

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

CRAIG ALLAN LEWIS

Appellant

No. 915 MDA 2013

Appeal from the Judgment of Sentence of April 29, 2013
In the Court of Common Pleas of York County
Criminal Division at No.: CP-67-CR-0001730-2012

BEFORE: MUNDY, J., WECHT, J., and FITZGERALD, J.*

MEMORANDUM BY WECHT, J.:

FILED JUNE 30, 2014

Craig Allan Lewis appeals from his April 29, 2013 judgment of sentence. Lewis argues that the Commonwealth violated the tenets of Pa.R.Crim.P. 600 by failing to bring his case to trial in a timely fashion. For the reasons that follow, we affirm.

The underlying facts of this case are not in material dispute. On January 21, 2012, the Northern York County Regional Police Department ("NYCRPD") responded to a reported shooting on North George Street in Manchester Township. Upon arriving, the responding officer found the victim, David Whitcomb, in the parking lot of a local bar. Whitcomb had been shot in the stomach following an altercation that began inside of the

* Former Justice specially assigned to the Superior Court.

establishment. Police obtained video surveillance footage of the parking lot taken at the time of the incident. On the same day, the police also received an anonymous tip that Lewis was the shooter. **See** Affidavit of Probable Cause, 1/21/2012, at 2. Still images from the surveillance footage, as well as a photographic line-up including Lewis' picture, were presented to Whitcomb at the hospital. Whitcomb positively identified Lewis from both the surveillance footage and the photographic line-up. Further police research revealed that Lewis previously had been an inmate housed at the York County Prison, where Whitcomb worked as a corrections' officer. **Id.** The NYCRPD filed a criminal complaint against Lewis that same day.

On January 22, 2012, Lewis appeared in court for a preliminary arraignment. Preliminary Arraignment/Hearing Notice, 1/22/2012, at 1. A preliminary hearing in Lewis' case originally was scheduled for February 1, 2012, **id.**, but was rescheduled to March 1, 2012, by the magisterial district court on its own motion. **See** Preliminary Hearing Notice, 1/23/2012, at 1; **see also** Recommitment, 3/1/2012, at 1. At the March 1, 2012 preliminary hearing, Lewis waived his formal arraignment and entered a plea of not guilty. **See** Waiver of Arraignment, 4/17/2012, at 1.¹ A pre-trial conference was scheduled for May 22, 2012. By criminal information filed on March 29, 2012, Lewis was charged with criminal attempt--criminal homicide,

¹ Although Lewis signed the formal arraignment waiver on March 1, 2012, the document was not filed of record until April 17, 2012.

aggravated assault--serious bodily injury, aggravated assault--bodily injury, simple assault, and recklessly endangering another person.²

Before the May 22, 2012 pre-trial conference, Lewis was transferred from the York County Prison to the Dauphin County Prison.³ Notes of Testimony--Pre-Trial Conference, 5/22/2012, at 2. However, Lewis was not transported back to York County for the May 22 pre-trial conference. In response, the trial court issued a bench warrant as a detainer. *Id.* The trial court rescheduled Lewis' pre-trial conference for June 19, 2012, and entered an order directing the warden of the Dauphin County Prison to transport Lewis to York County "on or before June 18, 2012." Order, 5/29/2012, at 1. On June 18, 2012, Lewis' pre-trial conference was held one day early. Following a schedule conflict brought to the court's attention by Lewis' counsel, the trial court directed that Lewis' case be listed for trial "during the August term of Criminal Court." *Id.* at 2. However, Lewis was not tried in August 2012. For unknown reasons, no further action was taken in Lewis' case until February 2013.

² 18 Pa.C.S. §§ 901(a) (18 Pa.C.S. § 2501(a)), 2702(a)(1), 2702(a)(4), 2701(a)(1), and 2705, respectively.

