

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

DANIEL D. LITZ

Appellant

No. 1449 WDA 2012

Appeal from the Judgment of Sentence August 23, 2012  
In the Court of Common Pleas of Allegheny County  
Criminal Division at No(s): CP-02-CR-0003699-2012

BEFORE: GANTMAN, P.J., ALLEN, J., and STABILE, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED: May 22, 2014

Appellant, Daniel D. Litz, appeals from the judgment of sentence entered in the Allegheny County Court of Common Pleas, following his bench trial conviction for robbery.<sup>1</sup> We affirm.

In its opinion, the trial court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant now raises one issue for our review:

DOES THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING [APPELLANT'S] RULE 600 MOTION IF THE TRIAL COURT OPINION CONSIDERS THE WRONG LEGAL STANDARD WHEN EXPLAINING ITS RULING ON THIS MOTION AND WHEN CONSIDERING THE CORRECT LEGAL

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<sup>1</sup> 18 Pa.C.S.A. § 3701(a)(1)(ii).

STANDARD, THE COMMONWEALTH FAILS TO EXERCISE  
DUE DILIGENCE BY ITS INACTION ON THE CASE FOR  
OVER A YEAR?

(Appellant's Brief at 4).

"In evaluating Rule 600 issues, our standard of review of a trial court's decision is whether the trial court abused its discretion." **Commonwealth v. Hunt**, 858 A.2d 1234, 1238 (Pa.Super. 2004) (*en banc*), *appeal denied*, 583 Pa. 659, 875 A.2d 1073 (2005).

The proper scope of review...is limited to the evidence on the record of the Rule 600 evidentiary hearing, and the findings of the trial court. An appellate court must view the facts in the light most favorable to the prevailing party.

Additionally, when considering the trial court's ruling, this Court is not permitted to ignore the dual purpose behind Rule 600. Rule 600 serves two equally important functions: (1) the protection of the accused's speedy trial rights, and (2) 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. However, the administrative mandate of Rule 600 was not designed to insulate the criminally accused from good faith prosecution delayed through no fault of the Commonwealth.

\* \* \*

So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule 600 must be construed in a manner consistent with society's right to punish and deter crime.

**Id.** at 1238-39 (internal citations and quotation marks omitted).

In assessing a Rule 600 claim, the court must exclude from the time for commencement of trial any periods during which the defendant was unavailable, including any continuances the defendant requested and any periods for which he expressly waived his rights under Rule 600. Pa.R.Crim.P. 600(C).

[I]n addition to any other circumstances precluding the availability of the defendant or the defendant's attorney, the defendant should be deemed unavailable for the period of time during which the defendant contested extradition, **or a responding jurisdiction delayed or refused to grant extradition**; or during which the defendant was physically incapacitated or mentally incompetent to proceed; or during which the defendant was absent under compulsory process requiring his or her appearance elsewhere in connection with other judicial proceedings.

**Commonwealth v. McNear**, 852 A.2d 401, 405-6 (Pa.Super. 2004) (quoting Pa.R.Crim.P. 600, Comment (emphasis added)). "It is generally held that Rule [600] is tolled where the Commonwealth shows, by a preponderance of the evidence, that it has acted with due diligence in seeking extradition to bring the defendant to trial...." **McNear, supra** at 406 (quoting **Commonwealth v. DeMarco**, 481 A.2d 632 (Pa.Super. 1984)).

"In determining whether the police acted with due diligence [in trying to apprehend a defendant], a balancing process must be employed where the court, using a common sense approach, examines the activities of the police and balances [these] against the interest of the accused in receiving a fair trial." **Commonwealth v. Ingram**, 591 A.2d 734, 737 (Pa.Super. 1991), *appeal denied*, 530 Pa. 631, 606 A.2d 901 (1992). "The actions

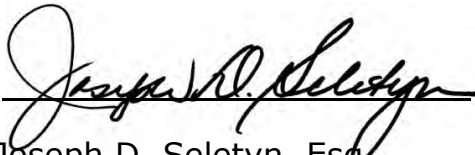
must be judged by what was done, not by what was not done. In addition, the efforts need only be reasonable; lack of due diligence should not be found simply because other options were available or, in hindsight, would have been more productive.” *Id.*

