

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	CRIMINAL DIVISION
	:	DOCKET NO. 700-2009
vs.	:	
	:	2129 MDA 2012
THERIM RAHMEE POWELL,	:	
Defendant	:	OTN: K7889674

ORDER
Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)

By criminal information filed May 15, 2009, the Commonwealth charged Defendant Therim Rahmee Powell as follows: Count 1 (Felony) and Count 8 (Misdemeanor): Possession with Intent to Deliver a Controlled Substance (Powder Cocaine) in violation of 35 P.S. § 780-113(a)(30); Count 2 (Felony) and Count 9 (Misdemeanor): Possession with Intent to Deliver a Controlled Substance (Crack Rock Cocaine) in violation of 35 P.S. § 780-113(a)(30); Count 3: Receiving Stolen Property (.45 Pistol) in violation of 18 Pa. C.S. § 3925(a); Count 4: Persons not to Possess Firearms in violation of 18 Pa. C.S. § 6105(a)(1); Count 5: Alternating or Obliterating Marks of Identification (Springfield XD-9 Pistol) in violation of 18 Pa. C.S. § 6117(a); Count 6: Firearms not to be Carried without a License in violation of 18 Pa. C.S. § 6106(a)(1); Count 7: Possession of Firearm with Altered Manufacturer's Number in violation of 18 Pa. C.S. § 6110.2(a); and Count 10: Possession with Intent to Deliver Drug Paraphernalia (Plastic Baggies) in violation of 35 P.S. § 780-113(a)(32). On July 7, 2009, the Court consolidated Defendant's case with the case of Amien Patton, found at CR-826-2009.

On three separate occasions, the Court granted mistrials in the above-captioned matter. The first mistrial occurred on January 11, 2010; Defendant requested a trial continuance when he received information concerning a potential Commonwealth witness, one David Motyka. The second mistrial occurred on February 16, 2011, because a discussion occurred concerning a

severed count (persons not to possess) during voir dire. The third mistrial occurred on April 12, 2011, on the first day of trial, because the prosecutor improperly provided evidence of Defendant asserting his Fourth Amendment rights, i.e. refusing to consent to a search of a vehicle. On May 13, 2011, Defendant filed a motion to dismiss on double jeopardy grounds. By Opinion and Order dated November 2, 2012, this Court denied Defendant's motion and scheduled the case for a pre-trial conference.

On November 20, 2012, Defendant filed his Notice of Appeal. In his Concise Statement of Matters Complained of on Appeal, Defendant raises the same issues addressed by this Court in its Opinion and Order dated November 2, 2012: Defendant's motion to dismiss based upon the prohibition against double jeopardy found in the Pennsylvania and federal Constitutions.

Appellate review is appropriate in this matter. Pursuant to Pa. R.A.P. 311(a) and *Commonwealth v. Brady*, 508 A.2d 286, 291 (Pa. 1986), the denial of a motion to dismiss based upon double jeopardy grounds is subject to appellate review unless Defendant's appeal is deemed frivolous by the Court. *See also Commonwealth v. Schmidt*, 919 A.2d 241, 244 (Pa. Super. Ct. 2007), *appeal denied*, 936 A.2d 40 (Pa. 2007). This Court finds that the instant appeal is not frivolous.

Defendant's instant appeal is based upon the Court's Opinion and Order dated November 2, 2012. For purposes of this appeal, this Court relies upon that Order and respectfully requests its affirmation.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Julian Allatt, Esq.
K. Osokow, Esq. (DA)

N. Spring, Esq. (PD)
Gary L. Weber, Esq.