³ Lewis claims that he was transferred to Dauphin County pursuant to a "motion from the Commonwealth." Brief for Lewis at 5. The Commonwealth concedes as much, explaining that Lewis was transferred from York County for his own safety. The underlying reason for Lewis' transfer is not relevant to our review.

On February 14, 2013, Lewis filed a "Motion to Dismiss Charges for Violation of Rule 600." In relevant part, Lewis argued as follows: "[Lewis] has been in continuous custody in excess of 365 days and his case has not yet been called for trial, in fact as of the filing of this [m]otion, he will have been in custody for 389 days." Lewis' Rule 600 Motion, 2/14/2013, at 1 (unnumbered). Thus, Lewis asserted that his continuing incarceration was rendered illegal by the terms of Pa.R.Crim.P. 600 ("Prompt Trial").

On February 21, 2013, the Commonwealth filed a response alleging that Lewis' calculation of the time that had elapsed was incorrect because "it fails to [subtract] both excludable [time] and excusable [delay], which would extend the Rule 600 adjusted run date." Commonwealth's Answer to Defendant's Motion to Dismiss, 2/21/2013, at 2 ¶4 (unnumbered). Specifically, the Commonwealth identified several periods of time that it argued should be excluded, or excused, from the calculation of the one-year period prescribed by Rule 600 for the commencement of trial.

The trial court aptly has summarized the remaining procedural history of this case, as follows:

A hearing was held on [Lewis'] Rule 600 motion on March 1, 2013. At the conclusion of that hearing, [the trial court] denied [Lewis'] motion. [Lewis] then proceeded to trial [on March 4, 2013] and, on March 6, 2013, a verdict of guilty was entered against [Lewis] for [aggravated assault--serious bodily injury]. On March 13, 2013, [Lewis] submitted a ["]Motion for Arrest of Judgment and Motion for New Trial.["] [Lewis'] post-trial motions were rejected on April 29, 2013. On May 16, 2013, [Lewis] filed a [n]otice of [a]ppeal. Pursuant to [Pa.R.A.P. 1925(b), Lewis] was directed to file a statement of [errors] complained of [on appeal]. On June 4, 2013, [Lewis] requested

and was granted an extension of time [in which] to file his [Rule 1925(b) statement]. The extension was granted until July 6, 2013. [Lewis' Rule 1925(b) statement] was docketed on July 8, 2013, two days past the extension deadline.^[4]

Trial Court Opinion ("T.C.O."), 7/19/2013, at 1-2. On July 19, 2013, the trial court issued a Rule 1925(a) opinion.

Lewis raises a single issue for our consideration on appeal: "Whether the trial court committed an error [of] law by denying [Lewis'] Rule 600 motion to dismiss where the Rule 600 adjusted run date had expired and the Commonwealth had not exercised due diligence in its [efforts] to bring [Lewis] to trial?" Brief for Lewis at 4 (capitalization modified).

Our standard of review in this context is as follows:

Our standard of review relating to the application of Rule 600 is whether the trial court abused its discretion. **Commonwealth v. Hunt**, 858 A.2d 1234, 1238 (Pa. Super. 2004) (*en banc*). Our scope of review is limited to the evidence on the record of the Rule 600 evidentiary hearing and the findings of the trial court. **Id.** We must view the facts in the light most favorable to the prevailing party. **Id.** at 1239.

⁴ The trial court properly considered Lewis' Rule 1925(b) statement to be timely, and addressed the merits of his appeal. The last day of Lewis' extended deadline fell on July 6, 2013, which is a Saturday. T.C.O. at 2. Thus, Lewis actually had until July 8, 2013, to file a timely Rule 1925(b) statement. **See** 1 Pa.C.S. § 1908 ("When any period of time is referred to in any statute, such period in all cases . . . shall be computed so as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, . . . such day shall be omitted from the computation."). Accordingly, Lewis' Rule 1925(b) statement was timely filed.

