

Commonwealth v Painter

COMMONWEALTH OF PENNSYLVANIA
v. ROBERT STANLEY PAINTER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Criminal Action Nos. 174 - 2011 and 200 - 2009

Criminal Law: Duty of Prosecution to Proceed to Trial: Speedy Trial Rule

1. The speedy trial rule protects a defendant's right to a speedy trial and society's right to effective prosecution of criminal cases. Pa. R. Crim. P. 600.
2. To avoid dismissal of charges on the basis of a speedy-trial violation, the Commonwealth must demonstrate by a preponderance of the evidence that it exercised due diligence, or that the delay in trying the case was beyond its control. Pa. R. Crim. P. 600.
3. Due diligence is a fact-specific inquiry, and must be determined on a case-by-case basis. Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth. Pa. R. Crim. P. 600.
4. Commonwealth was not responsible for delays in bringing defendant to trial where defendant escaped multiple times, failed to show for court appearances, and needed to be extradited from other states.

Criminal Law: Duty of Prosecution to Proceed to Trial: Speedy Trial Rule

1. Because the speedy trial rule requires trial within 365 days, the extra day in a leap year is included in the speedy-trial time calculations. Pa. R. Crim. P. 600.

Extradition and Detainers: Interstate Agreement on Detainers

1. Interstate Agreement and Detainers (IAD) is an interstate compact that establishes procedures for the transfer of prisoners incarcerated in one jurisdiction to the temporary custody of another jurisdiction with has lodged a detainer against them. 42 Pa. C.S. § 9101.
2. The IAD does not apply to a prisoner who is serving a sentence after a conviction.
3. A prisoner cannot request to be extradited under the IAD and then claim that the IAD does not apply to him.

Extradition and Detainers: Uniform Criminal Extradition Act

1. The Uniform Criminal Extradition Act allows the Commonwealth to detain fugitives wanted in other jurisdictions, and to request return of fugitives who are wanted in Pennsylvania. 42 Pa. C.S. § 9123 *et seq.*
2. A prisoner may waive formal extradition under the Uniform Criminal Extradition Act and be returned to the Commonwealth. When a prisoner waives extradition, the Commonwealth need not initiate formal extradition proceedings.
3. The proper method of challenging extradition is to file a writ of habeas corpus in the extraditing jurisdiction.
4. A prisoner cannot waive extradition and then complain that the Commonwealth failed to initiate extradition proceedings.
5. A prisoner cannot challenge extradition under the Uniform Criminal Extradition Act after he has already been returned to the Commonwealth.

Appearances:

Travis L. Kendall, Esq., *District Attorney*

Philip J. Harper, Esq., *Counsel for Defendant*

OPINION

Walsh, J., September 10, 2012

Charged with various crimes including assault and theft, Defendant Robert Stanley Painter moves to dismiss some charges, to be released on nominal bail, or to be returned to Maryland. He argues that the Commonwealth failed to timely bring him to trial, and that it illegally extradited him to Pennsylvania. Most of the delay in this case is due to Painter's excursions through the forests, fields, and towns of Pennsylvania, Maryland and West Virginia, and his sojourns in various correctional facilities in the latter two states. The Court finds that the Commonwealth exercised due diligence in bringing Painter to trial, and has therefore complied with the Speedy Trial Rule. The Court further finds that Painter was not illegally extradited from Maryland; so the Commonwealth has violated neither the Interstate Agreement on Detainers (IAD) nor the Uniform Criminal Extradition Act. We deny Painter's pretrial motions.

Background

Painter's travels are as epic as those of the mythical warrior Odysseus. There are several key differences between the Greek and this Defendant. First, our story lacks gods, sirens, and sea monsters. Second, instead of trying to return home from the Trojan War, Painter has been mostly on the lam. As a result of alleged crimes and prior convictions, the procedural poster for this case has become as tangled as another item from antiquity: the Gordian Knot. After four separate hearings, we must determine what happened during Painter's voyages, and whether the Commonwealth may try him in either of his cases.

Our story begins on March 1, 2009, with an alleged break-in at the Southern States farmer's cooperative in Frederick, Maryland. That night, according to investigative reports, police responded to a theft there. Def.'s Ex. 4. A Southern States employee told police that several thousand pounds of 19-19-19 fertilizer^[1] and urea were stolen from the co-op's storage shed. Id. Police notified the FBI, because urea can be used to make explosives.

Upon further investigation, Frederick City Police Detective Kevin Forrest found out that the thief may have used a white, newer-model stake-body truck with a trailer to bag, load, and haul away the fertilizer. Id. At some later point, a former federal government employee living in Falling Waters, West Virginia contacted Detective Forrest about his investigation. The man told Detective Forest that a person named Jesse Burcker asked to access the man's property to survey an adjacent lot. Id. Recently, someone had stolen a 5-ton heating and air furnace from one of Burcker's industrial job sites. Id. The property next door was Robert Painter's. Id. The man also told Detective Forrest that Painter owned a white stake-body truck. Id. Finally, the man said that Burcker called him on March 6, 2009, to report that he and an associate went to Painter's family farm in an attempt to take back his stolen furnace, and that Painter assaulted him. Id. At this point, our story switches to Pennsylvania.

