IN THE COURT OF COMMON PLEAS OF BLAIR COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO.CP-07-CR-0002724-2024
	:	
	:	OTN F1009165-3
VS	:	
	:	
	:	
LUIGI NICHOLAS MANGIONE	:	

MEMORANDUM

Argument and Summary: Legal Authority for the Physical Production of the Defendant in Blair County

On May 2, 2025, the Court issued an order finding Defendant unavailable pursuant to Pa.R.Crim.P. 600 because the he did not waive personal appearance for proceedings and the federal authorities refuse to produce Defendant in person. The Order directed the Commonwealth to update the Court every sixty days on the availability of the Defendant for personal appearance and further directed either party may praecipe for a hearing based upon a change in circumstances.

On June 23, 2025, the Court received the Commonwealth's *Notice of Defendant's Unavailability for Personal Appearance in the Blair County Court of Common Pleas and Praecipe for Consent to Remote Appearance,* with attached correspondence from the United States Attorney for the Southern District of New York. The correspondence from the U.S. Attorney's Office indicated that the U.S. Attorney's Office would not agree to the transport of the Defendant to Blair County, and that the Defendant would remain federal custody in New York until conclusion of the federal prosecution. The letter also reflected that the U.S. Attorney would instruct the U.S. Marshals Service to "not honor any writ seeking to take custody of the Defendant for appearance in Blair County."

On June 24, 2025, this Court received the Defendant's *Praecipe to Schedule Hearing on Pretrial Motions,* expressing a demand for physical appearance to participate in a scheduled hearing.

On July 2, 2025, the Court directed the Defendant to file a memorandum providing the legal authority for the physical production of the Defendant for pretrial motions in the Court of

Common Pleas of Blair County, while he (the Defendant) remains subject to federal custody in New York, and where the United States Attorney has indicated its refusal to release the Defendant for transport to Blair County.[1]

Defendant Mangione's Right to be Present in Blair County

It is well established that a defendant charged with a felony in the Commonwealth of Pennsylvania has a constitutionally protected right to be present at every stage of a trial, from the arraignment to the delivery of a verdict. See Lewis v. United States, 146 U.S. 370, 372, (1892) ("A leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the prisoner.") Brinlee v. Crisp, 608 F.2d 839, 848 (10th Cir. 1979); see also Commonwealth v. McLaurin, 292 Pa.Super. 392, 395-96, 396 (1981). However, such right can be relinquished and can be waived by one's words or actions. See for example Illinois v. Allen, 397 U.S. 337, 344 (1970); Commonwealth v. Africa, 466 Pa. 603, 353 A.2d 855 (1976). In Pennsylvania, such right is reflected in Pa.R.Crim.P. 1117, which provides in pertinent part, "(t)he defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence ....".

Clearly, Defendant Mangione in the case at bar has not waived his right to be present at any stage of the trial, including pretrial motions, and has a Constitutionally protected right to be present. Indeed, Defendant asserts his Constitutional right to be present.

The "Primary Custody" Doctrine

Where a defendant faces prosecution by both state and federal authorities, the "primary custody" doctrine determines where and how the defendant will serve any resulting sentence of incarceration. In relevant part, the doctrine provides the sovereign that first arrests an individual has primary custody over him. That sovereign's claim over the individual has priority over all other sovereigns that subsequently arrest him. The sovereign with primary custody is entitled to have the individual serve a sentence it imposes before he serves a sentence imposed by any other jurisdiction, regardless of the chronological order of sentence imposition. Williams v. FCI McKean, 2019 WL 1118057, at *1 (3d Cir. 2019)(Not Reported in Fed.Supp.), citing Bowman v. Wilson, 672 F.2d 1145, 1153-54 (3d Cir. 1982); Harris v. Bureau of Prisons, 787 F.Supp.2d 350, 355 (W.D. Pa. 2011). Moreover, primary custody remains vested in the sovereign that first arrests the individual until its sentence expires and it releases the inmate, or until it relinquishes its priority through some other act, such as granting bail, dismissing the charges, or releasing the individual on

[1] On May 2, 2025, the Court issued an Order finding Defendant "unavailable" pursuant Pa.R.Crim.P. 600 because "federal authorities refuse[d] to produce Defendant in person."

parole. Williams, at *1; George v. Longley, 463 F.App'x 136, 138 n.4 (3d Cir. 2012)(per curiam).[2]

As explicitly recognized by the Third Circuit, however, temporary transfer of a prisoner pursuant to a writ *ad prosequendum* does not constitute a relinquishment. Rios v. Wiley, 201 F.3d 257, 274–75 (3d Cir. 2000) (collecting cases), superseded on other grounds, see United States v. Saintville, 218 F.3d 246, 249 (3d Cir. 2000).