Commonwealth v. Williams, 876 A.2d 1018, 1020 (Pa. Super. 2005). “An abuse of discretion is not a mere error in judgment but, rather, involves bias, ill will, partiality, prejudice, manifest unreasonableness, or misapplication of law.” ***Commonwealth v. Hacker***, 959 A.2d 380, 392 (Pa. Super. 2008).

In pertinent part, the version of Rule 600 that was in effect at the time that Lewis committed the above offense⁵ provided as follows:

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,^[6] shall commence no later than 365 days from the date on which the complaint is filed.

⁵ A new version of Pa.R.Crim.P. 600 was adopted on October 1, 2012, and it took legal effect on July 1, 2013. **See** Pa.R.Crim.P. 600 comment. Lewis shot Whitcomb on January 21, 2012, which is more than nine months before the new version of Rule 600 had been adopted. Thus, we will review Lewis’ case under the version of Rule 600 that was in effect at the time that he committed the instant offense. **See *Commonwealth v. Colon***, 87 A.3d 352, 357 n.3 (Pa. Super. 2014).

⁶ “[T]he language of Rule 600 ordinarily applies to defendants on bail.” ***Commonwealth v. Peterson***, 19 A.3d 1131, 1135-36 (Pa. Super. 2011). However, Pennsylvania courts have nonetheless “applied Rule 600 to defendants who are not eligible for bail or were otherwise not free on bail at the time that the 365-day period elapsed.” ***Commonwealth v. Colon***, 87 A.3d 352, 357 n.4 (Pa. Super. 2014); **see *Commonwealth v. Peterson***, 19 A.3d 1131, 1135-36 n.4 (Pa. Super. 2011). Thus, we will apply the requirements of Rule 600 to Lewis’ case.

* * *

- (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;
 - (2) any period of time for which the defendant expressly waives Rule 600;
 - (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.

(G)

* * *

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 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.

This Court has discussed the requirements of Rule 600, and the calculation of the relevant time period, in the following way:

[Rule 600] was designed to implement the speedy trial rights provided by the Sixth Amendment to the United States

Constitution and by Article I, Section 9 of the Pennsylvania Constitution. **Commonwealth v. DeBlase**, 665 A.2d 427, 431 (Pa. 1995). The constitutional provisions themselves continue to provide a separate basis for asserting a claim of undue delay in appropriate cases. **Id.** The first step in determining whether a technical violation of Rule 600 has occurred is to calculate the “mechanical run date.” **Commonwealth v. Aaron**, 804 A.2d 39, 42 (Pa. Super. 2002). The mechanical run date is the date by which the trial must commence under Rule 600. **Id.** It is calculated by ascertaining the number of days in which the Commonwealth must commence trial under Rule 600 and counting from the date on which the criminal complaint was filed. **Id.** The mechanical run date can be modified or extended by adding any periods of time in which the defendant causes delay. **Id.** Once the mechanical run date is modified accordingly, it then becomes an “adjusted run date.” **Id.**

Rule 600 takes into account both “excludable time” and “excusable delay.” **Commonwealth v. Hunt**, 858 A.2d 1234, 1241 (Pa. Super. 2004). “Excludable time” is defined in Rule 600(C) as 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 whereabouts was unknown and could not be determined by due diligence; any period of time for which the defendant expressly waives Rule 600; and/or such period of delay at any stage of the proceedings as results from: (a) the unavailability of the defendant or the defendant’s attorney; and/or (b) any continuance granted at the request of the defendant or the defendant’s attorney. **Id.** (citing Pa.R.Crim.P. 600(C)). The “due diligence” required under Rule 600(C)(1) pertains to the Commonwealth’s efforts to apprehend the defendant. **Id.** at 1241 n.10. The other aspects of Rule 600(C) defining “excludable time” do not require a showing of due diligence by the Commonwealth. **Id.** “Excusable delay” is not expressly defined in Rule 600, but the legal construct takes into account delays which occur as a result of circumstances beyond the Commonwealth’s control and despite its due diligence. **See id.** at 1241-42 (explaining manner in which excludable time, excusable delay and due diligence are to be determined); **see also DeBlase**, 665 A.2d at 431 (discussing excludable time and excusable delay).

