

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

KOBEAY SWAFFORD,

Defendant-Appellant.

Supreme Court
No. 136751

Court of Appeals
No. 268499

Wayne County Circuit
Court No. 05-10897-01

APPELLANT'S REPLY BRIEF

PROOF OF SERVICE

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**STATEMENT OF MATERIAL
PROCEEDINGS AND ORDERS BELOW**

Defendant-Appellant incorporates by reference the Statement of Material Proceedings and Orders Below, as previously filed in Appellant's Brief on Appeal.

STATEMENT OF JURISDICTION

Defendant-Appellant incorporates by reference the Statement of Jurisdiction as previously filed in Appellant's Brief on Appeal.

STATEMENT OF QUESTIONS PRESENTED

- I. **DOES THE INTERSTATE AGREEMENT ON DETAINERS (IAD) APPLY BECAUSE THE WAYNE COUNTY PROSECUTOR'S DETAINER WAS LODGED AT THE FEDERAL CORRECTIONAL INSTITUTION WHERE DEFENDANT SWAFFORD HAD ENTERED UPON A TERM OF IMPRISONMENT?**

Defendant-Appellant states "yes"

Plaintiff-Appellee states "no"

STATEMENT OF FACTS

Defendant-Appellant incorporates by reference the Statement of Jurisdiction as previously filed in Appellant's Brief on Appeal.

ARGUMENT

Defendant-Appellant incorporates by reference the Argument as previously filed in Appellant's Brief on Appeal, and in reply to Appellee's Brief, states:

I. THE INTERSTATE AGREEMENT ON DETAINERS (IAD) APPLIES BECAUSE THE WAYNE COUNTY PROSECUTOR'S DETAINER WAS LODGED AT THE FEDERAL CORRECTIONAL INSTITUTION WHERE DEFENDANT SWAFFORD HAD ENTERED UPON A TERM OF IMPRISONMENT.

Appellee's argument can be summarized in one simple sentence; the Wayne County Prosecutor's Office sent a detainer to the United States Marshals before Defendant Swafford was incarcerated on his federal sentence and everything that occurred thereafter can be ignored as legally and factually irrelevant.¹ This position flies in the face of the explicit language of the IAD, the spirit of the law and the record in this case. According to this view, it is of no consequence that:

1. The detainer was initially lodged at the federal correctional institution when it accompanied Defendant Swafford as he entered upon his term of imprisonment.²

¹This is the position taken by the Court of Appeals majority. "The prosecutor's office never sent a detainer to the Bureau of Prisons where defendant was serving a sentence. It only sent a detainer to the United States Marshal for the State of Tennessee" (Exhibit M, Appendix, pg. 37a).

²Defendant Swafford became a federal inmate when he was sentenced on November 16, 2004, and was subsequently transferred to the FCI at Beckley on February 16, 2005.

2. Subsequently, on March 2, 2005, the detainer was lodged again through confirmation by the Wayne County Prosecutor's Office (with the FCI at Beckley).

3. The FCI confirmed the detainer with the Wayne County Prosecutor's Office by written notification and by sending the appropriate forms under the IAD to the prosecutor.

4. The Wayne County Prosecutor's Office invoked the IAD by executing the forms and returning them to the FCI.

5. Wayne County took possession of Defendant Swafford from the FCI on October 5, 2005, pursuant to their detainer under the IAD.

Thus, the undisputed record belies Respondent's argument that "a detainer . . . was never filed with the Bureau of Prisons or any of its specific institutions" (Appellee's Brief, pg. 7).³

To reach its conclusion, Appellee relies initially on the assertion that the State of Michigan did not obtain custody of Defendant until he completed his federal sentence, making the IAD inapplicable. This is factually incorrect. Appellee relies on Exhibit L, Appendix, pg. 29a. That exhibit explicitly states that Appellee took possession of Defendant on October 5, 2005 pursuant to their detainer under the IAD. The exhibit also explicitly required that "Inmate must be returned to FCI Beckley, Beaver, WV" because he was currently under federal

³Respondent does not contest the validity of the documents contained in Appellant's Appendix. In response to Defendant's Motion to Remand, Appellee stated in relevant part, ". . . no dispute exists as to the record . . ." (Appellee's Answer to Motion to Remand, pg. 2).

sentence. Defendant Swafford was sentenced to a term of thirty seven (37) months on November 19, 2004.

