

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	: <b>No. CP-41-CR-0000695-2024</b>
	:
<b>vs.</b>	: <b>Omnibus Pre-Trial Motion</b>
	:
<b>DAWUD ROGERS,</b>	:
<b>Defendant</b>	:

**OPINION AND ORDER**

This matter came before the court on January 28, 2025 and April 7, 2025 for hearings and argument on the Omnibus Pre-Trial Motion (OPTM) filed on behalf of Dawud Rogers (hereinafter “Rogers”). The OPTM contains the following counts: Count I-Petition for Writ of Habeas Corpus; Count II-Motion to Dismiss Pursuant to Rule 600; Count III-Motion to Suppress Evidence; Count IV-Motion to Dismiss Prearrest Delay (Ross Motion); Count V-Motion to Compel Discovery; and Count VI-Motion to Reserve Right to File Additional Motions. The Commonwealth filed its brief in opposition to the OPTM on April 15, 2025. The defense filed its brief in support of the OPTM on April 28, 2025.

Jury selection is scheduled for September 22, 2025 and trial is scheduled for September 29 through October 3.

By way of background, Rogers is charged with an open count of homicide,<sup>1</sup> two counts of aggravated assault,<sup>2</sup> possession of firearm prohibited,<sup>3</sup> firearms not to be carried without a license,<sup>4</sup> and possession of a weapon.<sup>5</sup> These charges arise out of the shooting death of William Blackwell outside of the Penn State Auto Repair in the 2000 block of Boyd Street, Williamsport, Lycoming County, Pennsylvania on December 30, 2016.

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<sup>1</sup> 18 Pa. C.S.A. §2501(a).

<sup>2</sup> 18 Pa. C.S.A. §2702(a)(1), (4).

<sup>3</sup> 18 Pa. C.S.A. §6105(a)(1).

## **DISCUSSION**

### ***A. Habeas***

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a prima facie case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A prima facie case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also* *Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

At the preliminary hearing, the Commonwealth presented testimony from Agent Aaron Levan, Hakiem Price, and former Agent Ed Lucas and three exhibits- the autopsy

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<sup>4</sup>18 Pa. C.S.A. §6106(a)(1).

<sup>5</sup>18 Pa. C.S.A. §907(b).

report authored by Dr. Barbara K. Bollinger, a photograph of Rogers' Volkswagen, and video surveillance from the Polish Club that captured the shooting that occurred across the street near Penn State Auto Repair.

Agent Levan testified that the police were dispatched at approximately 3:15 p.m. on December 30, 2016 for a shooting in the 2000 block of Boyd Street. Upon arriving, the police found a black male lying face down on the ground with multiple gunshot wounds. The victim, William Blackwell, was taken by ambulance to the hospital in Williamsport and then flown to Geisinger Medical Center in Danville where he was pronounced dead. Ed Lucas was the original lead investigator in the case but he retired.

An autopsy was performed by Dr. Bollinger of Forensic Pathology Associates, which showed that the victim died of multiple gunshot wounds. There were penetrating wounds to the abdomen, right wrist and neck, perforating wounds to the right arm and torso, and a grazing to the right chest. There was no soot or stippling on the victim's skin surfaces surrounding the entrance wounds. There were injuries to his lungs, mesentery, intestine, spinal cord, and left kidney with hemothoraces and hemoperitoneum.

Agent Levan also identified Rogers as the defendant and indicated that he had a prior conviction in 2010 for possession with intent to deliver a controlled substance (2010) which disqualified him from possessing a firearm and precluded him from obtaining a concealed carry permit.

On cross-examination, Agent Levan testified that he had heard that on the date of the original preliminary hearing Rogers' brother, Bilal Rogers, was brought to the hearing instead of Rogers. He testified that the crime scene technician collected evidence, including shell casings and blood samples, and took measurements and photographs at the scene. He

stated that nine 9mm casings were found in close proximity to the sedan where the victim was found and three 9 mm casings were found several feet away from where the victim was found. All of the casings came from the same firearm, but Agent Levan did not know if the firearm had been recovered. Agent Levan took over the case around September 8, 2023 when he filed the charges and there was no further investigation since October of 2023.

Hakiem Price testified that he knew Rogers and he identified him in court. He stated that the last time he saw Rogers was in 2016 on the date of the incident. He said he and Rogers had gone to Jum'ah, rode around and wanted to get permanent tags for Rogers' car, which was a bluish-gray, four-door Volkswagen sedan. He identified the photograph of a vehicle admitted as Commonwealth Exhibit #2 as Rogers' vehicle. Price drove Roger's car because he had a license and Rogers did not. Price drove to Penn State Auto Repair in the 2000 block of Boyd Street. It was mid-afternoon. Price was in the driver's seat, and Rogers was in the front passenger seat. Price parked across the street from the repair shop, exited Rogers' vehicle and went into the repair shop right behind the victim. Price and the victim were talking with the mechanic, Al Williams. Al started to talk to the victim about his car. They went outside. Al came back into the shop and Price started to talk to him about his car. They heard gunshots and stuff went crazy. They ran out of the back door and saw the victim on the ground. He went back inside the shop and left through the front door. Price did not see Rogers again that day. Price wanted to leave and had to call his parents for a ride.

On cross-examination, Price said that he saw a tall guy shoot a firearm that day. He could not tell who it was because the person was wearing all black clothing and a black mask.

On re-direct examination, Price testified that Rogers was wearing black pants and a

black hoodie (or hooded sweatshirt) that day.

Edward Lucas, a former Agent with the Williamsport Bureau of Police who retired in February of 2020 and initially was the lead investigator in this case, also testified. He was at headquarters on December 30, 2016 and the call about the shooting came in around 3:10 p.m. He and other police officers responded to the scene at the Penn State Repair shop in the 2000 block of Boyd Street. When he arrived, the victim was unconscious and unresponsive in the ambulance but he still had a heartbeat according to the ambulance crew. He left the ambulance and sent Agent Levan with the victim in the ambulance.

Lucas conducted interviews of the neighbor across the street from the shop; the shop mechanic, Albert (Al) Williams; the female that arrived with the victim, Brittany Taylor; and another individual who was inside the shop, Jesse Hessman. Al knew Hakiem Price as Boo or Boo-Boo. Al said that Price came into the shop right after the victim.

Another officer told Lucas that the shooting incident was captured on the video surveillance camera from the Polish Club, which was about 100 feet away. An officer obtained a copy of the video and it was put into evidence. Lucas testified that he viewed the video and it corresponded to what Albert Williams and Brittany Taylor told him in their interview. Based on the interviews and viewing the video, Lucas testified about what occurred that day. He said that the victim arrived at the shop to pick up his car. He was driven there by his friend, Brittany Taylor. Right after they pulled into the shop and parked in front of the shop doors, a blue-gray Volkswagen also pulled up but parked along the street curb. Hakiem Price exited the Volkswagen, walked up to the main shop door and entered the shop right behind the victim. The mechanic, Al, walked out of the shop with the victim to his car, which had been repaired. Al thought that the keys were in the car but they were not, so

Al went back into the shop to retrieve the keys. At that point, an individual dressed in black exited the passenger side of Rogers' Volkswagen, walked behind the vehicle, pulled out or raised a gun, and as he walked across the street towards the victim, he shot the victim several times while his back was turned. The victim fell to the ground. The shooter jogged a few steps toward the repair shop, turned and fired a few more shots at the victim, crossed the street, entered the driver's side of the Volkswagen, and drove away.

Lucas also testified that on December 23, 2016, exactly a week before the shooting incident, there was an incident outside the Valley Inn in Duboistown during which the victim beat up, knocked out and robbed Rogers. Both men went to the Williamsport Hospital. The police were called to speak to them at the hospital. The victim left with a freshly cast left hand which he fractured during the incident.

