NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. STEVEN D. GEBHART Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1198 MDA 2012

Appeal from the Judgment of Sentence December 21, 2011
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0007763-2009

BEFORE: MUNDY, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY MUNDY, J.: Filed: February 15, 2013

Appellant, Steven Gebhart, appeals from the December 21, 2011 judgment of sentence of nine months to five years' incarceration, plus restitution in the amount of $83,765.70 to Harleysville Insurance Company (Harleysville), after he was found guilty by a jury of insurance fraud.[1] After careful review, we affirm.

The relevant facts and procedural history, as gleaned from the certified record, are as follows. On July 21, 2002, a fire destroyed Appellant's barn located at 7518 Lincoln Highway, Abbottstown, Pennsylvania. The barn contained both personal property, and property of Appellant's business,

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. § 4117(a)(2).

Gebhart Pole Building, Inc. The following day, July 22, 2002, Appellant notified his insurance company, Harleysville, about the fire and loss of property. Thereafter, on September 30, 2002, Appellant filed a claim asserting a loss of $425,890.00 for the barn and personal contents of the barn, and $185,000.00 for the business property inside the barn.

Harleysville assigned William Doney as the general adjuster, and Mr. Doney retained, Gerald Kufta as the cause and origin fire investigator to conduct an investigation of the fire on Appellant's property. N.T., 10/31/11, at 151-152, 155. Mr. Kufta concluded the fire was intentionally set, but he made no conclusions as to who set the fire. ***Id.*** at 157, 168. Appellant hired Blase Salomone, a public adjuster, to inventory the contents of the barn on Appellant's behalf. N.T., 11/2/11, at 540. Mr. Salomone went to Appellant's property and created an inventory based on what he observed, as well as sat down with Appellant to put the inventory together. ***Id.*** at 544, 553. At trial, Mr. Salomone testified he could not remember if there were items at the loss site that were "simply unidentifiable[.]" ***Id.*** at 553. Mr. Salomone then submitted his completed inventory to Harleysville. N.T., 10/31/11, at 172.

As part of its investigation, Harleysville also retained the services of Jeffery Worthers, Esquire (Attorney Worthers), a partner at Niles, Barton & Wilmer, a law firm in Baltimore Maryland, and Andrew Runge, a forensic accountant. While not pertinent to this appeal, it is important to note that

Attorney Worthers and Mr. Runge were hired to investigate Appellant's financial situation at the time of the fire, and to interview Appellant and obtain documentation necessary for Harleyville's investigation of Appellant's claim. After a lengthy investigation into Appellant's financial records, yielding information that his business would have gone bankrupt within one year, Harleysville's ultimate decision was to pay Appellant's claim. Thereafter, on October 12, 2004, Appellant's claim was closed, and the total amount Appellant was paid by Harleysville was $284,765.05, specifically, $200,999.35 for the building, and $85,765.70 for the buildings contents. N.T., 10/31/11, at 175.

Subsequently, on August 27, 2007, Appellant was charged with insurance fraud in the instant matter.[2] A three-day trial was held at which all of the aforementioned people testified, with the exception of Appellant himself. Additionally, Nancy Nickol, Appellant's neighbor, testified for the Commonwealth. Miss Nickol testified that she and Lori Kuhn, Appellant's girlfriend, took an inventory of the contents of Appellant's barn over the course of a two-to-three-day period sometime prior to the fire. N.T., 11/2/11, at 456-461. Miss Nickol testified the inventory was taken on a yellow tablet of paper, and that when the inventory was complete she and

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[2] We note, Appellant was charged with several other crimes which were severed from this case and are docketed at CP-67-CR-0005854-2008. These charges are not before us for review.

Miss Kuhn gave the inventory to Appellant. ***Id.*** at 461-462. Miss Nickol further testified that after the fire Appellant told her to forget the inventory ever existed. ***Id.*** at 463.

On November 3, 2011, a jury found Appellant guilty of the insurance fraud. Subsequently, on December 21, 2011, Appellant was sentenced to nine months to five years' incarceration, with credit for time-served, and restitution in the amount of $83,765.70 to Harleysville. N.T., 12/21/11, at 13. On December 31, 2011, Appellant filed a post-sentence motion averring, *inter alia*, the Commonwealth failed to set forth sufficient evidence to support his conviction for insurance fraud. On May 30, 2012, after granting several extensions of time for each side to file briefs, the trial court denied Appellant's post-sentence motion.

