

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 04-11,390  
:   
vs. : CRIMINAL  
:   
RASHEEDA LEASHA TURNER, :   
Defendant :

**ORDER**

AND NOW, this \_\_\_ day of December 2004, the Court DENIES the defendant's Motion to Dismiss based on 18 Pa.C.S.A. §110(1)(ii). Under this section, a subsequent prosecution is barred if each prong of the following test is met: (1) the former prosecution resulted in an acquittal or conviction; (2) the current prosecution was based on the same criminal conduct or arose from the same criminal episode; (3) the prosecutor in the subsequent trial was aware of the charges before the first trial; and (4) all the charges were within the same judicial district as the former prosecution. Commonwealth v. Nolan, 855 A.2d 834, 839 (Pa. 2004). The Court finds the second and third prongs are not met in this case.

The defendant argued that second prong was met and relied on the case of Commonwealth v. (Walter) Stewart, 493 Pa. 24, 425 A.2d 346 (1981) in support of her argument that she could not be prosecuted for the drug offenses in this case since the drugs were discovered incident to her arrest for retail theft and she already pled guilty to the retail theft charge. The Commonwealth argued that case was distinguishable from this case based on the Superior Court decision in Commonwealth v. (Edward) Stewart, 325 Pa.Super. 465, 473 A.2d 161 (1984). The Superior Court distinguished the Supreme Court decision, noting two possession offenses (firearms and drugs) were involved in that case and therefore there

was a logical relationship between the two offenses. The Superior Court then found that there was no logical relationship between a crime of theft and one involving possession of controlled substances; therefore, the prosecution for possession of controlled substances was not part of the same criminal episode as the theft by receiving stolen property charge of which the defendant had been previously acquitted. Since the factual situation before this Court involves a prior theft conviction and a subsequent controlled substance prosecution, the Superior Court's decision is directly on point.

The Court also does not believe the third prong has been met in this case. The defendant pled guilty to retail theft on June 21, 2004. The police did not receive the lab report stating the vial taken from the defendant contained controlled substances until July 12, 2004, so they did not file the criminal complaint for the drug offenses in this case until July 21, 2004. There is no evidence that the District Attorney's office knew about the drug offenses before the criminal complaint was filed, so it didn't have the opportunity to consolidate these charges with the retail theft case for disposition. Based on this evidence, the Court cannot conclude that the third prong was met.

By The Court,

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Kenneth D. Brown, P.J.

cc: Jason Poplaski, Esquire (APD)  
William Simmers, Esquire (ADA)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)