

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 03-11,873
:
vs. : CRIMINAL
:
SCOTT MULL, : Motion to Dismiss
Defendant :

ORDER

AND NOW, this ___ day of November 2004, the Court DENIES the defendant's Motion to Dismiss. The defendant asserts in his motion that the Commonwealth is collaterally estopped from trying the defendant on counts 1 and 4, because a co-defendant was acquitted of those charges in a separate trial. Case law is clear, however, that collateral estoppel only applies in a criminal case if the defendant was a **party** in the previous trial. Commonwealth v. Brown, 473 Pa. 458, 464, 375 A.2d 331, 334 (1977)("Collateral estoppel has generally been applied only in those criminal cases involving defendants who were parties to the prior adjudication."); Commonwealth v. Cromwell, 329 Pa.Super. 329, 334, 478 A.2d 813, 815 (1984)("The law is clear that collateral estoppel is available as a defense to a criminal charge only where the defendants are the same as the parties to the prior adjudication."). Although the defendant was a witness at the prior trial, he was not a party. Therefore, the defendant is not entitled to dismissal of counts 1 and 4 on the theory of collateral estoppel.

By The Court,

Kenneth D. Brown, P.J.

cc: Peter Campana, Esquire
Kenneth Ososkow, Esquire (ADA)
Work file
Gary Weber, Esquire (Lycoming Reporter)