The Commonwealth admitted as Commonwealth Exhibit #22C, a disc containing three videos from the Polish Club's surveillance system.<sup>6</sup> The third video on that disc depicts Boyd Street to the west of the Polish Club. The video appears to be taken from a camera near the side door of the Polish Club. The side of the Penn State Auto Repair Shop is on Boyd Street, catty-corner across the street from the Polish Club. Although one cannot see the main entrance to the repair shop, one can see the shooting on this video.<sup>7</sup> The video is consistent with Lucas' testimony. It depicts the driver of the vehicle (Price) exiting the vehicle and walking across the street to the repair shop. A short time later, Al and the victim walk to the victim's white vehicle, which is parked on Boyd Street near the southwest corner of the repair shop. They look inside the vehicle and then Al walks back toward the repair

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<sup>6</sup> The video was Commonwealth Exhibit #3 at the preliminary hearing.

<sup>7</sup> The most relevant part of the video is between 7:00 minutes and 12 minutes on the running time of the video

shop. The victim continues to look inside his vehicle. When the coast is clear after two cars turn in front of the Volkswagen, an individual exits the passenger side of the Volkswagen, walks behind it, and as the individual is walking across the street toward the victim, he shoots him several times. He jogs a few steps toward the repair shop, and then turns and fires more shots toward the victim. From the video, it appears that the shooter placed his hands, including his right hand that was carrying the gun, into his hoodie pocket as he jogged a few steps toward the repair shop before removing his right hand from the hoodie pocket, turning and firing a few more shots. He then returned to the vehicle, entered the driver's side and drove away.

Rogers first contends that he is entitled to habeas corpus relief on all of the charges because the Commonwealth failed to: (1) present testimony from any witness who saw the shooting and can identify Rogers as the shooter; and (2) show that Rogers possessed a firearm at all, let alone in a vehicle or concealed on his person. The court cannot agree.

In Count 1, Rogers is charged with an open count of Homicide. The charge of homicide is defined as follows: "A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being." 18 Pa. C.S.A. §2501(a).

In Counts 2 and 3, Rogers is charged with Aggravated Assault by Attempting or Causing Serious Bodily Injury and Aggravated Assault by attempting or causing bodily injury with a deadly weapon. Aggravated assault as charged in this case is defined as:

A person is guilty of aggravated assault if he:

- (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances

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or from approximately 16:07:22 to 16:11:22 on the time stamp in the upper right corner.

manifesting extreme indifference to the value of human life;

\* \* \*

- (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon;

18 Pa. C.S.A. §2702(a)(1), (4). For purposes of these crimes, the terms “serious bodily injury,” “bodily injury” and “deadly weapon” are defined as follows:

**“Bodily injury.”** Impairment of physical condition or substantial pain.

**“Deadly weapon.”** Any firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.

**“Serious bodily injury.”** Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

18 Pa. C.S.A. §2301.

Price testified that he drove Rogers’ vehicle, a blue-gray Volkswagen, to the repair shop. He parked the car, got out of the vehicle, and went inside the repair shop. Rogers remained in the passenger seat of the vehicle and was wearing black pants and a black hoodie that day. No one else was in the vehicle. Although Price either could not or would not identify Rogers as the shooter during his preliminary hearing testimony, one can reasonably conclude that the shooter was Rogers from the totality of the evidence presented. The video shows the vehicle pull up along the curb on Boyd Street and an individual exit the driver’s side and walk across the street toward the repair shop, just as Price testified that he did. The video shows the victim and another individual walk to the victim’s white vehicle, look around inside the vehicle and the other individual return to the repair shop. This is consistent with Price’s testimony about the victim and Al leaving the shop and Al returning, as well as



Lucas' testimony regarding his interviews of Al and the victim's friend, Brittany Taylor.

While the Volkswagen is parked along the curb, no one entered it. After Al returns to the building and while the victim is alone at his vehicle, an individual dressed in black pants, a black hoodie and a black mask gets out of the front passenger seat of the Volkswagen, walks behind it, extends his right arm, and shoots the victim as he crosses the street walking towards the victim. He then appears to place his hands in the pocket of his hoodie. He jogs a few steps toward the repair shop, pauses, and then turns and pulls his right hand out of his hoodie and fires more shots at the victim. Additionally, there was a prior altercation between the victim and Rogers a week prior, which shows that Rogers had a motive to injure or kill the victim.

From the totality of the evidence and the inferences that may reasonably be drawn from the evidence, a jury could reasonably conclude that Rogers was the shooter. According to Price, Rogers was in the front passenger side of the vehicle when Price left it. Rogers was dressed in black pants and a black hoodie. No one else entered or exited the vehicle between the time Price exited the vehicle and the shooter exits the vehicle. The shooter exited the front passenger side of the vehicle and was dressed in black pants and a black hoodie. Rogers had a motive to injure or kill the victim. It is reasonable to conclude that Rogers was the shooter.<sup>8</sup>

Agent Levan testified about the results of the autopsy and the autopsy report was admitted at the preliminary hearing. An autopsy was performed by Dr. Bollinger of Forensic Pathology Associates, which showed that the victim died of multiple gunshot wounds. There

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<sup>8</sup> Whether the jury believes Price that the passenger in the vehicle was Rogers is a factual question for trial. Credibility determinations cannot be made at this stage of the proceedings.

were penetrating wounds to the abdomen, right wrist and neck, perforating wounds to the right arm and torso, and a grazing to the right chest. There was no soot or stippling on the victim's skin surfaces surrounding the entrance wounds. There were injuries to his lungs, mesentery, intestine, spinal cord, and left kidney with hemothoraces and hemoperitoneum. In other words, the victim suffered significant injuries and died as a result of the gunshot wounds. As the Commonwealth presented prima facie evidence that the victim was intentionally or knowingly shot, injured and killed and that Rogers was the shooter, the Commonwealth has presented sufficient evidence for Counts 1, 2 and 3.

Rogers also challenges the sufficiency of the evidence to hold the firearm charges for trial. Again, the court cannot agree.

In Count 4, the Commonwealth charged Rogers with Possession of Firearm Prohibited in violation of Section 6105(a)(1) of the Crimes Code, which states:

(a) Offense defined.--

(1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

18 Pa. C.S.A. §6105(a)(1). Subsection (c)(2) states:

In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a): ...

(2) A person who has been convicted of an offense under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or any equivalent Federal statute or equivalent statute of any other state, that may be punishable by a term of imprisonment exceeding two years.

18 Pa. C.S.A. §6105(c)(2). Agent Levan testified that Rogers had a 2010 conviction for

possession with intent to deliver a controlled substance (PWID), which precluded him from possessing a firearm.<sup>9</sup>

As noted previously, it is reasonable to infer that Rogers was the shooter. Although one cannot distinctly see the firearm in the video, at the end of the shooter's extended right arm one can see flashes from a firearm discharging and the victim immediately falling to the ground. The autopsy showed that the victim suffered multiple gunshot wounds. Nine 9 mm casings were found near the victim and three 9mm casings were found near where the shooter paused, turned and shot after jogging toward the repair shop. It is reasonable to infer that the shooter had a firearm that shot 9mm ammunition.

As it is reasonable to infer that Rogers was the shooter and he possessed a firearm and the evidence showed that Rogers has a conviction that precludes him from possessing a firearm, the Commonwealth presented prima facie evidence for the charge of possession of firearm prohibited.

In Count 5, the Commonwealth charged Rogers with Firearms Not to Be Carried Without a License pursuant to Section 6106(a)(1) of the Crimes Code, which states:

(a) Offense defined.--

(1) Except as provided in paragraph (2), any person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of the third degree.

18 Pa. C.S.A. §6106(a)(1).

The Commonwealth also presented testimony that Rogers' conviction precluded him from obtaining a permit to carry a firearm in a vehicle or concealed on his person. No one

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<sup>9</sup> The 2010 conviction is from Lycoming County. *See* CP-41-CR-0001654-2010. He may also have drug convictions from Philadelphia County. *See* CP-51-CR-1109511-2001 and CP-51-CR-1203622-2001.

enters or exits the vehicle after Price exited the vehicle to go into the repair shop until the shooter exits the vehicle. The shooter does not stop to pick anything up on the sidewalk or on the street. He exits the vehicle, walks behind it and starts shooting. From the evidence presented by the Commonwealth, it is reasonable to infer that Rogers is the shooter and that he had the firearm with him in the vehicle. Therefore, the Commonwealth presented *prima facie* evidence for the charge of carrying a firearm without a license.

