

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

COMMONWEALTH	:	
	:	
v.	:	No.: 00-10,533; 02-12,103
	:	
LINDA D. WATSON,	:	
Defendant	:	

OPINION AND ORDER

Linda D. Watson (Defendant) was charged in March, 2000 with the following violations of the Pennsylvania Crimes Code: Conspiracy, Theft of Services and Theft by Deception as well as a violation of the Public Welfare Code. The Chief County Detective of Lycoming County alleged that during the time frame of May 5, 1997 to some point during the year 2000, the Defendant obtained public housing at an incorrect rent level by failing to report changes in household size, income or employment. The Defendant acknowledged her wrongdoing by a plea of no contest on September 7, 2002 to the charge of Theft of Services. On August 29, 2002, Defendant was charged with a violation of the Public Welfare Code, this time by the Department of Public Assistance, for again failing to report changes in household size, income or employment during the time frame beginning November 7, 1997 until sometime in the year 2000. Before the Court is the Defendant’s Motion to Dismiss on the grounds that the second set of charges filed are a violation of 18 Pa.C.S.A. Sections 109 and 110, the “compulsory joinder rule”, as well as a double

jeopardy violation under the Fifth Amendment to the United States Constitution and Article 1, Section 10 of the Pennsylvania Constitution.

COMPULSORY JOINDER RULE VIOLATION

Defendant first asserts that the charges pending against her under information number 02-12,103 are barred by the compulsory joinder rule, codified at 18 Pa.C.S.A. Section 109 and 110. Pertinent to the instant case, Section 109 states that

When a prosecution is for a violation of the same provision of the statutes and is based upon the same facts as a former prosecution, it is barred by such former prosecution under the following circumstances:

(3) The former prosecution resulted in a conviction.

It is undisputed that the former prosecution under 00-10,533 resulted in a conviction when the Defendant entered her plea of guilty to Theft of Services on September 7, 2002. It is also clear from the record that the charge brought under 02-12,103 is brought under the same statutory provision as Count 4 under information 00-10,533. Thus, the only remaining issue for analysis is whether the two prosecutions are based upon the same facts. Here, both cases assert that Defendant failed to report changes in household size, income or employment during the time frame beginning November 7, 1997 until sometime in the year 2000, and that she therefore fraudulently obtained public assistance based upon her misrepresentations. Significantly, however, Information 00-10,533 asserts that she failed to report those changes to the Lycoming County Housing Authority, while Information 02-12,103 asserts that her misrepresentations were to the Lycoming County Assistance Office.

It is clear from the affidavits filed in the two separate prosecutions that Defendant had a separate responsibility to report household changes to each of these agencies. The Court finds that she cannot meet the “same facts” requirement under Section 109 and therefore Section 109 does not bar the present prosecution.

The relevant portions of 18 Pa.C.S.A. Section 110 state that

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 as defined in Section 109 of this title (relating to when prosecution barred by former prosecution for same offense) and the subsequent prosecution is for:

* * *

(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 unless the court ordered a separate trial of the charge of such offense.

Section 110 was designed to serve two distinct policy considerations: (1) to protect a person accused of crimes from governmental harassment of being forced to undergo successive trials for offenses stemming from the same criminal episode; and (2) as a matter of judicial administration and economy, to assure finality without unduly burdening the judicial process by repetitious litigation. Commonwealth v. Hude, 458 A.2d 177, 500 Pa. 482 (1983).

Section 110(1)(ii) can be separated into four requirements: first, the former prosecution must have resulted in an acquittal or a conviction; second, the instant prosecution is based on the same criminal conduct or arose from the same criminal episode as the former prosecution; third, the prosecutor was aware of the

instant charges before the commencement of the trial on the former charges; and fourth, the instant charges and the former charges were within the jurisdiction of a single court. Commonwealth v. Hockenbury, 701 A.2d 1334 (Pa. 1997). See also Commonwealth v. Bracalielly, 658 A.2d 755, 540 Pa. 460 (1995). This test will now be applied to the issues and facts in this case.

There is no dispute regarding the first and fourth prongs of the test. The former prosecution ended in a conviction, satisfying the first prong, and both cases have arisen in front of the Lycoming County Court of Common Pleas, satisfying the fourth prong of the test.

