

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**NICHOLAS HAROLD MOTT,
Defendant**

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**CR: 1420-2011
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on December 28, 2011. The Motion included a Motion to Suppress and a Motion to Quash the Information. A hearing on both Motions was held March 13, 2012.

Background

On July 16, 2011, Trooper Christine Fye (Fye) arrested Nicholas Mott (Defendant) which resulted in charges of Driving Under the Influence of Alcohol, Driving Vehicle at Safe Speed, Careless Driving, and Harassment. Defendant was in a one-vehicle crash in a 2000 Plymouth Breeze. Defendant was the operator of the vehicle and Kelly Robinson (Robinson) was a passenger. Defendant was traveling SW on Lower Bodines Road while he and Robinson had been arguing. Defendant pulled over on Lower Bodines Road and the argument became physical. Afterwards, Defendant continued to drive down Lower Bodines Road and after a short distance crashed his vehicle.

Fye arrived on the scene of the accident and interviewed both the Defendant and Robinson. Fye noticed that defendant had slurred speech, blood shot eyes, and the odor of

alcohol. Defendant indicated that he had been drinking. Robinson stated that she and Defendant had been arguing in the car. After the argument, she stated that she reached over and put her hand on Defendant's leg and as he looked down at her hand he lost control. Robinson further indicated that they were both drinking all day.

Defendant pled guilty to a summary harassment charge in front of Magisterial District Judge James Sortman on October 12, 2011. The charge was a result of the events that occurred on July 16, 2011. Subsequently, Defendant has been charged with a DUI as a result of the same events.

Motion to Quash the Information

Defendant argues that 18 Pa.C.S.A. § 110 bars the Commonwealth from prosecuting Defendant on the DUI charge because he had already pled guilty to a summary harassment offense arising from the same incident. 18 Pa.C.S.A. § 110 provides as follows:

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 prosecution officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered a separate trial of the charge of such offense;

18 Pa.C.S.A § 110(1)(ii). Thus, Section 110 bars a prosecution for an offense where a former prosecution resulted in a conviction for a different offense that arose from the same criminal

episode. A four-part test has been created to determine whether a prosecution is barred by 18 Pa.C.S.A. §110(1)(ii):

Under Section 110(1)(ii), the Commonwealth is prohibited from prosecuting a defendant based on its former prosecution of the defendant if the following four-part test is met: (1) the former prosecution resulted in an acquittal or a conviction; (2) the current prosecution must be based on the same criminal conduct or have arisen from the same criminal episode as the former prosecution; (3) the prosecutor must have been aware of the current charges before the commencement of the trial for the former charges; and (4) the current charges and the former charges must be within the jurisdiction of a single court.

Commonwealth v. Failor, 564, Pa. 642, 770 A.2d 310, 313 (Pa. 2001). The Commonwealth has indicated that the only issue to the case is whether the current prosecution was based on the same criminal conduct or arose from the same criminal episode. The Court agrees since Defendant has already pled guilty to a summary Harassment charge. Therefore, only the second part of the four-part test will be discussed.

Several factors are considered when determining whether a number of criminal charges arose from a single criminal episode: (1) the temporal sequence of events; (2) the logical relationship between the acts; and (3) whether they share common issues of law and fact.

Commonwealth v. Lane, 442 Pa. Super. 169, 658 A.2d 1353 (Pa. Super. 1995) (citing Commonwealth v. Hude, 500 Pa. 482, 458 A.2d 177 (1983)).

In Stewart, the defendant was stopped and frisked by police officers. Commonwealth v. Stewart, 493 Pa. 24, 425 A.2d 346 (1981), see also Commonwealth v. Lane, 442 Pa. Super. 169, 658 A.2d 1353 (Pa. Super. 1995) (applying Stewart to determine what is considered a criminal episode). Police found a pistol on defendant and drugs lying near him on the street. Defendant was charged with possessing the firearm without a license, and the drug charges were filed against him one month later. He was brought to trial on the firearms charges and he entered a guilty plea. Defendant was then indicted on the drug charges. The Supreme Court found that the

two offenses were part of the same criminal episode since the crimes occurred at the exact same time. Further, the testimony of the same two officers regarding the same two offenses was required to convict defendant of both charges.

In this case, both criminal charges are temporally related. The Defendant was driving a car while Robinson was a passenger. A physical altercation occurred while they were inside the car. A very short distance and short time later the Defendant crashed his car, which resulted in the DUI charge. Further, there is a logical relationship between the acts because the arresting police officer was the same for both charges. Also, the testimony of Fye and Robinson could be used for both charges. The charges, however, are unrelated to one another. Although important, this fact is not dispositive as shown in Stewart, which found a single criminal episode existed where charges of possession of a firearm without a license and various drug charges were involved.

The Commonwealth, using Pies, argues that because the charges are unrelated there is no single criminal episode. Commonwealth v. Pies, 2004 Pa. Super. 417, 861 A.2d 951 (Pa. Super. 2003). Besides unrelated charges, Pies found no single criminal episode because the arresting officers were different, the acts occurred in different municipalities, had different witnesses, and because Defense counsel was aware of the double jeopardy problem but elected not to consolidate the cases. The Court finds that the facts of this case are more similar to Stewart.

In the present case, the DUI and harassment charges were both temporally and logically related. The prosecution was obligated to join the cases under 18 Pa.C.S.A. § 110 as they were part of the same criminal episode. Accordingly, the Defendant's Petition for Motion to Quash the Information will be granted. As the Motion to Quash the Information is granted, there is no need for the Court to address the Defendant's Motion to Suppress.

ORDER

AND NOW, this ____ day of April, 2012, based upon the foregoing Opinion, the Court finds that 18 Pa.C.S.A. § 110 bars the Commonwealth from prosecuting the Defendant on the Driving under the Influence Charge. Therefore, it is hereby ORDERED and DIRECTED that the Defendant's Motion to Quash the Information is GRANTED and the charges filed against the Defendant are hereby DISMISSED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
John C. Mott, Esquire
Eileen Dgien, Dep. CA
Gary Weber