On March 6, 2009, according to Trooper Ellis Barnett of the Pennsylvania State Police McConnellsburg barracks, Jesse Burcker and an associate went to Painter's farm, at 398 Waltz Road, Needmore, because they thought that Painter had stolen some things from them (possibly the furnace mentioned in Detective Forrest's report). The two parked by the barn and talked to an individual on a tractor later identified as Painter's father, Robert Painter, Sr. While Burcker was talking to the father, the son suddenly appeared, brandishing a pump-action shotgun. Painter chased the individuals down a dead-end road and across a creek. He fled after Burcker's associate yelled that he had called police.^[2] N.T., 11/29/11, at 6. As a result of these allegations, Trooper Barnett filed a criminal complaint against Painter, eventually docketed in this Court at No. 200 of 2009. ^[3] N.T., 11/29/11, at 3, 45.

In addition to filing charges, Trooper Barnett sought an arrest warrant. Id. at 45-46. On March 17, 2009, Trooper Ellis faxed a copy of the arrest warrant to Frederick County, Maryland, because he learned that Painter was incarcerated in its county jail. Id. at 46-47. For reasons that are not apparent, Frederick County authorities failed to detain Painter, and he was released.

On March 19, 2009, another state trooper from the McConnellsburg barracks contacted Detective Forrest with an anonymous tip that Painter was at his residence in Falling Waters, West Virginia. Def.'s Ex. 4. Detective Forrest notified the FBI special agent assigned to the fertilizer-theft case and the Berkeley County, West Virginia Sheriff's Department. Id. There, Sheriff's Department Lieutenant Gary Harmison arrest Painter on a fugitive from justice warrant. Def's Ex. 1.^[4] The warrant pertained neither to Frederick nor Fulton Counties. Rather, authorities in a third jurisdiction - Dorchester County, Maryland - wanted him for violating his parole on a larceny conviction. Id. The same day, he appeared before the County Magistrate Court in Martinsburg, where he was remanded without bail to the Eastern Regional Jail in Martinsburg,

West Virginia. Id. The FBI special agent informed Detective Forrest that Painter was in custody. Id.

Meanwhile, back in Pennsylvania, State Police Corporal William Baker got a warrant to search the Painter family farm on March 20, 2009. In the supporting affidavit of probable cause, Corporal Baker wrote that he received information the same day from Lieutenant Harmison in West Virginia; Detective Forrest in Frederick, Maryland; and the FBI special agent. Def.'s Ex. 3. Corporal Baker wanted to search the Painter farm for the fertilizer stolen from Southern States, barbed-wire fencing possibly also stolen, as well as the shotgun that Painter allegedly used to threaten Burcker and his associate on the Painter farm the week before. Id.

Back in West Virginia, on March 21, 2009, Lieutenant Baker swore out a search and seizure warrant for Painter's stake-body truck and the residence where it was parked in Falling Waters. Def.'s Ex. 4. The attached documentation includes Frederick City police's open investigation report. Id.

Painter, still in Eastern Regional Jail, waived extradition to Maryland, and on April 17, 2009, was remanded to Maryland authorities, specifically the Washington County Sheriff's Department. Def.'s Ex. 2; N.T., 5/3/12, at 46. Maryland authorities took Painter to Maryland Correctional Institution at Hagerstown. N.T., 5/3/12, at 46-47. Neither State Police nor the Fulton County Sheriff were informed of Painter's arrest in West Virginia or transfer to Maryland. N.T., 2/9/12 at 39-40.

From Maryland, Painter mailed a handwritten letter dated April 20, 2009 to "the Common Wealth [sic] Attorney for Fulton County PA." stating that, "I waive extradition and request to be transferred under the I-A-D agreement on Detainers." Com.'s Ex. 2. Painter said that he was housed at "M-R-D-C-C," the Maryland Reception, Diagnostic and Classification Center in Baltimore City, Maryland. Id. The District Attorney's secretary, Deborah Sprague, received the letter on May 5, 2009. Id. N.T., 11-29-11, at 56-57. It was postmarked May 4, 2009. N.T., 11/29/11, at 58. On May 28, 2009, Sprague mailed to Painter an IAD packet with forms to begin the extradition process. Id. at 58-59; Com's Ex. 3.

Before Painter was returned to Pennsylvania, the Maryland Parole Commission found that he had violated his parole from an earlier case. Painter's parole was continued, and he was released to a detainer. Def.'s Ex. 5. On June 30, 2009, Painter was transferred from MCI-Hagerstown to Dorchester County Detention Facility because he had violated his probation or parole there by failing to appear. N.T., 5/3/12, at 47.

On August 10, 2009, having waived extradition five days earlier, Painter returned to Pennsylvania. Id. The Fulton County Sheriff's Department took Painter to the Franklin County Jail.^[5] Id. A magisterial district judge arraigned him the same day, and set bail at \$50,000.00. On August 31, 2009, Painter had his preliminary hearing, and all charges were held for court. Through a bondsman, Painter posted bail on September 3, 2009.

Unaware that Painter had posted bail, the District Attorney's Office sent a notice of mandatory arraignment date to Painter at the Franklin County Jail and to his attorney on September 3, 2009 via first class mail.^[6] N.T., 11/29/11, at 61; Com's Ex. 4. When the letter was returned, the District Attorney's Office sent it to the Painter farm on September 17. N.T., 11/29/11, at 61-62; Com.'s Ex. 5. The post office returned the second letter too, marking it "return to sender, refused unable to forward." Unsurprisingly, Painter did not appear at his mandatory arraignment on October 13, 2009. The Court, through the undersigned Judge, issued a bench warrant for Painter's arrest. Com.'s Ex. 5. Painter claimed that the post office rejected delivery because the letter was addressed to "Robert Stanley Painter, Jr." i.e. him, and that post office only delivered letters addressed to "Robert S. Painter," i.e. his father. N.T., 11/29/11, at 12. Thus, he claimed that he never received notice of his mandatory arraignment date. Id. at 11-12.