The second prong of the test is whether this case is based on the same criminal conduct or arose from the same criminal episode as the former prosecution. Bracalielly, id., and Hude, supra., are the two seminal cases on this issue. They mandate that we examine two factors: the logical relationship between the acts and the temporal relationship between the acts. Hockenbury, supra. The temporal relationship between these two cases is obvious. Both arose from the alleged failure of the Defendant to provide information regarding changes in her household to the Housing Authority and the Assistance Office during the same time span, namely from November 7, 1997 until sometime in the year 2000. The question then becomes whether there is a logical relationship between these two cases. It is important to note, however, that “(i)n determining whether the “logical relationship” prong of the test has been met, we are cautioned “that a mere de minimis duplication of factual and legal issues is insufficient to establish a logical relationship between the offenses.” Id., citing Bracalielly, supra. In Bracalielly, the Supreme Court held

that a critical factor which “mandates the conclusion that the transactions . . . were not part of the same criminal episode is the independent involvement of two distinct law enforcement entities, for it prevents the substantial duplication of issues of law and fact required under Hude for the transactions to be deemed logically related.” Id., at 762. Here, the charges brought under Information 00-10,533 were instituted by Lycoming County Chief County Detective Donald Turner, of the Lycoming County District Attorney’s Office. The charges brought under Information 02-12,103 were brought by Jon Carpenter, Agent of the Office of Inspector General. Bracalielly therefore compels this Court to find that the transactions involved in these two cases are not logically related, and accordingly that Defendant has failed to meet the second prong of the test.

The third prong of the test outlined above is whether the prosecutor was aware of the instant charges before the commencement of the trial on the former charges. No information has been presented by either party which tends to show that Chief Detective Turner was aware that Agent Carpenter intended to commence another, similar prosecution at the time of Defendant’s conviction on the first case, which occurred on September 7, 2000. Indeed, Agent Carpenter’s allegations were not filed until nearly two years later, on August 29, 2002, and it is likely that at the time of Defendant’s plea on the earlier charges, Agent Carpenter also had no idea that he would eventually pursue the charges presently filed under 02-12,103. While both sets of charges have been prosecuted through the Lycoming County District Attorney’s Office, there is similarly no showing that any representative of that office

was aware on the date of Defendant's guilty plea that the present charges could be instituted.

Defendant has therefore failed to present any evidence which would meet the third prong of the test. Because she has failed to meet the second and third prongs of the test set forth in Hockenbury, supra., Bracalielly, supra., and Hude, supra., her claim that 18 Pa.C.S.A. Section 110 bars the present prosecution must also fail.

DOUBLE JEOPARDY UNDER THE UNITED STATES CONSTITUTION

Defendant next claims in her motion that prosecution under 02-12,103 is a violation of the Double Jeopardy Clause found in the Fifth Amendment to the United States Constitution. This Constitutional provision protects an individual against successive punishments and successive prosecutions for the same criminal offense.

North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969).

However, the Double Jeopardy Clause does not prohibit a second prosecution of the same individual "simply because that defendant had earlier been convicted of violating that same statutory provision. The additional necessary element is that the two prosecutions must arise out of the same criminal offense." Hockenbury, id.

Here, the facts of the two cases show that while the alleged offenses occurred during the same time period and as a result of the Defendant's failure in both cases to report changes in her household status, there is one critical difference. In the earlier case, 00-10,533, Defendant was required to report information to the Lycoming County Housing Authority. In the present case, 02-12,103, Defendant was required to report

information to the Lycoming County Assistance Office, a separate entity with a separate place of business. Therefore, the two prosecutions are not for the same criminal offense and do not offend the Double Jeopardy Clause.

DOUBLE JEOPARDY UNDER THE PENNSYLVANIA CONSTITUTION

Defendant's final contention is that prosecution under 02-12,103 violates the Double Jeopardy provisions under Article 1, Section 10 of the Pennsylvania Constitution. In order for Defendant to prevail, there must be "adequate and independent state grounds which establish that the constitution of our Commonwealth provides greater rights to our citizens than they enjoy under the federal constitution." Hockenbury, id., citing Commonwealth v. Edmunds, 586 A.2d 887, 526 Pa. 374 (1991). This issue has been previously address by the Pennsylvania Supreme Court in Hockenbury, id., wherein no relief was granted to that appellant on this identical issue. Therefore, Defendant's allegation that the present prosecution is in violation of her rights under Double Jeopardy provision of the Pennsylvania Constitution must fail.

ORDER

Based upon the foregoing, it is ORDERED and DIRECTED that Defendant's Motion to Dismiss, filed January 23, 2003 is hereby DENIED.

By the Court

Nancy L. Butts, Judge J.

xc: DA
PD (MS)
Court Scheduling
Gary Weber, Esquire