

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH,	:	
	:	CR - 341-2013
vs.	:	
	:	CRIMINAL DIVISION
TIMOTHY EILAND,	:	
Defendant	:	88 MDA 2014

{consolidated with}

COMMONWEALTH,	:	
	:	CR – 144-2013
vs.	:	
	:	CRIMINAL DIVISION
DAVID COLLINS,	:	
Defendant	:	2248 MDA 2013

ORDER

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

This Court issues the following Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a). The Commonwealth filed its concise statement of matters complained of on appeal on January 21, 2014, which identified the following matters for appeal.

1. The trial court erred by granting Defendant’s suppression motion without hearing evidence, making findings of fact, or making conclusions of law.
2. The trial court abused its discretion when it denied the Commonwealth’s request to call witnesses and introduce testimony at a suppression hearing in which the Commonwealth had the burden of proof.
3. The trial court abused its discretion when it adopted the decision from a companion case and accepted it as controlling without considering the merits.
4. The trial court abused its discretion when it adopted the record from a companion case and precluded the Commonwealth from supplementing that record with additional facts.

At issue is this Court’s Order on January 6, 2014 (docketed January 9, 2014) which adopted the pre-trial suppression ruling made by Judge Marc F. Lovecchio, a judge of coordinate jurisdiction sitting in the consolidated case involving identical facts and the legality of the same traffic stop.

This Court believes that it would have been an abuse of discretion to overrule that suppression

ruling. This Court further believes that it would have been an error to allow the Commonwealth to introduce additional evidence where the Commonwealth failed to proffer what specific evidence it sought to introduce and that such evidence was new and unavailable at the time of the suppression hearing or that it was inadvertently omitted. This Court submits that the ruling on the suppression of evidence from the traffic stop should be the same against both defendants in the consolidated cases.

This Court respectfully requests that its decision and Order on January 6, 2014, docketed January 9, 2014, be affirmed. This Court relies upon the Opinion and Orders by the Honorable Judge Marc F. Lovecchio entered December 2, 2013, and December 13, 2013 (docketed December 16, 2013), and the Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) issued in the consolidated case. In addition, this Court respectfully submits the following background and discussion in further support of affirmance of its decision and Order.

Factual and Procedural Background

This criminal matter arises from a police stop of a vehicle on December 3, 2012. The vehicle was impounded and searched. Police seized heroin, cocaine, two firearms, drug paraphernalia and U.S. Currency from the vehicle. All three occupants of the vehicle were arrested. This appeal relates to two occupants of the vehicle, Timothy Eiland and David Collins, who were both criminally charged based upon the items seized from the vehicle.¹ Eiland's case, *Commonwealth v. Timothy Eiland*, CR- 341-2013, was assigned to the Honorable Judge Nancy L. Butts, President Judge. Collins's case, *Commonwealth v. David Collins*, CR-144-2013, was assigned to the Honorable Judge Marc F. Lovecchio.

¹ Eiland was charged with eleven counts: two felony counts of possession with intent to deliver, 35 P.S. § 780-113(a)(30), one felony count of criminal conspiracy, 18 Pa.C.S. § 903(c), one felony 2 count of receiving stolen property (firearm), 18 Pa.C.S. § 3925, one felony 3 count of firearms not to be carried without license – person, 18 Pa.C.S. § 6106(a)(1), three misdemeanor counts of possession of controlled substances (heroin and crack-cocaine) 35 P.S. § 780-113(a)(16), and drug paraphernalia 35 P.S. § 780-113 (a)(32), two felony counts of possession with intent to deliver, 35 P.S. § 780-113(a)(30) and a final count of criminal conspiracy, 18 Pa.C.S. § 903(c).

