

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA

v.

BENJAMIN ARNOLD,
Defendant

NO. CR-313-2024

Kara Marie Beck, Esquire
Assistant District Attorney
Jeffrey G. Velandier, Esquire

Counsel for Commonwealth

Counsel for Defendant

MEMORANDUM OPINION

Nanovic, P.J. – October 9th, 2024

More than eight years after a fire destroyed Defendant's home and after fire insurance for this loss was paid, the Commonwealth filed a criminal complaint against Defendant for arson and insurance fraud. At issue is whether prosecution for these charges, as well as a count for conspiracy which the Commonwealth seeks to add at this time, is time barred by the applicable statute of limitations.

PROCEDURAL AND FACTUAL BACKGROUND

On January 11, 2016, the Commonwealth contends David Argott, at approximately 4:12 a.m., deliberately set fire to a vacant double home located at 522/524 East Front Street, Lansford, Pennsylvania, neither home being connected to any active utilities. The home at 522 East Front Street was previously sold at tax sale and was reported to be owned by a bank. The fire was started in the basement of this home. The home at 524 East Front Street was owned by Defendant Benjamin Arnold ("Arnold") and his wife,

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Kimberly Arnold, and was in the process of having repairs made by Richard Snyder.¹ Both homes were completely destroyed.

Nationwide Mutual Fire Insurance Company insured the home at 524 East Front Street. Nationwide was first contacted about the loss on January 12, 2016, and completed its estimate of the loss on January 27, 2016. A check for this loss in the amount of \$82,631.00 was deposited into an account in Kimberly Arnold's name on March 21, 2016.

At the time of the fire, the Commonwealth did not know of Argott's involvement. This was only learned years later, when Argott's former girlfriend, Suzanne Thompson, in the course of an unrelated criminal investigation advised the Hazleton City Police Department that Argott set the fire, that Snyder paid Argott \$5,000.00 in February 2016 to do so, and that Arnold hired and paid Snyder \$10,000.00 to have the home set on fire in order to collect under the fire insurance policy on the property. The Hazleton City Police Department provided this information to the Pennsylvania State Police on March 8, 2023,

¹ In his brief in support of his Motion to Dismiss, Arnold claims his wife, Kimberly Arnold, was the sole owner of the property, reasoning that the fire insurance claim was made solely by Kimberly Arnold and the insurance check for the fire damage was made payable solely to Kimberly Arnold. See Defendant's Brief, p.2, n.1. While the copy of the insurance check attached to the Commonwealth's Legal Memorandum from Mayo & Associates Public Adjustment Firm, LLC, dated March 16, 2016, in the amount of \$82,631.00 is payable solely to Kim Arnold, a copy of the claim made to Nationwide Mutual Fire Insurance Company has not been made part of the record. Nor does this information appear elsewhere in the record.

Our finding that the home was in the name of both Benjamin and Kimberly Arnold is based on the testimony of Trooper Martini and Detective Soberick on July 30, 2024, as well as the probable cause affidavit attached to the criminal complaint filed in this matter. Further, both Benjamin and Kimberly Arnold are identified as the insured in a memo of Nationwide attached to Co-Defendant David Argott's Brief in support of his Motion to Dismiss. Ultimately, whether 524 East Front Street was titled in Benjamin and Kimberly Arnold's names jointly or in Kimberly Arnold's name alone, we believe, is immaterial to the statute of limitations defense raised by Defendant.

who then interviewed Thompson on March 13 2023, at which time Thompson confirmed what the State Police had been told by the Hazleton Police Department and provided greater detail.

On July 14, 2023, the Pennsylvania State Police contacted the Carbon County District Attorney's Office and provided the information they had received regarding the cause of the January 11, 2016, fire and the principals involved. On February 27, 2024, the Commonwealth filed a criminal complaint against Arnold charging him with arson-endangering persons, under 18 Pa.C.S.A. §3301(a)(1)(i); arson-endangering property to collect insurance, under 18 Pa.C.S.A. §3301(c)(3); reckless burning or exploding, under 18 Pa.C.S.A. §3301(d)(1); and insurance fraud under 18 Pa.C.S.A. §4117(a)(5). The affidavit of probable cause attached to the criminal complaint asserts that the complaint is timely filed, citing 42 Pa.C.S.A. §5552 as providing the authority for the late filing of any offense which has fraud as a material element.