After his release from the Franklin County Jail, Painter claimed that he traveled back and forth between his parents' farm and Maryland to sell hay. N.T., 11/29/11, at 11. On Halloween Night (October 31-November 1, 2010), Painter claimed that he was stopped by police in Frederick County, Maryland. Id. at 11-12. He claimed that police told him that he was being arrested because of his Fulton County bench warrant, though that testimony may not be entirely accurate.^[7] Id. at 12-13. In contrast to Painter's assertion, records state that Frederick County authorities placed Painter in their Adult Detention Facility on new charges of fleeing or eluding and summary offenses. N.T., 5/3/12, at 47. Frederick County housed Painter from November 2, 2009 to December 4, 2009. Id. He was also placed back into Frederick County's jail on December 24, 2009. Id.

On December 28, 2009, Painter appeared before a judge of the Frederick County District Court and waived extradition to Pennsylvania. Com.'s Ex. 6. Pennsylvania authorities took custody of Painter on January 11, 2010, and he appeared before the undersigned Judge on January 12, 2010.^[8] The Court noted a significant question as to whether Painter received notice of his mandatory arraignment, so we set a hearing for February 2, 2010 on the Commonwealth's motion

to revoke bail. Over the Commonwealth's objection, we placed Painter on electronic monitoring, and required him to reside at his family's farm in Needmore.

On February 1, 2010 - the day before the bail-revocation hearing - Painter, in his own words, "took off." N.T., 11/29/11, at 14. At about 2:45 p.m., Fulton County Probation received a notification that Painter's ankle bracelet was outside of the restricted zone (the Needmore farm). N.T., 2/9/12, at 27. Fulton County Probation Officer Darin Butts had the monitoring company connect him to the ankle bracelet, which operates like a cell phone. Id. at 27-28. Officer Butts could hear background noises, but could not get Painter to speak to him. Id. According to the bracelet's GPS monitoring information, the bracelet was located in Hancock, Maryland. Id. Probation rounded up a posse of its own officers and state troopers to go to the Painter family farm and arrest him. Id. at 29. Upon arriving at the farm, Officer Butts called the landline phone, and Painter answered and hung up. Id. When the law enforcement team arrived at the farm, Painter ran into the woods. Id. at 29-30. Officer Butts had the monitoring company attempt to activate an alarm siren on the ankle bracelet, but it was not working. Id. at 30. Painter escaped.

On February 2, 2010, when Painter failed to appear for his bail hearing, the Court, through the Honorable Carol L. Van Horn, issued a bench warrant for Painter's arrest. On February 3, 2010, state police filed a complaint charging Painter with escape, theft by unlawful taking, receiving stolen property, and criminal mischief.^[9] N.T., 11/29/11, at 3. Police also entered the arrest warrant into the National Criminal Information Center (NCIC) database. Com's Ex. 1; N.T., 11/29/11, at 48-49. Painter failed to appear for court dates for the remainder of 2010. N.T., 2/9/12, at 4-5.

Painter's whereabouts for the next 10 1/2 months are somewhat of a mystery. Apparently, he spent most of the time in Maryland. First, he absconded to a hotel near Harpers Ferry, on the Maryland side of the Potomac River. N.T., 11/29/11, at 36-37. Sometime in June 2010, Painter moved into a room at an acquaintance's motel, rent-free in Ocean City, Maryland. Id. at 38. At the end of the summer, Painter moved to another motel, this one in Mount Airy, Maryland. Id. at 39. Painter claimed that he was supporting himself by buying hay from various places and selling it to the horse racetrack in Charles Town, West Virginia. Id. at 39. At all times, Painter avoided detection by law enforcement, and at no time did he attempt to contact Fulton County authorities regarding his charges. Id. at 37-39.

The long arm of the law finally caught up to Painter for the last time on January 12, 2011. Two officers from the Howard County, Maryland Police Department responded to a report of a burglary in progress in Mount Airy. Def.'s Ex. 10. The victim reported to police that the thief took a generator. The officers began to canvass the area, and found a Ford pickup truck at a motel, across the county-line into Carroll County.^[10] Id. One of the officers spoke to the apparent owner of truck, who identified himself as "Mark Short." Id. Short related that he suffered from Parkinson's disease (like Painter), N.T., 11/29/11, at 14, and that he was traveling back and forth to Pennsylvania buying and selling hay (like Painter), id. at 39. Short gave a suspicious story about how he acquired the generator in the truck, as well as why he had bolt cutters with him in the motel room. Def.'s Ex. 10. The officers arrested Short. ^[11]

On January 13, 2011, the Howard County investigator called Trooper Joseph Horton at the McConnellsburg Pennsylvania State Police barracks. Def.'s Ex. 10. Trooper Horton told the investigator that Short sounded like someone for whom they were looking. Id. The investigator contacted central booking and discovered that Short was an alias, and that he had numerous outstanding warrants. Id. State Police Corporal William Baker emailed a photograph of Short to the Howard County investigator, who matched Short to his true identity: Robert Stanley Painter, Jr. Id. Painter admitted that he used the alias to prevent return to Pennsylvania to face his Fulton County charges. N.T., 5/3/12, at 34. Painter's charges for allegedly stealing the generator are still pending. Id. at 26.