Thereafter, on May 31, 2012, Appellant filed a timely *pro se* notice of appeal. As Appellant was still represented by counsel, a copy of Appellant's notice of appeal was forwarded to his counsel, Adam Witkinos, Esquire (Attorney Witkinos). On June 27, 2012, Attorney Witkinos filed an amended notice of appeal on Appellant's behalf.[3]

On appeal, Appellant raises the following issues for our review.

> 1. Whether the Commonwealth failed to present sufficient evidence to convict Appellant of insurance fraud beyond a reasonable doubt because the testimony presented does not

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[3] Appellant and the trial court have complied with Pa.R.A.P. 1925.

> show a materially false claim which caused the insurance company to act differently than they would have acted if they had gotten the proper information?
>
> 2. Whether [] Appellant's conviction for insurance fraud can stand when the Commonwealth only presented evidence proving *de minimis* differences between Appellant's inventory of lost property provided to the insurance company and an unsubmitted inventory that was not available during the trial?

Appellant's Brief at 4.

Instantly, both of Appellant's issues challenge the sufficiency of the Commonwealth's evidence presented to convict him of insurance fraud. Specifically, in his first issue Appellant avers that "the Commonwealth failed to prove he made a materially false claim to Harleysville[.]" ***Id.*** at 14. In his second issue, Appellant avers the "Commonwealth presented evidence proving *de minimis* differences between Appellant's inventory of lost property provided to the insurance company and an unsubmitted inventory that was not available during the trial." ***Id.*** at 22. In support of these arguments, Appellant notes that the Commonwealth presented evidence of Miss Nickol, regarding the inventory of his property she helped conduct weeks before the fire, and compared that with the inventory Appellant provided to the insurance company, so that the jury would draw the conclusion "that because there were two different inventories (and one was generated several weeks before the fire), [Appellant] provided false, misleading, or incomplete information to Harleysville about his claim." ***Id.***

at 14, 23. Appellant argues, however, that Mr. Doney, the insurance adjuster, testified the evidence of the inventories "was not material and had no bearing on the ultimate decision of Harleysville to pay out the insurance claim to [Appellant]." ***Id.*** at 14-15. Therefore, Appellant claims "the Commonwealth failed to establish the materiality element of the offense of Insurance Fraud[,] and his conviction cannot stand." ***Id.*** at 15. In support he argues, "the *de minimis* inferences the Commonwealth asked the jury to draw from, and what the Commonwealth actually produced are simply too tenuous to let [Appellant]'s conviction stand." ***Id.*** at 24.

"The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt." ***Commonwealth v. O'Brien***, 939 A.2d 912, 913 (Pa. Super. 2007) (citation omitted). "Any doubts concerning an appellant's guilt were to be resolved by the trier of fact unless the evidence was so weak and inconclusive that no probability of fact could be drawn therefrom." ***Commonwealth v. West***, 937 A.2d 516, 523 (Pa. Super. 2007), *appeal denied,* 947 A.2d 737 (Pa. 2008). "The trier of fact while passing upon the credibility of witnesses … is free to believe all, part or none of the evidence." ***Commonwealth v. DiStefano***, 782 A.2d 574, 582 (Pa. Super. 2001) (citations omitted), *appeal denied*, 806 A.2d 858 (Pa. 2002). Additionally, "[t]he Commonwealth may

sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence." ***Commonwealth v. Perez***, 931 A.2d 703, 707 (Pa. Super. 2007) (citations omitted). As previously noted, Appellant was convicted of insurance fraud in violation of 18 Pa.C.S.A. § 4117(a)(2), which provides, in pertinent part, as follows.

> **§ 4117. Insurance fraud**
>
> **(a) Offense defined.--**A person commits an offense if the person does any of the following:
>
> ...
>
> (2) Knowingly and with the intent to defraud any insurer or self-insured, presents or causes to be presented to any insurer or self-insured any statement forming a part of, or in support of, a claim that contains any false, incomplete or misleading information concerning any fact or thing material to the claim.

