

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA: 97-11,916

VS :

KEVIN BEATTY :

OPINION AND ORDER

Before the Court is the Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P. 1100(g). A hearing on the motion was held March 31, 1999. The Court makes the following findings of fact relevant to the Defendant's motion. On September 27, 1997, Sgt. Robert Burns of the Old Lycoming Police Department observed the Defendant driving a back hoe east bound on Colvin Road and pull into the entrance of the BiLo parking lot. Officer Burns observed the Defendant get down from the back hoe and stumble to the front entrance of the store. Upon realizing that the store was closed, he staggered back to the back hoe. Officer Burns then approached the Defendant, and after seeing the Defendant's unsteady gait and speech, he developed the opinion that the Defendant was driving under the influence. The Defendant was arrested and taken to the DUI Processing Center. At the DUI Processing Center, the Defendant submitted a blood sample and was released. On October 9, 1997, after receiving the results of the blood testing, criminal charges were filed. A summons was issued on October 10, 1997. The Defendant appeared before the District Magistrate on November 5, 1997, and released on \$1,500.00 bail.

The case was called for trial in July, 1998, at which time the Defendant requested a continuance until the August trial term. At the August pre-trial held on August 17, 1998, the Defense orally made a Motion in Limine to exclude the testimony of the blood alcohol test

claiming it was a supernatant blood sample rather than the required testing of whole blood to determine the level of alcohol by weight in Defendant-s body. The Commonwealth requested a continuance on October 12, 1998. A hearing on the Defendant-s Motion in Limine was held on October 29, 1998. The Court issued an Opinion on the issue on November 9, 1998. On November 24, 1998, the Commonwealth filed a Motion to Reconsider and Present Additional Testimony. A hearing on the Commonwealth-s motion was scheduled for December 30, 1998, but was rescheduled due to the fact that the Commonwealth-s witness was unable to attend because of adverse weather conditions. The hearing on the motion was rescheduled for January 11, 1999. On January 27, 1999, the Court issued an order with regard to the Motion to Reconsider. The Commonwealth again requested a continuance through the February, 1999 trial term due to the fact that the officer was unavailable. On February 4, 1999, the Defendant submitted his Motion to Dismiss pursuant to Pa.R.Crim.P. 1100(g).

Pa.R.Crim.P. 1100 provides that trial in a case in which a written complaint is filed against the defendant, where the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed. In determining the period for commencement of trial, excludable times include: the period of time between the filing of the written complaint and the defendant-s arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence, any delays resulting from the unavailability of the defendant or the defendant-s attorney, and any continuances granted at the request of the defendant or the defendant-s attorney.

In the present case, 483 days had passed from the time the complaint had been filed to the date the Defendant filed his Motion to Dismiss pursuant to this Rule. Excluded from that time, however, are any continuances requested by the Defendant's counsel (July 9, 1998 - August 17, 1998), and the time period between the filing of the Defendant's Motion in Limine and the disposition of the motion, (August 17, 1998 - November 9, 1998), *See Commonwealth v. Fuchs*, 372 Pa.Super. 499, 539 A.2d 1307 (1988), appeal den., 521 Pa. 610, 557 A.2d 341. The excludable time frames total 123 days. After excluding these time frames from the total number of days that had passed, leaves a balance of 360 days. Therefore, the Court finds that the time had not yet expired under Pa.R.Crim.P.1100, and would therefore deny the Defendant's Motion to Dismiss.

Additionally, even if the 365 day time limit were found to have expired, the Court would find that the Commonwealth acted with due diligence in bringing this case to trial, and the circumstances occasioning any postponement were beyond the control of the Commonwealth. Specifically, the Court would find that the postponement from the date of the initial hearing on the Commonwealth's Motion to Reconsider and the date it was actually held (December 30, 1998 - January 11, 1999) was beyond the control of the Commonwealth. The Commonwealth's witness was travelling by plane from a significant distance. Due to inclement weather conditions, the witness was unable to fly on the date the hearing was held. Accordingly the Commonwealth did not deliberately delay the proceedings but was merely a victim of the weather.

ORDER

AND NOW, this \_\_\_\_ day of May, 1999, it is ORDERED and DIRECTED that the Defendant's Motion to Dismiss pursuant to Pa.R.Crim.P.1100 is DENIED.

By The Court,

Nancy L. Butts, Judge

xc: Michael Dinges, Esquire, D.A.  
Peter T. Campana, Esquire  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire