

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. MD-105-2014
: (Extradition)
vs. :
DARYLE INGRAM, :
Defendant :

OPINION AND ORDER

On March 5, 2014, Detective Kenneth Mains of the Lycoming County District Attorney's Office filed a Criminal Complaint against Defendant seeking his arrest prior to requisition in accordance with 42 Pa. C.S.A. § 9134. Defendant was subsequently taken into custody and appeared before the Court for an initial extradition hearing pursuant to Pennsylvania's Uniform Criminal Extradition Act. 42 Pa. C.S.A. § 9121 et seq.

By Order of Court dated March 10, 2014 following the initial hearing, Defendant decided not to waive extradition and the Court directed that the Commonwealth of Kentucky issue and serve the appropriate warrant and extradition paperwork within thirty (30) days.

On April 16, 2014, the Commonwealth filed a motion for an extension of time with respect to the service of the appropriate paperwork. Defendant's then counsel, Robert Cronin of the Lycoming County Public Defender's office, concurred in the motion. The Court granted the motion by Order dated April 16, 2014.

By letter to the Court dated April 25, 2014, Defendant requested to proceed pro se and requested to be released on bail. By Order of Court dated April 30, 2014, the Court set Defendant's Motion for a hearing on May 5, 2014. By Order of Court dated May 5, 2014, the Court appointed conflict counsel on behalf of Defendant. As well, the Court noted

that the Governor's warrant from the Commonwealth of Kentucky was received. The Court granted Defendant ten (10) days to file a petition for writ of habeas corpus.

Defendant, through his newly appointed counsel, filed a petition for writ of habeas corpus on May 13, 2014. The Court held a hearing and argument on the motion on May 23, 2014.

Defendant contends that he was not in Kentucky at the time the alleged crime was committed, that the requisition papers from Kentucky are not in proper order and that he did not authorize his attorney to concur in the Commonwealth's request for an extension of time.

Preliminarily, it is clear under Pennsylvania law that an extradition should be ordered if the extradition papers are in order, the subject of the extradition is charged with a crime in the demanding state, the subject is a fugitive from the demanding state and the subject of the extradition was in the demanding state at the time the crime was committed. Commonwealth v. Hendrick, 430 Pa. 575, 243 A.2d 438, 439 (1968).

With respect to Defendant's first contention that he was not present in the demanding state when the crime was committed, the Commonwealth need only to present a prima facie showing. Commonwealth v. Gedney, 253 Pa. Super. 274, 384 A.2d 1340, 1343 (1978).

It is alleged in the Kentucky paperwork that Defendant committed robbery and related offenses on April 20, 2009 in Fayette County, Kentucky. Defendant testified, however, at his extradition hearing that he did not live in Kentucky in April of 2009 and was not present in Kentucky in April of 2009. Defendant testified that he began living in

Kentucky in the beginning of March of 2005 and then left in mid-January of 2007. He had secured a recording contract, which ended in 2007.

He then obtained employment in different states including Texas, South Carolina and Virginia. He did not return to Kentucky until mid-March of 2010. He stayed until August or September of 2011 and then moved to Georgia.

He testified that while he was in Kentucky from 2010 to 2011, he was not aware of any criminal allegations against him and was never arrested for such.

Defendant conceded, however, that while he lived in Kentucky, he used his cousin's "identity." His cousin is Jermaine Butler. Defendant testified that they have similar physical features, the same height, weight, skin tone and hairstyle. He testified that while he was in Kentucky his driver's license contained his photograph but his cousin's identification information. He testified that he used his cousin's identity in order that he could secure employment, which he would not otherwise secure because of his criminal record.

Admitted as Defendant's Exhibit 1 was a photocopy of Defendant's driver's license with a photo dated March 4, 2010. The driver's license apparently has the identifying information of Mr. Butler. When Defendant first reviewed the exhibit, he indicated that the photograph was of him. Defendant was then presented with Defendant's Exhibit 2, which is a Commonwealth Photo Imaging Network (CPIN) sheet depicting a photograph of Mr. Butler along with his identifying information. Defendant conceded that that photograph was of Mr. Butler. He then changed his mind and indicated that the photograph on Defendant's Exhibit 1 was also of Mr. Butler.

Apparently, Defendant suffers from a degenerative eye disease which requires him to wear sunglasses. At the Commonwealth's direction, Defendant took off his sunglasses and the Court observed Defendant's features. Defendant's appearance is virtually identical to the appearance of the individual depicted in Defense Exhibit 1, the copy of Defendant's Kentucky driver's license under the name of Mr. Butler.