18 Pa.C.S.A. § 4117(a)(2).

Instantly, the trial court concluded there was sufficient evidence to convict Appellant. Specifically, in addressing Appellant's materiality claim the trial court reasoned as follows.

> Regarding materiality, [the trial court] notes at the outset that the physical inventory submitted by [Appellant] was purported by him to be the one conducted by Nancy Nickol and Lori Kuhn just two weeks prior to the fire (although, as noted above, the evidence indicates otherwise). In spite of this, [Appellant] claims that the materiality of this one document, given the numerous other documents

> considered by the insurance company, is miniscule at best.
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> "Material information means information the agency would regularly rely on in making its official determinations or findings." Pennsylvania Suggested Standard Criminal Jury Instruction 15.4117A. In this case, it is self-evident that an insurance company would regularly rely on physical inventories submitted by insureds claiming to represent the items lost in the fire and the respective costs of those items. In addition, Attorney Wothers testified that "a physical inventory would be good and reliable information about what was actually in the building that might come within the coverage for business personal property." (N.T., 11/1/11, page 374). Hence, the physical inventory is material, as it is information the agency would regularly rely on in making its official determinations or findings.
>
> Given the foregoing, there was sufficient evidence adduced at trial that proved beyond a reasonable doubt that [Appellant] knowingly submitted an exaggerated claim of loss to his insurance company, including a document which he knew contained false information and would be relied upon by the insurance company in determining the amount of the loss, thereby showing an intent to defraud the insurance company with false, incomplete, or misleading information that was material to the claim.

Memorandum Order Disposing of Defendant's Post-Sentence Motions, 5/30/12, at 6.

Appellant's claim that Mr. Doney testified that the information in the inventories "was not material and had no bearing on the ultimate decision of Harleysville to pay out the insurance claim to [Appellant]," is belied by the

record. At the close of Mr. Doney's direct testimony, the trial court conducted the following colloquy.

> [The Court]: Okay. Now, let's go on to the contents. Regarding the contents, how did you decide to pay the amount of money that you did pay?
>
> [Mr. Doney]: The public adjuster submitted an inventory. We did research, and in that inventory, he would give us a description, age, and estimate a replacement cost of each item. We would then go to our own sources for pricing and apply applicable depreciation based on the type of item and its normal life expectancy.
>
> [The Court]: So, correct me if I'm wrong, so what I'm understanding happened is a public adjuster, somebody hired by [Appellant], submitted an inventory to you that listed the contents of the building - -
>
> [Mr. Doney]: Yes.
>
> [The Court]: - - that were destroyed - - that according to [Appellant] were destroyed in the fire?
>
> [Mr. Doney]: And when I was there originally, I inventoried what I could see when I did my initial inspection.
>
> [The Court]: Okay. So you then took the information on that list?
>
> [Mr. Doney]: Yes.
>
> [The Court]: And then simply determined whether based upon the description on the list their claimed value was higher, lower, or the same as what you believed the value - - the replacement value of the item would be, is that correct?
>
> [Mr. Doney]: That's correct.

> [The Court]: Okay. So, would it be fair then to say that the only question was whether the value that the insured applied to a particular item on the inventory was equal to what you believed the value of it was - -
>
> [Mr. Doney]: Yes.
>
> [The Court]: - - as opposed to whether it was - - should have been on the inventory at all?
>
> [Mr. Doney]: Right.
>
> [The Court]: Okay.

N.T., 10/31/11, at 177-179. While there may be merit to Appellant's claim that the inventories had no bearing on Harleysville's overall decision of whether to pay out on Appellant's claim, Mr. Doney's testimony certainly demonstrates that once Harleysville did decide to pay the claim, the amount to be paid out was determined by the information on the inventories.

Further, the jury was presented with Miss Nickol's testimony regarding the inventory she and Miss Kuhn conducted of Appellant's property. When asked by the Commonwealth whether Appellant ever mentioned the inventory to her again, she testified as follows.

> [Q.] Okay. And at any point at the house did [Appellant] say anything about the inventory?
>
> [A.] After the fire. I had mentioned that he had the inventory list that Lori and I made, and actually [Appellant] told me to forget about that, that that ever existed is what he said.
>
> [Q.] What did he say?

[A.] He said, forget that that ever existed.

[Q.] Okay.

N.T., 11/2/11, at 463.

