

**Supreme Court**

No. 2012-263-Appeal.  
No. 2012-264-M.P.  
(P1/10-1155A)  
(dissent begins on page 2)

State :  
  
v. :  
  
Michael Patino. :

**O R D E R**

This matter came before a single justice of the Supreme Court, sitting as Duty Justice, on September 13, 2012, on a motion filed by the State, denominated as a “Motion to Compel compliance with G.L. § 9-24-3,” the defendant’s objection thereto, the defendant’s Petition for a Writ of Habeas Corpus, and the State’s objection thereto.

On September 12, 2012, in a comprehensive and thorough 190 page decision, a trial justice of the Superior Court granted the defendant’s Motion to Suppress Evidence obtained from a cellular telephone. In so doing, the trial justice excluded what she termed the “core evidence” of the State’s case against the defendant. The State immediately filed a notice of appeal with this Court. The trial justice also indicated that she would conduct an evidentiary hearing pursuant to Franks v. Delaware, 428 U.S. 154 (1978). The State, citing the provisions of G.L. § 9-24-33, then filed the motion to compel compliance with the statute. Before this Court, the State argues that the statute mandates that any further proceedings on which the trial justice had ruled relating to the matter under appeal be stayed. It is the position of the State that the trial justice’s suppression order made findings which would be applicable in a Franks hearing, and that

therefore further proceedings should be stayed pending resolution of the State's appeal by this Court. The defendant has objected to the State's motion. He contends that the suppression order is separate and apart from the matters to be heard in a Franks hearing and that judicial economy demands that both proceedings be conducted simultaneously.

Following the granting of his motion to suppress, the defendant requested that the Superior Court set bail, noting that he has been incarcerated pending trial and that much of the evidence that the State seeks to introduce against him has been suppressed. The Superior Court, however, refused to set bail, and the defendant has filed a Petition for Writ of Habeas Corpus, to which the State has objected.

The Duty Justice has reviewed the materials submitted by the parties, has conferred with the parties, and has conferred with the other members of the Court. After doing so, the following Order shall issue:

1. The Petition for Writ of Habeas Corpus is denied.
2. It is the opinion of the Court that the trial justice has made several findings that would be critical in a Franks hearing. Therefore, because § 9-24-33 provides for a stay of any further proceedings with respect to those findings pending the State's appeal, all further proceedings are stayed until further Order of this Court.

**Justice Indeglia, dissenting.** I respectfully dissent from this order. I do not believe that the decision below contains an appealable finding with respect to whether the defendant is entitled to a Franks hearing. Further, judicial economy would suggest briefly delaying the appeal on the order to suppress to allow the Superior Court a reasonable time to conduct the second step of the analysis to actually determine whether a Franks hearing is warranted, and to then conduct that hearing, if necessary. Both issues could then be considered together on appeal.

Entered as an Order of this Court this 25th day of September, 2012.

By Order,

  
Clerk