IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-1320-2007**
	:	
vs.	**:**	
	:	**CRIMINAL**
TIMOTHY LEE JACOBS,	**:**	**Motion to Dismiss Pursuant**
Defendant	**:**	**to Rule 600**

OPINION AND ORDER

Defendant was arrested on November 11, 2005 at 1:40 a.m. after being involved in a one vehicle accident in which his vehicle rolled over on SR 14, Lewis Township, Lycoming County. Troopers Franklin G. Harvey and Jason Terwilliger responded to the scene. The troopers determined that Defendant was under the influence of alcohol and placed him under arrest.

After being transported to the Williamsport Hospital, Defendant refused to submit to a blood alcohol test. A computer check revealed Defendant's driver's license was suspended (DUI related) until November 13, 2016. Defendant related the car was owned by his girlfriend, Talaka Hanley. Trooper Harvey advised Defendant that he would file criminal charges of driving under the influence of alcohol and driving under suspension, DUI related. The trooper informed Defendant he would send him a summons containing the charges. Defendant listed his residence on the evening of his arrest as 1140 West Fourth Street, Williamsport, Pennsylvania. Pursuant to Rule 519(B), Trooper Harvey released Defendant to his girlfriend Talaka Hanley.

A summons was mailed to Defendant at his listed address on November 21, 2005. The summons was returned on November 23, 2005.

The trooper obtained an arrest warrant for Defendant on December 8, 2005. Trooper Harvey then made efforts to locate Defendant to serve the arrest warrant on him. He went to the Defendant' listed address, and learned from neighbors that Defendant left this address. The trooper then went to the Post Office to get a forwarding address, but he was not able to obtain an address.

The Trooper then contacted Defendant's father who lived on Isabella Street in Williamsport. The trooper was told that Defendant left Pennsylvania and went to Destin, Florida. The trooper obtained a motel name with a room number and phone number.

Around January 2006, the trooper made efforts to telephone Defendant. He was able to reach Defendant on the phone and the trooper explained he had a warrant of arrest for Defendant. He told Defendant he needed to come back to Lycoming County to resolve the matter. Defendant indicated he would not return to the area to face the warrant.

The trooper also sent a copy of the arrest warrant to the manager of the motel where Defendant was staying. Talaka Hanley confirmed to the trooper that Defendant received the copy of the arrest warrant.

Defendant did not return to Lycoming County so the trooper continued to make efforts to locate Defendant.

Subsequently, the trooper received information from Talaka Hanley, who had returned to Lycoming County that Defendant was still in Florida. She gave the trooper a new Florida address for Defendant. The trooper also obtained a cell phone number for Defendant. The trooper then attempted to reach Defendant by telephone. Despite his efforts, Defendant refused to cooperate in responding to the warrant.

The trooper also sent letters to Defendant. A letter dated October 26, 2006 from the trooper to Defendant was offered into evidence at the Rule 600 hearing. Defendant failed to respond to the trooper's phone calls or letters.

The trooper maintained contact with Ms. Henley and he received information in June or July 2007 that Defendant had returned to the Williamsport area. The trooper went to Ann's Tavern, a place Defendant was known to frequent. The trooper observed an individual wearing baseball cap. The trooper then realized that this was Defendant, but by that time Defendant has snuck out the back of the tavern. The bartender confirmed that the individual was Defendant.

The trooper continued to try to find Defendant. The trooper received information that a man matching the description of Defendant was going in and out of his mother's residence. He went to Defendant's mother's house and interviewed neighbors. The trooper also went to a work location where he received information that Defendant was working, but he did not find Defendant.

Eventually, on July 14, 2007, the trooper located Defendant on a porch outside a home in Williamsport. When the Defendant saw the trooper he jumped over the banister and fled. After a four block foot pursuit, the trooper apprehended Defendant and took him into custody.

Early on, when the trooper realized Defendant was in Florida, the trooper conferred with the Lycoming County District Attorney's office to see if they would approve extradition from Florida and the trooper was told that the District Attorney's office would

only approve extradition from the states surrounding Pennsylvania.[1] Thus, the trooper continued his efforts to have Defendant voluntarily return to Pennsylvania.

