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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF MICHIGAN,

Case No. 05-3228

Honorable Mary M. Waterstone

vs.

ALEXANDER ACEVAL AND RICARDO PENA,  
Defendant.

IN-CAMERA CONFERENCE

before the Honorable Mary M. Waterstone, Circuit Judge, 403  
Frank Murphy Hall of Justice, 1441 St. Antoine, Detroit,  
Michigan, September 8, 2005, at or about 12:35 p.m.

APPEARANCES:

For the People:

MS. KAREN K. PLANTS (P43616)  
Assistant Prosecuting Attorney  
Wayne County Prosecutor's Office  
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Transcribed by:

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THE COURT: On the record. We are making a sealed record in Case No. 05-3228. Present with me is only the court reporter, of course, and the prosecutor, Ms. Plants.

MS. PLANTS: Judge, last night I received a phone call from Mr. Feinberg who first asked me if I would agree to an adjournment. I said no. He said he needed more discovery of that being the cell records of Chad Povish and Brian Hill. At that time I indicated to him I was not going to produce those records, I'm not obligated to turn over discovery that is not in my possession and control.

THE COURT: And these records are not?

MS. PLANTS: These records are not in my possession. My concern is I can't think of any legitimate reason why he wants them except to find out which one called the OIC on the morning of March 11th 2005, to find out which one of them is the CI.

I have a jailhouse snitch which tells me Mr. Pena and Aceval have narrowed the informant to either Mr. Hill or Mr. Povish.

I'm presenting the Court with an ex parte order for Verizon Wireless and SBC not to release any records regarding Chad Povish or Brian Hill or their telephone numbers which are included in the order because I'm

1 concerned for their safety.

2 THE COURT: The SBC order is for Brian Hill and I  
3 will sign that. I think that is a substantial reason.

4 For the record, I'm simply amazed -- not amazed,  
5 I'm appalled at what appears to be a blatant effort to  
6 do no more than discover the identity of the CI and I  
7 will not be a party to that. I believe the man's life  
8 is in danger.

9 Since it is a sealed record we already know that it  
10 is a man from the prior sealed record.

11 I have signed the order both to SBC regarding Brian  
12 Hill's records and Verizon records regarding Mr. Povish.

13 MS. PLANTS: I will provide the court reporter true  
14 copies to seal with the records, if I may.

15 THE COURT: Would you, please.

16 MS. PLANTS: All right.

17 THE COURT: This relates to a different issue. We  
18 are now moving from the issue of the records to another  
19 issue.

20 MS. PLANTS: We were doing an evidentiary hearing  
21 on Tuesday concerning Mr. Pena and, with Mr. Feinberg's  
22 prompting, Mr. Scharg asked the witness, Sergeant  
23 Rechtzigel, whether he had met Chad Povish, Brian Hill  
24 or the defendant prior to March 11th, 2005. Sergeant  
25 Rechtzigel said no. This clearly contradicts earlier

1 testimony he gave about the CI which he had met.

2 He knowingly committed perjury to protect the  
3 identification of the CI. To answer yes would have  
4 indicated that he had met them in a confidential  
5 informant capacity.

6 I did not object at that point because I thought an  
7 objection would telegraph who the CI is. I let the  
8 perjury happen. He committed perjury knowingly, all in  
9 efforts to comply with the Court's order to keep the CI  
10 confidential.

11 THE COURT: It is clear that is what he was asking  
12 for and it really was not relevant to the issue that he  
13 had raised. So I think that it was appropriate for him  
14 to do that. It is too bad. I'm sure the question came  
15 from left field. No one would have expected such a  
16 blatant attempt to do nothing but to find out the name  
17 of the CI, certainly would not have expected it from  
18 Mr. Scharg, but it happened.

19 MS. PLANTS: Well, I think Mr. Scharg was  
20 unwittingly an accomplice.

21 THE COURT: I think he leaned over and asked  
22 Mr. Feinberg if he had any other questions he should  
23 ask. I'm not certain of that, but that is what I  
24 believe happened. Mr. Feinberg must have told him what  
25 the question was. I did not hear him, but he asked that

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question.

MS. PLANTS: Thank you.

THE COURT: Let me just add for the record I think this CI is in grave danger and I'm worried that he'll not make the weekend for the trial on Monday. I'm very concerned about his identity being found out.

All right there we are.

MS. PLANTS: Thank you.

(Concluded 12:40 p.m.)