In Count 6, the Commonwealth charged Rogers with Possession of a Weapon. Rogers contends that the evidence fails to show that he concealed a weapon on his person. As evidence regarding this element is lacking, the Commonwealth failed to *prima facie* evidence for this charge.

Section 907(b) states: “A person commits a misdemeanor of the first degree if he possesses a firearm or other weapon concealed upon his person with intent to employ it criminally.” 18 Pa. C.S.A. §907(b).

The evidence presented at the preliminary hearing showed that Rogers was the shooter and that he possessed a firearm. In the video, it appears that the shooter put his hands and the firearm in his hoodie pocket during the time he jogged toward the repair shop. He then pulls his right hand out of the hoodie pocket and again fires shots at the victim. As Rogers appeared to place his hands, including his right hand that held the firearm, into the pocket of his hoodie as he jogged toward the repair shop and then he removed his right hand holding the firearm and fired additionally shots at the victim, the Commonwealth presented *prima facie* evidence that Rogers possessed a firearm concealed on his person (in his hoodie pocket) with the intent to use it criminally.

For the foregoing reasons, the court will deny the Petition For Writ of Habeas Corpus

contained in Count I of Rogers' OPTM.

**B. Motion to Dismiss Pursuant to Rule 600**

Rogers next contends that the charges against him must be dismissed pursuant to Rule 600 of the Pennsylvania Rules of Criminal Procedure. Rule 600 states:

**(A) Commencement of Trial; Time for Trial**

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(2) Trial shall commence within the following time periods.

(a) Trial in a court case in which a written complaint has been filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

\* \* \*

**(C) Computation of Time**

(1) For purposes of paragraph (A), periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

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**(D) Remedies**

(1) When a defendant has not been brought to trial within the time periods set forth in paragraph (A), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a written motion requesting that the charges be dismissed with prejudice on the ground that this rule has been violated. A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing. The judge shall conduct a hearing on the motion.

PA. R. CRIM. P. 600.

For delay to be attributable to the Commonwealth and included in the computation,

(1) the delay must be caused by the Commonwealth; and (2) the Commonwealth must have failed to exercise due diligence. *See Commonwealth v. Stackhouse*, 331 A.3d 661, 665 (Pa. Super. 2024). "Due diligence is fact-specific and determined on a case-by-case basis."

*Commonwealth v. Marnoch*, 316 A.3d 1041, 1044 (Pa. Super. 2024). Due diligence does not require the Commonwealth to show that it acted with perfect vigilance or punctilious care,

but rather merely requires a showing that the Commonwealth has put forth a reasonable effort. *See id.* Furthermore, the court must consider the dual purposes of the Rule—"the protection of the accused's speedy trial rights and the protection of society. In determining whether an accused's right to a speedy trial has been violated, consideration must be given to society's right to effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it." *Stackhouse*, 331 A.3d at 668.

The mechanical run date is calculated by adding 365 days to the date the complaint was filed. *See Commonwealth v. Ramos*, 936 A.2d 1097, 1102 (Pa. Super. 2007). The adjusted run date is calculated by excluding any delays attributable to the defendant or his attorney and by deducting any excusable delay. Excusable delay is a legal construct for delay that occurs as a result of circumstances beyond the Commonwealth's control and despite its due diligence. *See id.*

The criminal complaint was filed on September 8, 2023. Therefore, the mechanical run date was September 8, 2024. However, there was a significant amount of excludable and excusable delay.

***1. Delay in scheduling/holding preliminary arraignment***

There was a significant amount of delay in holding the preliminary arraignment in this case. The complaint was filed on September 8, 2023. On September 12, 2023, Amy Breen ("Breen"), a clerk and supervisor in MDJ Frey's office, sent an email to Jennifer Connors ("Connors"), a paralegal/assistant in the District Attorney's Office and to Agent Aaron Levan ("Levan") inquiring how to set up a video arraignment with a federal prison, as Rogers was an inmate at Federal Correctional Institution (FCI) Allenwood. Although FCI Allenwood is approximately 45 minutes from Magisterial District Judge (MDJ) Frey's office

in Williamsport Pennsylvania, the procedures for transporting a federal inmate are different from those used to transport state inmates and county inmates. Similarly, the procedures to set up video conferencing for federal inmates are also somewhat different. Connors sent a reply email to Breen the same day with contact information for a person at FCI-Allenwood who could help her and Connors indicated she thought that Levan would be available on Friday or next week. *See Commonwealth Exhibit 3.*

On September 29, 2023, Connors emailed Breen and asked if Breen needed her to facilitate or if there was an issue. Breen replied that MDJ Frey was going to contact Levan and see if he could bring Rogers in person and she would see if that was still the case. *See Commonwealth Exhibit 3.*

On October 10, 2023, Connors again emailed Breen. She indicated that the preliminary arraignment needed scheduled one way or the other. They preferred video but if the judge wanted Rogers in person, they could do that but they just needed a date. Breen responded that the judge has the file and Breen would let her know shortly how the judge wished to handle it.

On October 25, 2023, Connors directly emailed MDJ Frey, noting that it had been two weeks. She again asks for a date for the preliminary arraignment. She copied Levan because she knew there were some dates that he was unavailable. She also asked whether it would be by Zoom or in person. MDJ Frey responded that Information Services (IS) was on his Zoom to no avail. He wanted Rogers brought in person next Tuesday, Wednesday or Thursday (10/31/, 11/1, 11/2). Connors emailed Breen asking whether Connors handled the writ or the MDJ office. Breen replied that the DA's office does the writ. Connors thanked Breen and asked Breen to keep her posted on Levan's availability.

On October 26, 2023, Levan sent an email that he was available on November 1 or November 2. On October 27, 2023, Breen sent an email that the preliminary arraignment was scheduled for November 2 at 11:00 a.m. On October 29, 2023, Levan responded that the date worked for him and inquired to make sure it was an in-person proceeding.

On October 30, 2023, Connors sent an email that Allenwood needed five days to process the paperwork and asked for a date in the next week. Unfortunately, the paperwork that the DA's office received from Allenwood to "write the defendant out" of Allenwood did not state that the paperwork needed to be submitted at least five days prior to the hearing date. Breen sent a reply email with a new date of November 13, 2023. Connors replied that she believed Levan was unavailable that date and she asked if there were any other dates. On October 31, 2023, Breen again gave the date of November 13, 2023.

On November 27, 2023, Connors emailed Correctional Systems Officer Shane Gephart at FCI-Allenwood, inquiring whether FCI-Allenwood had Polycom capabilities or Zoom for doing video arraignment. On November 28, 2023, Connors received an email from Supervisory Correctional Systems Specialist Terry Greely, Jr. that Counselor Foust would be able to help her with this and he copied Foust on the email. On December 8, 2023, Gephart emailed Connors and said that the unit team would be able to help her and he copied the unit team on this email. *See Commonwealth Exhibit 11.*

On December 12, 2023, Connors emailed Breen and said the preliminary arraignment needed to be set up ASAP. She asked if Zoom had been repaired. She also said she just needed a date for Allenwood. *See Commonwealth Exhibit 3.*

On December 18, 2023, Counselor Randy Foust sent Connors an email that FCI-Allenwood has Zoom capabilities as long as there is a SIP address, which is the only way that



they can connect. *See* Commonwealth Exhibit 11.

On January 4, 2024, a member of the DA's office sent a request to IS asking them to help set up a Zoom meeting with FCI-Allenwood. *See* Commonwealth Exhibit 14.

On January 4, 2024, Connors emailed the unit team and indicated that the MDJ called and said they could send a link of the meeting via email and asking if we could make it work that way as the MDJ has had issues with getting people connected any other way. Randy Arnold sent a reply email that they could not connect without a SIP address. They would need that or they would have to produce by phone. *See* Commonwealth Exhibit 11.

On January 11, 2024, Breen sent an email to Connors that IS came and a Zoom meeting was set up to hold the preliminary arraignment on January 17, 2024 at 1:30 p.m. *See* Commonwealth Exhibit 4.

