

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-11,379
	:
	:
vs.	: CRIMINAL DIVISION
	: Motion to Dismiss
NATHAN GEYER,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss, filed October 25, 2001. Argument on the Motion was heard December 21, 2001.

On May 19, 2001, Defendant was involved in a motor vehicle accident and was subsequently charged on that date with driving under the influence of alcohol and related offenses. On July 23, 2001, Defendant was charged with theft, receiving stolen property, unauthorized use of an automobile and criminal mischief, on the grounds the vehicle belonged to someone else who, according to the Affidavit of Probable Cause, had not given Defendant permission to use it. On September 7, 2001, Defendant entered a guilty plea to the driving under the influence charge. He now seeks to dismiss the theft and related charges, contending a continued prosecution of such violates Section 110 of the Crimes Code.

Since in his motion Defendant contends both sets of charges "arose from the same incident", the Court will focus on that portion of Section 110 which refers to "the same criminal episode", as follows:

Section 110. When prosecution barred by former prosecution for different offense.

Although a prosecution is for a violation of a different provision of the

statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) the former prosecution resulted in an acquittal or in a conviction ... and the subsequent prosecution is for:

(i) ...

(ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and was within the jurisdiction of a single court ...; or

(iii)

18 Pa. C.S. Section 110. Our Courts have interpreted this section to bar a subsequent prosecution if:

1) the former prosecution resulted in an acquittal or a conviction; 2) the instant prosecution is based on the same criminal conduct or arose from the same criminal episode as the former prosecution; 3) the prosecutor was aware of the instant charges before the commencement of the trials on the former charges; and 4) the instant charges and the former charges were within the jurisdiction of a single court. Commonwealth v Spotz, 756 A.2d 1139 (Pa. 2000). In the instant case only the second factor is at issue, but the Court believes that the two sets of charges do not arise from the same criminal episode.

To determine whether various acts constitute a single criminal episode, a Court must consider two factors: the logical relationship between the acts and the temporal relationship between the acts. Commonwealth v Spotz, supra. In determining whether offenses are logically related to each other, the Court inquires into whether there is a substantial duplication of factual and/or legal issues presented by the offenses. Commonwealth v Wittenburg, 710 A.2d 69 (Pa. Super. 1998). In the instant case, the issues presented by driving under the influence and by the theft charges are distinct and involve, at best, de minimis duplication, and even in that regard only for background purposes. Thus, even though the theft of the automobile and the subsequent accident and Defendant's arrest for driving under the influence may have been close in time, there is no logical relationship between the

acts such that the Court can conclude they arise from a single criminal episode.

Even were the Court to conclude that the offenses involved did indeed arise from a single criminal episode and thus all factors of Section 110 were satisfied, the Court nevertheless finds Defendant has waived the protections of Section 110. See Commonwealth v Failor, 734 A.2d 400 (Pa. Super. 1999). In Failor, the Defendant was charged first with speeding and subsequently with driving with suspended operating privileges. The Court there found that all requirements of Section 110 were met but that Defendant waived the benefit of Section 110 by pleading guilty to the speeding charges, knowing full well that the charges of driving with suspended operating privileges remained pending, but failing to request consolidation of the charges at the time of the guilty plea to the speeding charge. The Court found such conduct to amount to acquiescence to the separation of the charges, and denied the defendant's motion to dismiss the later charges. In the instant case, at the time Defendant pled guilty to driving under the influence, he knew of the pending theft charges but did not request consolidation. The Court thus finds he waived any Section 110 protections.

ORDER

AND NOW, this 3rd day of January, 2002, for the foregoing reasons Defendant's Motion to Dismiss is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley N. Anderson