IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-1244-2017**
	:	
CHRISTOPHER ADKINS,	**:**	**Opinion and Order re Defendant's Motion to**
Defendant	**:**	**Dismiss Pursuant to Rule 600**

OPINION AND ORDER

This matter came before the court on Defendant's Motion to Dismiss Pursuant to Rule 600. By way of background, Defendant is charged with driving under the influence of alcohol (DUI) and a traffic summary arising out of a vehicle stop that occurred on June 18, 2010. The criminal complaint was filed on July 13, 2010 and an arrest warrant was issued on July 20, 2010, but Defendant was not arrested until June 16, 2017. The issue in this case is whether the Commonwealth exercised due diligence in attempting to discover Defendant's whereabouts.

At the hearing and argument on Defendant's motion, the Commonwealth called as a witness Agent Jason Bolt of the Williamsport Bureau of Police. Agent Bolt testified that he stopped Defendant's vehicle on June 18, 2010. Defendant presented a Florida driver's license with an Avis, Pennsylvania address. As a result of the traffic stop, Agent Bolt filed a criminal complaint on July 13, 2010, in which he charged Defendant with DUI and driving the wrong way on a one-way street. A warrant was issued for Defendant's arrest. Agent Bolt entered the warrant into NCIC as limited extradition – surrounding states only. That was the end of Agent Bolt's personal contact with the case until Defendant called him a week or a few days before June 16, 2017. During the phone call, Defendant told Agent

Bolt that he could not get his license back and he begged Agent Bolt to drop the charges. Agent Bolt took Defendant's phone number but told him that the charges probably would not go away. On June 16, 2017, Defendant "came down" from Barre, Massachusetts and turned himself in.

Despite the fact that Agent Bolt made no personal efforts to serve the warrant or locate Defendant, Agent Bolt testified, without objection from defense counsel, that officers and sheriffs attempted to serve the warrant at the Avis, Pennsylvania address listed on his license, but they were not able serve him at that address. Agent Bolt also testified that the sergeants in the police department typically deal with the warrants and routinely check NCIC.

The Commonwealth admitted as Commonwealth Exhibit 1 an NCIC log that showed the number of times Defendant "had been run" through NCIC between the date the complaint was filed in June 2010 until Defendant's arrest on the warrant on June 16, 2017. Agent Bolt testified that Defendant's name was run through NCIC by the Williamsport police on June 18, 2010, and July 20, 2010, as well as by the Lycoming County Sheriff's Department on September 4, 2010. Agent Bolt also testified that the Williamsport police ran Defendant's name through NCIC once or twice a year in every year since then. He believed that they updated their policy and "check even more frequently now." There are, however, no entries on the NCIC log for the Williamsport police between November 13, 2011 and November 14, 2014.

In Defendant's motion, he asserted that he was stopped by authorities in

Lancaster, Pennsylvania in August 2010 and sometime thereafter stopped by authorities in Connecticut. Agent Bolt testified that there was nothing in the NCIC log to show that Lancaster authorities ran Defendant's name through NCIC in August 2010. He also indicated that if Lancaster had run Defendant's name, the Lancaster authorities would have had the phone number to contact the Williamsport police and confirm that the Williamsport police had the physical warrant. If the Lancaster authorities had done so, Agent Bolt testified that Williamsport police officers would have gone to Lancaster and picked up Defendant. Agent Bolt indicated that it is not difficult for them to go anywhere in the state of Pennsylvania. Curiously, there is an entry on the NCIC log on January 22, 2014 from the Montoursville police, but inexplicably Defendant was not arrested on the warrant at that time. Neither party addressed this entry at the hearing.[1]

Agent Bolt also confirmed that Waterford, Connecticut was listed in the NCIC log in August 2016, but he was unaware if the Williamsport police were contacted by Waterford authorities.

Although there were numerous entries on the NCIC log between September 28, 2010 and February 28, 2012 for the Broward County Florida Sheriff's Office as well as the Fort Lauderdale Police Department,[2] Agent Bolt did not check with Broward County authorities to determine Defendant's whereabouts. Agent Bolt testified that his police department would look for leads that they could "go on" and if the lead was within an area where they would seek extradition, they would contact the local authorities.

[1] Montoursville is only about five miles from Williamsport.

Between January 19, 2013 and the date of Defendant's arrest, there were numerous entries on the NCIC log from Massachusetts, especially Rutland, Massachusetts. No testimony was presented about these entries or any efforts the Williamsport police made to determine whether Defendant was living in this area of Massachusetts.