The "primary custody" doctrine developed to provide different sovereigns (in this case the Commonwealth of Pennsylvania and the federal governments) with an orderly method by which to prosecute and incarcerate an individual who has violated each sovereign's laws. Ponzi v. Fessenden, 258 U.S. 254 (1922). See, e.g., Bowman, 672 F.2d at 1153-54; George, 463 F.App'x at 138 n.4 (3d Cir. 2012); Elwell v. Fisher, 716 F.3d 477 (8th Cir. 2013).

On December 9, 2024, Defendant Mangione was arrested in Altoona, Pennsylvania by local police officers, and was charged with; Tamper Records Or Id-Writing, Poss Instrument Of Crime W/Int, and False Identification To Law Enforcement Officer. While being held in the Blair County Prison, he was subsequently indicted by a federal grand jury in the Southern District of New York.

Upon his arrest in Altoona, Pennsylvania, Defendant was in the "primary custody" (sometimes referred to as "primary jurisdiction") of the Commonwealth of Pennsylvania.

In Jones v. Warden McKean FCI, 714 Fed.Appx. 166 (3d. Cir. 2017)(unpublished and non-precedential), a Third Circuit panel concluded the petitioner had Article III standing to raise the primary-custody question under 28 U.S.C. § 2241 because the defendant did "not wish to challenge the explicit exercise of intersovereign comity, but rather intends to raise an issue about the results flowing therefrom." 714 F. App'x 166, 168 n.6 (3d Cir. 2017).[3]

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[2]Any such release must be explicit rather than tacit or implied. See Shumate v. United States, 893 F.Supp. 137, 142–43 (N.D.N.Y.1995) (finding that local authorities relinquished primary custody by signing express waiver).

[3] Other Courts, however, have ruled that a defendant lacks standing under Article III to invoke the primary custody doctrine. "Those who assert jurisdiction, not those in their custody, are the beneficiaries of the rule allocating priority of prosecution to the sovereignty which first takes custody of a person." Bowman, 672 F.2d at 1153; see also United States v. McCrary, 220 F.3d 868, 870 (8th Cir. 2000) ("The exercise of jurisdiction over him is solely a question to be determined between those two sovereignties, and is not subject to attack by the prisoner. See also Rawls v. United States, 166 F.2d 532, 534 (10th Cir. 1948) ("The sovereign alone may raise the objections to the interference with its rights.... If [the accused] has violated the laws of both sovereigns, he is subject to prosecution by both, and he may not complain of or choose the manner or order in which each sovereign proceeds against him so long as his constitutional rights in each trial are not

The record in the case sub judice is unambiguous. The Commonwealth has never expressly waived primary custody of Defendant, has not released Defendant on parole, has not granted bail, or dismissed the charges, see Williams, at *1; George, 463 F.App'x 136, at 138 n.4. Thus, the Defendant remains in the primary custody of Pennsylvania.

Rule 600

Under Pennsylvania Rule of Criminal Procedure 600(A)(2)(a), the Commonwealth must commence trial within 365 days from the filing of a criminal complaint. Rule 600(C)(1) governs the calculation of this time period and requires that, "Periods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included.... Any other periods of delay shall be excluded from the computation." If trial is not commenced within the prescribed time, the defendant may file a motion to dismiss the charges with prejudice under Rule 600(D)(1). The burden then shifts to the Commonwealth to show, by a preponderance of the evidence, that it exercised due diligence in bringing the defendant to trial.

What Constitutes Due Diligence?

"Due diligence" under Rule 600 is a fact-specific inquiry to be determined on a case-by-case basis. It does not require "perfect vigilance and punctilious care," but it does require the Commonwealth to put forth a reasonable, good-faith effort to bring the defendant to trial. See Commonwealth v. Selenski, 994 A.2d 1083, 1088–89 (Pa. 2010); Pa.R.Crim.P. 600, Comment. When a defendant is incarcerated in another jurisdiction and is thus "unavailable," the Commonwealth may toll Rule 600 only if it demonstrates that it exercised due diligence in attempting to obtain custody of the Defendant. See Commonwealth v. Plowden, 157 A.3d 933 (Pa. Super. 2017); Commonwealth v. Booze, 953 A.2d 1263, 1273 (Pa. Super. 2008).