On January 17, 2024, Foust sent an email that FCI-Allenwood was in lockdown; therefore, the arraignment could not proceed as scheduled. *See* Commonwealth Exhibit 11.

The preliminary arraignment was rescheduled and held on January 25, 2024 at 11:00 a.m. *See* Commonwealth Exhibit 6.

Rogers contends that all of the delay between the filing of the complaint and the holding of the preliminary hearing is attributable to the Commonwealth and is a result of its lack of due diligence. He also argues that since there was an open count of homicide, Rogers was not entitled to bail and Levan's presence was not necessary.

In its brief, the Commonwealth concedes that it did not make reasonable efforts to have Rogers arraigned between November 2, 2023 and November 27, 2023. Other than that period of delay, the Commonwealth argues that the remainder of the delay in scheduling Rogers' preliminary arraignment was beyond its control and despite its due diligence.

According to the Commonwealth, the delay was attributable to Rogers being incarcerated in a federal prison, and the inadequacies of the MDJ and his staff in using available technology to conduct the preliminary arraignment by video. The Commonwealth also contends that its requests and preference for video arraignment were reasonable due to safety concerns. However, the court cannot consider the alleged safety concerns of a Williamsport Bureau of Police (WBP) captain contained in the Commonwealth's argument/brief because the parties agreed to redact the paragraphs in the emails related to this information and the Commonwealth did not call the captain as a witness at either hearing on Rogers' OPTM. The only facts that the court can consider with respect to safety are the charges filed against Rogers and his status as a federal inmate at FCI-Allenwood.

The court finds that the time from September 12, 2023 through November 2, 2023 (51 days) is excusable delay. The Commonwealth cannot unilaterally schedule a preliminary arraignment. It needs the MDJ to set a date that he is available to conduct that proceeding. Connors sent numerous emails trying to get a date for the arraignment, with little to no success. On September 12, 2023 when Breen emailed her about a video arraignment, Connors sent Breen the contact information for an individual at FCI-Allenwood. When Connors did not have an arraignment by September 29, 2023, she emailed Breen again asking Breen if she needed her help to facilitate a video arraignment or if there was a problem. The help desk tickets from MDJ Frey to IS on September 21 and October 4 showed MDJ Frey was having difficulty using the available technology (Zoom) to schedule video meetings such as Rogers' preliminary arraignment. The emails show that the Commonwealth did not initially request a video arraignment; Breen contacted Connors about setting up a video arraignment with the federal prison. Connors emailed again on October

10. While she expressed a preference for a video arraignment, she said that the arraignment could be held in person; she just needed a date. Breen needed to check with the MDJ to confirm that he wished to conduct an in-person arraignment. Two more weeks went by without Connors receiving a date for the preliminary arraignment from the MDJ. On October 25, 2023, the MDJ finally emailed Connors with three possible dates for the arraignment—October 31, November 1 or November 2. On October 26, 2023, Breen notified Connors and Levan that the preliminary arraignment was scheduled for November 2 at 11:00 a.m. The arraignment did not occur on that date, because FCI-Allenwood needed the DA's certification at least five days prior to the hearing date. There was nothing on the certification form to notify the Commonwealth of the five days that FCI-Allenwood needed to process the paperwork. As soon as Connors received that information, she emailed Breen asking for another date. Adding the 51 days to the mechanical run date, gives a new date of October 29, 2024.

The court also finds that the time from November 27, 2023 through January 25, 2024 (59 days) is excusable delay. On November 27, 2023, Connors emailed FCI-Allenwood staff about their ability to hold a video arraignment. On November 28, 2023, Connors received an email response that perhaps the counselor could assist and the counselor was copied on that email. On December 8, 2023, the counselor emailed Connors saying that the unit team could help and copied individuals on the unit team. On December 18, 2023, a member of the unit team informed Connors that FCI-Allenwood could do Zoom provided the MDJ could provide a SIP address. On January 4, 2024, Connors sent an email to the unit team that the MDJ was having issues with Zoom. Connors also sent a help desk ticket to IS asking IS to help MDJ Frey set up the arraignment by Zoom. On January 17, 2024, Connors emailed FCI-

Allenwood that the MDJ could conduct the arraignment that afternoon. Arrangements were made to hold the arraignment at 1:30 p.m. but the arraignment could not be held because FCI-Allenwood was in lockdown. The preliminary arraignment was rescheduled for and held on January 25, 2024.

It was not Connors job or responsibility to schedule the preliminary arraignment. That was the MDJ's responsibility. Connors could neither arrange a video preliminary arraignment nor send the DA's certification to "writ out" Rogers from FCI-Allenwood for an in-person arraignment without being provided a date that the MDJ was available with more than five days' notice. Connors efforts to ensure that the preliminary arraignment was scheduled were above and beyond reasonable. Connors repeatedly emailed Breen reminding her that the proceeding needed to be scheduled and asking for dates. She emailed FCI-Allenwood to obtain information about their ability and the requirements for them to conduct the arraignment by Zoom. She also sent a help desk ticket so that IS could help MDJ Frey set up a video arraignment. Connors' efforts resulted in the preliminary arraignment being scheduled to be held via video on January 17, 2024. That did not occur because FCI-Allenwood was in lockdown, which was beyond the control of the Commonwealth. Therefore, the 59 days between November 27, 2023 and January 25, 2024 is excusable delay. Adding 59 days to the run date, results in a new run date of December 27, 2024.

Due diligence does not require perfect vigilance and punctilious care; it requires reasonable efforts. Furthermore, the Commonwealth's diligence is judged by what was done, rather than by what was not done. *See Commonwealth v. Selenski*, 919 A.2d 229, 232 (Pa. 2007). With the exception of the time frame between November 2 and November 27, 2023, during which time the Commonwealth conceded that it did not exercise due diligence,

Connors' efforts were more than reasonable. Furthermore, because Rogers' arguments focus on what was not done, the court rejects them pursuant to *Selenski*.

**2. *Delay in scheduling/holding preliminary hearing***

The preliminary hearing was originally scheduled for February 13, 2024. On February 1, 2024, the MDJ through his staff asked court administration to move the preliminary hearing to the Lycoming County Courthouse due to expected public interest in the case and safety concerns.<sup>10</sup> N.T., 01/28/25, at 34; Commonwealth Exhibit 7. Court administration scheduled the preliminary hearing for February 23, 2024, at 10:00 a.m. in Courtroom #2 of the Lycoming County Courthouse. *See* Commonwealth Exhibits 8 and 9. The 10 days between February 13, 2024 and February 23, 2024 is excusable delay as the request to move the preliminary hearing was initiated by the MDJ. Adding 10 days to December 27, 2024 results in a new run date of January 6, 2025.

The scheduling notice for the February 23<sup>rd</sup> preliminary hearing was issued on February 8, 2024. *See* Commonwealth Exhibit 9. Unfortunately, Levan failed to ask the MDJ for a subpoena for Hakiem Price, a key Commonwealth witness, until February 20, 2024. As a result, he was unable to effectuate service on Price. On the request of the Commonwealth, the preliminary hearing was continued to March 20, 2024. This 26-day delay is attributable to the Commonwealth. The subpoena of its witnesses was within the control of the Commonwealth and it failed to promptly obtain a subpoena for Price. Therefore, this time is not excusable delay. The Commonwealth did not include this time in its calculations of excludable or excusable delay.

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<sup>10</sup> The court notes that typically preliminary hearings in homicide cases are held at the Lycoming County Courthouse rather than at the MDJ's office due to the additional space in the courtrooms and additional security

The Commonwealth obtained a subpoena for Price for the March 20, 2024 preliminary hearing and served Price with it on or about March 12, 2024. On March 15, 2024, Price filed a motion to quash the subpoena. The court held a hearing on Price's motion on March 18, 2024 and denied it. Despite being subpoenaed, Price failed to appear at the March 20, 2024 preliminary hearing. The Commonwealth requested a continuance due to Price's failure to appear. The preliminary hearing was continued to May 10, 2024. *See* CP-41-MD-95-2024; Commonwealth Exhibit 6, 17-19.

