

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-155-2015
 :
 ROCCO BENEFIELD, :
 :
 Defendant : Motion to Dismiss Pursuant to Rule 600

OPINION AND ORDER

On August 3, 2015, Defendant filed a motion to dismiss pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure.

In his motion, Defendant claims that he has not been tried within 365 days of the complaint being filed against him and requests that the case be dismissed. Alternatively, Defendant claims that he has not been tried within 180 days and requests nominal bail.

A hearing in this matter was held on August 21, 2015. At the hearing, the parties stipulated that the criminal complaint against Defendant was filed on July 2, 2014 but that Defendant was not arrested until December 31, 2015. The parties further stipulated that the Rule 600 issue was determinative on whether the time between the complaint being filed and the arrest warrant being served on Defendant is excludable. If so, Defendant concedes that Rule 600 would not be violated. If not, the Commonwealth concedes that Rule 600 would be violated.

At the hearing, the Commonwealth called Trooper Matthew Sweet of the Pennsylvania State Police (PSP) to testify. He has been employed by the PSP for several years and is presently assigned to the Criminal Investigation Assessment Unit.

In December of 2013, he was contacted by the alleged victim's mother

regarding inappropriate conduct by Defendant with respect to the alleged victim. Subsequent to the initial contact, Trooper Sweet interviewed the alleged victim and her mother. A consensual phone call was made from the alleged victim to Defendant, and further investigative steps were taken with respect to determining the merit of potential criminal charges.

On July 2, 2014, before any charges were filed against Defendant, Trooper Sweet spoke with Defendant over the telephone. Trooper Sweet informed Defendant that allegations were made against him and that he wanted to meet with Defendant. Trooper Sweet was purposefully “vague” during the conversation because his prior investigation led him to believe that there was a risk that Defendant would flee.

During this telephone conversation, Defendant agreed to come to the barracks on July 3, 2014 to meet with Trooper Sweet. Subsequently, on the same date of the telephone conversation, July 2, 2014, Trooper Sweet filed the criminal charges against Defendant.

During the telephone conversation earlier, Trooper Sweet and Defendant had discussed the fact that an investigation was pending. Defendant allegedly indicated that he was an over the road truck driver and could not get back to the Williamsport area until the “next day.”

Immediately following the filing of the charges on July 2, 2014, a warrant was issued for Defendant’s arrest and the warrant was placed in the national database NCIC.

On July 3, 2014, Defendant did not appear for the scheduled meeting. Sometime during the next few weeks, Trooper Sweet contacted Defendant by telephone.

Trooper Sweet advised Defendant that charges were filed against him, a warrant was issued for his arrest and Defendant needed to turn himself in.

Defendant indicated that Attorney Scott Gardner had previously represented him in connection with a criminal matter and he would be retaining Mr. Gardner in connection with the pending investigation. It was agreed that Defendant and Mr. Gardner would appear at Magisterial District Judge (MDJ) Carn's office on July 23, 2014 for the warrant to be served, the charges to be given to Defendant and Defendant to be arraigned.

On July 23, 2014, however, Defendant failed to appear at MDJ Carn's office. Mr. Gardner did appear. Mr. Gardner had no information as to why Defendant did not appear. As well, Mr. Gardner was not entirely clear as to what his role was in connection with these matters.

Following the scheduled arraignment date in late July through the latter part of August of 2014, Trooper Sweet took several efforts in an attempt to locate Defendant. He obtained a biographical sheet of Defendant through the PSP's "Intelligence Unit." He discovered that Defendant previously resided in New York and had some prior criminal contacts in the city of Albion, NY.

He went to Defendant's residence and left a note asking Defendant to contact him. Unfortunately, no one was present and it appeared to Trooper Sweet that no one was residing at the residence.

Trooper Sweet contacted the landlord and was informed by the landlord that he did not believe Defendant was residing there anymore.

As well, Trooper Sweet attempted to contact Defendant on more than one occasion via the phone but was unable to speak with him.

In late August of 2014, Trooper Sweet turned the apprehension of Defendant over to the PSP Fugitive Unit. The Trooper assigned to the Unit which is apparently coordinated through the US Marshal's Service, was Trooper Shipman.

Trooper Sweet spoke with Trooper Shipman about his efforts to locate Defendant. He also provided to Trooper Shipman a biographical sheet containing the New York information and requested that Trooper Shipman utilize the Unit's resources to apprehend Defendant.

After speaking with Trooper Sweet, Trooper Shipman reached out to his "counterparts" with the Marshal's Service in an attempt to apprehend Defendant. As well, Trooper Shipman made several contacts in the Albion, NY area in an attempt to locate Defendant.

Unfortunately, the efforts to locate Defendant were somewhat slowed during this two-month period due to an investigation that was taking place in a nearby county to locate an armed and dangerous fugitive who had killed and seriously wounded law enforcement officers. Both Trooper Shipman and Trooper Sweet were called in on the investigation during the two-month period. This individual was subsequently apprehended and in early November of 2014, Trooper Shipman reinitiated his efforts to locate Defendant. Trooper Sweet forwarded again to Trooper Shipman all of the information regarding Defendant including the "due diligence" information setting forth the background of the

investigation and the background of the efforts taken by law enforcement to locate Defendant.

Defendant was eventually located on December 31, 2014. He was working as a truck driver apparently employed in the State of Georgia. He was taken into custody in Clayton County, Georgia.

Defendant contends that the Commonwealth did not exercise due diligence in trying to locate him. The parties do not dispute the fact that the Commonwealth bears the burden of proving that it exercised due diligence by a preponderance of the evidence.

The “due diligence” required of law enforcement under the circumstances, however, does not demand “perfect vigilance and punctilious care, but rather a reasonable effort.” *Commonwealth v. Laurie*, 334 Pa. Super. 580, 483 A.2d 890, 892 (1984)(quoting *Commonwealth v. Polsky*, 493 Pa. 402, 407, 426 A.2d 610, 613 (1981)).

In this particular case, the court easily concludes that the PSP acted with due diligence. It would be unreasonable to expect the police to devote all of their attention and resources to locating Defendant. The PSP had many other crimes to deal with over the relevant period of time. The issue is not whether “they did all they could have done” but rather “whether what they did do was enough to constitute due diligence.” *Laurie*, supra (citing *Commonwealth v. Dorsey*, 294 Pa. Super. 584, 588, 440 A.2d 619, 621 (1982)); see also *Commonwealth v. Collins*, 266 Pa. Super. 340, 404 A.2d 1320 (1979); *Commonwealth v. Mitchell*, 472 Pa. 553, 372 A.2d 826 (1977).

Because the Commonwealth exercised due diligence, the time period between the

filing of the compliant and Defendant's arrest is excluded for Rule 600 purposes. Accordingly, Defendant's motion to dismiss and/or to release on nominal bail shall be denied.

ORDER

AND NOW, this 31st day of August 2015, following a hearing and argument, Defendant's motion to dismiss pursuant to Rule 600 is denied.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (AB)
PD (JF)
Gary Weber, Esquire (Lycoming Reporter)
Work file