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Randal B. Todd, we conclude Appellant’s issue merits no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed July 15, 2013, at 5-12) (finding: Commonwealth did not engage in misconduct to evade Appellant’s right to speedy trial; Appellant committed armed robbery in Allegheny County on July 15, 2010; Appellant subsequently fled Pennsylvania and embarked on multi-state crime spree; Commonwealth filed criminal complaint on August 17, 2010; Detective Johnson credibly testified about Commonwealth’s efforts to locate Appellant after filing criminal complaint; in August 2010, Detective Johnson learned Appellant was incarcerated in Georgia and contacted its department of corrections on numerous occasions to inquire about Appellant’s status; Georgia authorities informed Detective Johnson that other jurisdictions had filed criminal complaints against Appellant before Allegheny County, and Georgia would not extradite Appellant until after he served time on Georgia sentences; on November 1, 2011, Commonwealth forwarded detainer to Georgia prison where Appellant was incarcerated;

Appellant was continuously incarcerated in Georgia from August 2010 until February 27, 2012, when prison officials released him to Commonwealth's custody; although 737 days elapsed between filing date of criminal complaint and start of trial, 563 days of excludable delay existed due to Appellant's incarceration in Georgia; Commonwealth acted with due diligence in seeking extradition given Appellant's flight and out-of-state incarceration). Accordingly, we affirm on the basis of the trial court opinion.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 5/22/2014

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF  
PENNSYLVANIA

v.

DANIEL D. LITZ,

Defendant.

CRIMINAL DIVISION

NO: CC201203699

APPEAL

OPINION

JUDGE RANDAL B. TODD

COPIES SENT TO:

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District Attorney

By

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**ORIGINAL**  
Criminal Division  
Dept. of Court Records  
Allegheny County, PA.

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CRIMINAL DIVISION  
ALLEGHENY COUNTY PA



Commonwealth did absolutely nothing to obtain Mr. Litz's custody and waited until November 2011 to begin extradition proceedings. This abject failure by the Commonwealth to act demonstrates a lack of due diligence in bringing Mr. Litz to trial within the required timeframe."

## **BACKGROUND**

This matter arises out of an armed robbery which occurred on July 15, 2010 when a man entered a gas station in the Carrick section of the City of Pittsburgh and displayed a firearm to the clerk. The actor told the clerk she had 30 seconds to open the safe and the cash drawer. The clerk removed the money from the cash drawer and turned it over to the actor who then fled. According to the Affidavit of Probable Cause executed by Detective John Johnson, images from the surveillance video from the gas station were electronically transmitted on July 29, 2010 to the Pittsburgh Bureau of Police and the Pennsylvania State Police. On August 2, 2010 information was received from the Pennsylvania State Police Erie Fugitive Squad that the individual shown in the surveillance images was believed to be Defendant and that he had been arrested in Valdosta, Ga. On August 5, 2010 Detective Johnson spoke with a detective from the Gainesville Police Department who informed Detective Johnson that he had, or was about to arrest Defendant, and recently interviewed Defendant. While being interviewed Defendant allegedly admitted to robbing a Carrick gas station prior to arriving in Florida.

According to the Affidavit of Probable Cause, Detective Johnson had also received information from the Pennsylvania State Police that Defendant had been involved in a "crime spree that stretched from Erie, Pittsburgh, Youngstown, Liberty Ohio, Valdosta Georgia and Gainesville Florida." As a result of the information received, a photo array was developed and presented to the gas station clerk on August 10, 2010 at which time she identified Defendant as the actor. A criminal complaint was filed on August 17, 2010 charging Defendant with Robbery and an arrest warrant was issued. Between August 17, 2010 and November 1, 2011, Detective



Johnson made numerous phone calls to authorities at the Georgia State Prison and took various other steps, as described in more detail below, to locate and track Defendant within the Georgia prison system. On November 1, 2011 a letter and copy of Defendant's arrest warrant was forwarded to the Phillips State Prison in Burford, GA, by the Extradition Office of the Allegheny County District Attorney's Office requesting a detainer against Defendant related to the robbery charge. On November 16, 2011 the Georgia Department of Corrections acknowledged the detainer from Allegheny County and informed the Allegheny County District Attorney's Office that it would be advised approximately 30 days in advance of Defendant's release date. On January 31, 2012 a Request For Temporary custody was submitted to the Georgia authorities and an Acceptance of Temporary Custody was executed on January 31, 2012. On February 27, 2012 Defendant was transported from Georgia and lodged in the Allegheny County jail. A preliminary arraignment was held on March 2, 2012 and preliminary hearing was scheduled for March 12, 2012 but continued at the request of the investigating officer to March 20, 2012. A formal arraignment was held on April 3, 2012 and a pretrial conference was held on April 13, 2012. The case was listed for trial on May 23, 2012. On April 30, 2012 Defendant filed a Motion to Dismiss Pursuant to Rule 600 in which he alleged he was continuously in the custody of the Georgia Department of Corrections from August 2010 until February 2012 and that the Commonwealth failed to exercise due diligence in bringing him to trial pursuant to Rule 600.