Commonwealth v. Murray, 879 A.2d 309, 313 (Pa. Super. 2005) (internal citations modified).

To summarize, the courts of this Commonwealth employ three steps . . . in determining whether Rule 600 requires dismissal of charges against a defendant. First, Rule 600(A) provides the mechanical run date. ***Commonwealth v. Cook***, 676 A.2d 639, 646 n.12 (Pa. 1996). Second, we determine whether any excludable time exists pursuant to Rule 600(C). We add the amount of excludable time, if any, to the mechanical run date to arrive at an adjusted run date. ***Id.***

If the trial takes place after the adjusted run date, we apply the due diligence analysis [relating to “excusable delay.”]

Commonwealth v. Ramos, 936 A.2d 1097, 1103 (Pa. Super. 2007). “In considering these matters, 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.” ***Id.***

With the foregoing in mind, we turn to the merits of Lewis’ claim. A criminal complaint was filed against Lewis on January 21, 2012. Therefore, Lewis’ mechanical run date pursuant to Rule 600 was January 21, 2013. Lewis’ trial did not commence until March 4, 2013, forty-two days after Lewis’ mechanical run date. However, we also must consider the potential periods of “excludable” and “excusable” time in ascertaining the adjusted run date in Lewis’ case. In relevant part, there were three periods of time discussed at the March 1, 2013 hearing on Lewis’ Rule 600 motion: (1) the magisterial district court’s continuance of Lewis’ preliminary hearing from February 1, 2012, until March 1, 2012; (2) the trial court’s continuance of Lewis’ pre-trial conference from May 22, 2012, to June 18, 2012; and (3) the continuance that the Commonwealth argues Lewis requested when the trial court scheduled Lewis’ trial for August 2012 (and not July 2012). Brief

for the Commonwealth at 4-10 (unnumbered). We will begin by addressing the excludability of each of these periods of time, in turn. Pa.R.Crim.P. 600(C).

Turning to the first period, Lewis' preliminary hearing originally was scheduled for February 1, 2012, but was continued until March 1, 2012. The twenty-nine day continuance was the necessary result of judicial time constraints. As Lewis aptly notes in his brief, **see** Brief for Lewis at 12-13, this Court has held that any "[d]elay caused by a district justice constitutes 'judicial delay,' and is **not excludable** for purposes of calculating the Rule 600 run date." **Commonwealth v. Lynn**, 815 A.2d 1053, 1057, 1057 n.5 (Pa. Super. 2003) (emphasis added) (citing **Commonwealth v. McCutcheon**, 488 A.2d 281, 282-84 (Pa. Super. 1985)). Therefore, we may not exclude this twenty-nine-day period as attributable to Lewis.⁷ **Id.**

⁷ The Commonwealth asserts that, because this delay was due to the magisterial court's "full calendar, and not the Commonwealth's lack of due diligence, that period is **excludable** for Rule 600 purposes." Brief for Commonwealth at 7 (emphasis added) (citing **Commonwealth v. Ramos**, 936 A.2d 1097, 1103 (Pa. Super. 2007)). The Commonwealth has conflated our Rule 600 analysis by arguing that the Commonwealth's due diligence is a factor in calculating "excludable time" pursuant to Rule 600(C). However, **Lynn, supra**, provides that the Commonwealth's due diligence primarily is considered when the petitioner's trial took place after the adjusted run date, which would require this Court to apply the tenets of Rule 600(G) and determine whether there was any **excusable delay**. **See Ramos, supra**. The "due diligence" referenced in Rule 600(C)(1) pertains to the Commonwealth's efforts to apprehend a defendant, prior to trial. Thus, the Commonwealth's putative due diligence is immaterial to assessing whether this twenty-nine day period is **excludable** under Rule 600(C). However, (Footnote Continued Next Page)