The defense argues that the time from January 2006 when the trooper located Defendant in Florida and talked to him on the phone until Defendant returned to Pennsylvania when Defendant tried to avoid apprehension by the trooper should count against the Commonwealth for purposes of Rule 600. Since this time frame from January 2006 until approximately June or July 2007 is more than one (1) year, Defendant argues the charges against him must be dismissed for violation of Rule 600.

DISCUSSION

The Court acknowledges that this is a close and difficult issue because Trooper Harvey located Defendant in Florida around January 2006. Rule 600(C)(1) contains language which could be construed as supportive of dismissal. Rule 600(C)(1) in pertinent part states: "In determining the period for commencement of trial, there shall be excluded therefrom: (1) the period of time between the filing of written complaint and Defendant's arrest, provided that Defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence." Thus, it can be argued when Trooper Harvey was able to locate the whereabouts of Defendant in January 2006, and Defendant would not voluntarily return to Pennsylvania, he could have had Defendant arrested by Florida authorities as a fugitive from justice and then extradited him back to

1 It has been the practice in Lycoming County to typically approve extradition of misdemeanor cases from only the surrounding states. This is because the significant financial costs of extraditions from a far away state. Most counties cannot afford to outlay money for all misdemeanor offenses for extraditions. While extradition costs upon a conviction can be considered a cost of prosecution it is often difficult to obtain timely reimbursement from criminal offenders.

Pennsylvania to face these charges.[2] In that sense Trooper Harvey's dedicated and diligent efforts to find the Defendant may in a sense have worked against him. If he had not located the Defendant after he left Pennsylvania, the time would run against the Defendant under Rule 600 because his whereabouts would be unknown. Thus, the Defendant can reasonably argue, since his whereabouts were known to the Trooper by or about January 2006, the Rule would start to run at that time and would expire one year later, before the Defendant returned to Pennsylvania.

However, there is also case law that indicates when a defendant is on bail and fails to appear for Court, the Commonwealth need not prove due diligence, and the time would run against the defendant until his apprehension. *See*, ***Commonwealth v. Vesel***, 751 A.2d 676 (Pa. Super 2000) (time from the defendant's failure to appear for ARD hearing up to eventual arrest of the defendant held to be excludable under former Rule 1100, even though Commonwealth knew the address of defendant).

What makes this case more difficult than a case like ***Vesel***, supra, is that although the Defendant was arrested, he was not formally charged with the offenses here because of the application of Rule 519(B) which allowed the Defendant's release without the filing of formal charges.[3] Also, this Court cannot say that the ***Vesel*** case is directly on point because bail had not been set in this case.

Nevertheless, in looking at the Defendant's conduct in this case, it is fair to find that he left Pennsylvania after being arrested for driving under the influence knowing he

2 This option was not available to the trooper because the District Attorney would only approve extradition from a surrounding state.

3 If the Defendant after arrest had been taken before the Magistrate and ROR bail set and the Defendant had left the State the time for Rule 600 would run against the Defendant under existing case law without the need for the Commonwealth to show due diligence in trying to find the Defendant.

would have to answer for the charges, since Trooper Harvey told him he would receive the charges by summons. Although bail had not yet been set to secure his appearance it can be inferred that the Defendant fled Pennsylvania to the State of Florida and then continued to move around in Florida with every intention of avoiding prosecution.[4]

When the Defendant returned to Williamsport from Florida, sometime in 2007, he did not notify the Trooper who he knew was looking for him to serve the arrest warrant, but rather continued his flight, twice running from the Trooper, only to be caught on July 14, 2007, after a four-block foot chase.

It does not appear equitable under the facts of this case to allow the Defendant to benefit from his efforts to avoid prosecution and to give him a dismissal of the charges by virtue of Rule 600.