DISCUSSION

Rule 600 provides that "[t]rial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed." Pa. R. Crim. P. 600(A)(2)(a). In determining whether 365 days have passed, "delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth failed to exercise due diligence shall be included in the computation of time within which trial must commence. Any other periods of delay shall be excluded from the computation." Pa. R. Crim. P. 600(C)(1). When the defendant has been instrumental in causing the delay, the period of delay will be excluded from the computation of time. Pa. R. Crim. P. 600, cmt. One example of delay caused by the defendant is "the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence." *Id.*

The Commonwealth must demonstrate by a preponderance of the evidence that it exercised due diligence. *Commonwealth v. Bradford*, 616 Pa. 122, 46 A.3d 693, 701 (Pa. 2012). "As has been oft stated, '[d]ue diligence is fact-specific, to be determined case-

[2] Fort Lauderdale is the county seat of Broward County, Florida.

by-case; it does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort.'" *Id.* at 701-702. Furthermore, "due diligence must be judged by what was done by the authorities rather than by what was not done." *Commonwealth v. Jones*, 886 A.2d 689, 701 (Pa. Super. 2005).

The problem that the court has with this case is it does not know what efforts the authorities made to attempt to serve the warrant at the Avis address or what occurred during those efforts. The only evidence presented by the Commonwealth was a conclusory statement by Agent Bolt that other officers and sheriffs attempted to serve the warrant but were unsuccessful. The court, however, does not know any facts about those attempts. The court does not know how many attempts were made, whether anyone was present at the address, or whether the address belonged to the defendant's family or friends or some third party who had never even heard of the defendant. These types of facts are relevant and can be crucial in the court's determination of whether the efforts put forth were reasonable. If, for example, the address was vacant or abandoned at the time the authorities attempted to serve the warrant, a single visit to the address and periodically checking NCIC to try to determine the defendant's whereabouts may be sufficient. If, on the other hand, the defendant's mother answered the door and gave the authorities a specific local address where the defendant could be found but the authorities never attempted to locate the defendant at that address, such would not be reasonable.

Typically, the Commonwealth provides testimony from the individual or individuals who actually made the attempts at service or at least a business record that

provides the date, time and a brief statement regarding the attempts made.[3] No such evidence was provided in this case.

Agent Bolt's testimony was more about the typical procedures of the Williamsport police than the actual efforts made to locate the defendant in this case.[4] Based on *Commonwealth v. Thompson*, 136 A.3d 178 (Pa. Super. 2016), the court finds that this type of testimony is insufficient.

In *Thompson*, the appellant filed a motion to dismiss pursuant to Rule 600, which the trial court denied. On appeal, the appellant challenged the trial court's Rule 600 decision, specifically its determination that two significant periods of delay that occurred when the appellant was not transported from state custody were the result of "administrative error" and not attributable to the Commonwealth. The record was remanded to the trial court to determine whether the Commonwealth sought a writ from the trial court to secure the appellant's presence in court. At the remand hearing, the assistant district attorney (A.D.A.) testified that her file did not indicate whether a writ was requested or prepared but her standard procedure was to request a writ from the court and from the clerk. The trial court again denied the appellant's Rule 600 challenge, finding the A.D.A.'s testimony credible and concluding that the Commonwealth had demonstrated by a preponderance of the evidence

[3] If the court recalls correctly, the Williamsport police at one time kept such a record and they even called it a due diligence report.

[4] The court is not in any way negatively commenting on Agent Bolt. In the court's experience, Agent Bolt is very professional and forthright.

that it had exercised due diligence in securing the appellant's presence for trial. The Superior Court reversed and stated:

> Despite the admissibility of evidence tending to establish the Commonwealth's habitual use of the writ system, see Pa.R.E. 406, such evidence does not pass the threshold requirements established in [*Commonwealth v. Hawk,* 597 A.2d 1141 (Pa. 1991) and *Commonwealth v. Caden*, 487 A.2d 1 (Pa. Super. 1984)]; i.e., mere assertions of due diligence are insufficient, rather due diligence requires affirmative action. Thus, regardless of whether it is the common practice or standard procedure for the Commonwealth to request a writ for a defendant's transportation, and we presume that it is, the issue here was whether the Commonwealth did so on a specific date. To be clear, we do not question the trial court's credibility determination. Rather, we hold that the credible testimony of [the A.D.A.] was insufficient to establish the Commonwealth's due diligence on May 9, 2011.

Thompson, 136 A.3d at 184-185.

Since the Commonwealth did not provide any evidence to show the specific efforts made to serve the arrest warrant in this case or any other efforts to determine Defendant's whereabouts other than checking NCIC but apparently not following up on any information contained in the NCIC log, the court cannot find that the Commonwealth has met its burden of proving that it acted with due diligence. Accordingly, the Court will grant Defendant's motion.

ORDER

AND NOW, this ___ day of February 2018, the court GRANTS Defendant's motion to dismiss. Defendant shall remain on bail until the thirty (30) day appeal period has expired. If no appeal is filed, any bail posted less poundage shall be returned to Defendant. If an appeal is filed, Defendant shall remain on bail. While on bail, Defendant must inform

the court, the Commonwealth, and his attorney of any change of address **in writing**.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Dance Drier, Esquire (APD)
Work File