The next day, January 14, 2011, Painter was placed in Howard County Detention Facility for his burglary charge. Id. at 48. On January 17, 2011, he was transferred to Maryland Correctional Institution at Jessup as a parole violator. Id. at 48-49. On January 20, 2011, he was again transferred to Maryland Reception, Diagnostic and Classification Center in Baltimore City for outstanding warrants. Id. at 49. On February 11, 2011, authorities sent him back to MCI-Jessup as a parole violator. On July 1, 2011, he was released to parole to Anne Arundel County Detention Center, and authorities there filed a fugitive from justice warrant. Id. at 49. On July 14, 2011, he was transferred to the prison in Baltimore County in Towson for outstanding warrants from Baltimore and Howard Counties. Id.

Evidently, the District Attorney was unaware that Painter had been arrested. The District Attorney also apparently was unaware of Painter's merry-go-round ride through Maryland's prisons. The District Attorney discovered Painter's location on June 13, 2011, when he received IAD Forms I, II, III, and IV, signed by Painter. Com's Ex. 9; N.T., 2/9/12, at 4-5. Together, the forms indicate that Painter was in MCI-Jessup and that he wanted to return to Fulton County to face trial. Form III indicates that Painter was serving a 15-year sentence at Jessup, and that he had already served 7 years. Com.'s Ex. 9. Painter claims that he never executed the forms in question. N.T., 11/29/11, at 22-24. He claims that nobody ever

showed him papers regarding his return to Pennsylvania, and that Pennsylvania authorities never began formal extradition proceedings. Id. Finally, Painter claims that he was not serving a sentence of incarceration from January 15, 2011 to July 29, 2011. Id. at 25. Rather, he claims that he was re-paroled by Maryland authorities but that Pennsylvania's detainer kept him in Maryland jails during that time period, and that his Baltimore County lawyer was attempting to file a writ of habeas corpus to vacate Pennsylvania's detainer. Id. at 18-20, 26; Def.'s Ex. 9.

On June 14, 2011, Judge Van Horn signed IAD Form, IV, which authorized the District Attorney to take temporary custody of Painter from Jessup. Com.'s Ex. 10. The District Attorney also executed IAD form VI which allowed a Fulton County sheriff's deputy to go to Maryland and retrieve Painter. The District Attorney's Office received word that Painter was transferred to Baltimore County Correctional Facility, so on July 18, 2011, it executed a new Form VI. The Fulton County Sheriff's Department took custody of Painter on July 29, 2011, and placed him to the Franklin County Jail. N.T., 5/3/12, at 49. He has remained there since, though as of May 3, 2012, Baltimore County Detention Center still listed him as an inmate there. Id. The Court is quite certain that Baltimore County is incorrect.

To date, Painter has several active warrants. Frederick County has a warrant for the alleged escape incident from Halloween Night, 2009. Id. at 50. Howard County has a warrant for the alleged burglary of the generator in January, 2011. Id. at 50-51. Dorchester County lifted its warrant. We do not know the status of the March 2009 fertilizer-theft charges in Frederick County. Nor do we know the status of the March 2009 furnace-theft charges in Berkeley County, West Virginia.

After Fulton County retained custody of Painter the most recent time (July 29, 2011) he was preliminarily arraigned on his new charges on August 8, 2011, and the charges were held for court and docketed at No. 174 of 2011. On September 6, 2011, Painter appeared and waived formal arraignment. On October 6, 2011, Painter filed the pretrial motions currently under consideration. The motions have been pending ever since. The Court has held hearings on the motions on four separate dates: November 29, 2011, December 22, 2011, February 9, 2012, and May 3, 2012. Finally, we have returned to the shores of Ithaca, and the motions are ripe for disposition.

Discussion

This case is extremely complicated, and the Commonwealth and Defense counsel are to be commended for their work. Painter advances three arguments: (1) Rule 600; (2) the IAD; and (3) the Uniform Criminal Extradition Act. He also requests three remedies: dismissal of the 2009 charges with prejudice, granting of nominal bail on the 2011 charges, and, alternatively, dismissal of all charges and return to Maryland. The Commonwealth opposes, contending that it has used due diligence in finding Painter and attempting to bring him to trial, and that it violated neither the IAD nor the Uniform Criminal Extradition Act in taking custody of Painter from Maryland. We will address the arguments in turn.

I. Rule 600

Pennsylvania Rule of Criminal Procedure Rule 600 protects a defendant's right to a speedy trial and society's right to effective prosecution of criminal cases. Commonwealth v. Bradford, 46 A.3d 693, 701 (Pa. 2012); Commonwealth v. Booze, 947 A.2d 1287, 1289 (Pa. Super. 2008). To protect a defendant's speedy trial rights, the Rule requires the Commonwealth to bring the defendant to trial within 365 days, subject to certain delay attributable to the defendant, of filing charges. Bradford, 46 A.3d at 701 (citing Pa. R. Crim. P. 600(A)(3), (G)). In addition, if the Commonwealth fails to bring an incarcerated defendant to trial within 180 days of instituting charges, the defendant is entitled to immediate release on nominal bail. Pa. R. Crim. P. 600(A)(2), (E).

