

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

United States,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No: 17 CR 50060
)	
Demontrion D. Phillips,)	
)	
<i>Defendant.</i>)	Judge Frederick J. Kapala

ORDER

The court accepts the report and recommendation of the magistrate judge [43]. Defendant’s motion to dismiss [38] is denied.

STATEMENT

Defendant, Demontrion Phillips, pro se, was arrested and taken into custody on July 19, 2017, on a Kankakee County, Illinois, arrest warrant for failure to appear in connection with driving while his license was suspended. On August 22, 2017, defendant was indicted for armed bank robbery, but was not arrested on that charge until September 5, 2017, and was arraigned on the same day. On December 19, 2017, defendant was charged by superseding indictment with an additional count of bank robbery and was arraigned on December 20, 2017.

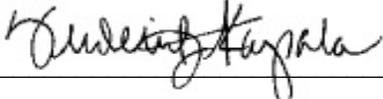
In his motion to dismiss, defendant contends that he was not indicted within 30 days of being arrested as required by 18 U.S.C. § 3161(b) (“Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.”). In his report and recommendation (“R&R”) the magistrate judge has pointed out that defendant was not taken into custody in connection with an indictment filed in this case until September 5, 2017, despite his being arrested on state charges on July 19, 2017. See United States v. Janik, 723 F.2d 537, 542 (7th Cir. 1983) (finding that an arrest by state officers on state charges does not start running of 30-day period in 18 USCS § 3161). The magistrate judge also rejected defendant’s contention that the state arrest was a ruse to detain him until federal charges were filed, finding that he failed to show that the pending state charges were a mere ruse. Accordingly, the magistrate judge has field a R&R that this court deny defendant’s motion to dismiss.

Defendant has filed an objection to the R&R arguing that the “ruse exception” applies and that the Winnebago County Jail is a federal institution because it is under contract with the federal government to house federal detainees. First, defendant continues to merely articulate that the state charges were a ruse without even proffering facts to support that theory. This would prove difficult considering that the Kankakee warrant was issued in 2013, in connection with a 2013 traffic offense.

Second, the mere fact that a prisoner is housed in a correctional facility that also houses federal detainees does not mean that every prisoner in that facility was arrested on federal charges and is in federal custody. Therefore, defendant's objections to the magistrate judge's R&R are overruled, the R&R is accepted, and defendant's motion to dismiss is denied.

Date: 3/21/2018

ENTER:

A handwritten signature in black ink, appearing to read "Frederick J. Kapala", written over a horizontal line.

FREDERICK J. KAPALA

District Judge