Moreover, Miss Nickol's was shown the inventory Appellant submitted to Harleysville and asked if it was the same inventory she and Miss Kuhn prepared. Miss Nickol's testified that it was not the same inventory, and she testified to a significant number of discrepancies between the two inventories. ***See id.*** at 466, 467-474. In response to Appellant's claim that the evidence presented by the Commonwealth proved only a *de minimis* difference between the two inventories, the trial court summarized Miss Nickol's testimony in its Rule 1925(a) opinion. Trial Court Opinion, 9/14/12, at 2-5. For purposes of our review, we adopt the portion of the trial court's opinion, disposing of Appellant's *de minimis* argument and listing each of the discrepancies Miss Nickol's testified to at Appellant's trial. ***See id.***

Herein, the jury, as fact-finder, was free to weigh the testimony of the witnesses and draw its own conclusions. ***DiStefano***, ***supra*** at 582. As previously stated, we view all the evidence admitted at trial in the light most favorable to the verdict winner, and we will not disturb the verdict if there is sufficient evidence, even if wholly circumstantial, to enable the fact-finder to find every element of the crime beyond a reasonable doubt. ***See O'Brien***, ***supra*** at 913, ***Perez***, ***supra*** at 707; ***see also Commonwealth v. Sanchez***, 848 A.2d 977, 982 (Pa. Super. 2004) (concluding there was

sufficient evidence to convict an appellant of insurance fraud after resolving "all conflicts in favor of the Commonwealth[]").

Based on the foregoing, we conclude the evidence presented by the Commonwealth was sufficient to convict Appellant of insurance fraud. Accordingly, we affirm the December 12, 2011 judgment of sentence.

Judgment of sentence affirmed.

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CP-67-CR-7763-2009

v.

STEVEN D. GEBHART,
Defendant

APPEARANCES:

DAVID SUNDAY, Esquire
Assistant District Attorney

ANTHONY TAMBOURINO, Esquire
Counsel for Defendant

TRIAL COURT'S 1925(a) STATEMENT

Defendant has appealed to the Superior Court from the Trial Court's order Imposing sentence entered on December 21, 2011.

The Trial Court issued a directive to Defendant on July 2, 2012, to file a Statement of Errors Complained of on Appeal (hereinafter "Statement") pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Defendant's Statement was filed on July 23, 2012. Defendant filed a Supplemental Statement on August 9, 2012.

This 1925(a) Statement is submitted in response to Defendant's 1925(b) Statement and Supplemental Statement, and as a supplement to the record and the Trial Court's order of December 21, 2011.

Defendant's **first** complaint contends that there is insufficient evidence to convict Defendant of Insurance Fraud "because the testimony presented is only circumstantial evidence of intent required by statute." (Defendant's Statement number I). The Trial Court refers the Superior Court to the Trial Court's "Memorandum Order Disposing of

Defendant's Post-Sentence Motions," dated May 30, 2012, page 2.

Defendant's **second** complaint contends that there is insufficient evidence to convict Defendant of Insurance Fraud "because the evidence presented does not show a materially false claim which caused the insurance company to act differently than they would have acted if they had gotten the proper information." This complaint is the same issue Defendant raised in his "Motion for Judgment of Acquittal" portion of his Post Sentence Motion, as set forth in his "Brief for Defendant." Therefore, the Trial Court refers the Superior Court to the Trial Court's "Memorandum Order Disposing of Defendant's Post-Sentence Motions," dated May 30, 2012, page 6.

In Defendant's **third** complaint, he contends that his conviction for Insurance Fraud cannot stand because "the Commonwealth only presented evidence proving de minimis differences between [Defendant's] inventory of lost property provided to the insurance company and an unsubmitted inventory that was not available during trial." Defendant's definition of de minimis must clearly be different than the definition of de minimis set forth in Black's Law Dictionary:

> De minimis: Trifling; minimal. Of a fact or thing so insignificant that a court may overlook it in deciding an issue or a case.

