

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 03-10,342
	:
vs.	: CRIMINAL DIVISION
	:
JOSEPH JENNINGS, II,	:
Defendant	: Motion to Strike Hearing

OPINION AND ORDER

Before the Court is Defendant's "Motion to Strike the Hearing Held on Thursday, October 16, 2003", filed October 24, 2003. The Court notes the hearing held October 16, 2003, was held to address Defendant's Omnibus Pre-trial Motion, which had been filed on May 27, 2003, and was originally scheduled to be heard July 18, 2003. That scheduling Order was filed May 30, 2003. Defense counsel requested a continuance on July 14, 2003, indicating that he would be involved in a trial on July 18. The continuance request was granted and the motion was scheduled to be heard September 3, 2003 at 3:00 p.m. That scheduling Order was filed July 22, 2003. Defense counsel requested a continuance on August 4, 2003, indicating he had a hearing at 1:00 p.m. on September 3, 2003, in Potter County. The continuance request was granted and the motion was then scheduled to be heard September 17, 2003. This rescheduling resulted in Defense counsel requesting a continuance of the criminal monitoring date, which had been scheduled to occur on September 5, 2003, resulting in the monitoring being backed up to October 16, 2003. On September 17, 2003, Defense counsel did not appear at the time scheduled for hearing on the pre-trial motion. His office was contacted and the Court was informed that the hearing had been continued. Finding no evidence of that in the Court's

records, the Court asked Defense counsel to fax a copy of said continuance and Defense counsel faxed a copy of the Order which had continued the monitoring date, but not the pre-trial motion. While frustrated with the situation, the court nevertheless continued the pre-trial motion once again, and entered an Order dated September 17, 2003, rescheduling the pre-trial motion for October 2, 2003. Defense counsel submitted a continuance request on October 1, 2003, indicating he would be in trial on October 2. By Order dated October 1, 2003, the matter was rescheduled to October 6. This Order was faxed to Defense counsel and on October 2, 2003, the Court was informed by Defense counsel's secretary that Defense counsel would not be available on October 6, 2003. After reviewing the Court's schedule, Defense counsel's secretary was contacted and offered two dates: October 14 or October 16, it being noted that monitoring was already scheduled for the 16th and there had been no indication that monitoring could not take place as scheduled. Defense counsel's secretary indicated the hearing could be scheduled for October 16 and the Court then entered an Order dated October 2, 2003, rescheduling the matter for October 16, 2003. That Order further indicated that no further continuances would be granted. On October 14, 2003, Defense counsel requested a continuance of the pre-trial hearing "scheduled for Wednesday October 15th", indicating he had to attend a deposition on that date. The Court contacted Defense counsel's secretary and reminded her that the hearing was scheduled for the 16th, not the 15th. The Court then received from Defense counsel via fax, a letter requesting a continuance of the October 16th hearing, Defense counsel indicating that he would be attending a trial that date. The Court contacted Defense counsel's secretary and informed her that the request for continuance was denied.

On October 16, 2003, Defendant and substitute counsel, who had been contacted by Defense counsel and requested to appear in his place, appeared for hearing and the hearing was held. Because substitute counsel informed the Court he was not familiar with the case, substitute counsel was given the opportunity to contact Defense counsel before the hearing began, but Defense counsel could not be reached. Because the written pre-trial motion is extremely “boilerplate”,¹ and contains no specifics whatsoever, the Commonwealth presented what evidence it thought might be relevant to any issues which Defendant might be raising, but both the Commonwealth and the Court were left to “guess” what those issues might be. Therefore, at the conclusion of the hearing, substitute counsel was informed on the record that Defense counsel would be given until 5:00 p.m. on October 24, 2003, to file with the Court a statement, in letter or brief form, indicating the evidence sought to be suppressed and the basis for such. No such statement was filed. Instead, the instant motion to strike the hearing held October 16 was filed.

In denying Defense counsel’s final continuance request the Court considered Defendant’s right to a speedy trial (especially in light of the fact that he remains throughout this time incarcerated). Considering the latitude granted to Defense counsel in the scheduling of this matter and the opportunities provided to Defense counsel to address the issues sought to be raised, the Court cannot find that Defendant’s right to counsel was violated by having held the hearing on October 16, 2003, with substitute counsel, rather than Defense counsel himself, present.

¹ For example, in Paragraph 8 of the motion, Defendant contends “there was no adequate basis to stop him and the police did not have any probable cause or reasonable suspicion or warrant” and that “any stopping of him was in violation of his rights under the Pennsylvania and United States Constitutions.” A review of the complaint and

ORDER

And now, this 29th day of October, 2003, for the foregoing reasons, the Motion to Strike the Hearing Held October 16, 2003, is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Samuel Stretton, Esq., 301 South High Street, West Chester, PA 19381
Hon. Dudley Anderson

affidavit of probable cause filed in this matter indicates, however, and the Commonwealth represented to the Court at the time of hearing, that there was no “stop” of Defendant.