

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-862-2011
vs. :
:
KAREEM A. BLACKMAN, :
Defendant :

OPINION AND ORDER

This matter came before the Court on Defendant's Motion to Dismiss, which was filed pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure.

By way of background, on March 17, 2010, a confidential informant (CI) allegedly called Kareem Blackman's cell phone to arrange a purchase of heroin and Blackman instructed the CI to come to his place on Second Street. Blackman and the CI met at 647 Second Street and entered that residence. The CI told the police that Blackman delivered heroin to him in exchange for \$100 in pre-recorded currency. The police field tested the substance that the CI turned over to them and it tested positive for heroin.

On July 13, 2010, Lieutenant (then Sergeant) Timothy Miller of the Williamsport Bureau of Police filed a criminal complaint against Blackman charging him with delivery of a controlled substance, possession with intent to deliver a controlled substance, possession of a controlled substance, possession of drug paraphernalia, and criminal use of a communication facility. On July 18, 2010, the Magisterial District Judge (MDJ) issued a warrant for Blackman's arrest. Blackman was not arrested on this warrant until approximately June 13, 2011.

On August 9, 2011, Blackman filed a Motion to Dismiss, because more than 365 days had passed since the filing of the criminal complaint and he had not been brought to

trial.

The Court held a hearing on the motion on September 30, 2011. At the hearing, Lt. Miller testified for the Commonwealth and Blackman testified in support of his motion.

Lt. Miller testified about his efforts to locate and apprehend Blackman. Lt. Miller testified that it was his understanding that when the MDJ entered an arrest warrant in the MDJ computer system that information automatically was entered into the NCIC (National Crime Information Center) computer. Lt. Miller also put Blackman's information on the "hot sheet" at the Williamsport Bureau of Police so that all the other officers in the Bureau would be aware that Lt. Miller was looking for him. Furthermore, as part of his job with the Special Operations Group, Lt. Miller was in the 600 block of Second Street on an almost daily basis. When he was in that area, he "kept an eye out" for Blackman.

Lt. Miller also drove by other locations Blackman and his associates frequented, such as Patterson's Market. Lt. Miller admitted he did not go up to the residence at 647 Second Street or into Patterson's Market to ask the occupants or the proprietor if they knew Blackman's whereabouts. He did, however, indicate that he spoke to "informants" on the street. He also explained that sometimes it is better not to let everybody know when you are looking for someone, and this was one of those instances because he was looking for other individuals in addition to Blackman. Lt. Miller also noted that before he obtained the warrant he would routinely see Blackman out and about on the 600 block of Second Street, but once he obtained the warrant he no longer saw him in that area.

About a month or two after he obtained the arrest warrant Lt. Miller “did not keep as close an eye out” for Blackman, because he received “credible information from a reliable source” that Blackman had fled to Philadelphia.

About four or five months before Blackman was taken into custody on the arrest warrant in this case, Lt. Miller received a phone call from an individual from the State Board of Probation and Parole from the Philadelphia area, who was aware of the warrant for Blackman’s arrest and was calling to confirm the warrant was still outstanding. Lt. Miller told the individual that he received information that Blackman had fled to Philadelphia and the individual indicated they would try to serve the warrant. Lt. Miller also stated that this telephone call confirmed his belief that the warrant was entered into NCIC.

Lt. Miller believed Blackman was taken into custody in Philadelphia around June 2011 and that Corporal Jody Miller made arrangements to have him brought from Philadelphia back to Lycoming County. Lt. Miller acknowledged that Blackman was not immediately transported back to Lycoming County; it was at least a few weeks later.

On cross-examination, Lt. Miller acknowledged he did not check to see if Blackman was on parole at the time he obtained the arrest warrant and, when the individual from State Parole called, Lt. Miller did not ask for any information regarding Blackman’s address or whereabouts. Lt. Miller testified that Blackman’s rap sheet indicated he was on parole through April 2010, but he probably did not run the rap sheet until after Blackman was taken into custody. He also acknowledged that if this warrant was entered into NCIC and Blackman was arrested in another jurisdiction, the other jurisdiction typically would

notify the Williamsport Bureau of Police.

Lt. Miller did not review any websites to try and locate Blackman. He also did not contact any of Blackman's family members to determine Blackman's whereabouts; however, he was not aware that Blackman's family lived in Philadelphia.

Blackman testified that in April 2008 he was incarcerated at SCI-Rockview. He was paroled on May 9, 2009 under the supervision of the Pennsylvania Board of Probation and Parole (PBPP). His approved address was 2022 Robbins Avenue in Philadelphia, which is the home of his mother and grandmother, and his supervision was handled by the Northwest Philadelphia division. His parole ended in April 2010, but he remained under state special supervision on another matter.

On January 13, 2011, Blackman was arrested by the State Police in Centre County. The State Police ran a computer check and it came back that there was a warrant for him from Lycoming County. Blackman was incarcerated in the Centre County Prison from January 13, 2011 until June 3, 2011, and then he was brought to Lycoming County.

Defense counsel introduced the docket sheet from the Centre County case as Defendant's Exhibit 1. This exhibit shows that the Centre County case was initiated on January 13, 2011 and bail was set at \$100,000, but never posted. On February 16, 2011, Blackman pleaded guilty to two misdemeanor offenses and he received a sentence of 35 days to 23½ months. He was paroled on June 3, 2011.

DISCUSSION

Generally, trial in a court case must commence no later than 365 days from the date on which the written complaint is filed. See Pa.R.Cr.P. 600(A)(3). In determining the period of commencement of trial, however, the period of time between the filing of the complaint and the defendant's arrest is excluded "provided the defendant could not be apprehended because his whereabouts were unknown and could not be determined by due diligence." Pa.R.Cr.P. (C)(1).