On June 4, 2012 a hearing was held on the motion to dismiss at which the Commonwealth presented the testimony of Detective Johnson who confirmed that he had developed Defendant as a suspect as a result of the information received from the Pennsylvania State Police after they reviewed the surveillance video from the robbery and advised him that Defendant may be in the custody of the authorities in Georgia (T., p. 3) Detective Johnson also

acknowledged that he filed the complaint on August 15, 2010 and obtained an arrest warrant on August 17, 2010 but was unsure at that time if Defendant was in Florida or Georgia. (T., p. 4) Detective Johnson testified that after he learned that Defendant was in Valdosta, Georgia he attempted to make contact with authorities at the Department of Corrections in Georgia to ascertain his exact location. (T., p. 6) Detective Johnson testified that he made as many as 10 phone calls over an unspecified period of time trying to determine exactly where Defendant was located. During that time he spoke to approximately 5 different individuals until he was advised that he needed to check the Georgia Department of Corrections' website to obtain information about Defendant. (T., p. 8) Detective Johnson testified that it was approximately February or March of 2011 when he confirmed where Defendant was in the Georgia state prison system. (T., p. 8) When he inquired as to what would be needed to take Defendant into custody, Detective Johnson was informed that:

“Pittsburgh was one of the last to file complaint against him and there were other states ahead of me and that it was probably going to be a while before I get him because he would have a hearing or a trial and most likely service time before I even get him.” (T., p. 9)

Detective Johnson testified that he was also informed that Defendant had received a sentence of five years for possession of a firearm and five years for escape. (T., p. 10) Detective Johnson indicated that he first began to document his attempts to locate Defendant in August of 2011. Detective Johnson testified that he had also contacted the Allegheny County District Attorney's Office and spoke to an Assistant District Attorney about what was necessary to extradite Defendant. (T., p.12) On cross-examination Detective Johnson testified that he believed that he spoke with the Assistant District Attorney sometime in 2010 and was also told to speak to another representative of the District Attorney's office, who he spoke to in late 2010 or early 2011. (T., p. 17) The Commonwealth also offered into evidence Defendant's rap sheet, the

November 1, 2011 letter from the District Attorney's Office forwarding a copy of the warrant and requesting a detainer to the Phillips State Prison in Burford, Ga. and the State of Georgia docket sheet dated January 12, 2011. (T., pp. 18-19)

On June 28, 2012, after the submission of briefs by the parties, Defendant's Motion to Dismiss was denied. On August 23, 2012 Defendant proceeded to a nonjury trial and was found guilty as charged and sentenced. The instant appeal followed.

### **DISCUSSION**

In his concise statement Defendant raises the single issue that it was an abuse of discretion to deny the Rule 600 Motion. Defendant argues that the Commonwealth filed a criminal complaint in August 2010 but did not schedule a trial until May of 2012. Defendant asserts that although the Commonwealth knew that Defendant was incarcerated in Georgia in August 2010, the Commonwealth did nothing to facilitate Defendant's extradition despite the fact that Defendant's last pending case in Georgia was resolved in January 2011. Defendant asserts that the Commonwealth failed to act with due diligence in bringing Defendant to trial within the required time and, therefore, the charge against him should be dismissed.

The Commonwealth asserts that it did act with due diligence because Detective Johnson, although he was informed initially that Defendant was in the Georgia system, was still required to make numerous attempts to locate Defendant within the Georgia State Prison system and was ultimately referred to a website to obtain information about Defendant. In addition, Detective Johnson was informed that Defendant would have to complete his sentences before he could be returned to Pennsylvania.