Thereafter, on June 19, 2024, Defendant filed an Omnibus Pre-Trial Motion requesting, *inter alia*, that the case be dismissed as being barred by the applicable statute of limitations found at 42 Pa.C.S.A. §5552. See Commonwealth v. Corban Corp., 909 A.2d 406, 411 (Pa.Super. 2006) (noting that a statute of limitations defense to criminal charges is properly raised prior to trial by filing a pre-trial omnibus motion to dismiss the charges), *aff'd*, 957 A.2d 274 (Pa. 2008). A hearing on this Motion was scheduled for July 30, 2024, at which time testimony was taken from the arresting officer, Trooper Zachary Martini, and the county's detective, Jack Soberick, and an agreement reached

that a ruling on Arnold's statute of limitations defense be made before taking further evidence on the other issues raised in the Omnibus Pre-Trial Motion.

The Commonwealth has conceded that under the original complaint, the charges are barred by the statute of limitations (see Commonwealth's Legal Memorandum, page 4), but seeks to maintain its prosecution by amending the information to include a count for criminal conspiracy to commit arson to collect insurance for the fire loss, referencing 18 Pa.C.S.A. §3301(c)(3) as the crime which was the subject of the conspiracy. See Petition to Amend the Criminal Information filed on August 29, 2024. Defendant opposes this amendment as being equally barred by the statute of limitations.

DISCUSSION

The statute of limitations for major crimes such as arson or insurance fraud requires that a prosecution must be "commenced" within five years after commission of the offense. See 42 Pa.C.S.A. §5552(b). More specifically, on the issue before us, Section 5552 of the Judicial Code provides as follows:

(b) Major offenses.—A prosecution for any of the following offenses must be commenced within five years after it is committed:

(1) Under the following provisions of Title 18 (relating to crimes and offenses):

* * *

Section 3301 (relating to arson and related offenses).

* * *

Section 4117 (relating to insurance fraud).

* * *

(3) Any conspiracy to commit any of the offenses set forth in paragraphs (1) and (2) and any solicitation to commit any of the offenses in paragraphs (1)

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and (2) if the solicitation results in the completed offenses.

* * *

(c) Exceptions.—If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:

(1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than three years.

* * *

(d) Commission of offense.—An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the complicity of the defendant therein is terminated. Time starts to run on the day after the offense is committed.

(e) Commencement of prosecution.—Except as otherwise provided by general rule adopted pursuant to Section 5503 (relating to commencement of matters), a prosecution is commenced either when an indictment is found or an information under Section 8931(b) (relating to indictment and information) is issued, or when a warrant, summons or citation is issued, if such warrant, summons or citation is executed without unreasonable delay.

42 Pa.C.S.A. §5552. In applying this Section we must also keep in mind that statutes of limitations are to be “liberally construed in favor of the defendant and against the Commonwealth.” Commonwealth v. Cardonick, 292 A.2d 402, 407 (Pa. 1972) (citations omitted).

Pursuant to 42 Pa.C.S.A. §5552(b)(1), a prosecution for violating Section 3301 (relating to arson and related offenses) and Section 4117 (relating to insurance fraud) of the Crimes Code must be commenced within five years of when the offense is committed. Section 5552(b)(3) further provides that a prosecution premised on a conspiracy to commit either of these offenses must likewise be commenced within five years.

Consequently, all of the offenses with which Defendant was originally charged, as well as the charge of conspiracy to commit arson to obtain the proceeds of insurance which the Commonwealth seeks to add to the information, must be commenced within five years after the offense was committed. Cf. Commonwealth v. McGogney, 293 A.3d 610 *3 (Pa.Super. 2023) (Non-Precedential Decision), appeal denied, 302 A.3d 1191 (Pa. 2023). “An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the complicity of the defendant therein is terminated.” 42 Pa.C.S.A. §5552(d).

A criminal prosecution is commenced generally when an indictment is found; an information issued; or a warrant, summons or citation issued, if executed without unreasonable delay. See 42 Pa.C.S.A. §5552(e).

Additionally, commencement of a prosecution may occur by other means established by general rule of court. See *id.*; 42 Pa.C.S.A. §5503(b). In this regard, [the Pennsylvania Supreme Court] has prescribed that criminal proceedings in court cases shall be instituted, *inter alia*, by the filing of a written complaint. See Pa.R.Crim.P. 502(1).

Commonwealth v. Laventure, 894 A.2d 109, 111 (Pa. 2006). Here, the criminal complaint against Arnold was filed on February 27, 2024, thereby commencing the prosecution as to the original charges. This date is clearly more than five years after the fire on January 11, 2016.