Secondly, the assertion that “Here, the People obtained custody of Defendant at the completion of his term of incarceration” is simply not true. At the time the Wayne County Prosecutor took Defendant Swafford from the FCI, he was still serving his federal sentence. On March 2, 2005, the FCI at Beckley sent an Agreement on Detainers Certificate of Inmate to the Wayne County Prosecutor’s Office, setting forth his sentence and the time remaining on his federal sentence (Exhibit R, Supplemental Appendix, pg. 83a). As of March 2, 2005, Defendant Swafford had two (2) years, three (3) months and twenty four (24) days remaining on his federal sentence. Even if it were true, a State cannot avoid application of the IAD by simply waiting out the completion of the sentence in another state, once an inmate has invoked the IAD.⁴

⁴Jurisdiction may not be conferred by the Interstate Criminal Extradition Act following a violation of the IAD. People v Borman, 189 Mich App 215 (1991), rev’d on other grounds, 442 Mich 424 (1993). A detainer under the IAD also includes a request to the institution to hold the inmate after his release. Carchman v Nash, 473 US 716, 719, 105 S Ct 3401, 87 L Ed 2d 516 (1985). The Court in People v Bentley, 121 Mich App 36, 40 (1982) specifically rejected Appellee’s argument asserted here, that they can circumvent the IAD by some other means of obtaining the inmate.

The fact that defendant was ultimately brought to Midland County by bond procedures instead of by a request for temporary custody under Article IV(a) of the IAD did not render inapplicable the provisions of the IAD. In United States v Mauro, supra, the United States Supreme Court stated that the speedy trial requirement of Article IV of the agreement applied whenever the receiving state initiated the disposition of charges underlying a detainer it had previously lodged against a prisoner: “Any other reading of this section would allow the Government to gain the advantages of lodging a detainer against a

Appellee also claims that after the original dismissal of this case on January 26, 2006 in the trial court, Defendant Swafford was not returned to federal custody but “simply released,” apparently roaming the streets (emphasis in original) (Appellee’s Brief, pg. 12). Appellee offers no proof in support of this claim or any evidence that they lifted the detainer. In fact, Defendant Swafford was returned to the FCI at Beckley in April of 2006 where he remained until subsequently being returned to the Wayne County Jail for trial in September 2007 (Exhibit S, Program Review Report, FCI Beckley, dated April 21, 2006, Supplemental Appendix, pg. 84a-85a). Defendant Swafford was never released from custody.

On the other hand, Defendant Swafford agrees that the IAD only requires that the detainer be lodged with the prison system, not a specific institution, and upon transfer to a different location, a new detainer is not required (Appellee’s Brief, pg. 13). Defendant also agrees that a detainer may be filed by the prosecutor’s office, the police, the sheriff or other law enforcement agency (Appellee’s Brief, pg. 28). As such, the delivery of the Wayne County Prosecutor’s detainer by the U.S. Marshal to the FCI would constitute the filing of the detainer as defined

prisoner without assuming the responsibilities that the Agreement intended to arise from such an action.” 436 US 364; 98 S Ct 1849; 56 L Ed 2d 349. See also People v Browning (on Rehearing), supra, (footnote omitted).