In pertinent part, Rule 600 provides:

"Rule 600. Prompt Trial

- (A)(3) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.
- (B) For the purpose of this rule, trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty or nolo contendere.
- (C) In determining the period for commencement of trial, there shall be excluded therefrom:
- (1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;
- \* \* \*
- (3) such period of delay at any stage of the proceedings as results from:
- (a) the unavailability of the defendant or the defendant's attorney;
- (b) any continuance granted at the request of the defendant or the defendant's attorney.”

If a defendant believes that the Commonwealth has failed to comply with Rule 600, a motion to dismiss may be filed. Rule 600(G) provides, in part, that:

“If the court, upon hearing, shall determine that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth, the motion to dismiss shall be denied and the case shall be listed for trial on a date certain.” Pa.R.Crim.P. 600(G)

In addressing, the issue of whether or not the Commonwealth has exercised due diligence and the circumstances were beyond the control of the Commonwealth, the Supreme Court stated in *Commonwealth v. Bradford*, 46 A.3d 693 (Pa. 2012):

“The Commonwealth, however, has the burden of demonstrating by a preponderance of the evidence that it exercised due diligence. See *Browne*, 584 A.2d at 908. As has been oft stated, “[d]ue diligence is fact-specific, to be determined case-by-case; it does not require perfect vigilance and punctilious care, but merely a showing the Commonwealth has put forth a reasonable effort.” *Selenski*, 994 A.2d at 1089. “If, at any time, it is determined that the Commonwealth did not exercise due diligence, the court shall dismiss the charges and discharge the defendant.” Pa.R.Crim.P. 600(G). *Commonwealth v. Bradford*, 46 A.3d 693, 701-02 (Pa. 2012)

The Court further stated:

“So long as there has been no misconduct on the part of the Commonwealth in an effort to evade the fundamental speedy trial rights of an accused, Rule 1100 must be construed in a manner consistent with society's right to punish and deter crime. In considering matters such as that now before us, courts must carefully factor into the ultimate equation not only the prerogatives of the individual accused, but the collective right of the community to vigorous law enforcement as well.”  
*Commonwealth v. Bradford*, 46 A.3d 693, 702-03 (Pa. 2012)

The Commonwealth relies on *Commonwealth v. McNear*, 852 A.2d 401 (Pa. Super. 2004) to support its contention that it acted with due diligence. In *McNear*, the defendant sold drugs to an undercover agent on July 25, 2000 in Stroudsburg, Pennsylvania. On November 2, 2000 a criminal complaint was filed against McNear and on November 6, 2000 an arrest warrant was issued. After searches failed to discover McNear's whereabouts, a “wanted person form” was filed on December 8, 2000. On December 20, 2000 the investigating detective received information through the National Crime Information Center, via teletype, that McNear was incarcerated in New Jersey. The Court then described the efforts by the investigating officer leading to his return to Pennsylvania as follows:

“Thereafter, Detective Munch **spoke with the contact listed on the teletype** and explained that Appellant was wanted on charges in Pennsylvania. **Detective Munch expressed the desire to extradite Appellant. The detective was told Appellant would not be available for extradition until after he had completed his current sentence and another sentence to be served in Essex County, New Jersey.** In May 2001, Appellant was transferred to Essex County, New Jersey. The New Jersey authorities reiterated to Detective Munch that Appellant would not be available to Pennsylvania authorities until after he completed his Essex County sentence. In late June 2002, the Essex County authorities contacted Detective Munch and informed him that Appellant was available for extradition. (See Trial Court Findings of Fact, entered October 15, 2002, at 1-2). Detective Munch immediately returned Appellant to Pennsylvania. The record demonstrates Appellant was arraigned on June 26, 2002. On September 13, 2002, Appellant filed his Rule 600 motion to dismiss.” *Commonwealth v. McNear*, 852 A.2d 401, 406-07 (Pa. Super.2004) (Emphasis added)

In his Rule 600 motion, McNear argued that the Commonwealth failed to act with due diligence because it did not act to obtain his custody until he completed serving his sentences in New Jersey. The Court noted:

“Appellant maintains the Commonwealth had tools available to return him to Pennsylvania in a timely manner. These tools consisted of the Interstate Agreement on Detainers (“IAD”) at 42 Pa.C.S.A. §§ 9101- 9108 and/or the Uniform Criminal Extradition Act (“UCEA”) at 42 Pa.C.S.A. §§ 9121-9148.4 Appellant insists the Commonwealth did not exercise due diligence, because it failed to utilize either of these tools to bring him back to this jurisdiction for a timely trial. As a result, Appellant concludes his speedy trial rights were violated and he is entitled to dismissal of the charges and immediate release. We disagree.” *Commonwealth v. McNear*, 852 A.2d 401, 404-05 (Pa. Super. 2004)