We now consider the continuation of Lewis' pre-trial conference. Lewis originally was scheduled to take part in a pre-trial conference on May 22, 2012. However, Lewis was transferred from the York County Prison to the Dauphin County Jail upon the basis of a January 24, 2012 order that apparently stemmed from a prisoner transfer motion advanced by the Commonwealth. **See** Commonwealth's Answer to Defendant's Motion to Dismiss, 2/21/2013, at 4 ¶16 (unnumbered) ("It is conceded that [Lewis] was incarcerated in the Dauphin County Prison for his own safety by motion of the Commonwealth as of January 24, 2012."). Specifically, the transfer order mandated that Lewis "shall remain in Dauphin County Prison until further order of court." Order, 1/24/2012, at 1. Unfortunately, no further order of court was entered providing for Lewis' transfer to York County from Dauphin County. The following exchange took place at the May 22, 2012 pre-trial conference:

[LEWIS' COUNSEL]: Your Honor, [Lewis] is not here. Counsel is here on his behalf. I did check the prison screen. Apparently, [Lewis] was transported to Dauphin County. I'm not exactly sure why. That is why he was not transported here today.

THE COURT: He's in Dauphin County?

(Footnote Continued) _____

due diligence is relevant to our examination of "excusable delay." **Ramos, supra; see infra** at 17-21.

[LEWIS' COUNSEL]: Yes, Your Honor.

THE COURT: We should probably issue a bench warrant to get a detainer to bring him back.

[COMMONWEALTH]: Yes, Your Honor.

[LEWIS' COUNSEL]: Yes.

THE COURT: [Lewis] has failed to appear. We issue a bench warrant, authorizing the Sheriff's Department to take custody of [Lewis] and transfer him to York County for purposes of appearing on his case.

We will put this back on the docket for June 19th, 2012, at 9:00 in the morning. And if we don't have custody of him at that time, obviously, we will have to continue it until he is available.

Notes of Testimony--Pre-Trial, 5/22/2012, at 2-3; **see** N.T. at 11-13.

"A criminal defendant who is incarcerated in another jurisdiction is unavailable within the meaning of Rule 600 if the Commonwealth demonstrates by a preponderance of the evidence that it exercised due diligence in attempting to procure the defendant's return for trial." **Commonwealth v. McNear**, 852 A.2d 401, 404 (Pa. Super. 2004) (citing **Commonwealth v. Hill**, 736 A.2d 578, 586 (Pa. 1999)). "Due-diligence [*sic*] is a fact-specific concept that is determined on a case-by-case basis." **Id.** (citing **Commonwealth v. Wallace**, 804 A.2d 675, 680 (Pa. Super. 2002)). "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.** (citing **Hill**, 736 A.2d at 588). In its brief before this Court, the Commonwealth has not discussed this period of time at all. Because it has failed to address this issue at all, we are constrained to conclude that the Commonwealth has failed to demonstrate that it acted with due diligence in attempting to ensure Lewis presence at the May 22, 2012 pre-trial conference.

The record indicates that Lewis was transported to the Dauphin County Jail at the Commonwealth’s behest. In its original response to Lewis’ motion for dismissal, the Commonwealth conceded that it failed to act with diligence: “The Commonwealth’s inadvertence as to the nature of the defendant’s unavailability at that time is conceded.” Commonwealth’s Answer to Defendant’s Motion to Dismiss, 2/21/2013, at 6 ¶22. Furthermore, the Commonwealth devoted the entirety of its argument at the Rule 600 hearing to arguing that this period should be excludable due to the fact that Lewis’ counsel was aware that his client was incarcerated in Dauphin County. N.T. at 10-13. This argument flatly ignores the precedent cited above, which assigns to the Commonwealth the burden of establishing its own due diligence in procuring the defendant’s presence. Thus, the Commonwealth’s argument is unavailing.