Respondent’s reliance on People v Ferazza, 18 Mich App 80 (1969) is misplaced. The defendant in Ferazza asserted speedy trial claims under the Constitution and MCL 750.316. Having found that the Michigan authorities acted with sufficient due diligence, the Court found no speedy trial violation. Ferazza has no application to this case.

under the statute and as interpreted in Carchman v Nash, 473 US 716, 719, 105 S Ct 3401, 87 L Ed 2d 516 (1985).⁵

Additionally, Appellee's heavy reliance on United States v Mauro, 436 US 340, 98 S Ct 1834, 56 L Ed 2d 329 (1978) for the definition of a detainer to resolve the issue here is misplaced. The question in Mauro was whether a writ of habeas corpus ad prosequendum by the United States to obtain state prisoners constituted a detainer under the IAD. Mauro, does not address the issue of when a detainer is to be filed under the IAD.⁶

Finally, Appellee argues that an interpretation of the unambiguous language of the IAD is that a detainer is valid only if filed after a defendant is a prisoner, i.e. has entered a term of incarceration (Appellee's Brief, pg. 13).⁷ Defendant submits the issue in this case is not when a detainer was filed with the institution, but whether a detainer was lodged with the Bureau of Prisons. In any event, Appellee reaches this conclusion by focusing only on the first portion of the sentence,

⁵"A detainer is a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated asking the institution either to hold the prisoner for the agency [after his release] or to notify the agency when release of the prisoner is imminent." (Emphasis added).

⁶The same analysis applies to other cases cited by Appellee. For example, Appellee relies on People v Gallego, 199 Mich App 566 (1993) for the proposition of whether the IAD applies. Yet Gallego, only addressed whether a defense counsel's letter constituted a detainer for sufficient notice under the IAD, and not the issue raised here.

⁷As noted, Appellee argues that his interpretation allows them to prevail by ignoring that the detainer was, in fact, lodged after Defendant was a prisoner. Also, Appellee does not claim any good faith reliance. "The People (sic) good faith will not excuse a violation" (Appellee's Brief, pg. 26).

ignoring the remaining language. The critical language after “entered upon a term of imprisonment in a penal or correctional institution” is the word “and” referencing a pending untried charge, for which “a detainer has been lodged against the prisoner” (emphasis added). The plain language of the statute does not require that the detainer be lodged after the defendant is imprisoned. No case cited by Appellee contravenes this. As previously argued, the underlying purpose of the detainer is notification, which undeniably occurred here. When “the purpose of the Agreement and the reasons for its adoption” are implicated, there is “no reason to give an unduly restrictive meaning” to the terms of the IAD. Mauro, supra, 436 US at 361-362). Again, the question is whether a detainer was lodged with the institution where Defendant Swafford was serving a sentence.⁸ The undisputed answer to that question is in the affirmative. Therefore, this Court should reverse the Court of Appeals.

⁸“A detainer serves to notify the custodial state to hold the prisoner or inform the notifying state prior to the prisoner’s release. A detainer remains lodged against a prisoner without any action being taken on it” (emphasis added). People v Bentley, 121 Mich App 36, 40 (1982), citing to People v McLemore, 411 Mich 691, 692 fn. 2 (1981); People v Monasterski, 105 Mich 645, 652 (1981) (other cites omitted).

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, Defendant-Appellant requests this Honorable Court reverse the Court of Appeals and affirm the trial court's Order of Dismissal, or alternatively remand for an evidentiary hearing.

Respectfully submitted,

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Dated: December 29, 2008

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PROOF OF SERVICE

STATE OF MICHIGAN)
)SS
COUNTY OF WAYNE)

CRAIG A. DALY, P.C., being first duly sworn, deposes and says that on the 29th day of December 2008, he did serve a true copy of the Appellant's Reply Brief Appeal upon the Michigan Attorney General, G. Mennen Williams Building, 7th Floor, 525 W. Ottawa St., P.O. Box 30212, Lansing, Michigan 48909 and the Wayne County Prosecutor's Office, Appellate Division, 1441 St. Antoine, 12th Floor, Detroit, Michigan 48226, State Attorney by first class mail.

CRAIG A. DALY, P.C. (P27539)

Subscribed and sworn to before me
this 29th day of December 2008.

Melinda D. Zawal
Notary Public, Macomb County, MI
Acting in Wayne County, Michigan
My Commission expires: 06/18/2010