In reviewing Rule 600 the Court referred to a comment to Rule 600, which provides as follows:

“Under paragraph (C)(3)(a), in addition to any other circumstances precluding the availability of the defendant or the defendant's attorney, the defendant should be deemed unavailable for the period of time during which the defendant contested extradition, **or a responding jurisdiction delayed or refused to grant extradition**; or during which the defendant was physically incapacitated or mentally incompetent to proceed; or during which the defendant was absent under compulsory process requiring his or her appearance elsewhere in connection with other judicial proceedings.” *Commonwealth v. McNear*, 852 A.2d 401, 405-06 (Pa. Super. 2004) (Emphasis in Original)

In finding that the Commonwealth acted with due diligence the Court noted that after Detective Munch received the teletype notifying him that McNear was in custody in New Jersey, Detective Munch spoke with the contact in New Jersey and expressed the desire to extradite McNear. The Court further noted that Detective Munch was told that McNear would not be available for extradition and that the trial court found at the time that McNear “spent under the auspices of the New Jersey authorities” was excludable. The Court stated:

“Moreover, in view of the fact that the New Jersey authorities opposed extradition, the Commonwealth was not necessarily compelled to proceed under either the IAD or the UCE aid, as to do so would have no doubt have been fruitless.” *Commonwealth v. McNear*, 852 A.2d 401, 407 (Pa. Super. 2004)

The facts in the present case are analogous to those set forth in *McNear*. In the instant case, Detective Johnson credibly testified that after receiving information that Defendant was in Georgia he made numerous attempts to contact individuals within the Georgia prison system to locate Defendant and determine when his sentence would be complete. This was the exact same action taken by the detective in *McNear*. Likewise, the Court in *McNear* noted that the detective was told that McNear would not be available for extradition until he had completed his current sentence and another sentence to be served in Essex County, New Jersey. Likewise, as noted above, Detective Johnson testified that he was informed by the Georgia authorities that:

“Pittsburgh was one of the last to file a complaint against him and there were other states ahead of me and that it was probably going to be awhile before I get him because he would have a hearing or a trial and most likely serve his time before I even get him.” (T., p. 9)

Detective Johnson was also informed that Defendant had received a five year sentence for possession of a firearm and a five year sentence for escape.

In his Brief in Support of the Motion Rule 600, Defendant, in reviewing *McNear* states:

“Furthermore, once Mr. McNear’s location was discovered in a New Jersey prison on December 20, 2000, **Detective Munch immediately filed extradition paperwork to obtain the defendant’s presence back in Pennsylvania. See *Id.* at 403-4. New Jersey subsequently denied his extradition request, telling Detective Munch that Defendant would not be available for extradition until his current sentence was completed and he served a further sentence in a separate New Jersey prison.**” *Defendant’s Memorandum of Law in Support of Motion to Dismiss Pursuant to Rule 600*, p. 8. (Emphasis added)

This analysis of the facts in *McNear* is incorrect. In *McNear* the Court noted that Detective Munch entered the warrant for appellant’s arrest into the NCIC and that on December 20, 2000 received a teletype informing him that he was incarcerated in New Jersey. There is no evidence in *McNear* that the investigating detective immediately filed extradition paperwork. The Court

specifically noted that the action taken by Detective Munch was that he “spoke with the contact listed on the teletype and explained that appellant was wanted on charges in Pennsylvania”. The facts only state that the detective was told McNear would not be available for extradition until he completed both his current sentence and a subsequent sentence in another jurisdiction. Thus, the Court in *McNear* found that under the circumstances, with the defendant incarcerated in another jurisdiction, that the Commonwealth acted with due diligence, through the actions of the investigating detective, in determining that defendant was incarcerated in another jurisdiction, speaking to representatives of that jurisdiction and determining that the defendant was not available. The Court in *McNear* also rejected the contention that the Commonwealth was compelled to proceed under the IAD or the UCEA in order to show due diligence where to do so would have been fruitless. The facts in *McNear* indicate that the Court did not require a formal filing of proceedings under either the IAD or the UCEA, but found that the New Jersey’s authorities’ representation that defendant would not be available until after he completed his sentence was sufficient evidence of delay by the state in which he was incarcerated.