Black's Law Dictionary, 443 (7th ed. 1999). In this case, Nancy Nickol, a witness for the Commonwealth, testified that she and Lori Kuhn performed an inventory of the personal business property at the barn approximately two (2) weeks prior to the fire. (N.T., 11/2/11, pages 456-458). Defendant submitted an inventory of the personal business property, claiming that it was the same inventory made by Lori Kuhn [and Nancy Nickol] not long before the fire. (N.T., 11/1/11, pages 387-388, 391-392, 394; Commonwealth's

Exhibit number 21). Ms. Nickol testified that the inventory submitted by Defendant to the insurance company was not, in fact, the inventory she and Lori Kuhn prepared. (N.T., 11/2/11, pages 466-467). She also testified that there were numerous items on the inventory submitted by Defendant that were not on site when she and Ms. Kuhn did the inventory:

- There were no shower or bathroom stalls as represented by Defendant; and
- She did not recall any fluorescent lights as represented by Defendant; and
- There were no picnic tables as represented by Defendant; and
- There was no refrigerator as represented by Defendant; The only freezer that was at the site was trash to be thrown away; and
- There were a few slate slabs but not hundreds as represented by Defendant; and
- She did not recall cinder blocks in assorted sizes as represented by Defendant; and
- She believed the Bobcat and front end loader on the list submitted by Defendant were rented, as opposed to being owned, by Defendant; and
- She did not recall any hardhats being on the site as represented by Defendant; and
- There was no air compressor as represented by Defendant; and
- She did not believe there were complete sets of large planers as represented by Defendant; and
- There were no hooks and chains as represented by Defendant; and
- She did not recall seeing any handsaws that were listed on Defendant's inventory submitted to the insurance company; and
- While Defendant claimed assorted saws on the inventory, Nancy Nickol only saw a chain saw; and

- She did not recall any rolls of insulation as represented by Defendant; and
- There were no skids of sheetrock as represented by Defendant; and
- She did not recall any telephone poles being on the site as represented by Defendant; and
- There were no bundles of tin roofing as represented by Defendant; and
- She did not believe there were hundreds of barn beams as represented by Defendant; and
- There was no tongue and groove flooring or siding measuring 14 x 20 as represented by Defendant; and
- There were not hundreds of tires and hubcaps as represented by Defendant.

(N.T., 11/2/11, pages 468-473). On their face, these items by themselves are not of de minimis value, let alone when they are considered collectively. Moreover, the value of these items is not so insignificant that a court may overlook it.

Defendant makes the point of mentioning that the inventory prepared by Nancy Nickol and Lori Kuhn was not presented at trial. (Defendant's Statement, paragraph III). However, Nancy Nickol testified as follows regarding what happened to that particular inventory:

- She saw Lori Kuhn give the completed inventory to Defendant (N.T., 11/2/11, page 461); and
- Nancy Nickol never saw the inventory again after that (N.T., 11/2/11, page 462); and
- After the fire, Defendant told Nancy Nickol to forget about that inventory and that it ever existed (N.T., 11/2/11, page 463, 474).

"The finder of fact is free to believe all, none, or part of the testimony presented at trial." Commonwealth v. Bozic, 997 A.2d 1211 (2010)(citation omitted). The jury apparently

found Nancy Nickol's testimony pertaining to the inventory to be credible. "It is well settled that we cannot substitute our judgment for that of the trier of fact." Id.

Defendant's **fourth** complaint contends that the Trial Court "erred in allowing prejudicial testimony from a witness concerning the [Defendant's] truthfulness during the insurance investigation." Because Defendant does not indicate what testimony he believes is prejudicial or which witness he is referring to, the Trial Court is unable to address this complaint with any specificity. Moreover, Defendant's truthfulness, or lack thereof, during the insurance investigation would be relevant in determining Defendant's intent to defraud.

Defendant's **fifth**, and supplemental, complaint contends that the Trial Court "erred in denying [Defendant's] Motion to Dismiss based on R600 because the Commonwealth failed to exercise due diligence and brought [Defendant] to trial after the adjusted run date."

> As provided by Rule 600, the trial must commence by the mechanical run date, which is calculated by adding 365 days to the date on which the criminal complaint was filed. The mechanical run date can be adjusted by adding any 'excludable' time when the delay was caused by the defendant under Rule 600(C). If the trial begins before the adjusted run date, there is no violation and no need for further analysis. However, if the defendant's trial is delayed until after the adjusted run date, we inquire if the delay occurred due to 'excusable delay,' circumstances beyond the Commonwealth's control and despite its due diligence pursuant to Rule 600(G).