The written complaint in this case was filed on July 13, 2010. Therefore, the mechanical run date for Rule 600 was July 12, 2011. The issue in this case is whether the time between the filing of the complaint and Blackman's arrest is excludable under Rule 600(C)(1). If it is, the adjusted run date would not expire until June 2012, at the earliest. If it is not, Defendant would be entitled to dismissal.

The burden is on the Commonwealth to prove by a preponderance of the evidence that it acted with due diligence in attempting to apprehend a defendant. Commonwealth v. Hill, 558 Pa. 238, 736 A.2d 578, 589 (Pa. 1999); Commonwealth v. Booze, 953 A.2d 1263, 1273 (Pa. Super. 2008); Commonwealth v. McNear, 852 A.2d 401, 404 (Pa. Super. 2004). Due diligence is a fact-specific concept that must be determined on a case-by-case basis; due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth. Commonwealth v. Selenski, 606 Pa. 51, 994 A.2d 1083, 1089 (Pa. 2010); Commonwealth v. Peterson, 19 A.3d 1131, 1137 (Pa. Super. 2011). Due diligence must be judged by what was

done by the authorities, not by what was not done. Commonwealth v. Ingram, 404 Pa.Super. 560, 591 A.2d 734, 735 (1991); Commonwealth v. Faison, 324 Pa.Super. 406, 471 A.2d 902, 903 (1984), quoting Commonwealth v. Hinton, 269 Pa. Super. 43, 50, 409 A.2d 54, 57-58 (1979).

The Court concludes that due diligence was lacking in this case. The efforts Lt. Miller made to locate the defendant were placing his information on the Williamsport Bureau of Police “hot sheet,” keeping an eye out while driving by Defendant’s residence and Patterson’s Market as part of the Lieutenant Miller’s normal duties in that neighborhood, and speaking to informants. Lt. Miller admitted he never knocked on the door of Defendant’s Second Street residence or went inside Patterson’s Market to try to ascertain Defendant’s whereabouts. The only individuals Lt. Miller spoke to were informants. The record, however, does not indicate the number of informants that Lt. Miller contacted, the number of times Lt. Miller spoke to them or whether the informants even knew who Defendant was.

A month or two after the criminal complaint was filed, Lt. Miller received information that Defendant had left the Williamsport area and gone to Philadelphia. No testimony was presented to show that any efforts were made to try to find out where Defendant was in the Philadelphia area. In fact, when an individual from the Philadelphia office of the Pennsylvania Board of Probation and Parole contacted Lt. Miller to determine whether the warrant was still active, Lt. Miller did not even ask the individual for Defendant’s parole address or inquire whether the individual knew Defendant’s whereabouts.

Lt. Miller also testified that it took weeks to have Defendant brought to

Lycoming County once the police were informed that Defendant was in custody in another jurisdiction.¹ He indicated that Corporal Jody Miller would have made the transportation arrangements.

Once the Commonwealth knows a defendant is incarcerated in another jurisdiction, regardless of whether that jurisdiction is within or outside this Commonwealth, the Commonwealth must initiate reasonable efforts to secure the defendant's return for the time to be excludable. See Commonwealth v. Booze, 953 A.2d 1263 (Pa.Super. 2008)(dismissal appropriate where Commonwealth knew defendant incarcerated in Maryland but failed to initiate steps to secure his return); Commonwealth v. Kubin, 637 A.2d 1025 (Pa. Super. 1994)(unexplained delay in initiating extradition proceedings not excludable); Commonwealth v. Wroten, 451 A.2d 678 (Pa.Super. 1982)(defendant not entitled to dismissal where Commonwealth was unaware that defendant had been transferred from SCI-Graterford to SCI-Camp Hill). Since Corporal Jody Miller was never called as a witness, it is unclear whether the police promptly attempted to have Defendant arrested and returned to Lycoming County on these charges but they were unsuccessful, or whether they simply waited for Defendant to complete his sentence in Centre County.

The burden was on the Commonwealth to establish due diligence. After considering all the evidence in this case, the Court finds the Commonwealth did not meet its burden of proof. The Court finds this case is more akin to the cases cited by Defendant, such

¹ Lt. Miller testified he thought Defendant was in custody in Philadelphia. Defendant testified he was incarcerated in Centre County. Defendant's testimony is supported by the docket sheet from his Centre County case, which was admitted as Defendant's Exhibit 1. The Court finds Defendant was incarcerated in Centre County, and Lt. Miller held an honest, but mistaken, belief that Defendant was in custody in Philadelphia

as Commonwealth v. Collins, 409 A.2d 1320 (Pa. Super. 1979), than Commonwealth v. Laurie, 483 A.2d 890 (Pa.Super. 1984), the case upon which the Commonwealth relied.²

Accordingly, the following Order is entered:

ORDER

AND NOW, this ____ day of November 2011, the Court GRANTS Defendant's Motion to Dismiss for violation of Rule 600 of the Pennsylvania Rules of Criminal Procedure.

By The Court,

Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire (ADA)
Nicole Spring, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file

because he was contacted by an individual from a Philadelphia office of the PBPP four or five months before Defendant was returned to Lycoming County.

² The Court notes the efforts of the police in Laurie were more extensive than in this case. In Laurie, the police contacted a number of defendant's relatives, the electric and gas companies and the Department of Public Welfare. The defendant's sister informed the police that the defendant was no longer living at the address they had on file for him. When the police obtained information that the defendant may have been in the Northeast Philadelphia area, the police took out an ad in a newspaper that contained a photograph and physical description of the defendant and a request that anyone with information contact the police. The police also entered the defendant's name in the Philadelphia crime computer (PCIC).