In the case of ***Commonwealth v. Cohen***, 481 Pa. 249 (1978) the Pennsylvania Supreme Court discussed an earlier case, ***Commonwealth v. Mitchell***, 472 Pa. 533 (1977). In ***Cohen***, the Defendant, who had been formally charged, failed to appear for arraignment while under bail. The Court noted in its earlier ***Mitchell*** decision the factual situation involved whether due diligence was used by the Commonwealth in serving a warrant of arrest for a defendant. The ***Cohen*** court noted that in the ***Mitchell*** decision it was the obligation of the police to notify the accused of the issuance of the warrant. ***Id.*** at 355. The court went on to say:

> An accused unaware that process has been issued against him has no obligation to make himself available. Employing a due diligence criteria in such a situation provides the basis for attributing to the accused any delay

4 The Defendant was present at the Rule 600 evidentiary hearing but he chose not to testify at the hearing. The Court believes it can infer from the evidence his intention to avoid prosecution in this case.

> that results in his apprehension. Where, however, the accused is aware of his obligation to appear and fails to do so, he may legitimately be held accountable for any resultant delay.

Id. Once again, it cannot be said that the ***Cohen*** decision squarely applies to this case because the touchstone of release on bail is not involved here due to Defendant's release pursuant to Rule 519(B).[5]

It is arguable that the line of cases cited by defense counsel where Defendants are incarcerated in another state prison and the Commonwealth, despite being aware of their location, does not use due diligence in extraditing the Defendant, would apply to this case. *See,* ***Commonwealth v. Kubik***, 432 Pa. Super 144, 637 A.2d 1025 (1994). However, one distinction of our own case from a case like the ***Kubik*** case is that the Defendant here was not incarcerated and his conduct indicated a willful effort to avoid facing the charges in this case.

In conclusion, this case is not clearly covered in any of the precedents discussed in this Opinion. It can be argued that the District Attorney's direction to the Trooper that they would not extradite from Florida is the key fact which requires dismissal under Rule 600. However, the factual equities of this case point to the Defendant leaving Pennsylvania knowing he was to be formally charged with a crime taking advantage of the release provision Rule 519(B). The Defendant then continued to move around Florida

---

5 *See also,* ***Commonwealth v. Brown***, 351 Pa. Super 119, 505 A.2d 295 (1986). In ***Brown,*** the defendant was released on bail and failed to appear for a preliminary hearing. The police then learned the defendant was incarcerated in another county on other charges. Even though he could not appear at the preliminary hearing because of his incarceration, the Court held the defendant was unavailable even without proof of due diligence by the Commonwealth, because he failed to comply with the change of address notice requirement of his bail and former Pa. R. Crim. Pro. 4013(c), now Rule 526(A)(3) requiring a defendant on bail to notify the District Attorney and the Clerk of Courts, in writing, within 48 hours of a change of address.

knowing he was wanted and eventually exhibiting the same conduct in Pennsylvania fleeing from the Trooper's efforts to bring him to account for these charges. The Court believes that where the facts of a case show a conscious effort by a Defendant to flee, he should be considered unavailable under Rule 600 (C) until his actual apprehension and not be entitled to dismissal.

The Court would suggest that Rule 519(B), which allows a defendant to be released after arrest pending the filing of a summons, be amended to include a similar provision as is found in Rule 526 (A)(3), which requires a defendant on bail to give written notice within 48 hours of a change of address. If Rule 519(B) included an obligation of a defendant pending receipt of a summons to give written notice of a change of address, failure of a defendant to do so may then allow a finding of unavailability which would seem appropriate where a defendant decides to change his address to avoid receipt of a summons.

In light of the difficult circumstances of this case, the Court will not dismiss the charges against the Defendant pursuant to Rule 600.

Accordingly, the following Order is entered.

O R D E R

AND NOW, this day of April 2008, the Defendant's Motion to Dismiss pursuant to Rule 600 is DISMISSED.

By The Court,

_____

Kenneth D. Brown, P.J.

cc: Peter Campana, Esquire

Mary Kilgus, Esq. (ADA)
Work File