Due Diligence Includes an Obligation to Follow the Proper Legal Process

Due diligence requires more than just initiating contact with the holding jurisdiction. It mandates the Commonwealth timely invoke and properly follow the correct legal procedures to obtain custody of the defendant. In Plowden, for example, the Commonwealth was found to have exercised due diligence by promptly initiating the Interstate Agreement on Detainers (IAD) process and maintaining communication with New York authorities. The court held that delays beyond the Commonwealth's control, once the

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violated."); Harris v. Bureau of Prisons (BOP) Fed., 787 F. Supp. 2d 350, 357 (W.D. Pa. 2011) ("Any dispute over whether an inmate should be in the primary custody of either the state or federal government is a matter to be agreed upon between the two sovereigns; it is not subject to attack by the prisoner.").

proper procedure was invoked, were excludable from the Rule 600 computation. See Plowden, 157 A.3d at 942–43; Pa.R.Crim.P. 600(C)(1), Comment.

It should be noted, however, the IAD is not applicable to federal pretrial detainees, as it applies only to defendants who have "entered upon a term of imprisonment". United States v. Mauro, 436 U.S. 340 (1978).

Application to Mr. Mangione's Case

To satisfy its due diligence obligations in the case at bar, the Commonwealth must pursue the only legally available process: a writ of habeas corpus ad prosequendum, authorized by 28 U.S.C. § 2241(c)(5). This writ is a formal request from a state prosecutor to the federal court seeking temporary custody of a federal detainee for the purpose of prosecution in state court. The process is governed by 28 U.S.C. § 2241(c)(5) which authorizes the federal court to issue the writ; 28 C.F.R. §§ 527.30–31 which details BOP procedures for transfers; and, DOJ and USMS policies which clarify that the U.S. Marshals Service has discretion to honor such writs.

The petition must be filed in the appropriate U.S. District Court, not a state court, and must demonstrate the necessity of the detainee's appearance. Once issued, the writ directs the U.S. Marshals to transport the detainee for the state proceeding and return them promptly to federal custody.

Nor would informal communications between the Commonwealth and the U.S. Attorney's Office in the SDNY satisfy the Commonwealth's due diligence obligations in this case. The Commonwealth must demonstrate that it took affirmative steps to initiate the proper writ process through federal court channels to secure Mr. Mangione's presence.

Detainers Are Not a Substitute for Due Diligence

In this case, the Commonwealth claims to have served a detainer on federal authorities to secure Mr. Mangione's appearance. However, as recognized by the U.S. Supreme Court in Mauro, a detainer is not the legal equivalent of a writ of habeas corpus ad prosequendum. As noted by the Court, "We can therefore assume that Congress was well aware of the use of such writs by the Federal Government to obtain state prisoners and that when it used the word "detainer," it meant something quite different from a writ of habeas corpus *ad prosequendum*." See Mauro, 436 U.S. at 360. A detainer merely notifies the holding institution that the prisoner is wanted in another jurisdiction upon completion of their current detention. A detainer does not compel production of the prisoner, nor does it constitute action sufficient to meet the Commonwealth's burden of due diligence. See Mauro, at 361–63. Accordingly, merely serving a detainer is insufficient.

Conclusion

In sum, the Commonwealth cannot claim due diligence under Rule 600 unless it:

1. Timely identifies the need for custody of a defendant held in another jurisdiction;
2. Invokes the correct legal mechanism applicable to that defendant's status (e.g., IAD for sentenced prisoners, writ of habeas corpus ad prosequendum for federal pretrial detainees); and
3. Pursues the process through proper channels, including formal filings in federal court where necessary.

Nor can the Commonwealth evade its obligations by claiming Mr. Mangione is "unavailability" when he remains in their primary custody, despite his current physical custody in New York. Because the Commonwealth did not follow this process in Mr. Mangione's case, it has not satisfied its burden of demonstrating due diligence under Rule 600(C)(1). The mere service of a detainer and informal communications simply do not meet the necessary legal standard.

TOM DICKEY LAW OFFICES, P.C.

Thomas M. Dickey, Esquire
ATTORNEY FOR DEFENDANT

PUBLIC ACCESS POLICY CERTIFICATION

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Thomas M. Dickey, Esquire

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CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:
	: NO. CP-07-CR-0002724-2024
v.	:
	:
LUIGI NICHOLAS MANGIONE	:

CERTIFICATE OF MAILING

I, Thomas M. Dickey, hereby certify that on this date, a true and correct copy of the foregoing *Memorandum* was hand delivered to the following parties on August 1, 2025:

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