

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

COMMONWEALTH	:	
	:	
v.	:	No.: 04-10,245
	:	
KRISTINE SPONG,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is the Defendant's Motion to Dismiss the above-captioned criminal information, which was filed on March 22, 2004. A hearing was held in this matter on April 1, 2004. The Defendant argues that the entire information filed in this case should be dismissed because it, in part, duplicates the information filed against the Defendant under 03-11,255.

The pertinent facts are as follows: On June 3, 2003 a complaint was filed against the Defendant alleging that on May 13, 2003 two dogs owned by her attacked a ten year old child named Matthew Shaheen. One of the two dogs bit the child, breaking his skin. The complaint alleged that the dogs, Dale and Freddy, had previously been declared dangerous in December, 2002. Dale is the dog alleged to have bitten the child. As a result of this incident, the Defendant was charged with one count of Attacks by Dangerous Dogs under 3 P.S. § 459- 505A(b), multiple counts of Failure to Register and Restrain under 3 P.S. § 505A and two related summary offenses. The case was eventually filed in the Court of Common Pleas under

information number 03-11,255. The Defendant then entered a guilty plea to all counts under that information on February 17, 2004.

On November 12, 2003 a second complaint was filed against the Defendant. This complaint eventually became the above-captioned information, which is currently pending before this Court. The first four counts of that complaint concern the same incident referenced above, which occurred on May 13, 2003, was charged under 03-11,255, and to which the Defendant entered a guilty plea on February 24, 2004. The remaining charges concern incidents which allegedly occurred on September 26, 2003 and November 5, 2003. The dogs involved in those two incidents were named Roxie and Freddy. The complaint alleges that on September 26, 2003, both dogs attacked a Bill Harrison, with Freddy biting Mr. Harrison and breaking his skin. It further alleges that these same dogs attacked Donna Bates on November 5, 2003, with Freddy biting Ms. Bates and breaking her skin. Defendant now claims 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 04-10,245 are barred by the compulsory joinder rule,

codified at 18 P.S. Sections 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 03-11,255 resulted in a conviction when the Defendant entered her plea of guilty under that information on February 17, 2004. Thus, the only remaining issue for analysis is whether the two prosecutions are based upon the same facts. Here, both cases assert that Defendant's dogs, which had previously been designated as "dangerous dogs", attacked and injured ten year old Matthew Shaheen on May 13, 2003. The first four counts of information 04-10,245 allege the same set of facts as information 03-11,255. However, the remaining charges in information 04-10,245 are based upon incidents which happened on different days, involved different victims, and were precipitated by at least one additional dog.

The relevant portions of 18 PS. 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). 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. What remains is to determine if the second and third prongs are satisfied as well.

The second prong of the test under Section 110 is whether this case is based on the same criminal conduct or if it arose from the same criminal episode as the former prosecution. Bracalielly, supra., 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 Court finds that there is a clear logical and temporal relationship between all of the counts filed in information 03-11,255 and the first four counts of information 04-10,245. Both of the informations address the same allegations of criminal conduct. They concern the behavior of the Defendant's dangerous dogs, Freddy and Dale, on May 13, 2003 when the animals attacked and injured Matthew Shaheen. However, the remaining charges in Information 04-10,245 are neither temporally nor logically related to the incident of May 13, 2003. Those charges arise from incidents which allegedly occurred on September 26 and November 5, 2003 and involved two additional alleged victims attacked by dogs named Freddy (presumably the same Freddy involved in the Shaheen incident) and Roxie. This Court is therefore compelled to find that the September 26 and November 5, 2003 transactions are not logically related to the charges raised in 03-11,255. Accordingly Defendant has met his burden with respect to Counts 1 through 4 of

04-10,245 and failed to meet the second prong of the test with regard to the remaining charges under 04-10,245.

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. The charges leading to both informations were filed by Scott P. Shurer of the Department of Agriculture, Dog Law Enforcement. Clearly, therefore, the Commonwealth and particularly Officer Shurer knew of the former charges at the time that the prosecution for the later charges was commenced. He therefore would have been aware that the conduct of the May 13, 2003 incident had previously been charged against the Defendant. Officer Shurer nevertheless opted to include charges relating to the same incident in the complaint he filed on November 12, 2003. Defendant has therefore met the third prong of the test with regard to the charges regarding the May 13, 2003 incident.

Defendant has therefore met her burden under the second and third prongs of the test set forth in Hockenbury, supra., Bracalielly, supra., and Hude, supra., with respect to the charges concerning the May 13, 2003 incident and Counts 1 through 4 of information 04-10,245 must therefore be dismissed. It is specifically noted that the Commonwealth conceded at the time of the hearing on this matter that Counts 1 through 4 should properly be dismissed. Defendant, has, however, failed to meet her burden with respect to the remaining charges under information 04-10,245 and therefore her

claim that 18 Pa.C.S.A. Section 110 bars the present prosecution of those charges must fail.

DOUBLE JEOPARDY UNDER THE UNITED STATES CONSTITUTION

The Court shall also examine whether the present prosecution under 04-10,245 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, supra. Here, counts 1 through 4 of information 04-10,245 arise from the same criminal offense as those charges brought under 03-11,255. They are therefore barred from prosecution under the Double Jeopardy provision of the United States Constitution. However, the remaining counts brought under 04-10,245 are not a result of the same criminal offense. As noted above, they arise from incidents which occurred on separate dates some months after the May 13, 2003 incident, involve different victims, and at least one different dog. Therefore, the prosecution for Counts 5 through 12

of Information number 04-10,245 are not for the same criminal offense and do not offend the Double Jeopardy Clause.

DOUBLE JEOPARDY UNDER THE PENNSYLVANIA CONSTITUTION

Finally, the Court shall also examine whether the continued prosecution of Counts 5 through 12 of Information number 04-10,245 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, supra., citing Commonwealth v. Edmunds, 586 A.2d 887, 526 Pa. 374 (1991). This issue has been previously addressed by the Pennsylvania Supreme Court in Hockenbury, supra., wherein no relief was granted to that appellant on this identical issue. Therefore, any allegation that the present prosecution is in violation of Defendant’s rights under Double Jeopardy provision of the Pennsylvania Constitution must fail.

ORDER

AND NOW, this ____ day of April, 2004, based upon the foregoing, it is ORDERED and DIRECTED that Defendant's Motion to Dismiss, filed March 22, 2004, is hereby GRANTED IN PART and DENIED IN PART. Accordingly, counts 1 through 4 of information number 04-10,245 are DISMISSED. Defendant's motion is DENIED with respect to counts 5 through 12 of information 04-10,245.

By the Court

Nancy L. Butts, Judge J.

xc: DA
PD (JP)
Court Scheduling
Honorable Nancy L. Butts
Judges
Diane L. Turner, Esquire
Gary Weber, Esquire