To protect society's right to effective prosecution of criminal cases, Rule 600 requires the court to consider whether the Commonwealth exercised due diligence, and whether the delay in bringing the defendant to trial was beyond the Commonwealth's control. Bradford, 46 A.3d at 701. If the Commonwealth proves that it exercised due diligence and was not responsible for the delay the charges cannot be dismissed. Id. (citing Pa. R. Crim. P. 600(G)).

Due diligence is a fact-specific inquiry, and must be determined case-by-case. Booze, 947 A.2d at 1289. "Due diligence does not require perfect vigilance and punctilious care, but rather a showing by the Commonwealth that a reasonable effort has been put forth." Id.; Commonwealth v. Jones, 886 A.2d 689, 695 (Pa. Super. 2005).

Because more than 365 days have passed since Painter was charged in each of his cases, the Court must determine whether any time is excluded from the Rule 600 calculation. Excludable time includes (1) the period of time between the filing of the criminal complaint and the arrest, provided that the defendant's whereabouts are unknown and could not be determined by due diligence; (2) any period for which the defendant expressly waives Rule 600; and (3) time attributable to the unavailability of the defendant or his attorney, or any continuance granted to the defendant. Pa. R. Crim. P. 600(C). Time also does not count against the Commonwealth if a delay is beyond its control and it uses due diligence in

attempting to bring the defendant to trial. Pa. R. Crim. P. 600(G); Bradford, 46 A.3d at 702.

A. The Parties' Arguments

The Commonwealth argues that the balance of time between March 3, 2009 and today is either (1) excludable because it did not know where Painter was, despite using due diligence to find him or (2) excludable because of Painter's continuances in his cases.

Painter argues that March 19, 2009 to August 2009 should count for Rule 600 purposes. He contends that the Commonwealth knew where he was on March 19, when Trooper Barnett received a "hit" confirmation when searching for Painter. Thus, the Trooper knew that Painter was in West Virginia's Eastern Regional Jail. Insofar as Painter was a moving target in West Virginia and Maryland jails until August 2009, Painter argues that the Commonwealth could have easily found him by making inquiries to authorities, just as Jody Keefer, of the Fulton County Probation Department did for the purposes of Painter's omnibus hearing. See N.T., 5/3/12, at 44-51.

For the theft case (number 174 of 2011), Painter argues that state police were aware the night of the arrest - January 13, 2011 - that Maryland authorities arrested Painter for allegedly stealing the generator. Painter claims that he was detained on the Pennsylvania warrant. Thus, he argues all time from his arrest until his continuance request on October 11, 2011 should count against the Commonwealth. Painter also contends that the events from September 3, 2009 to January 13, 2011 are irrelevant, because Painter's whereabouts were truly unascertainable.

In sum, Painter believes that 438 non-excludable days passed in the assault case, and 270 days in the theft case. Thus, he argues that the charges in number 200 of 2009 must be dismissed and that he is entitled to immediate release on nominal bail in number 174 of 2011.'

B. The Court's Ruling

In large part, the Court agrees with Commonwealth. We find that the Commonwealth used due diligence in trying to find Painter. Similarly, the Commonwealth used due diligence in attempting to extradite Painter each of the three times that he left Pennsylvania, those three being after assault charges were filed after the shotgun incident, after Painter failed to appear at mandatory arraignment in that case, and after he absconded while on electronic monitoring.

First, the Court notes that both the Commonwealth and Painter agree that certain time periods are excludable. In the assault case, the time between the faxing of the arrest warrant to West Virginia and Painter's arrest (March 17-19, 2009) is excludable. Pa. R. Crim. P. 600(C)(1). Furthermore, the Parties agree that the time after Painter's escape from the family farm on February 2, 2010 until his arrest in Howard County, Maryland on January 13, 2011 is excludable.^[12]

We reject Painter's argument that the Commonwealth failed to use due diligence by merely faxing a copy of Painter's arrest warrant to Maryland authorities in March of 2009 and January of 2011. In Booze and Alexander, the Superior Court found that the Commonwealth's did not exercise due diligence when it failed to extradite defendants from other states when it knew where they were. Booze, 947 A.2d at 1291; Commonwealth v. Alexander, 464 A.2d 1376, 1383 (Pa. Super. 1983). But the cases recognize that a due-diligence inquiry is fact specific, Booze, 947 A.2d at 1290, and that due diligence must be measured by what the Commonwealth did, not what it didn't do, Alexander, 464 A.2d at 1384 (quoting Commonwealth v. Williams, 425 A.2d 451, 455 (Pa. Super. 1981)). Both cases are materially distinguishable, mostly because our facts are different. In Booze, the defendant was sitting in a jail in Allegany County, Maryland for a year before the Commonwealth attempted to extradite her. Booze, 947 A.2d at 1288. In Alexander, the defendant was in two New Jersey prisons. Here, Painter was transferred between numerous jails and prisons in two jurisdictions. He spent time in the Martinsburg Eastern Regional jail, MCI-Hagerstown, MCI-Jessup, Baltimore County Correctional Facility, Dorchester County Detention Center. The Commonwealth was uncertain about his location, or whether he was even in custody at various points. Indeed, even the Maryland correctional system itself appeared to be unaware of Painter's location. If Maryland was unsure where Painter was, we cannot fault Pennsylvania authorities for their same lack of knowledge. The Court also disagrees with Painter regarding his alleged activities during his times as a fugitive. Painter's actions (use of an alias, allegedly fleeing from police, and frequently changing his location) evince intent to avoid detection and apprehension. The due diligence required by Rule 600 must be weighed against the defendant's actions. A defendant cannot simultaneously actively attempt to avoid apprehension and claim that the Commonwealth was not trying hard enough to find him.