On March 20, 2024, the Commonwealth obtained a material witness warrant for Price. *See* Commonwealth Exhibit 21. As a result, Price was present and the preliminary hearing was held on May 10.

The court finds that the 61 days from March 20, 2024 to May 10, 2024 is excusable delay. The Commonwealth had no control over Price's failure to appear on March 20. It promptly sought a material witness warrant to ensure Price's appearance at the May 10, 2024 hearing. Adding 61 days to January 6, 2025 results in a new run date of March 8, 2025.

### ***3. Defense Delays/Continuance Requests***

Continuances are a matter of sound trial strategy within the purview of counsel. *See Commonwealth v. Williams*, 140 A.3d 696, 699 (Pa. Super. 2016). Counsel has the authority to agree to continuances without the defendant's knowledge and consent. *See Commonwealth v. Wells*, 521 A.2d 1388, 1391-92 (Pa. 1987). Therefore, any continuance requests made by defense counsel is excludable time. Furthermore, if the defense files pre-trial motions which delay trial, the time is excludable provided the Commonwealth is diligent in responding to

the motion.<sup>11</sup> *See Commonwealth v. Hill*, 736 A.2d 578, 587 (Pa. 1999).

On May 20, 2024, Peter Lovecchio, then an assistant public defender, entered his appearance on behalf of Rogers and waived his arraignment that was scheduled for June 17, 2024. The case was scheduled for a status conference on June 21, 2024 and a pre-trial conference on July 1, 2024.

At the pre-trial conference, the defense requested a continuance and a 60-day extension to file pre-trial motions. The court granted both requests and found that the time from July 1, 2024 to August 12, 2024 (42 days) was attributable to the defense and

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<sup>11</sup>Any time that the Commonwealth does not exercise due diligence in opposing or responding to the motion would not be excluded.

excludable for Rule 600 purposes. The Commonwealth listed the number of days for this time period in its chart in its brief. Although Peter Lovecchio testified that he abruptly left the Public Defender's Office at the end of June 2024 and he did not attend the first pre-trial conference on July 1, 2024, he also testified that that Nicole Spring would have been Rogers' counsel at the time of the first pre-trial conference. *See* N.T., 04/07/2025, at 38-39.<sup>12</sup> The court would find this time excludable as the continuance was not caused by the Commonwealth or due to a lack of due diligence on its part. Adding 42 days results in a new run date of April 19, 2025.

On July 12, 2024, Peter Lovecchio filed a praecipe to withdraw his appearance and Tyler Calkins and Howard Gold, who were also assistant public defenders, entered their appearance as co-counsel on behalf of Rogers.

At the pre-trial conference held on July 22, 2024, defense counsel requested a continuance to the October trial term. The court granted this request and continued the case to October 14, 2024, the first day of jury selection for the October term. The court scheduled the case for a status conference on August 27, 2024 and a pre-trial conference on September 16, 2024. The court found that the time from July 22, 2024 to October 14, 2024 shall run against Rogers for Rule 600 purposes. The court's prior calculation excluded up to August 12. Therefore, the time attributable to this continuance request is the 43 days from August 12 up to October 14, 2024. Adding 43 days results in a new run date of June 1, 2025.

Tyler Calkins and Howard Gold left the public defender's office in August 2024. On August 20, 2024, Tyler Calkins withdrew his appearance and Robert Hoffa, through a special

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<sup>12</sup> The court also notes that in the court's experience, when an assistant public defender is not available for a pre-trial conference, another public defender handles the unavailable person's cases, despite the fact that



contract with the Public Defender's Office, entered his appearance to represent Rogers.

On September 16, 2024, at the request of defense counsel, the court continued the case to the first day of jury selection on December 2, 2024. A status conference was scheduled for October 29, 2024 and a pre-trial conference was scheduled for November 12, 2024. The court stated that the delay from September 16, 2024 to December 2, 2024 shall run against Rogers for Rule 600 purposes. As the court already excluded the time up to October 14, the 49 days from October 14 to December 2, 2024 will be added to arrive at a new run date of July 20, 2025.

On September 20, 2024, the court entered an order expressly granting the withdrawal of Peter Lovecchio and Tyler Calkins.<sup>13</sup> Without objection from the Commonwealth due to the recent entry of appearance by Robert Hoffa, the court extended the deadline for filing pre-trial motions to October 21, 2024.

On October 18, 2024, Rogers' OPTM was filed.

On November 12, 2024, defense counsel requested a continuance due to the outstanding pre-trial motion. The court granted the continuance request and scheduled the case for a pre-trial conference on December 9, 2024 and the January 13, 2025 trial list. The court found that the time from November 12, 2024 to January 13, 2025 shall run against Rogers for Rule 600 purposes. The court already excluded November 12 to December 2. Therefore, the court will add 42 days from December 2, 2024 to January 13, 2025 to arrive at a new run date of August 31, 2025.

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another public defender had not yet entered an appearance.

<sup>13</sup> The court entered this order merely to ensure that the withdrawals of counsel complied with Pa. R. Crim. P. 120(B) which states: "Counsel for a defendant may not withdraw his or her appearance except by leave of court."

At the pre-trial conference on December 9, 2024, defense counsel requested a continuance which the court granted without objection from the Commonwealth. The court continued the case to the first jury selection day of the April trial term, April 23, 2025, and a pre-trial conference on March 17, 2025. The court found that the time from January 13, 2025 to April 23, 2025 would run against Rogers for Rule 600 purposes. Adding the 100 days from January 13, 2025 to April 23, 2025 results in a new run date of December 9, 2025.

Delay continues to run against Rogers due to his outstanding OPTM, which included this Rule 600 motion to dismiss. Therefore, April 23, 2025 to the date of this decision would also be excludable time.

Finally, the court would take judicial notice of the documents and orders related to Rule 600, which have been filed after this matter was submitted to the court for decision. Specifically, on July 22, 2025, the Commonwealth filed a motion to expedite jury selection and requested that the jury selection be held on August 4, 2025. The Commonwealth's motion was heard on August 1, 2025 before the Honorable Ryan Tira. Judge Tira issued an order on August 1, 2025 denying the Commonwealth's motion to expedite jury selection and attributed the delay from August 1, 2025 to September 22, 2025 against Rogers. The time from August 1, 2025 to September 22, 2025 is 52 days.

Adding the 152 days (from April 23, 2025 to September 22, 2025) to December 9, 2025 results in a new adjusted date of May 10, 2026.

#### ***4. Commonwealth Delay in Providing Discovery***

Rogers contends that the Commonwealth lacked due diligence in obtaining and

providing discovery in this case. Therefore, any time after the preliminary hearing should be attributable to the Commonwealth.<sup>14</sup> Rogers asserts that the Commonwealth did not have discovery that it needed to proceed to trial. As the Commonwealth was never ready for trial, none of the delay should be attributable to the defense.

The Commonwealth argues that it made reasonable efforts to obtain and provide discovery to the defense. It asserts that several of the allegedly “missing” items requested by the paralegal on July 23, 2025, were not “missing” at all; instead, several items did not exist or were provided in the initial discovery. Furthermore, even if there were problems with discovery, it was at a time during which defense counsel had made continuance requests that were not related to discovery but rather were due to attorneys leaving the Public Defender’s Office and the filing of pre-trial motions.

The defense made a request for discovery on May 20, 2024. The Commonwealth responded to that discovery request by providing or making available 419 pages of documents and a drive with material from over 40 discs on June 19, 2024. The paralegal from the Public Defender’s Office picked up the materials on June 20, 2024.

The PD paralegal reviewed the discovery provided and, on July 23, 2024 sent an email requesting three-pages of additional discovery that the paralegal felt was “missing” from the original discovery provided by the Commonwealth. The assistant district attorney (ADA) assigned to the case at this time was Matthew Welickovitch. His then clerk, Lynelle Cromley, provided the initial discovery. ADA Welickovitch and Cromley received the email

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<sup>14</sup>The court recognizes that defense counsel argued that the delay from the filing of the charges to the date the preliminary hearing was held was attributable to the Commonwealth’s lack of due diligence. However, the court rejected most these arguments and found that the majority of the delay was out of the Commonwealth’s control.

from the PD paralegal. ADA Welickovitch testified that he directed his clerk to provide discovery to the PD paralegal. Unfortunately, there is nothing in the record to show what efforts were made by the Commonwealth between July 23, 2024 and October 24, 2024 (93 days) to provide the items requested in the July 23 email.