Based upon the foregoing, we do not consider Lewis “unavailable” pursuant to Rule 600 during the period between May 22, 2012, and June 18, 2012. Consequently, we will not consider that time period “excludable” pursuant to Rule 600(C). **See McNear**, *supra*.

We now turn to the final period of potentially excludable time, which refers to the scheduling of Lewis' criminal trial in the court's August 2012 term, and not its July 2012 term. At the June 18, 2012 pre-trial conference, the parties discussed the most efficacious time to schedule Lewis' case for trial. The following exchange took place:

[COMMONWEALTH]: I have spoken with [Lewis' counsel], and he indicates that this matter is to be listed for trial. He is attached for the July term, but I believe this could go during the August, 2012 term.

[LEWIS' COUNSEL]: Yep.

* * *

THE COURT: Any other issues?

[LEWIS' COUNSEL]: No. Ready to go for trial.

THE COURT: But can't be tried during July?

[LEWIS' COUNSEL]: I have a pre-trial with Judge Kennedy tomorrow. I think he's going to attach me for July for a Homicide case. I'm anticipating that's what's going to happen.

* * *

THE COURT: We'll list this case for trial during the August term of Criminal Court. [Lewis is] remanded to the York County Prison to await trial.

Notes of Testimony-Pre-Trial, 6/18/2012, at 1-2. Our reading of this exchange indicates that the Commonwealth putatively was prepared to proceed to trial during the court's July criminal term. However, Lewis'

counsel asserted that he was unsure that he would be able to proceed to trial within that time frame due to a representative obligation in another case. Thus, Lewis' case was listed for trial during the August criminal term.

"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" ***Commonwealth v. Hunt***, 858 A.2d 1234, 1241 (Pa. Super. 2004) (citing ***Commonwealth v. Taylor***, 598 A.2d 1000, 1003 (Pa. Super. 1991)). "If the defense [indicates] approval or acceptance of the continuance, the time associated with the continuance is excludable under Rule 600 as a defense request." ***Id.*** (citing ***Commonwealth v. Guldin***, 463 A.2d 1011, 1014 (Pa. 1983)).

The question presented by this third period is a close one. While defense counsel unquestionably acquiesced to continuing his client's case until the court's August criminal term, he did not specifically frame the request as a formal continuance. **See** N.T. at 15. However, viewing the evidence in the light most favorable to the Commonwealth as the prevailing party, **see Williams**, *supra*, we conclude that the defense request to schedule trial in August, and not in July, rendered Lewis' counsel "unavailable" for the purposes of Rule 600. **Hunt**, *supra*. Thus, we must calculate what portion of that time is "excludable" under Rule 600.

The pre-trial conference took place on June 18, 2012, and Lewis' trial was scheduled for August 17, 2012. **See** Brief for Lewis at 10; Brief for the

Commonwealth at 9. The Commonwealth, Lewis, and the trial court all claim that these sixty days represent the period of time that is either “excludable,” or not, under Rule 600. We disagree. Our statutory law indicates that the metric for measuring excludable time under Rule 600 is the unavailability of the defendant. While the defense entered its request for a later scheduling date on June 18, 2012, it does not necessarily follow that we must measure the defendant’s unavailability from the date of the putative continuance request. Rather, the clear terms of Rule 600 indicate that we measure excludable days based upon the period of delay caused by the defendant’s unavailability. **See** Pa.R.Crim.P. 600(C)(3) (referring to the “period of delay” as the time to be excluded in calculating the adjusted run date). The proper period of excludable time under Rule 600 is measured by calculating how long trial actually was delayed by the defendant.

While Lewis’ attorney requested a continuance on June 18, 2012, trial was **not** scheduled to begin on that date. As evinced by the testimony reproduced above, the earliest that Lewis’ case could have proceeded to trial was during the court’s July 2012 criminal term. **See** Notes of Testimony-Pre-Trial, 6/18/2012, at 1-2. The certified record is silent as to which dates the York County Court of Common Pleas had set aside for its criminal docket in July 2012. However, Lewis asserts, and the Commonwealth does not dispute, that the relevant criminal term of court was from July 9 to July 13, 2012. Brief for Lewis at 11.

