U.S. 123, 88 S.Ct. 1620 (1968). The Commonwealth may introduce a redacted statement in conformity with Bruton at a joint trial only if the statement does not refer to the other defendant. Com. v. Johnson, 378 A.2d 859 (Pa. 1977). A statement of a non-testifying co-defendant may not expressly implicate a defendant. Com. v. Overby, 809 A.2d 295, 303 (Pa. 2002). However, if the implication only arises following the introduction of other evidence at trial, then redaction and a limiting instruction may be sufficient to cure the potential prejudice to the defendant. Id.

A statement that, despite redaction, obviously refers directly to someone, often obviously the defendant, and which involves inferences that a jury could ordinarily make immediately even were the confession the very first item introduced at trial, violates Bruton and is not admissible at trial. Gray v. Maryland, 523 U.S. 185, 196, 118 S.Ct. 1151, 1157 (1998). A redacted statement is improper if the redaction itself is obvious to the jury, such as when there is the term “deleted” or X,” or where there are gaping holes in the narrative. Com. v. McGlone, 716 A.2d 1280, 1286 (Pa. Super. 1998). Use of a generic term like “other guys” or “other man” reduces the powerfully incriminating impact of a statement and is not within Bruton’s protection. Id. Redaction must remove references that explicitly implicate the defendant. Com. v. Travers, 768 A.2d 845, 847 (Pa. 2001) (approving the use of a neutral pronoun to allow a statement by a non-testifying co-defendant to be admitted against a defendant).

The Commonwealth introduced a CD at the May 6 hearing containing the two statements made by Mr. Martinez and two statements made by Mr. Nieves. The Commonwealth intends to introduce all statements made by both defendants at the joint trial.

Mr. Martinez objects to the introduction of the statements made by Mr. Nieves. The

Commonwealth has made several proposed redactions on this transcript, which purports to eliminate several references which identify Mr. Martinez.

Our review of Mr. Nieves's statement indicates that it may easily redacted in order to comply with the rule of Bruton as refined by Gray. Our Supreme Court has approved the use of neutral pronouns to replace direct references to a defendant so long as any implication the jury makes connecting the defendant to the non-testifying co-defendant's statement is implicit rather than explicit. See Travers, 768 A.2d 845. References to "yous" or "you guys" by the interviewing officers or "we" by the defendants do not rise to the level of explicit implication necessary for Bruton protection.

We deny the Martinez motion to preclude the admission of Mr. Nieves's statements during the joint trial.

We note that Mr. Martinez has not been given the opportunity to review the Commonwealth's proposed redaction. Therefore, we direct the Commonwealth to provide a final - trial ready - redacted statement for review by June 17, 2011. We will schedule a conference with Counsel on June 24, 2011 to review any objections or requests for modification to the Commonwealth's proffer.

**2. Jeremiah Nieves's Motion to Preclude Statements Made by Luis Martinez on June 20, 2010**

Mr. Nieves made a motion to preclude statements made by Luis Martinez on June 20, 2010, because they allegedly would violate the rule in Bruton. In an argument similar to that urged by Mr. Martinez, Mr. Nieves argues the use of the terms "we" and "you guys" in the statement contextually implicates Mr. Nieves and therefore is not admissible pursuant to Bruton.

While we discussed above that no record was made on Mr. Nieves's motion, we did receive into evidence transcripts of the statements made by Mr. Martinez during Mr. Martinez's May 6 hearing. As a result, we have had an opportunity to review the statement and redactions proposed by the Commonwealth.

As discussed above in our decision regarding Mr. Martinez's motion to preclude the introduction of Mr. Nieves's statement, the use of generic pronouns like "you guys" or "we" in a non-testifying co-defendant's statement does not explicitly implicate the defendant. See Travers, 768 A.2d 845. In this case, after the statement is redacted, if the statement was the first piece of evidence introduced, other evidence would be necessary to implicate Mr. Nieves as the other person referred to in the statement. This implicit connection does not preclude the statement from being introduced under Bruton.

The Martinez statements can be properly redacted and therefore are not precluded from being introduced pursuant to Bruton. We deny Mr. Nieves' motion to preclude the introduction of Mr. Martinez's statements during the joint trial.

As we noted above, Mr. Nieves has not been given the opportunity to review the Commonwealth's proposed redaction. Therefore, we direct the Commonwealth to provide a final - trial ready - redacted statement for review by June 17, 2011. We will schedule a conference with Counsel on June 24, 2011 to review any objections or requests for modification to the Commonwealth's proffer.

#### **V. Motions to Compel Discovery and Extension of Time for Filing Pretrial Motions**

Mr. Martinez and Mr. Nieves both filed four additional motions seeking to compel the Commonwealth to disclose discovery, exculpatory evidence and an inventory of physical inventory

in the Commonwealth's possession and for an extension of time for the deadline for filing pretrial motions.

We understand the Commonwealth has satisfied many of the issues raised by Defendants' motions to compel discovery; specifically, the Commonwealth has provided to defense counsel transcripts of statements made by the Defendants to police in June and July 2010. We expect that the Commonwealth will continue to comply with its discovery obligations pursuant to the Rules of Criminal Procedure and relevant case law. The Commonwealth is directed to continue to comply with its discovery obligations.

With regard to an extension of time for filing pretrial motions, no proposed motions have been identified. Therefore, there is no issue before the court. We shall defer any action until supplemental motions have been filed and we receive a response from the Commonwealth.

**BY THE COURT:**

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**STEPHEN G. BARATTA, J.**