Cromley made the initial discovery available on June 19, 2024. Given the amount of discovery collected, it was not unreasonable for the Commonwealth to provide that information in about 30 days. Cromley became the paralegal for District Attorney Thomas Marino in about the third week of August.

Zoe Stauffenberg became ADA Welickovitch's clerk in late September 2024. The Commonwealth did not offer any evidence regarding why ADA Welickovitch did not have a clerk for approximately one month.

On September 19, 2024, Attorney Hoffa emailed ADA Welickovitch about the status of the discovery. There is nothing in the record to show that ADA Welickovitch responded to that email.

On October 18, 2024, Attorney Hoffa filed the OPTM on Rogers' behalf. In the OPTM, there was a motion to compel discovery. Stauffenberg reviewed the OPTM and began working on obtaining the discovery listed in the motion to compel. On October 24, 2024, she sent an email to Attorney Hoffa telling him that she was going to get him information and asking him for a 256GB flash drive. *See Commonwealth Exhibit 39.* On November 27, 2024, she sent Attorney Hoffa an email that the flash drive was ready for pick up and she was still awaiting additional discovery. *See Commonwealth Exhibit 45.* On December 3, 2024, Chandra Weston from Attorney Hoffa's office picked up the flash drive. *See Commonwealth Exhibit 46.*

On November 25, 2024, Stauffenberg sent emails to Agent Levan and Officers Joseph Ananea, Kristopher Caster, Zachary Geary, Raymond Kontz III, and Donald Barrett in search of additional discovery materials including supplemental police reports. *See* Commonwealth Exhibits 40-43. Geary replied on November 27 that he did not write a supplemental report; his involvement did not require a report. *See* Commonwealth Exhibit 44. On December 10, 2023, Ananea sent an email to Stauffenberg and Levan stating that he made copies or requested items and put them in the mail. *See* Commonwealth Exhibit 47. On January 22, 2025, Ananea sent another email to Stauffenberg and Levan stating he was not able to account for interviews of Kim McCray or Rogers and the Arch Street surveillance videos that Levan collected from the Duboistown Police Department. *See* Commonwealth Exhibit 50. He suggested asking Levan. Levan's reply email noted, among other things, that Rogers' interview was mentioned in Lucas' supplemental police report #6.<sup>15</sup> *See* Commonwealth Exhibit 51.

On January 21, 2025, Stauffenberg emailed Hoffa and Weston that additional discovery was loaded onto the flash drive and available for pick up. *See* Commonwealth Exhibit 49. Weston picked up that discovery on January 22, 2025. *See* Commonwealth Exhibit 48.

The court rejects Rogers' arguments that the time until January 22, 2025 is attributable to Commonwealth's lack of diligence in providing discovery. The court finds that the Commonwealth exercised reasonable efforts to provide discovery from May 20,

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<sup>15</sup> The defense claim that Rogers' interview is "missing" is somewhat misleading. In fact, to assert that there was an "interview" of Rogers is probably a misnomer. Lucas' supplemental police report #6 is contained within the initial discovery provided to defense. *See* Commonwealth Exhibit 27. Lucas indicates that he attempted to interview Rogers. He asked him about Mickey (the street name or alias of the victim, William Blackwell) and

2024 to June 19, 2024 and from October 24, 2024 to January 22, 2025. The only period of time when the Commonwealth may not have exercised due diligence in obtaining and providing discovery was between July 23, 2024 and October 24, 2024 (93 days). During that time, however, the attorneys for Rogers made continuance request which were granted due to changes in counsel. Peter Lovecchio left the PD's Office at the end of June 2024. He testified that Nicole Spring took over the case. On July 12, 2024, Tyler Calkins and Howard Gold entered their appearance to represent Rogers but in August 2024, they also left the PD's office. Due to the continuance requests necessitated by changes in defense counsel, the court finds that the delay during this time was attributable to the defense. Even if the Commonwealth had obtained and provided the "missing" discovery, the defense was not in a position to go to trial. Instead, the defense attorneys were asking for extensions of time to file pre-trial motions.

The court also rejects the defense arguments that the Commonwealth was not ready for trial during this time period. Merely because the defense wanted additional discovery information does not mean that the information was necessary for the Commonwealth to proceed to trial.

This does not mean that the court condones the Commonwealth's lack of attention to the discovery request. It most certainly does not. The Commonwealth needs to be better about responding to emails and the police need to be better about sending materials to the Commonwealth or uploading them into a shared information/data system. The Commonwealth asserts that it should not be responsible for the inaction of the police.

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Rogers denied even knowing him. Lucas knew that they knew each other and decided that he would not get anywhere with Rogers so he terminated the interview.

However, that is not the case, at least with respect to *Brady* material that constitutes exculpatory evidence in the possession of police agencies of the same government bringing the prosecution. *See Kyles v. Whitley*, 514 U.S. 419, 438, 115 S.Ct. 1555, 1568 (1995); *Commonwealth v. Burke*, 781 A.2d 1136, 1142 (Pa. 2001). One of these days, the Commonwealth (and the police) failure to promptly provide discovery could have dire consequences for the Commonwealth such as delay being attributable to the Commonwealth and a motion to dismiss being granted for a violation of a defendant's speedy trial rights or the preclusion of evidence at trial. Today, however, is not that day.

Furthermore, even if the court attributed the 93 days between July 23, 2024 and October 24, 2024 to the Commonwealth, the adjusted rule 600 date would be February 6, 2026 instead of May 10, 2026.

To be entitled to relief, a defendant must have a valid Rule 600 claim at the time he or she files the motion to dismiss. *See Commonwealth v. Hunt*, 858 A.2d 1234, 1243 (Pa. Super. 2004)(en banc); *see also Commonwealth v. Rice*, 331 A.3d 5, 10 (Pa. Super. 2025); *Commonwealth v. Dunmore*, 324 A.3d 1, 7 (Pa. Super. 2024). Rogers motion was contained in his OPTM, which was filed on October 18, 2024. At that time, the adjusted Rule 600 date was June 6, 2025. Therefore, Rogers is not entitled to dismissal.

Furthermore, delay attributable to the defense and its motions is continuing to accrue to the date of this decision which will exclude time beyond the current jury selection date of September 22, 2025.

Accordingly, the court will deny Rogers' motion to dismiss pursuant to Rule 600.

***C. Motion to Dismiss Due to Pre-Arrest Delay (Ross Motion)***

Rogers next contends that he is entitled to dismissal due to pre-arrest delay.

The shooting occurred on December 30, 2016, and charges were not filed against Rogers until September 8, 2023, nearly seven years later. Ed Lucas was the initial investigating officer in this case. He interviewed witnesses, obtained the autopsy report, obtained search warrants and obtained surveillance videos. Lucas' investigation was complete early in 2018. He prepared a criminal complaint and had it for quite some time before it was submitted to the then-DA and first assistant district attorney prior to Lucas' retirement in February of 2020. That administration elected not to file charges against Rogers. The only "investigation" conducted by Levan was confirming the availability of witness, Hakiem Price. Rogers contends that he is prejudiced due to the loss of a potential alibi. Rogers relies on cases such as *United States v. Marion*,<sup>16</sup> *Commonwealth v. Snyder*,<sup>17</sup> and *Commonwealth v. Davis*.<sup>18</sup>

The Commonwealth contends that Rogers is not entitled to relief because he has not shown actual prejudice. He has not shown any witness who would have been available to testify in his defense that is no longer available due to the delay in filing the charges. The Commonwealth also asserts that Rogers has failed to show that the delay was the product of bad faith or reckless conduct on the part of the Commonwealth. In fact, the Commonwealth asserts that the defense did not present any evidence in support of this claim. The Commonwealth relies on *Commonwealth v. Scher*.<sup>19</sup>

To establish a due process violation for a delay in prosecution, a defendant must show that the passing of time caused actual prejudice **and** that the prosecution lacked sufficient and

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<sup>16</sup> 404 U.S. 307 (1971).