Viewing this evidence in the light most favorable to the Commonwealth, the earliest date upon which Lewis could have been brought to trial was July 9, 2012. Therefore, the relevant "delay" attributable to Lewis ran from July 9, 2012, to August 17, 2012. This thirty-nine day period must be added to Lewis' "mechanical run date" in order to determine his "adjusted run date." Pa.R.Crim.P. 600(C). Lewis' mechanical run date is January 21, 2013. Accordingly, adding thirty-nine days to Lewis' mechanical run date renders his adjusted run date as Friday, March 1, 2013. Lewis' trial did not commence until Monday, March 4, 2013. Therefore, we are constrained to conclude that the Commonwealth commenced Lewis' trial beyond the permissible adjusted run date.

Because the Commonwealth brought Lewis to trial beyond the 365-day period mandated by Rule 600, we must assess whether, in spite of this violation, the Commonwealth acted with the necessary diligence to excuse an untimely trial:

"Even where a violation of Rule [600] has occurred, the motion to dismiss the charges should be denied if the Commonwealth exercised due diligence and the circumstances occasioning the postponement were beyond the control of the Commonwealth." *Hill*, 736 A.2d at 591.

"Due diligence is a fact-specific concept that must be determined on a case-by-case basis." *Id.* at 588. "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.* (emphasis added).

"Reasonable effort" includes such actions as the Commonwealth listing the case for trial prior to the run date "to ensure that [defendant] was brought to trial within the time prescribed by

Rule [600].” **Aaron**, 804 A.2d at 43–44; **see Hill**, 736 A.2d at 592 (finding Commonwealth exercised due diligence when it initially scheduled trial well within [the] time requirements of Rule [600] but trial was delayed by actions of defendant beyond Commonwealth’s control). Further, this Court has held the Commonwealth exercised reasonable effort when “[w]ithin the run date the Commonwealth was ready to **commence trial** and was prevented from doing so by an administrative error” [that] resulted in a trial date three days beyond the run date. **Commonwealth v. Wroten**, 451 A.2d 678, 680–81 (Pa. Super. 1982) (holding inadvertent administrative error is not enough to defeat due diligence); **see also Commonwealth v. Corbin**, 568 A.2d 635, 638–39 (Pa. Super. 1990) (holding inadvertent listing beyond run date due to overburdened docket, meager staff, and administrative breakdown at detention center, excused Commonwealth with respect to unavailability of its witness); **cf. Commonwealth v. Browne**, 584 A.2d 902 (Pa. 1990) (plurality) (holding due diligence imposes duty on Commonwealth to employ simple recordkeeping systems to track arraignment dates on a routine basis to ensure compliance with Rule 600); **McCutcheon**, 488 A.2d 281 (Pa. 1985) (holding Commonwealth did not exercise due diligence in bringing defendant to trial where district justice’s staff “misfiled” defendant’s paperwork, and Commonwealth only discovered, through chance meeting with defense counsel, that defendant’s case had stalled for nine months; Court concluded Commonwealth had no system to assure that cases held for court were properly processed and such failure in recordkeeping precluded finding of due diligence).

Hunt, 858 A.2d at 1241–42.

The only argument advanced by the Commonwealth with regard to its due diligence⁸ is that the magisterial district court’s order, which postponed

⁸ Beyond listing Lewis’ case for trial on August 17, 2012, it appears that the Commonwealth took no further steps toward prosecuting Lewis. In point of fact, the certified record indicates that neither the Commonwealth nor Lewis took any official action between the pre-trial conference on June 18, 2012, and the filing of Lewis’ Rule 600 motion on February 14, 2013. At the
(Footnote Continued Next Page)

Lewis' arraignment from February 1, 2012, until March 1, 2012, constitutes "excusable delay" because no exercise of due diligence by the Commonwealth could have changed the court's schedule. N.T. at 5-6. Furthermore, the magisterial district court entered a certification that this one-month delay was occasioned solely by judicial scheduling constraints:

(Footnote Continued) _____

Rule 600 hearing in this case, the trial court noted that Lewis' case inexplicably had languished on the criminal docket for seven months:

That's what troubles me. I will be candid with it. This case was listed for the August term of court. It was never tried during August, September, October, November, December, January, or February. And I can tell you that at least for one of these weeks in January, maybe two, I didn't have a damn case. I was begging for cases to be tried.

