

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-214-2012
vs. :
: Opinion and Order re:
JIMMY J. RODRIGUEZ, : Defendant's Motion to Transfer
Defendant : Prosecution

OPINION AND ORDER

Before the Court is Defendant's motion to transfer prosecution. The relevant facts follow.

On November 29, 2011, a Penn College student reported that his father's 1993 Honda Civic was stolen from a Penn College parking lot. On December 2, 2011, police officers from the Pocono Mountain Regional police were dispatched to 4365 Memorial Boulevard, Tobyhanna, Monroe County, Pennsylvania in reference to a suspicious vehicle. The homeowner at that residence reported a vehicle on her property that did not belong there. The police ran the registration and found that the vehicle was the 1993 Honda Civic that had been reported stolen from a Penn College parking lot.

On December 4, 2011, the Pocono Mountain Regional police filed a criminal complaint against Defendant in Monroe County charging him with receiving stolen property and conspiring to receive stolen property with two other individuals.

In this Monroe County case, Defendant waived his right to a preliminary hearing on December 7, 2011 and agreed to cooperate and testify against his co-conspirators in exchange for a recommendation for ARD on one count and dismissal of the other count. The preliminary hearings for the co-conspirators were continued until January 18, 2012 and Defendant was advised he was required to appear as a witness for the Commonwealth.

On December 9, 2011, the Penn College police filed a criminal complaint against Defendant in Lycoming County charging him with theft by unlawful taking, conspiracy to commit theft by unlawful taking, receiving stolen property and driving under suspension, related to the theft of the 1993 Honda Civic from the Penn College parking lot. Defendant's preliminary hearing was scheduled for December 20, 2011 and January 17, 2012, but, according to the docket transcript from the Magisterial District Judge (MDJ), it was continued both times at the request of defense counsel.

When Defendant appeared for his co-conspirators' preliminary hearing in Monroe County on January 18, 2012, he was informed that their charges were going to be transferred to Lycoming County.

On February 7, 2012, Defendant waived his preliminary hearing on the Lycoming County charges, so that he could be considered for an ARD disposition. Although the Lycoming County District Attorney considered Defendant's ARD application, he refused to approve Defendant for the ARD program, and instead contacted the Monroe County District Attorney to urge him to nolle pros the Monroe County charges.

On February 28, 2012, defense counsel was informed that Defendant was approved for ARD in Monroe County. The next day, however, defense counsel received a telephone message that the Monroe County charges would be nolle prossed.¹

On April 9, 2012, defense counsel filed a motion to transfer prosecution of the Lycoming County charges to Monroe County pursuant to Rule 130 of the Pennsylvania Rules of Criminal Procedure. The Court held an argument on Defendant's motion, during

which the District Attorney argued that Rule 130 did not apply because the case was beyond the preliminary hearing stage and the Court had no authority to transfer a prosecution over the District Attorney's objection.

DISCUSSION

Rule 130(B) and Rule 555 of the Pennsylvania Rules of Criminal Procedure govern the transfer of criminal proceedings from one judicial district to another.

Rule 130(B) states, in relevant part:

- (B) Transfer of Proceedings in Court Cases.**
- (1) Prior to the completion of the preliminary hearing:
- (a) when charges arising from a single criminal episode, which occurred in more than one judicial district,
- (i) are filed in more than one judicial district, upon the filing with the issuing authority of a written agreement by the attorneys for the Commonwealth, the proceedings shall be transferred to the magisterial district in the judicial district selected by the attorneys for the Commonwealth; or
- (ii) are filed in one judicial district, upon the filing of a written agreement by the attorneys for the Commonwealth, the proceedings shall be transferred to the magisterial district in the judicial district selected by the attorneys for the Commonwealth.

Pa.R.Cr.P. 130(B)(1)(a).

This Rule, by its express terms, only applies when the attorneys for the Commonwealth agree in writing to transfer the charges prior to the completion of the preliminary hearing. There is no provision in Rule 130 that gives the Court the authority to transfer a case at the request of a defendant. Rule 130 clearly does not apply in this case,

¹ Defense counsel filed a motion to enforce the plea agreement in Monroe County.

because the preliminary hearings on both sets of charges have already been waived and there is no written agreement by the attorneys for the Commonwealth to transfer the Lycoming County charges to Monroe County.

Once the case has been held for court, Rule 555 governs the transfer of multi-venue cases. Rule 555 states, in relevant part:

Rule 555. Transfer of Proceedings

(A) In all cases in which charges arising from a single criminal episode occur in more than one judicial district:

(1) If the charges are filed in more than one judicial district, at any time after the case is held for court, the proceedings may be transferred to one of the judicial districts.

* * * *

(B) The judicial district to which the proceedings are to be transferred shall be determined either:

(1) by written agreement of the parties, filed with the clerk(s) of courts of the judicial district(s) in which the charges are pending; or

(2) by written agreement of the attorneys for the Commonwealth, filed with the clerk(s) of courts for the judicial district(s) in which the charges are pending, with service upon the defendant or defendant's counsel, and an opportunity for the defendant to object.

(C) Upon the filing of the agreement of the parties in paragraph (B)(1), the court promptly shall order the transfer of proceedings.

(D) Upon the filing of the agreement of the attorneys for the Commonwealth in paragraph (B)(2),

(1) absent an objection within 10 days of filing, the court promptly shall order the transfer of the proceedings.

(2) In those cases in which an objection is filed by the defendant, the court shall promptly dispose of the objection. If the objection is denied, the court immediately thereafter shall order the transfer of the proceedings.

* * * *

Pa.R.Cr.P. 555.

As with Rule 130, there is no provision in Rule 555 for proceedings to be transferred upon the motion, petition or request of a defendant. The Court believes the reason

the Rules do not contain such a provision is because a defendant has other remedies to protect his rights, such as a motion to dismiss based on double jeopardy or violations of sections 109 and 110 of the Crimes Code (18 Pa.C.S.A. §§109, 110).

Even if the Court did not construe Rule 555 as a whole and found that it had the authority to transfer these proceedings upon the motion of the defendant under Rule 555(A)(1), the Court would not be inclined to transfer the proceedings from Lycoming County to Monroe County, because the theft of the vehicle occurred in Lycoming County.

In conclusion, the Court does not believe it has the authority to transfer criminal proceedings to another judicial district on the request of a defendant and over the objection of the attorney for the Commonwealth. Even if the Court had such authority, however, it would not be inclined to transfer this particular case, because the actual theft of the vehicle occurred in Lycoming County, not Monroe County.

Accordingly, the following Order is entered:

ORDER

AND NOW, this ____ day of June 2012, for the foregoing reasons, the Court
DENIES Defendant's motion to transfer prosecution.

By The Court,

Marc F. Lovecchio, Judge

cc: Eric Linhardt, Esquire (DA)
Janet Jackson, Esquire
607 Monroe Street, Stroudsburg, PA 18630
Gary Weber, Esquire (Lycoming Reporter)
Work file