<sup>17</sup> 713 A.2d 596 (Pa. 1998).

<sup>18</sup> 586 A.2d 914 (Pa. 1991).

<sup>19</sup> 803 A.2d 1204 (Pa. 2002)(defendant who was charged 20 years after the death occurred was not entitled to



proper reasons for postponing the prosecution. *See Commonwealth v. Snyder*, 713 A.2d 596, 601 (Pa. 1998).<sup>20</sup> Proof of prejudice is generally a necessary, but not sufficient element of a due process claim. *See id.* (relying on *United States v. Lovasco*, 431 U.S. 783, 790 (1977)). In other words, a defendant must show actual prejudice but even when he or she does, he or she is not automatically entitled to relief; the court must still consider the reasons for the delay.

Rogers alleged in his motion that he “may have sustained actual prejudice with the loss of any potential alibi witnesses or other eyewitnesses that have not been identified due to the passage of time. OPTM, ¶ 86. He alleged that: the investigation was complete in 2018; the delay has caused substantial prejudice to Rogers’ rights to a fair trial and the Commonwealth’s lack of due diligence is so egregious to warrant dismissal of the charges. OPTM, ¶¶ 75, 77-78, 82, 85. At the hearing, he asserted that the only reason charges were not filed was due to a change in administrations which is not a proper reason pursuant to *Snyder*.

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dismissal of charges due to pre-arrest delay).

<sup>20</sup> The court understands the appeal of the *Scher* case to the Commonwealth given the length of delay in that case and it is slightly more recent than *Snyder*. However, it appears that it is a plurality decision. Justice Flaherty did not participate in the decision. Justice Newman authored the Opinion Announcing the Judgment of the Court. Justice Nigro authored a concurring opinion in which he disagreed with the formulation of the second prong of the test regarding the reasons for the delay. Justice Nigro concurred that Scher failed to establish actual prejudice and he would not address the reasons for the delay. Justice Saylor authored a concurring opinion in which he espoused the position that a defendant was required to establish actual prejudice *and* substantial prejudice. In his view, Scher established actual prejudice but not substantial prejudice; therefore, the charges should not have been dismissed. Justice Zappala wrote a dissenting opinion that Justice Cappy joined, which would have affirmed the Superior Court’s decision dismissing the charges.

Rogers, however, did not present any evidence to establish prejudice. Allegations in a motion and arguments of counsel are not evidence. *See Commonwealth v. Puksar*, 951 A.2d 267, 280 (Pa. 2008); *Commonwealth v. Reich*, -- A.3d ---, 2025 WL 1740140, \*13 (Pa. Super. 2025); *Commonwealth v. Moore*, 263 A.3d 1193, 1206 (Pa. Super. 2021).

In this case, the assertion of prejudice is nothing more than speculation and supposition. Although Rogers presented some evidence through cross-examination of former Agent Lucas and Agent Levan to show that there was little to no investigation after the search warrant for Rogers phone was obtained and executed in late January 2018 and that a prior administration elected not to pursue the charges, the court cannot address that prong until a defendant has established prejudice, which Rogers has not done. Therefore, Rogers is not entitled to relief on this claim

***D. Motion to Suppress***

Rogers next seeks suppress any evidence obtained from the search warrant issued on January 24, 2018 for cell phone number XXX-XXX-4775. Rogers contends that former Agent Lucas searched the phone prior the warrant being issued because the inventory and return were dated January 23, 2018 at 12:47 p.m. but the warrant was issued on January 24, 2018 at 9:45 a.m. Rogers also asserts that the warrant lacked probable cause and was overly broadly and insufficiently specific. He noted that the warrant sought all information for the cell phone, including but not limited to

not only the subscribers name, address and phone number, but all call logs, all text messages and text message content, all instant messages, all emails, all voicemails sent and received, all phonebook/contact, information, all photos, all audio and video recordings, all calendar information, all internet history, all social media related data, all toll records, all historical location data in the form of tower sites and cell sector information, and GPS information for the period of time December 15, 2016 at 0001 hours through

January 15, 2017 at 2359 hours.

OPTM, ¶ 37.

In its brief, the Commonwealth countered that Lucas' testimony established that the date listed on the inventory/return was merely a typographical error. It also asserted that the warrant set forth probable cause explaining why the police reasonable believed that Rogers was the shooter and he was using this particular cell phone and why Lucas requested information two weeks prior to the shooting and two weeks after the shooting. The Commonwealth argued that the suppression motion should be denied.

When a defendant files a motion to suppress evidence, the Commonwealth shall have the burden of proving to a preponderance of the evidence that the challenged evidence was not obtained in violation of the defendant's rights. Pa. R. Crim. P. 581 (H). A preponderance of the evidence standard is tantamount to a "more likely than not" burden of proof. *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. Ct. 2002).

Probable cause is a practical and fluid concept that turns on the assessment of probabilities in particular factual contexts, which cannot readily be reduced to a neat set of legal rules. *Commonwealth v. Rapak*, 138 A.3d 666, 671 (Pa. Super. 2016), quoting *Commonwealth v. Huntington*, 924 A.2d 1252, 1256 (Pa. Super. 2007). Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted. *Commonwealth v. Leed*, 646 Pa. 602, 186 A.3d 405, 413 (Pa. 2018). The issuing magistrate must apply the totality of the circumstances test which requires him or her to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit, including the veracity and

basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Commonwealth v. (Harve) Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012); see also *Commonwealth v. Fletcher*, 307 A.3d 742 (Pa. Super. 2023)(“probable cause is based on a probability, not a prima facie showing, of criminal activity and deference is to be accorded to a magistrate’s finding of probable cause”); *Commonwealth v. Manuel*, 194 A.3d 1076, 1081 (Pa. Super. 2018)(probable cause does not demand the certainty we associate with formal trials; rather, it requires only that the totality of the circumstances demonstrate a fair probability that contraband or evidence of a crime will be found in a particular place). A reviewing court’s duty is merely to ensure that the issuing authority had a substantial basis for concluding that probable cause existed. The reviewing court must accord deference to the issuing authority’s probable cause determination, and must view the information offered to establish probable cause in a common-sense, non-technical manner. *Commonwealth v. (Lavelle) Johnson*, 240 A.3d 575, 584 (Pa. 2020).

***a. Was the warrant executed before it was issued***

MDJ Christian Frey issued the warrant on January 24, 2018 at 9:45 a.m. The inventory and return list the date and time of the search as 1/23/18 at 12:47 p.m. *See* OPTM, Exhibit A (application for search warrant, return of service and inventory). Lucas testified that he obtained the warrant in the morning on January 24, 2018 and that he executed it about three hours later that same day. He indicated that he simply made a mistake when he put January 23, 2018 on the inventory and return. He stated that the provider would not have provide him that phone information without the search warrant. *See* N.T., 01/24/2025, at 13-14. The court also notes that in the box for the name of the owner, occupant or possessor of

the premises to be searched it says “Sprint PCS Wireless/Attn: Legal Compliance for Search Warrant & Court Orders.” The court finds Lucas’ testimony credible and finds that the warrant was not executed before it was issued. Therefore, the court will reject Rogers argument that the information acquired from Rogers’ cell phone must be suppressed on this basis.

***b. Probable Cause for the Warrant***

Rogers also asserts that the evidence must be suppressed because the warrant lacked probable cause. The court cannot agree.

The affidavit of probable cause starts by stating Lucas’ over 27 years’ experience in law enforcement, including the investigations of serious crimes such as homicides, robberies, burglaries, assaults, sex crimes and drugs. Through these investigations he found that there was an increase in cellular phone communications among individuals involved in those crimes before, during, and after the commission of the crimes. He also noted that criminals have found a use for cellular phone to aid in the commission of their crimes.