N.T. at 15-16. This statement from the trial court indicates that the court was available to try Lewis' case during the seven-month delay of his case. We recognize, of course, that the Commonwealth can demonstrate "due diligence" in a variety of different ways. **See Hunt**, *supra*. However, we are also cognizant that the scope of our appellate review is restricted to that evidence which was presented at the Rule 600 hearing. In relevant part, the Commonwealth specifically declined to address its due diligence with respect to this seven-month delay in its argument before the trial court:

The only reason that the [c]ourt should arrive at a due diligence analysis in terms of whether or not [Lewis' case] should have been tried . . . during a subsequent term is if we exceeded the adjusted run time. And our contention is that we did not exceed the adjusted run time.

N.T. at 16. As our discussion above demonstrates, the Commonwealth's belief that it brought Lewis to trial within the adjusted run time mandated by Rule 600 is plainly erroneous. **See supra** at 18-19. In relevant part, it appears that the Commonwealth made no effort to bring Lewis' case to trial during this seven-month period. Consequently, we conclude that this seven-month is not a period of "excusable delay" pursuant to Pa.R.Crim.P. 600(G).

The preliminary hearing in [Lewis'] case was originally scheduled for February 1, 2012. Due to a busy court schedule, the [magisterial district judge] continued the preliminary hearing until March 1, 2012. This continuance was not requested by either party. This was the earliest available date consistent with the [magisterial district] court's business.

Certification of Court Continuance, 2/21/2013, at 1; **see** Notes of Testimony ("N.T."), 3/1/2013, at 5-10.

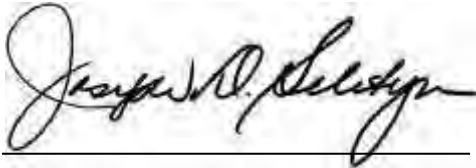
In the context of "due diligence," this Court has held that "judicial delay is a justifiable basis for an extension of time if the Commonwealth is ready to proceed." **Wroten**, 451 A.2d at 681 (citing **Commonwealth v. Cimaszewski**, 395 A.2d 931, 933 (Pa. Super. 1978)). Furthermore, our Supreme Court has held that a delay that "resulted from judicial delay beyond the Commonwealth's control," where the Commonwealth relied upon the actions of a magisterial district judge, constituted due diligence. **Commonwealth v. Bradford**, 46 A.3d 693, 704-05 (Pa. 2012). Additionally, we note that issues implicating Rule 600 call upon us to balance the defendant's interest in obtaining a speedy trial with society's interest in deterring criminal activity: "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." **Hunt**, 858 A.2d at 1239 (quoting **Corbin**, 568 A.2d at 638-39).

Based upon the foregoing discussion, and viewing the evidence in a light favorable to the Commonwealth as the prevailing party, we conclude

that the one-month continuance entered by the magisterial district judge pursuant to the court's crowded schedule constituted an "excusable delay" pursuant to Pa.R.Crim.P. 600(G). This is the same type of administrative error that this Court found insufficient to establish Rule 600 relief in **Wroten**, and which our Supreme Court found insufficient in **Bradford**. Excusing the twenty-nine-day period of delay occasioned by the magisterial district court, we conclude that the Commonwealth acted with due diligence in bringing Lewis' to trial by March 4, 2013. Accordingly, we conclude that the trial court did not abuse its discretion.

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: 6/30/2014