

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

Case # 01-09786

Hon. Timothy Kenny

KEVIN SIMPSON,

Defendant.

Patricia Leonard, Assistant Wayne County Prosecutor
Wayne County Prosecutor's Office
12th floor – Frank Murphy Hall of Justice
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Steven Fishman (P23049)
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**MOTION TO ALLOW CROSS-EXAMINATION
CONCERNING WITNESS'S USE OF AN ALIAS**

Now comes Kevin Simpson, Defendant herein, by and through his attorney Steven Fishman, and in support of his motion to allow cross-examination concerning the witness Michael Redmond's use of an alias states as follows:

1. Defendant Simpson is charged with two counts of second-degree murder and felony-firearm.
2. The prosecution's chief witness against him is Michael Redmond, a career criminal who is testifying pursuant to a plea and sentence agreement with federal authorities (T, 21).

3. At the preliminary examination, Mr. Redmond admitted that he had used an alias, "Calvin something", in the past (T, 26).

4. Mr. Redmond further admitted that he used the alias to obtain false identification for the purpose of fooling the police and "keeping the police off balance" (T, 26-27).

5. The prosecution objected to cross-examination concerning Mr. Redmond's use of an alias (T, 25-26).

6. On information and belief, the prosecution intends to make the same objection at trial.

7. Michigan case law clearly allows cross-examination of witnesses on the use of an alias as a means of testing credibility. People v Dietrich, 87Mich App 116, 138-139 (1978); People v Pace, 98 Mich App 714, 718 (1980); People v Bowens, 119 Mich App 470, 471-473 (1982); People v Messenger, 221 Mich App 171, 180 (1997).

WHEREFORE, Defendant Simpson requests that this Court grant his motion to allow cross-examination concerning the use of an alias by the witness Michael Redmond.

Respectfully submitted,

Steven Fishman (P23049)
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(313) 962-4090

Dated: December 6, 2001

BRIEF IN SUPPORT OF MOTION
TO ALLOW CROSS-EXAMINATION CONCERNING
WITNESS'S USE OF AN ALIAS

Statement of Facts

Kevin Simpson is charged with two counts of second-degree murder and felony-firearm. At the preliminary examination, the prosecution presented one witness, Michael Redmond. Mr. Redmond, an admitted career criminal (T, 27), was questioned on cross-examination concerning whether he had used an alias in the past (T, 25). After an objection from the prosecution was overruled, Mr. Redmond admitted that he had used an alias, a "Calvin something", in 1996 (T, 26).

When questioned about his reason for using an alias, Mr. Redmond admitted that he had done so because he was dealing drugs and wanted to conceal his true identity from the authorities:

Q. Did you just use it [the alias] just walking down the street because you felt like being Calvin that day or was there some criminal reason for doing it?

A. It was just that I was using that name at that time. Like I said, I was selling drugs back then.

Q. All right. **So did you obtain identification in that name?**

A. **Yes.**

Q. And that would be the identification you would show if you got stopped by the police because **you didn't want them to know you were Michael Redmond, drug dealer, right?**

A. **Right.**

Q. **So it was used then to fool somebody, wouldn't you agree?**

A. **Yeah.**

Q. **And that's a lot of what you do when you're a drug dealer, you want to keep the police off balance, wouldn't you agree?**

A. **Yeah.**

(T, 26-27).

On information and belief, the prosecution intends to raise the same objection at trial. Defendant Simpson has, therefore, filed a motion to allow cross-examination of Michael Redmond concerning his use of an alias.

Argument

The law is well-settled in Michigan that a witness, even if he is a defendant, may be cross-examined concerning his use of an alias for impeachment purposes. People v Dietrich, 87 Mich App 116 (1978); People v Pace, 98 Mich App 714 (1980); People v Bowens, 119 Mich App 470 (1982); People v Messenger, 221 Mich App 171 (1997). While it is inappropriate to inquire into the use of an alias for purely inflammatory or prejudicial reasons, such inquiry is permissible when it is meant to challenge the witness's credibility. Messenger, supra, at 180.

As the Court of Appeals stated in Dietrich, supra at 139:

We think that the witness's use of an alias is highly probative of the witness's credibility. In this case, the introduction into evidence of defendant's use of aliases was not highly inflammatory or prejudicial to the defendant..... The trial judge did not err in allowing

this testimony into evidence for impeachment purposes.

See also Bowens, supra, at 471-472

Though Dietrich and Bowens were cases where the defendant was the witness, the same principle was applied in Pace, supra. In that case, the defendant's brother was asked on cross-examination if he had ever used an alias. In ruling on the issue, the Court stated:

This Court has stated that a witness's use of an alias is highly probative of his or her credibility. Where, as here, the inquiries are not emphasized in an attempt to discredit a witness through innuendo, especially when the witness was the defendant's brother, they do not constitute error.

Id. at 718.

In the instant case, Michael Redmond was asked about his use of an alias for the specific purpose of impeaching his credibility. Mr. Redmond's admissions that he used the alias to obtain identification for the purpose of fooling the police and keeping them off balance have a direct bearing on his credibility as a witness. Clearly, a person who is willing to obtain false identification and use it to fool the police and other people is also a person who might be willing to make false statements to "fool" the jury. In addition, Mr. Redmond's use of an alias to advance his own interests is relevant under MRE 611(b). As the Supreme Court stated in People v Layher, 464 Mich 756, 764 (2001):

The interest or bias of a witness has never been regarded as irrelevant. Indeed, as we note below, MRE 611(b) states that "[a] witness may be cross-examined on any matter relevant to any issue in the case, including credibility.

It is interesting that the majority of the case law on this issue concerns situations where it has been ruled permissible to ask the **defendant** about his or her use of an alias; where, as in the

instant case, the person being questioned is a mere witness rather than a defendant, the rationale for allowing the evidence of use of an alias is even stronger. This Court, therefore, should allow defense counsel to cross-examine witness Michael Redmond concerning his admitted use of an alias to hide his true identity from the police and other people.

Conclusion

Wherefore, for the reasons set forth above, Defendant Simpson requests that this Court grant his motion to allow cross-examination concerning the use of an alias by the witness Michael Redmond.

Respectfully submitted,

Steven Fishman (P23049)
Attorney for Defendant Simpson
615 Griswold, Suite 1125
(313) 962-4090

Dated: December 6, 2001