Finally, in this case Painter waived extradition; thus, the Commonwealth did not need to initiate formal extradition proceedings.^[13] Given the facts of this case, the Commonwealth used due diligence in attempting to find Painter.

Because these cases are so complicated, the Court has prepared a table for each listing the time period for which Rule 600 counts. In both cases, we conclude that Painter is entitled to neither nominal bail nor dismissal of the charges.^[14]

1. Rule 600 Calculations for the Assault Case (No. 200 of 2009)

*SEE PAGE 269 FOR CHART^[15]

Based on the above findings, the Commonwealth has not violated Rule 600. The current adjusted run date is not fixed, because Painter's pretrial motions are causing the current delay. The adjusted run date is moving forward, and the Commonwealth can bring this case to trial without violating Rule 600.

As for Rule 600(E), the Court finds that Painter was incarcerated and awaiting trial on the assault charges from August 10, 2009 (the date he was returned to Pennsylvania from MCI-Hagerstown) to September 3, 2009 (the date he posted bail); from January 11, 2010 (the date the Fulton County Sheriff transported Painter to Pennsylvania from Frederick County Jail) to January 12, 2010 (the date the Court placed Painter on electronic monitoring); and from July 29, 2011 (the date Painter arrived in Pennsylvania from Baltimore County Correctional Facility) to the present. Only the first two periods count for purposes of Rule 600. Those periods total 25 days. Therefore, Painter is not entitled to release on nominal bail in case number 200 of 2009.

2. Calculations for the Theft Case (No. 174 of 2011)

*SEE PAGE 271 FOR CHART^[16]

Based on the above calculations, the Commonwealth has not violated Rule 600. Again, the adjusted run date for Rule 600 is a forward-moving target because of the reason for the current continuance. For the same reasons as in the assault case, the Commonwealth try Painter in number 200 of 2009 without violating Rule 600.

Furthermore, Painter is also not entitled to nominal bail in case number 174 of 2011. In this case, Painter has been incarcerated from July 29, 2011 (the date Fulton County retrieved him from Baltimore County) to the present. Per the above calculations, only 113 days, however, are non-excludable under Rule 600. That number is well under the 180-day limit.

In sum, the Court holds that Painter is entitled to neither dismissal of charges nor release on nominal bail in either of these two pending criminal cases. Painter caused the numerous delays by failing to appear for court, escaping, and by forcing Fulton County authorities to extradite him from Maryland three separate times.

II. Interstate Agreement on Detainers

The Interstate Agreement on Detainers, 42 Pa. C.S. § 9101, is an interstate compact that creates a uniform procedure for lodging and executing a detainer. A detainer is a legal order that requires an authority to hold a prisoner so that he may be transferred to another jurisdiction to face different criminal charges. See Alabama v. Bozeman, 533 U.S. 146, 147 (2001). The purpose of the IAD is to "encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints." 42 Pa. C.S. § 9101, Art. I. To accomplish that goal, the IAD provides procedures for speedy transfer of prisoners between jurisdictions. Id.

The IAD allows a receiving jurisdiction to take custody of a prisoner in two ways. First, a prisoner can demand to be extradited. 42 Pa. C.S. § 9101, Art. III(a). The request to be extradited must include a certificate of the prisoner's custodian "stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner." Id. After a prisoner delivers such a demand, the prosecutor of the receiving state has 180 days to bring him to trial. Id. A prisoner's escape after a request to be extradited voids such a request. Id. Art. III(f).

Second, a receiving jurisdiction has the right to request extradition of a prisoner. Id. Art. IV(a). Upon receipt of a demand for extradition, the sending state must provide a statement from the prisoner's custodian with the same information as if the prisoner requested to be extradited. Id. Furthermore, extradition is stayed for 30 days to allow the sending state's governor to object. Id. The receiving state has 120 days after it takes custody of the prisoner to bring him to trial. Id. Art. IV(c).

Time during which the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter, is

excluded from the 120-day calculation. Id. Art VI(a). This rule applies in cases in which the prisoner is extradited on his own request, and cases in which the receiving state demands extradition. Id. A defendant may also waive the IAD's time limits. New York v. Hill, 528 U.S. 110 (2000). The remedy for an IAD violation is dismissal of charges with prejudice, Id. Art. IV(e), and return to the forum state.

The IAD does not apply to a prisoner who is not serving a sentence imposed after a conviction. Commonwealth v. Hude, 397 A.2d 772, 774 (Pa. 1979) (quoting United States v. Dobson, 585 F.2d 55, 59 (3d Cir. 1978)).

Painter argues that the IAD does not apply to his case. Painter denies that he filled out an Article III request to be extradited to face prosecution in Pennsylvania. He claims that he could not have done so, because in the summer of 2011, he was not serving a term of imprisonment. Rather, Maryland detained him as a parole violator. Prisoners incarcerated on a parole violation are not covered by the IAD. Painter also argues that the District Attorney should have ensured that Painter was extraditable under the IAD.