He next states:

Cellular phones are vital components in our everyday lives, and are, therefore, increasingly likely to contain valuable evidence in criminal investigations. When turned on, cellular phones are continuously accessing tower sites to make and receive calls, send text messages, access the Internet and/or access social media sites. Most cellular phones are equipped with Global Positioning Systems (GPS) for locating cellular phones in emergency situations. These systems and devices, and the information they reveal, have proven extremely valuable to ongoing Criminal Investigations.

Lucas then sets forth the facts about the incident on Boyd Street outside of the Penn State Auto Repair Shop. It describes how Price left the suspect vehicle and entered the repair shop shortly after Blackwell entered. Blackwell and Albert Williams exit the shop and go to

Blackwell's vehicle. Price walks into the shop's bay area where he uses his cell phone, digitally fingering the buttons as if he were texting. A black male wearing dark clothing and a dark ski mask covering his head and face exits the right front passenger door of the suspect vehicle, walks up to Blackwell and shoot him numerous times with a 9mm handgun causing Blackwell to immediately fall to the ground unresponsive. The shooter jogs up the street to where he can see inside the shop's front door, possibly looking for Price who remained in the shop. The shooter turns and fires more rounds toward Blackwell before entering the driver's seat of the suspect vehicle and driving away leaving Price behind. Blackwell died from his wounds.

The time-line of the suspect vehicle arriving within one minute of Blackwell arriving in the area led Lucas to conclude that a reasonable person could infer that Price and/or the shooter were notified that Blackwell was on his way to the repair shop to retrieve his car; therefore, they went to the repair shop where Blackwell was ultimately shot.

The affidavit indicates that witnesses described the shooter as being a black male, at least six feet tall, very thin build wearing all dark clothing. Surveillance video from the Polish Club recorded the shooting as it occurred. Lucas viewed the video and determined that the shooter matched the description provided by witnesses.

Lucas then noted that he has know Rogers since 2010. Rogers matched the physical description of the shooter, and he had a motive to harm Blackwell because Rogers was severely beaten by Blackwell a week earlier on December 23, 2016. Both Rogers and Blackwell went to the Emergency Room. Rogers sought treatment for severe facial injuries and Blackwell sought treatment for a fractured hand. Blackwell told his mother and sister he received the hand fracture when he beat up Rogers at an area bar.

Lucas stated that he interviewed Price who told him that he drove Rogers to the shop, they were the only occupants of the suspect vehicle and Price stated that Rogers was the shooter who shot Blackwell outside the repair shop. Price also stated that he and Rogers phoned each other several times during the hours leading up to the homicide. Rogers phone number was listed in Williamsport Police (Spillman) Records System as XXX-XXX-4775 and a check revealed that the carrier for that phone number was Sprint PCS Wireless.

Lucas requested a search warrant to direct Sprint PCS Wireless to disclose and furnish to him any and all cellular phone communication records and content for the phone number including:

Subscriber information, account holder information, all call information, all calls sent and received, all missed calls, all text messages and text message content, all instant messages sent and received, all photographs and videos, all contact information, all internet based cookies-bookmarks-sites, all toll records, all historical location data in the form of tower sites and cell sector information between 12/15/16 (0001 hrs) through 01/15/17 (2359 hrs).

Lucas explained in the affidavit that he was seeking information both before and after the date of the homicide “due to his training and experience which lend me to believe that those who commit such crimes often use cell phones to plan their crimes in advance and/or to maintain communication with accomplices following the crimes.”

Lucas also explained that he believed the phone records being sought were relevant and material to the homicide investigation in that it would identify cell phone communications made and received by Rogers over the time period requested and would provide additional evidence in the investigation of this homicide.

The court finds that the affidavit set forth probable cause to believe that Rogers was the shooter and that there was a reasonable probability that evidence relevant to the homicide

would be found during a search of Rogers phone. Price and Rogers were the only occupants of the vehicle. Price was the driver. Therefore, Rogers was the passenger.

The shooter exited the front passenger seat of the suspect vehicle, walked up to Blackwell and shot him numerous times. Witness descriptions and the video of the shooting show that the shooter was a tall, thin black male wearing dark clothing and a dark mask. Lucas was familiar with Rogers and knew that he was a tall, thin black male. Given that Rogers was a tall, thin black male who was in the passenger seat of the suspect vehicle and the shooter exited from the passenger seat of the suspect vehicle in conjunction with Price's statement to Lucas that Rogers was the shooter, the affidavits set forth probable cause to believe that Rogers was the shooter.

The affidavit also set forth probable cause to believe that the phone number belonged to Rogers and that evidence related to the homicide would be found in Rogers cell phone. The number was one that police had in their records for Rogers. The subscriber information and account holder information requested could corroborate that the phone belonged to Rogers or someone who was allowing Rogers to use it.

The affidavit also set forth why Lucas expected to find evidence related to the homicide on the phone. Lucas explained how criminals use cell phones to communicate with their accomplices both before and after the crime. The affidavit also discussed a specific incident that occurred between Rogers and Blackwell that would provide a motive for Rogers to shoot Blackwell.

***c. Overbreadth and/or Lack of Specificity***

Rogers also contends that the search warrant was overbroad and lacked sufficient specificity such that the evidence must be suppressed. Again, the court cannot agree.



It was reasonable to include a request for information two weeks prior to the homicide because the fight at the bar that was arguable motive for the homicide occurred one week prior to the homicide and it would be reasonable to believe that there may have been conversations via phone, text or instant messages leading up to the fight, which could reveal the reasons for the fight or any “bad blood” between Rogers and Blackwell. It was also reasonable to request information two weeks after the homicide to search for communications after the homicide between Rogers and Price or whoever else may have been involved in the shooting, including those who may have aided Rogers in fleeing after the shooting or disposing of evidence such as Rogers’ clothing worn on the day of the shooting and the acquisition and/or disposal of the firearm used in the shooting. Rogers has a prior controlled substance conviction that precludes him from lawfully possessing a firearm. In other words, Rogers cannot obtain a firearm through lawful channels.

A reasonable person would believe that Rogers’ phone would contain information regarding what led to the fight, statements about the fight after it occurred, confirmation of Price’s statements about his and Rogers’ activities leading up to and the day of the shooting and Rogers’ conversations with others about the shooting after it occurred. The GPS capabilities would show Rogers location on the day of the fight, on the day of the homicide and where he fled to after the homicide. This evidence could also confirm the location where the fight occurred which could lead to the discovery of additional witnesses to the fight. It would also confirm that both Blackwell and Rogers were at the hospital following the fight which would tend to confirm that their injuries were the result of the fight.

The warrant was as specific as it could be. Other than Price, Lucas would not know the specific names of individuals that Rogers might discuss these incidents with or who he

might contact to obtain a firearm or who he might tell where he was fleeing to after the shooting. However, one would expect information regarding those individuals, their contact information and evidence related to their conversation with Rogers to be contained in Rogers' cell phone.

For the foregoing reasons, the court will deny Rogers' motion to suppress evidence.

***E. Motion Compel***

Although the OPTM contains a motion to compel discovery, by the time of the hearing the only information that defense counsel requested was the pending charges and any promises made to Price and other Commonwealth witnesses. The court issued an order on April 7, 2025 setting a briefing schedule with respect to the OPTM and giving the Commonwealth two weeks within which to provide to defense counsel the information regarding pending charges and any promises made to its witnesses in exchange for their cooperation. Therefore, this issue is now moot.

***F. Motion to Reserve Right***

The court would grant the defense motion consistent with the exceptions contained in Pa. R. Crim. P. 579(A) related to the opportunity to file the motion previously did not exist or defense counsel was not aware of the grounds for the motion.

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of August 2025, the court GRANTS the motion to reserve right provided the opportunity to file the motion previously did not exist or defense counsel was not aware of the ground for the motion. In all other respects, the court DENIES Rogers' Omnibus Pre-Trial Motion.

By The Court,

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Nancy L. Butts, President Judge

NLB/laf

cc: Martin Wade, Esquire (ADA)  
Robert Hoffa, Esquire (Counsel for Rogers)  
Jerri Rook