Commonwealth v. Tickel, 2 A.3d 1229 (Pa.Super. 2010)(citations omitted).

In this case, the complaint was filed on August 27, 2007. The mechanical run date would have been August 27, 2008. However, there are numerous periods of time that are excludable and/or excusable delays that must be taken into account:

- 1/9/08 – 9/23/08 Two continuances of the preliminary hearing at Defendant's request, resulting in **257** excludable days; and

- 1/8/09 – 6/28/10 Continuances requested by Defendant and various pre-trial motions filed by Defendant, resulting in **536** excludable days; and

- 6/29/10 – 7/11/10 The day after Trial Court ruled on Defendant's pre-trial motions until the first day of the July trial term (the next available time to try this case), resulting in **13** days of excusable delay; and

- 7/27/10 – 11/3/10 Defendant filed an interlocutory appeal, resulting in **99** excludable days; and

- 11/4/10 – 2/6/11 During this time period, Defendant's other case docketed at CP-67-CR-0005854-2008 was in trial during the November trial term which began on November 1, 2010, and took up the entire trial term plus two days thereafter; In the December trial term, the Trial Court had a specially scheduled capital homicide which took up the entire term; In the January trial term, the Trial Court had another specially scheduled capital homicide which took up the entire trial term; resulting in a total of **94** days of excusable delay; and

- 3/10/11 – 6/17/11 Continuance by Defendant, resulting in **98** excludable days;

The tally of the days indicated above that are either excludable and/or excusable delays is as follows:

257
536
13
99
94
+ 98
1097

Adding 365 to the excludable days and excusable delay days of 1097 equals 1,462. The number of days from the date the complaint was filed on August 27, 2007 to the first day of the September 2011 trial term (September 6, 2011) was 1,470 days. When you

subtract the 1,462 from the 1,470, the difference is 8 days.

Given that the Commonwealth was 8 days short of the adjusted run date, the Trial Court performed a due diligence analysis.

> Due diligence is a fact-specific concept that 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. Due diligence includes, among other things, listing a case for trial within the run date, and keeping adequate records to ensure compliance with Rule 600.

Id. Moreover, "where the Commonwealth is prepared to go to trial before the mechanical [or adjusted, where applicable] run date and the court is able to reschedule trial to commence within thirty days after that run date, a defendant's constitutional rights to a speedy trial are not seriously implicated." Commonwealth v. Staten, 950 A.2d 1006, 1011 (Pa.Super. 2008).

In this case, the Commonwealth was prepared to go to trial during the March 2011 trial term. Defendant was informed of the Commonwealth's intent to call the case the first day of the March trial term at a hearing on Defendant's pro se "Petiton to Set Bail" which occurred on February 14, 2011. (N.T., 2/14/11, pages 8-9). On March 10, 2011, during the March trial term, a status conference was held at which time Defendant requested a trial continuance due to Defendant obtaining new counsel that same day. (N.T., 3/10/11, pages 102). Given the foregoing, the lengthy procedural history of this case, and the reasons discussed at the hearing on the Motion to Dismiss, the Trial Court determined that the Commonwealth had exercised due diligence and denied the Motion. (See N.T., 8/30/11, pages 87-97).

It should also be noted that the Commonwealth was again prepared to call the

case for trial on the first day of the September 2011 trial term. At the hearing on the Motion to Dismiss and, after the Trial Court's denial of that Motion, the Trial Court indicated its intention to schedule the trial for September 6, 2011. (N.T., 8/30/11, page 97). However, Defense counsel indicated he was not prepared to go to trial in September and requested a continuance to the November trial term. (N.T., 8/30/11, pages 97-106). The continuance was granted (N.T., 8/30/11, page 106) and the trial was scheduled for, and was started on, October 31, 2011.

Given the foregoing, the lengthy procedural history of this case, and for the reasons set forth at the hearing on the Motion to Dismiss, the Trial Court determined that the Commonwealth did exercise due diligence

The Clerk of Courts is directed to provide a copy of this order to Attorney Anthony Tambourino and to Assistant District Attorney David Sunday.

BY THE COURT:

GREGORY M. SNYDER,
Judge

Date: Sep. 14, 2012