In response, the Commonwealth notes that Painter himself signed the IAD forms requesting to be extradited. The forms indicate that Painter was serving a 15-year sentence of incarceration, of which 8 years remained. The Commonwealth should be able to rely on those forms. Finally, the Commonwealth contends that Painter's argument amounts to gamesmanship: Painter may have intentionally misled the Commonwealth in an attempt to have his charges dismissed.

The Court holds that the Commonwealth did not violate the IAD. First, we do not believe Painter's claim that he never participated in IAD proceedings, and that he has no idea how he returned to Pennsylvania. Either Painter is not being entirely truthful, or the certification of the warden of MCI-Jessup that Painter was serving a sentence of incarceration is wrong. Again, we find the documentary evidence more credible than Painter's word. Further, neither of the cases cited by Painter apply here. In Hude, the defendant contested his forced extradition to New Jersey. Hude, 397 A.2d at 491. In Dobson, the defendant contested a federal detainer which kept him from being released from state custody, where he had been arrested for parole violations. Dobson, 585 F.2d at 56-57. Neither of those cases involved a defendant who *asked* to be extradited under the IAD.

The difference matters, because Painter should not be able to request extradition under the IAD, and then claim that he is not covered by the IAD. Furthermore, the Commonwealth should be able to rely on a defendant's own representations, as well as the certifications of wardens and jailors that a foreign prisoner is currently serving a sentence of incarceration. That is the very purpose of the IAD - to create a streamlined process to obtain jurisdiction of a prisoner to resolve pending charges - and to avoid a procedural morass. The IAD is not an ace up defendants' sleeves that they can law down to trump prosecution.

III. Uniform Criminal Extradition Act

The Uniform Criminal Extradition Act allows the Commonwealth to arrest and detain fugitives wanted in other states, and it allows the governor to request return of prisoners in other states' custody to the Commonwealth to answer to criminal charges. 42 Pa. C.S. §§ 9123, 9126(a). A person arrested under the Act, may not be detained for more than 30 days while awaiting a governor's warrant from the demanding state, unless a judge extends the time for another 60 days. Id. §§ 9136, 9138. A prisoner may test the legality of his arrest through a writ of habeas corpus.^[17] Id. § 9131.

Painter argues that the Act applied to him, and that the Commonwealth never initiated formal extradition proceedings in Maryland. The Commonwealth entered an arrest warrant into NCIC on February 2, 2010, but that he was not returned to Pennsylvania until July 29, 2011. Thus, he argues that the Commonwealth violated the Act.

Painter's argument is meritless. The Commonwealth never initiated formal extradition proceedings, because Painter *asked* to be returned to Pennsylvania. A governor's warrant is not needed if a prisoner waives extradition. That is the law when Pennsylvania authorities detain an individual wanted in another jurisdiction: "Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state...." 42 Pa. C.S. § 9146(c). It is the law in Maryland, as well: "This section does not limit the rights of the accused person to return voluntarily and without formality to the demanding state." Md. Code Crim. Pro. § 9-124(c)(1). And Painter was not arrested in Maryland pursuant to a fugitive warrant. Rather, he was arrested on new charges in both Maryland and West Virginia. In addition, he was arrested on parole violations, as he testified, in the forum state.

The proper way to challenge illegal detainment under the Act is a writ of habeas corpus in the extraditing jurisdiction. That much is evident from the case that Painter cites, see Commonwealth ex rel. Knowles v. Lester, 321 A.2d 637, 639 (Pa. 1974) (prisoner challenged his extradition to Florida), and other cases construing the Act, see, e.g., Commonwealth v. Quackenbush, 435 A.2d 872 (Pa. Super. 1981)(prisoner contested his extradition to New York); Commonwealth v. Hude,

364 A.2d 413 (Pa. Super. 1976) (en banc) (prisoner contested extradition to New Jersey).

If Painter believed that his 2011 arrest in Maryland was illegal, that those states held him on Fulton County's detainer longer than permissible under the Act, or that a governor's warrant was necessary to remove him to Pennsylvania, he should have filed writs of habeas corpus there. See Commonwealth v. Carlos, 341 A.2d 71, 73 (Pa. 1975) ("The legality of extradition must be challenged in the asylum state prior to extradition to the demanding state."); Commonwealth v. Caffrey, 508 A.2d 322, 324 (Pa. Super. 1986) ("[T]he legality of the extradition must be tested in the asylum state prior to extradition, not afterwards.") This Court has no authority to question the legality of an arrest in another court's jurisdiction in another state. It is far too late for Painter to challenge his presence in Pennsylvania under the Uniform Criminal Extradition Act.

Conclusion

Painter is not entitled to release from Pennsylvania custody under Rule of Criminal Procedure 600, the Interstate Agreement on Detainers, or the Uniform Criminal Extradition Act. Most of the delays in Painter's cases are his own fault - not the Commonwealth's, and the Commonwealth has exercised due diligence in attempting to find Painter. "[T]he administrative mandate of Rule 600 was not designed to insulate the criminally accused through prosecution delayed through no fault of the Commonwealth." Commonwealth v. Ramos, 936 A.2d 1097, 1101 (Pa. Super. 2007). Also, Painter cannot prove that Pennsylvania illegally extradited him from Maryland. For those reasons, the Court must deny all requested pretrial relief.

An Order follows.

