

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. 03-10,234
	:	
vs.	:	CRIMINAL DIVISION
	:	
DUSTIN MICHAEL HOFFMAN, SR.,	:	
Defendant	:	Motion to Dismiss

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss, filed May 19, 2004. Argument was scheduled for September 13, 2004, at which time counsel requested the Court issue a decision based on briefs that would thereafter be filed. Defendant filed a brief on September 27, 2004. The Commonwealth filed an answer to the motion on October 5, 2004..

In his motion, Defendant claims the charges must be dismissed on double jeopardy grounds. Defendant's first trial ended when Defendant moved for and was granted a mis-trial after a state trooper testified to an admission by Defendant which had not previously been provided to defense counsel. In response to the motion for mis-trial, the assistant district attorney indicated he himself had been given the statement only shortly before trial.¹ Defendant now claims the Commonwealth's conduct constituted prosecutorial misconduct such as would justify barring re-prosecution.

Generally, when a new trial is granted at the request of the defendant, the double jeopardy clause does not bar a subsequent prosecution, even when the motion is prompted by prosecutorial misconduct. Commonwealth v. Lafferty, 461 A.2d 1261 (Pa. Super. 1983). Retrial will be barred, however, where the misconduct amounts to overreaching. Id. This standard has been further defined to enumerate two types of misconduct: misconduct which is designed to provoke a mistrial in order to secure a second, perhaps more favorable, opportunity to convict the defendant, or misconduct undertaken in bad faith to prejudice or harass the defendant. Id. Defendant argues the misconduct in the instant case was designed to provoke a mistrial. The Court does not agree.

¹ What exactly was meant by "shortly" was never developed by either counsel.

In Commonwealth v. McElligott, 432 A.2d 587 (Pa. 1981), the mistrial which ended the original proceeding therein resulted from the Commonwealth's failure to provide the defendant with the results of certain testing in a timely manner. The prosecutor testified to his belief that the test results were of no value, and indicated that his failure to provide them to defense counsel was totally inadvertent. The Court found no evidence of prosecutorial overreaching, concluding that a deficiency in judgment or knowledge of the law would not be found to be intentional bad faith misconduct. In the instant case, there is nothing on the record to indicate why the Commonwealth did not provide defense counsel with the admission testified to by the state trooper. Although Defendant argues that the Commonwealth's intent to force a mistrial is clear from the circumstances, there is nothing to support Defendant's underlying contention the Commonwealth wanted more time to prepare and/or change their strategy. The Court is thus left to conclude the failure was simply the result of a "deficiency in judgment", and, as such, does not constitute prosecutorial overreaching.

ORDER

AND NOW, this 6th day of October 2004, for the foregoing reasons, Defendant's Motion to Dismiss is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
George Lepley, Jr., Esq.
Gary Weber, Esq.
Hon. Dudley Anderson