The Commonwealth bears the burden to establish that a crime as charged was committed within the applicable statute of limitations period. Corban, 909 A.2d at 411. (2006). In general, An offense is committed when every element of the offense has

concluded. 42 Pa.C.S.A. §5552(d). As to the original arson charges, these offenses occurred as of the date of the fire, January 11, 2016.² As to the charge of insurance fraud - knowingly benefiting from the proceeds under Section 4117(a)(5) – the offense was committed once payment of the fire insurance money was received on March 21, 2016.³ Cf. Commonwealth v. McSloy, 751 A.2d 666, 669 (Pa.Super. 2000) (holding that the offense of theft by deception had not occurred for purposes of the running of the statute of limitations until defendant first obtained property from another by deception, that being receipt of the first payment from the insurance companies), appeal denied, 766 A.2d 1246 (Pa. 2000).

With respect to conspiracy, a continuing offense, the conspiracy ended once the object of the conspiracy, the payment of insurance proceeds, was concluded on March 21 2016. See 42 Pa.C.S.A. §5552(d) providing that if a legislative purpose to prohibit a continuing course of conduct plainly appears, the offense is committed “at the time when

² A defendant commits arson endangering persons “if he intentionally starts a fire or causes an explosion, or he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or that of another, and if he thereby recklessly places another person in danger of death or bodily injury, including but not limited to a firefighter, police officer or other person actively engaged in fighting the fire.” 18 Pa.C.S.A. §3301(a)(1)(i). A defendant commits the offense of arson endangering property “if he intentionally starts a fire or causes an explosion, whether on his own property or that of another, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, and if he commits the act with intent of destroying or damaging any property, whether his own or of another, to collect insurance for such loss.” 18 Pa.C.S.A. §3301(c)(3). A defendant commits reckless burning or exploding “if he intentionally starts a fire or causes an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another, and thereby recklessly places an uninhabited building or unoccupied structure of another in danger of damage or destruction.” 18 Pa.C.S.A. §3301(d)(1).

³ A defendant commits insurance fraud knowingly benefiting from the proceeds if he “knowingly benefits, directly or indirectly, from the proceeds derived from a violation of [Section 4117] due to the assistance, conspiracy or urging of any person.” 18 Pa.C.S.A. §4117(a)(5).

the course of conduct or the complicity of the defendant therein is terminated." Accordingly, the statute of limitations for conspiracy does not begin to run until the conspiracy expires, either when the conspirator's unlawful purpose is accomplished, or when the relevant conspirator withdraws from the conspiracy. *See also* 18 Pa.C.S.A. §903(g)(1) (Duration of conspiracy).

For each offense with which Defendant has been charged, or is sought to be charged by the Commonwealth in the case of conspiracy, more than five years have elapsed between when the offense occurred and prosecution commenced on February 27, 2024. While this would ordinarily dictate dismissal of the charges, 42 Pa.C.S.A. §5552(c)(1) allows prosecution for an otherwise time-barred offense for those offenses "a material element of which is either fraud or a breach of a fiduciary obligation within one year after discovery of the offense by an aggrieved party... but in no case shall this paragraph extend the period of limitations otherwise applicable by more than three years." McSloy, 751 A.2d at 669 ("[W]here there is fraud, the period of limitation is extended one year from the discovery of the fraud up to a period of three years beyond the original [] limit"); *see also* Commonwealth v. Hawkins, 439 A.2d 748, 750 (Pa.Super. 1982) (defining the term "discovery of the offense" in 42 Pa.C.S.A. §5552(c)(1) and concluding that discovery of the fraud "[i]mplies knowledge, and is not satisfied by mere suspicion of fraud. The suspicion may be such as to call for further investigation, but it is not of itself a discovery."); Commonwealth v. Succi, 173 A.3d 269, 281 (Pa.Super. 2017) (same), appeal denied, 188 A.3d 1121 (Pa. 2018). "The Commonwealth has the burden to prove

that the discovery of the alleged offenses took place within the year prior to the filing of charges.” Hawkins, 439 A.2d at 750.

In none of the arson offenses originally charged is fraud a material element of the offense. This is apparent from a review of the statutory language alone appearing in Section 3301(a)(1)(i) for arson endangering persons and Section 3301(d)(1) for reckless burning or exploding, as well as a close reading of arson endangering property for the purpose of collecting insurance proceeds proscribed by Section 3301(c)(3). Section 3301(c)(3) focuses on the motivation underlying the intentional setting of a fire, not the actual realization of that motive or the receipt of benefits as a material element of the offense. *Cf. Hawkins*, 439 A.2d at 751-52 (examining the Crimes Code’s definition of “material element of an offense” at 18 Pa.C.S.A. §103 and holding that fraud is not required to prove the elements of the crime of receiving stolen property).⁴ The harm sought to be prevented by Section 3301(c)(3) is the setting of a fire for a specific prohibited purpose whether or not that purpose is accomplished. Proof of fraud is not essential for a conviction under Section 3301(c)(3). Hence, as conceded by the Commonwealth, these offenses are time barred.