ORDER OF THE COURT

September 10, 2012, upon consideration of Defendant's *Omnibus Pretrial Motion, Motion for Habeas Corpus, and Petition for Nominal Bail*, and for the reasons in the attached opinion, it is ordered that the Motions and Petition be, and hereby are denied.

[1]According to the report, this type of fertilizer is for agricultural, i.e. not residential use and contains 19% nitrogen, 19% phosphorous, and 19% potassium.

[2]All allegations in this paragraph are gleaned from the affidavit of probable cause.

[3]Trooper Barnett charged Painter with two counts of aggravated assault, one count of persons not to possess firearms, two counts of terroristic threats, two counts of simple assault, two counts of recklessly endangering another person, and two counts of summary harassment. 18 Pa. C.S. § § 2702(a)(4); 6105 (a)(1); 2706(a)(1); 2701(a)(3); 2705; and 2709(a)(1).

[4]Painter testified that he was arrested on March 20 - not the 19th, N.T., 11/29/11, at 6. We find the documentary evidence more credible.

[5]Fulton County does not have a jail, and its prisoners are housed in Franklin County.

[6]At that time, the former Public Defender represented Painter. She was disqualified when she assumed office as magisterial district judge.

[7]Painter characterized the incident as a routine traffic stop. N.T., 11/29/11, at 11 ("I was coming back out of Frederick when I got pulled over on Halloween night."). On cross examination, the District Attorney asked Painter whether he fled from the police into a swamp and was caught only after they deployed a K-9 unit and a helicopter. Id. at 28-32. Painter is currently awaiting mandatory arraignment on charges of perjury and false swearing for his testimony, at CP-CR-29-101-2012.

[8]Painter testified that he was incarcerated in Frederick County until January 14 or 15, 2010. N.T., 11/29/11, at 12-13. Again, we find the record, specifically a dictated order signed by this Judge and dated January 12, 2010 to be more accurate.

[9]18 Pa. C.S. § § 5121(a); 3921(a); 3925(a); and 3304(a)(5).

[10]Mount Airy is located near the borders of Frederick, Carroll and Howard Counties.

[11]Painter claimed that Howard County law enforcement “showed up to the hotel,” asked for identification, ran his ID, and arrested him on Pennsylvania warrants (as opposed to the burglary of the generator). N.T., 11/29/11, at 40-41. Later, Painter admitted that he used the “Mark Short” alias in an attempt to elude detection. N.T., 5/3/12, at 28-29. Again, we find the documentation from the Howard County Police Department more credible.

[12]The Commonwealth actually concedes that some time *should* count against it, while Painter concedes that the same time *should not* count against the Commonwealth. The time periods include March 13-17, 2009 (the time between the filing of charges and the faxing of the arrest warrant to West Virginia); September 3-October 12, 2009 (the time between the mailing of the first mandatory-arraignment notice and Painter’s failure to appear at mandatory arraignment); and December 28, 2009-February 1, 2010 (the time between Painter’s second extradition from Maryland and his escape). Because the Commonwealth conceded that those times count, and because the Commonwealth bears the burden of proof, we conclude that those times count for Rule 600 purposes.

[13]The Court finds, below, that the Commonwealth properly extradited Painter to Pennsylvania. Therefore, the time it took to complete the extradition paperwork and to physically return Painter to Franklin County Jail is excludable under Rule 600. See, e.g., Alexander, 464 A.2d at 1384.

[14]One final note. Our calculations do not include the 180-day Rule 600(E) date. First, the Court has found that Painter was not incarcerated for more than 180 non-excludable days in either case. Second, Painter’s request for nominal bail is somewhat of a formality. Even if we agreed with Painter and granted him nominal bail in either his assault or his theft case, we would still have to post the \$25,000.00 bail in his perjury case. See Commonwealth v. Jackson, 585 A.2d 36, 40 (Pa. Super. 1991) (finding no Rule 600 violation where defendant was granted nominal bail but was not released because he did not post bail in other cases). And even if Painter posted his bail for Pennsylvania cases, the detainers for his Maryland cases would keep him in jail. Finally, given the history of this case, we question whether nominal bail is permissible. See Commonwealth v. Jones, 899 A.2d 353, 356 (Pa. Super. 2006) (citing Pa. Const. art I § 14) (holding that a defendant is not entitled to release on nominal bail under Rule 600(E) if no conditions of bail could assure the community’s safety). Painter has missed multiple court dates. He has used aliases to avoid detection. He escaped while on electronic monitoring - something that he does not dispute. He has fled this jurisdiction twice. And he has been extradited from Maryland three times.

[15]2012 is a leap year. Leap day counts for Rule 600 purposes, because the Rule requires trial within 365 days, not one calendar year. See Commonwealth v. Hunt, 858 A.2d 1234, 1242 (Pa. Super. 2004)(en banc) (“In the instant case, the Commonwealth filed its complaint on January 21, 2000. The mechanical run date was January 20, 2001, because 2000 was a leap year.”).

[16] See above, note 15, regarding leap day.

[17]The Uniform Criminal Extradition Act does not apply when another jurisdiction requests custody of a prisoner who is serving a sentence in Pennsylvania. In re Garcia, 984 A.2d 506, 508 (Pa. Super. 2009) (citing Commonwealth v. Lloyd, 535 A.2d 1152, 1160 n.4 (Pa. Super. 1988) and Wallace v. Hewitt, 428 F. Supp. 39 (M.D. Pa. 1976)).