Contrary to Defendant's representation that the photograph is that of his cousin, the Court concludes that the photograph is of Defendant. Indeed, it is consistent with what Defendant first testified and consistent with Defendant's testimony that when he "returned" to Kentucky in March of 2010 he then again assumed his cousin's identity.

The Court concludes that there is sufficient prima facie evidence that Defendant was present in Kentucky at the time of the alleged offense. The Court does not find Defendant's testimony to be credible. Defendant changed his testimony when confronted with facts that might cast doubt on his credibility. Defendant's testimony clearly contradicts the Court's independent observation. Defendant also was not able to provide any objective proof that he lived in Texas, South Carolina or Virginia in 2009. Defendant's clear deception in using his cousin's identity to avoid identification, albeit only for employment circumstances, casts doubt on the entirety of his testimony. Finally, the Kentucky paperwork relating to the incident demonstrates that Defendant was identified by witnesses of the robbery, albeit under the name of Jermaine Butler, and that Defendant's DNA was found at the crime scene, albeit under the name of Jermaine Butler. Moreover, Mr. Butler identified the Defendant as the robbery perpetrator.

While the Court concedes that the underlying circumstances could clearly result in a finding that Mr. Butler is using Defendant to escape liability and perhaps pinning the crimes on Defendant, the Kentucky criminal justice system will need to determine such. At this stage, the Commonwealth has satisfied its burden. See Commonwealth v. Valentin, 448 Pa. Super. 519, 672 A.2d 338, 340 (1996)(The Commonwealth's burden of proof is a minimal one, since the asylum forum is not permitted to inquire into the guilt of the defendant; therefore, where there is evidence presented that the defendant was present in the demanding state, which evidence may be believed by the ultimate factfinder, the asylum state must extradite).

Defendant next contends that the requisition paperwork from Kentucky is not proper. Defendant argues that the paperwork does not sufficiently identify that Defendant was in Fayette County at the time of the alleged incident, that Defendant is not charged with a crime and that Defendant is not a fugitive from justice.

In an extradition proceeding, the Commonwealth must establish that the requisition papers are in compliance with the applicable standards. Commonwealth v. Rowe, 264 Pa. Super. 67, 398 A.2d 1060 (1979). A governor's extradition warrant is prima facie evidence that all of the legal requirements have been complied with. Commonwealth v. Price, 409 Pa. 90, 185 A.2d 523, 528 (1962). If extradition papers are in order, the allegations contained therein must be accepted as prima facie true. Commonwealth v. Aytch, 273 Pa. Super. 55, 416 A.2d 1086, 1090 (1979); Commonwealth v. Murphy, 236 Pa. Super. 37, 344 A.2d 662, 663 (1975).

The paperwork from the Commonwealth of Kentucky, which includes a signed and properly sealed Governor's warrant complies with the statutory requirements and is proper. 42 Pa. C.S.A. §§9123, 9124. Moreover, while the Commonwealth's prima facie showing has been made by the production of the Governor's extradition warrant, the additional documentary evidence meets the required prima facie showing of Defendant's identity and fugitive status. See Commonwealth v. Valentin, 448 Pa. Super. 519, 672 A.2d 338 (1996).

Finally, Defendant contends that his attorney did not have the authority and did not consult with him with respect to concurring to the Commonwealth's motion for an extension. Even if the Court accepted Defendant's representations as true and even though timeliness in an extradition matter is jurisdictional, the Court has not been provided with any legal authority by which it can deny the extradition or release Defendant on that basis. Moreover, the Court is not inclined to accept that basis as a reason for denying the extradition. In all candor, in light of the allegations set forth in the Commonwealth's motion, the Court would have granted it even over Defendant's objection.

ORDER

AND NOW, this 23rd day of May 2014, following a hearing on Defendant's Petition for Writ of Habeas Corpus, said Writ of Habeas Corpus is **DENIED**. The Commonwealth of Pennsylvania is **DIRECTED** to release Defendant to representatives of the Commonwealth of Kentucky for extradition. The Commonwealth of Kentucky must take the Defendant into custody by 5:00 p.m. on Tuesday, June 10, 2014. If Defendant is not taken into custody by Kentucky by the stated time and date, the Defendant shall be discharged and

released.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (MW)
Jerry Lynch, Esquire
Gary Weber, Lycoming Reporter
Work File