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

COMMONWEALTH	:	
	:	
v.	:	**No.: 04-10,112**
	:	
SALVATORE GAINEY,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is the Defendant's Motion to Dismiss the above-captioned criminal information, filed February 25, 2005. A hearing was held in this matter on April 6, 2005. Defendant argues that the prosecution of the present case is based on the same conduct and arises out of the same criminal episode prosecuted under a former Information (04-11,362). Defendant pleaded guilty under said former Information to Possession with Intent to Deliver Cocaine. Defendant contends that prosecution in the above-captioned matter is in violation of 18 Pa.C.S. § 110 as well as the double jeopardy clauses of the Pennsylvania and United States Constitutions and should therefore be dismissed.

The relevant facts are as follows. On January 8, 2004 Williamsport Police organized a controlled buy using a confidential informant (CI). The CI was given pre-recorded funds and dropped off at an address targeted for the controlled buy. A white van arrived at the address and a transaction occurred. The CI informed officers that the driver had delivered cocaine to "David," another participant, who in turn sold it to the CI. David was arrested after police confirmed the transaction and he subsequently agreed to cooperate with police by calling the driver of the white

van and requesting another transaction. The driver returned and police conducted a stop. The driver was identified as Defendant. A search of Defendant produced the cell phone used in the transaction and a large amount of money including the pre-recorded bill given to the CI. The following day, a search warrant was executed on the white van in which was found approximately one (1) ounce of cocaine. The sale of cocaine led to the charges under the current Information, but the cocaine found in the van led to charges under a separate information to which Defendant previously pleaded guilty.

Defendant first asserts that the charges pending against him in the present case are barred by the compulsory joinder rule, codified at 18 Pa.C.S. §§ 109 and 110. The relevant portions of 18 Pa.C.S. § 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*, 500 Pa. 482, 489, 458 A.2d 177, 180 (1983). The Supreme Court has provided four requirements under § 110:

> 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, 549 Pa. 527, 533, 701 A.2d 1334, 1337 (1997). *See also Commonwealth v. Bracalielly*, 540 Pa. 460, 658 A.2d 755 (1995). There is no dispute regarding the first, third and fourth prongs of the test. The former prosecution ended in a conviction, the prosecutor was aware of the instant charges before the commencement of trial on the former, and both cases have arisen in front of the Lycoming County Court of Common Pleas. What remains is to determine if the second prong has been satisfied.

The second prong of the test under § 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* and *Hude* mandate that we examine two factors: the

logical relationship between the acts and the temporal relationship between the acts. *Hockenbury,* 701 A.2d at 1337.

The Court finds that there is a clear logical and temporal relationship between the acts that led to criminal charges under both Informations. After police confirmed the drug transaction between David and the CI they arrested David. In an effort to arrest Defendant, they arranged for David to call him back to the scene where he was subsequently searched and arrested. The fact that a warrant was obtained and the search of the van occurred the following day does not suffice to render this an independent criminal episode. The search of the van was undertaken as a logical step following Defendant's arrest for controlled substance violations. A controlled substance was found in Defendant's vehicle. All charges centered on the transaction pursuant to the controlled buy on January 8, 2004. Police set up a transaction and were able to identify and arrest the individuals attempting to illegally deal in controlled substances. The fact that the primary seller was called back to the scene following confirmation of the transaction does not render the contraband in the van the result of an independent criminal episode.

The Commonwealth argues that the Motion should be denied because the Defendant affirmatively hindered the Commonwealth's attempt to consolidate the charges by pleading guilty to the former charges while the Commonwealth's Motion to Consolidate was outstanding. The Court is not persuaded by this argument. A defendant does not have a responsibility to expedite the Information procedure. *See Commonwealth v. Muffley,* 493 Pa. 32, 425 A.2d 350 (1981). It is not clear that Defendant had any notion that said Motion was pending. Further, the District

Attorney's office was represented at each stage of the proceedings and had ample opportunity to advise the Court or defense counsel of an outstanding motion. This is especially true at the guilty plea, when the proceedings were simultaneously rendering said motion moot.

Defendant has therefore met the burden under the test set forth in *Hockenberry* with respect to the current charges and they must therefore be dismissed. Because the charges are dismissed pursuant to 18 Pa.C.S.A. § 110, the Court will not now analyze Defendant's contentions under the double jeopardy clauses of the United States and Pennsylvania Constitutions.

ORDER

AND NOW, this ____ day of April, 2005, based upon the foregoing Opinion, Defendant's Motion to Dismiss, filed February 25, 2005, is hereby GRANTED. It is ORDERED and DIRECTED that the charges against Defendant in the above-captioned matter be DISMISSED, with costs allocated to Lycoming County.

By the Court

_____
Nancy L. Butts, Judge

xc: DA (KO)
E. Linhardt, Esq.
Court Scheduling
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esq.