Defendant relies on *Commonwealth v. Booze*, 947 A.2d 1287 (Pa. Super. 2008) wherein the Court found that the Commonwealth failed to exercise due diligence when the Commonwealth knew that the defendant therein was being held in Maryland, but failed to follow the proper steps to secure her upon the disposition of the Maryland charges. In *Booze* the trial court granted the defendant’s motion to dismiss. The Superior Court affirmed, finding that the record was devoid of evidence to support a claim of due diligence. The Court also noted that both the trial court and the defendant asserted that extradition papers or formal detainment should have been filed. While noting that the Commonwealth should have at least initiated extradition proceedings, the Court in *Booze* stated that there was “. . . [c]onfusion regarding the



Commonwealth's duty as to due diligence when a defendant is incarcerated in another state." *Booze*, supra., at 1292. After reviewing the procedures under the extradition statute and the detainer statute, the Court stated:

"While we are cognizant of the fact that no statute requires the Commonwealth to institute these actions, the legislature enacted these statutes to institute a process of securing defendants being held in other states." *Booze*, supra., at 1292.

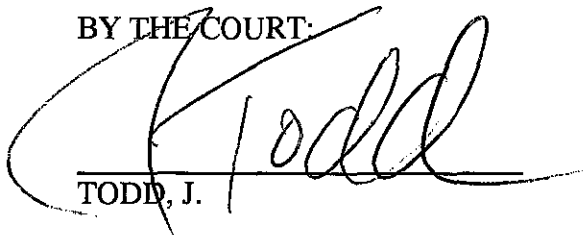
However, the Court also stated that "This case does not vitiate previous case law that allows excludable or excusable time to the Commonwealth upon a showing of due diligence." *Booze*, supra., at 1293. Thus, while *Booze* indicates that filing either for extradition or a detainer will support a finding of due diligence, it does not find that the failure to file for extradition or a detainer is, in itself, a lack of due diligence.

In this case there is absolutely no evidence that the Commonwealth engaged in any misconduct in an attempt to evade the Defendant's right to a speedy right trial. Nor is there any evidence of any prejudice to Defendant. The Commonwealth promptly investigated the facts and circumstances surrounding the robbery and transmitted the surveillance video of the robbery to other police agencies. Having received information that the surveillance images showed Defendant, Detective Johnson developed a photo array and obtained a positive identification from the victim. Detective Johnson then filed a criminal complaint on August 17, 2010 and issued a warrant for his arrest. The mechanical run date pursuant to Rule 600 would have been August 17, 2011. As alleged by Defendant, he was continuously in the custody of the Georgia Department of Corrections from August 2010 until February 2012.

In *McNear* the Court noted that the criminal complaint was filed on November 2, 2000 and McNear was arraigned on June 26, 2002 upon his return to Pennsylvania. He then filed his Rule 600 motion on September 13, 2002. The Court excluded the time between November 2,

2000 until June 26, 2002 finding that the time that his whereabouts were unknown and the time he “spent under the auspices of the New Jersey authorities was excludable.” *McNear*, supra., at 407. In the instant case, the Criminal Complaint was filed on August 17, 2010 and Defendant was arraigned on March 2, 2012.<sup>1</sup> Defendant then filed his Rule 600 Motion to Dismiss on April 30, 2012 which was denied and he proceeded to trial on August 23, 2012. Therefore, there was a period of 737 days between the filing of the complaint and trial. However, of that time, the period between August 17, 2010 and March 2, 2012, a period of 563 days, is excludable as the time he spent in the Georgia prison system. When weighing Defendant’s right to a speedy trial in conjunction with society’s interest to punish and deter crime, it is clear that Commonwealth acted with due diligence in the instant case given Defendant’s flight and subsequent period of incarceration in Georgia. Therefore, the Commonwealth did not violate Defendant’s right to a speedy trial and Defendant’s Rule 600 Motion was appropriately denied.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Todd", written over a horizontal line. The signature is stylized and cursive.

TODD, J.

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<sup>1</sup> It appears from the record Defendant was released by the Georgia authorities to the custody of the Allegheny County Sheriff’s Office on February 27, 2012 and he was arraigned immediately upon his return to Pennsylvania. This is consistent with the allegations in Defendant’s motion.