The Commonwealth’s request to amend the criminal information to include a

⁴ A material element of an offense is defined in Section 103 of the Crimes Code as:

“Material element of an offense.” An element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with:

(1) the harm or evil incident to conduct, sought to be prevented by the law defining the offense; or
(2) the existence of a justification or excuse for such conduct.

18 Pa.C.S.A. §103.

charge of conspiracy to commit arson for purposes of collecting under an insurance policy is similarly untimely. Even if we were to conclude that the duration of the conspiracy extended beyond the completion of the crime which is its object (*i.e.*, 18 Pa.C.S.A. §3301(c)(3));⁵ and did not end until payment from Nationwide was received (*i.e.*, March 21, 2016), see McSloy, 751 A.2d. at 669;⁶ and further concluded that a material and necessary element of this conspiracy was fraud (*i.e.*, to deceive the insurance company as to the cause of the fire);⁷ the statute of limitations under a best-case scenario for the Commonwealth expired on March 21, 2024, eight years after the conspiracy ended.⁸

The Commonwealth's Petition to Amend the Information to include this charge was filed on August 29, 2024, more than five months beyond the statute of limitations. There is no "relation-back" doctrine or good faith exception allowing the Commonwealth to file an amended information adding charges after the statute of limitations has run. *Cf. Laventure*, 894 A.2d at 116-117 (noting that statute of limitations are to be liberally

⁵ See 18 Pa.C.S.A. §903(g)(1) limiting the duration of a conspiracy and stating that "[f]or purposes of 42 Pa.C.S.A. §5552(d) (relating to commission of offense) [a] conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom he conspired." See also Commonwealth v. Meholic, 491 A.2d 848, 849 (Pa.Super. 1985) (holding that the statute of limitations for conspiracy to commit arson to collect insurance commences with the starting of the fire). Under this scenario, since, as explained earlier, Section 3301(c)(3) does not include receipt of a benefit or fraud as a material element, the five year statute of limitations would expire on January 11, 2021.

⁶ Under this scenario, the five year statute of limitations would expire on March 21, 2021.

⁷ This, however, is not the object of the conspiracy as stated in the Commonwealth's Petition to Amend where the Commonwealth identified a violation of 18 Pa.C.S.A. §3301(c)(3) as the crime which was the subject of the conspiracy, which offense does not include fraud as a material element. See Commonwealth v. Watson, 2014 WL 10987060 *3 (Pa.Super. 2014) (Non-Precedential Decision), discussing the significance of the object of the conspiracy as identified in the information.

⁸ This period of eight years encompasses the initial five year statutory period under Section 5552(b)(3) and a three year extension under Section 5552(c)(1).

construed in favor of the defendant and against the Commonwealth, that there is no "relation-back" doctrine pertaining to Section 5552(b)'s statute of limitation, and that 42 Pa.C.S.A. §5504 provides, subject to limited exception not applicable, that "the time limited by this chapter shall not be extended by order, rule or otherwise"); *see also* Pa.R.Crim.P. 564 (Amendment of Information) and Commonwealth v. Fiume, 419 A.2d 1364 (Pa.Super. 1980) (dismissing a motion to amend indictments to overcome the statute of limitations defense as requesting an amendment to correct a defect of substance, rather than form); Commonwealth v. Daniels, 2013 WL 11251610 (Pa.Super. 2013) (Non-Precedential Decision) (affirming trial court's dismissal of charge of driving under suspension as beyond the statute of limitations, concluding pending charges of driving under the influence and littering did not toll the statute under 42 Pa.C.S.A. §5554(2), as both involved elements separate and distinct from driving under suspension such that they did not involve the same conduct; nor did Pa.R.Crim.P. 564 permit the amendment, since granting this request would add a new or different offense; and concluding further that even if a defendant is fully apprised in an original filing of the factual scenario supporting the amendment, lack of notice is not the only way a defendant can be prejudiced, such as by allowing an amendment after the statute of limitations has expired).

The remaining charge, an alleged violation of 18 Pa.C.S.A. §4117(a)(5), insurance fraud, is another matter. Although the Commonwealth in its brief concedes that the statute of limitations for this offense had expired by the time its criminal complaint was filed, this

is not clear from the record before us or our understanding of the elements of Section 4117(a)(5). Section 4117(a)(5), in its entirety, provides as follows:

§4117. Insurance Fraud

(a) Offense defined. – A person commits an offense if the person does any of the following:

...

