

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1217-2014
 :
 ERICA LAMBERT, : Motion to Dismiss Pursuant to
 Defendant : Rule 600

OPINION AND ORDER

Defendant Lambert is charged with two counts of hindering apprehension or prosecution, one count of false reports to law enforcement, and one count of tampering with physical evidence. The criminal complaint against her was filed on July 1, 2014. Jury selection is scheduled for October 7, 2015, and the trial is scheduled for October 15 and 16, 2015. On August 4, 2015, Defendant filed a motion to dismiss pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure. Defendant contends that the trial was not commenced within 365 days from the date on which the complaint was filed; accordingly, the charges should be dismissed.

Rule 600 (A) (2) (a) requires that trial commence within 365 days from the date on which the written complaint was filed against the defendant. For purposes of computing the 365 days, delays caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the 365 days. PA. R. CRIM. P. 600 (C)(1). Any other period of delay shall be excluded from the computation. Id.

A hearing on Defendant's motion was held on September 15, 2015. Eileen Dgien testified on behalf of the Commonwealth. She is employed as the Deputy Court Administrator

for Lycoming County.

This case was first listed for call of the list on January 6, 2015. It was scheduled for jury selection on January 8, 2015, with trial set to begin on January 23, 2015. Ms. Dgien was subsequently called by the assistant district attorney assigned to the case and informed that it was a two-day trial, not a one-day trial. Given the unavailability of counsel and witnesses, the only two days during the trial term that the case could have been tried were January 26, 2015 and January 28, 2015. It could not be scheduled for those two days, however, because none of the judges were available. They all were in other trials or had other obligations.

The case was next set for call of the list on February 10, 2015, which encompassed a double trial term through February and March. Due to the unavailability of counsel and witnesses, the only available days were March 4, 5 and 6. The case was not reached because the judges were handling other matters, including a homicide trial.¹

The case was next placed on the March 31, 2015 call of the list. The trial term was scheduled between April 13, 2015 and May 1, 2015. Due to the unavailability of counsel and witnesses, the only available trial dates were April 15, 16, 18 and 27. Again, the case was not called because none of the judges were available; they were handling trials in other cases.

The next call of the list was May 19, 2015. The only available trial dates were June 2, 4 and 12. Ms. Dgien explained that the case was not called because the judges were handling other matters including, but not limited to, another homicide trial² and trials that had earlier Rule 600 dates.

¹ Commonwealth v. Da'Ran Sears, CR-1293-2011 and CR-293-2014.

The next call of the list was August 8, 2015, which covered the trial term in late August to mid-September and the trial term during the month of October. The Commonwealth witnesses were not available for the August/September term. Accordingly, the case was set for jury selection on October 7, with the trial set for October 15 and 16.

On cross-examination, Ms. Dgien conceded that there were no continuances requested by defense counsel during the relevant period. She indicated that the Commonwealth did not request the case to be specially scheduled, although she noted that in the past the practice was only to specially schedule homicide cases. She also noted that two-day trials did not necessarily need to be held on consecutive dates and that it was possible to bring in senior judges or judges from another county to handle cases on a special basis.

Defendant testified on her own behalf. She indicated that because of the length of time that this case has been pending, she has had difficulty contacting at least three out of her four witnesses, she has been denied employment, memories are fading, the pending charges have “greatly affected” her life and that, overall, her ability to defend against the charges has diminished.

Defendant argues that none of the time between when the case was first listed for call should be excluded. To the contrary, the Commonwealth contends that all of the time between January 6, 2015 through the date of jury selection should be excluded, because the Commonwealth has exercised due diligence in attempting to bring the case to trial. If the court agrees with Defendant, the charges should be dismissed. As well, should the court agree with the

² Commonwealth v. Glenn Jackson, CR-708-2013.

Commonwealth, the charges should not be dismissed.

While Defendant styles her motion as a motion to dismiss pursuant to Rule 600 (G), the court will interpret it as a motion to dismiss pursuant to Rule 600 (D). The court notes that Rule 600 was most recently amended effective July 1, 2013. When a defendant has not been tried within the 365 days, the defendant's attorney may file a written motion requesting the charges be dismissed with prejudice on the ground that the rule has been violated. PA. R. CRIM. P. 600 (D)(1).

Clearly, Rule 600 mandates that the Commonwealth commence trial within 365 days of filing the complaint against the Defendant. The trial in this case has not commenced within 365 days. However, the issue is whether the delay is "excusable." Stated otherwise, has the delay resulted from circumstances beyond the Commonwealth's control and despite its due diligence?

"The Commonwealth must do everything reasonable within its power to guarantee that a trial begins on time, and the Commonwealth has the burden of demonstrating by a preponderance of the evidence that it exercised due diligence. As has been oft stated, due diligence is fact-specific, to be determined case-by-case; it does not require perfect diligence and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort." Commonwealth v. Colon, 87 A.3d 352, 359 (Pa. Super. 2014)(citations omitted).

The court concludes that the delay in this matter resulted from circumstances beyond the Commonwealth's control and that the Commonwealth made a reasonable effort to bring the case to trial thus demonstrating due diligence.

For several trial terms, the case was listed for trial. It was set by the District Attorney's office, witnesses were contacted for their availability, information was provided to the Court Administrator's Office with respect to counsel and witnesses' availability, and the case was called before the court on the first day of jury selection. In January, a specific jury selection date was set, as well as a trial date. It became apparent, however, that the case was a two-day trial and not a one-day trial. Accordingly and because of court unavailability, the case could not proceed. During the following several months the case while still being listed during each trial term and still being called, could not be reached because of the unavailability of trial days or the court. These circumstances are clearly beyond the Commonwealth's control. As well and despite Defendant's arguments, the Commonwealth proceeded with due diligence.

Clearly, the Commonwealth put forth a reasonable effort. It is unreasonable to suggest that the Commonwealth must take extraordinary steps in order to list a case for trial as Defendant contends. The Commonwealth cannot be put to the burden of specially setting cases beyond trial terms or specifically setting cases before senior or out of county judges.

Finally, the court recognizes to some extent the prejudice to Defendant as testified by her. Defendant has not, however, asserted that the delay violated her rights to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution or by Article I, Section 9 of the Pennsylvania Constitution. Accordingly, it would be inappropriate for the court to consider Defendant's alleged prejudice under the balancing test set forth in Barker v. Wingo, 407 U.S. 514, 92 S. Ct. 2182 (1972). Colon, supra at 356.

ORDER

AND NOW, this 22nd day of September 2015, Defendant's motion to dismiss pursuant to Rule 600 is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Jerry Lynch, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file