

**IN THE COURT OF COMMON PLEAS
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH	:	
	:	
v.	:	No.: 04-11,413,
	:	04-11,445
MICHAEL KELLEY,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is the Defendant's Motion to Dismiss filed October 25, 2004. Defendant alleges he is entitled to dismissal of the charges pending against him in the above-captioned cases. Defendant bases this assertion on Pennsylvania Rule of Criminal Procedure 600 and argues that over 365 days have elapsed since the filing of the criminal charges on April 4, 2002 and June 5, 2002, during which time the Commonwealth has failed to exercise due diligence in bringing him to trial. For the following reasons, this Court will grant the Motion to Dismiss in both cases.

The facts of case no. 04-11,413 are as follows. Defendant was charged on April 4, 2002 by the Williamsport Bureau Police (WBP) with Driving Under the Influence of Alcohol. A summons was issued for Defendant but was returned on April 17, 2002 after which a warrant was issued. WBP attempted to locate Defendant at a possible residence but were unable to make contact.

Some time later, Officer Joseph Ananea came into contact with Defendant's brother but was unable to elicit Defendant's address. Defendant was entered into the National Crime Information Center (NCIC), but Police were unsuccessful in obtaining information concerning Defendant.

The facts of case no. 04-11,445 are as follows. Pennsylvania State Police (PSP) charged Defendant with Driving Under the Influence on June 5, 2002. A summons was issued shortly thereafter and returned on June 27, 2002, after which a warrant was issued. Trooper Andrew Bruggeman filed the complaint against Defendant. However, Trooper Bruggeman was transferred from the Montoursville barracks 25 days after the incident with Defendant had occurred. Presumably, the case was transferred within PSP, but Defendant was first entered into NCIC on this charge on March 4, 2003, more than eight months after the warrant was issued and nine months after Defendant was charged. PSP attempted to locate Defendant at several addresses between March 2003 and August 2004.

Rule 600 of the Pennsylvania Rules of Criminal Procedure requires the Commonwealth to bring a defendant to trial within 365 days from the date on which the complaint is filed. Rule 600(c)(1), "excludes the period of time between the filing of the written complaint and the defendant's arrest from calculation of the trial commencement period, provided that the defendant could not be apprehended because his whereabouts were unknown and could not be determined by due diligence. In determining whether the police acted with due diligence, a balancing process must be employed where the court, using a

common sense approach, examines the activities of the police and balances this against the interest of the accused in receiving a fair trial. The actions must be judged by what was done, not by what was not done. In addition, the efforts need only be reasonable; lack of due diligence should not be found simply because other options were available or, in hindsight, would have been more productive.” *Commonwealth v. Ingram*, 404 Pa.Super. 560, 567-8, 591 A.2d 734, 737 (1991).

However, in the present case, the efforts to locate and apprehend the defendant were not reasonably representative of due diligence. The WBP checked two possible addresses, entered Defendant into NCIC with no success and only happened on a chance encounter with a relative of Defendant. These actions appear to be the extent of WBP’s diligence. No further investigation appears to have been undertaken, including any attempt to search Defendant’s record for other possible charges, convictions, etc.

The Court finds that the PSP similarly failed to exercise the necessary due diligence. The original summons and warrant were issued in June of 2002, but Defendant was not entered into NCIC until March of 2003. From March 2003 forward, PSP attempted several addresses to locate defendant and issued a fugitive notice. Commonwealth’s Exhibit 1. However, these steps fall short of reasonable due diligence. PSP undertook what amounts to calling on a few possible addresses with no other type of significant activity to locate Defendant, nearly a year after filing a complaint. Therefore, this Court cannot find due

diligence for purposes of tolling the time period established to protect a defendant's right to a speedy trial.

Rule 600 protects Defendant's right to a speedy trial while also allowing the Commonwealth reasonable time to prosecute criminal charges. While the Commonwealth must only show a reasonable exercise of due diligence in locating and apprehending a defendant to avoid expiration of this time allowance, that burden was not met in these cases. The Commonwealth cannot toll the time period established by Rule 600 to protect criminal defendants through the minimal procedures undertaken in either of these cases.

ORDER

AND NOW, this _____ day of December, 2004, for the reasons stated above, the Defendant's Motion to Dismiss filed October 25, 2004 is GRANTED, and the charges filed under both 04-11,413 and 04-11,445 are DISMISSED.

By the Court,

Nancy L. Butts, Judge

xc: DA (RF)
J. Poplaski, Esquire
Court Scheduling Technician
Gary Weber
Judges
Judge Nancy L. Butts
Law Clerk