(5) Knowingly benefits, directly or indirectly, from the proceeds derived from a violation of this section due to the assistance, conspiracy or urging of any person.

18 Pa.C.S.A. §4117(a)(5). As already noted, this offense was completed once the \$82,631.00 payment was made by Nationwide, *i.e.*, March 21, 2016, more than five years before the prosecution commenced. Whether the prosecution of this offense is time-barred depends on whether fraud is a material element of the offense such that the period of limitation is extended one year from the discovery of the fraud, up to a period of three years beyond the original five-year limit.

A violation of Section 4117 as applicable to obtaining recovery under the fire insurance policy on Arnold's property may well have occurred in statements and submissions made to Nationwide Mutual Fire Insurance Company by Arnold, his wife, or others with whom he was associated in seeking recovery for the fire loss "that contain[ed] any false, incomplete or misleading information concerning any fact or thing material to the claim." See 18 Pa.C.S.A. §4117(a)(2) and (3) describing false, incomplete or misleading information provided to an insurer to induce payment under an insurance policy for an excluded loss. See also Hawkins, 439 A.2d at 751, noting that "[f]raud is characterized by false representation of a material matter made with knowledge of its

falsity and with the intent to deceive.”; Commonwealth v. Riding, 68 A.3d 990, 996-97 (Pa.Super. 2013) (*en banc*) (same).

As stated earlier, the record before us does not contain a copy of the claim for the loss submitted to Nationwide, by whom the claim was made, or any other statements Nationwide may have received and relied upon as part of its investigation into the fire loss. Nor is it apparent at this time that the Commonwealth has sufficient evidence to prove a violation of Section 4117 directed at Nationwide.

This, however, is not the precise question before us. The question is whether the criminal complaint filed against Arnold charging him with violating Section 4117(a)(5) is time barred. The answer to that question, however, and whether Arnold knowingly participated in or benefited from a violation of Section 4117 appears to be inextricably intertwined with whether a violation of Section 4117 occurred and by whom and how (*e.g.*, were fraudulent statements made directly to Nationwide by Arnold or in conjunction with his wife of which Arnold was aware). Because part of Arnold’s Omnibus Pre-Trial Motion also includes a habeas corpus motion to dismiss the criminal charges against him premised on the Commonwealth’s failure to prove a *prima facie* case and because the Commonwealth is entitled to a hearing on this Motion and at the hearing to present additional evidence, fairness dictates that the Commonwealth be provided this opportunity and that a decision on Arnold’s Motion to Dismiss the claim of insurance fraud as untimely filed be deferred for further consideration, after hearing and review of the Commonwealth’s evidence in support of this charge. See Commonwealth v. Saunders,

691 A.2d 946, 948 (Pa.Super. 1997) (explaining that at the hearing on a petition for writ of habeas corpus questioning the sufficiency of the evidence to establish a *prima facie* case, the Commonwealth has the opportunity to present additional evidence to establish that the defendant has committed the elements of the offense charged) (quoting Commonwealth v. Karlson, 674 A.2d 249, 250-51 (Pa.Super. 1996)), appeal denied, 705 A.2d 1307 (Pa. 1997); Commonwealth v. Carroll, 936 A.2d 1148, 1152 (Pa.Super. 2007) (explaining that in the course of deciding a habeas petition, a court must view the evidence and its reasonable inferences in the light most favorable to the Commonwealth), appeal denied, 947 A.2d 735 (Pa. 2008).

CONCLUSION

“A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution.” Smith v. United States, 568 U.S. 106, 110-12, 133 S.Ct. 714, 184 L.Ed.2d 570 (2013). Consequently, our decision to dismiss the arson charges against Arnold and deny the Commonwealth its request to add a charge of conspiracy to the information bears no relation to the merits of the charges, but acts only to implement a policy judgment of the legislature. Likewise, our decision to defer acting on Arnold's Motion to Dismiss the charge of insurance fraud under Section 4117 should not be construed as a decision on the viability of this charge, but simply as an opportunity for the Commonwealth to present evidence in support of the proposition that Arnold knowingly benefited from a violation of Section 4117, with fraud

being a material element implicating Arnold in this violation so as to extend the statute of limitations under 42 Pa.C.S.A. §5552(c)(1) for commencing prosecution.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized 'Q' followed by a series of loops and a horizontal line.

P.J.