On May 7, 2013, Eiland filed a motion to suppress evidence asserting that the police officer did not have reasonable grounds to stop the vehicle. Prior to that, in *Commonwealth v. David Collins*, CR-144-2013, on March 15, 2013, Collins filed a motion to suppress the same evidence based upon whether the officer had a reasonable suspicion to stop the vehicle. A hearing on Collins's motion was held on May 17, 2013, before Judge Lovecchio. The hearing on Eiland's motion to suppress was scheduled before Judge Butts for July 18, 2013. Upon defense motion, the hearing on Eiland's motion was continued to August 12, 2013. In the meantime, on July 29, 2013, the Court denied Collins's motion to suppress evidence. On August 7, 2013, the Commonwealth filed a motion to consolidate the criminal cases against David Collins, CR-144-2013 and Timothy Eiland, CR-341-2013. The Commonwealth asserted that the criminal complaints against the defendants were "virtually identical." *See, Commonwealth's Motion to Consolidate*, ¶¶ 3 & 4. On August 14, 2013, upon agreement of the parties and Order of Court, Eiland's motion to suppress was "continued for the completion of David Collins's suppression hearing transcripts of May 17, 2013." The Court further directed that after the completion of the transcripts, Counsel for Eiland was to advise the Court whether he wanted the motion decided based upon the transcripts or wanted an additional hearing.

On August 29, 2013, Collins filed a motion to reconsider the July 29, 2013 Order denying his motion to suppress. On September 25, 2013, argument was held on Collins's motion to reconsider. On October 16, 2013, the Court entered an Order Granting the Commonwealth's motion to consolidate the cases against Collins and Eiland. On December 2, 2013, the Court entered an Order in the Collins case granting the motion for reconsideration and granting the suppression of evidence, stating that "the court cannot find that ... [the police officer] ... had reasonable suspicion to stop the vehicle." On December 9, 2013, the Commonwealth filed a motion for reconsideration of that Order and a motion to re-open the record. On December 13,

2013, Eiland filed a motion for entry of an order of suppression, alleging that the Court was bound by the factual and legal decision of Judge Lovecchio in the Collins case entered on December 2, 2013. On December 16, 2013, in the Collins case, the Court denied the Commonwealth's motion to reconsider the Order suppressing evidence and the motion to re-open the record. On December 18, 2013, the Commonwealth filed a notice of appeal in the consolidated case against *Collins*, CR-144-2013.²

On January 6, 2014, Eiland's motion for entry of an order of suppression came before the Undersigned at the time set aside for criminal motions. At that proceeding, Eiland's attorney asserted that this Court should enter an order of suppression based upon the December 2, 2013 order. Counsel noted that the cases were consolidated and that the Commonwealth appealed the suppression order in Collins. Counsel asserted that the outcome of both matters should depend upon appellate review of the December 2, 2013 Order. The Commonwealth opposed this motion and instead sought to "reopen the door" to present supplemental testimony that might go to the suppression issue. (Transcript of Proceedings, January 6, 2014, Tr. 3, line, 8-11, 14). Counsel for Eiland noted that the Commonwealth had moved to re-open the record in Collins to present the same evidence that the Commonwealth sought to present in this case and that Judge Lovecchio denied that request. Eiland's counsel asserted that the Court was bound by that decision. The Commonwealth argued in essence that since the record had not yet been closed in Eiland, as it had been in Collins, this Court was not bound by the decision not to reopen in Collins.

On January 6, 2014, this Court granted Eiland's motion to suppress, stating that this Court believed that it was duty bound as a result of Judge Lovecchio's Opinion and Order to suppress the evidence arising out of the same stop.

² The Superior Court caption and docket number in the consolidated case against Collins is *Commonwealth of Pennsylvania v. David Emanuel Collins, Jr.*, 2248 MDA 2013; neither case identifies the other as a consolidated case on the Superior Court docket sheets. Docket Number 88 MDA 2014 lists 1326 MDA 2013, which is a prior case involving Eiland which was recently decided by the Superior Court.

Discussion

It is well settled that “judges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions.” *Commonwealth v. Starr*, 664 A.2d 1326, 1331 (Pa. 1995); *see, also, In re De Facto Condemnation & Taking of Lands of WFB Assocs., L.P.*, 903 A.2d 1192 (Pa. 2006). Specifically, the Pennsylvania Supreme Court has noted that “upon transfer of a matter between trial judges of coordinate jurisdiction, the transferee trial court may not alter the resolution of a legal question previously decided by the transferor trial court.” *Starr*, 664 A.2d at 1331 (citations omitted.), *see also, See, e.g., Commonwealth v. Brown*, 402 A.2d 1007, 1008 (Pa. 1979)(citing cases recognizing that it is an abuse of discretion to overrule a decision made in the same case based upon the same evidence.) Trial courts should adhere to the coordinate jurisdiction doctrine unless extraordinary circumstances exist, such as the presentation of new evidence, an intervening change in law, or the need to avoid manifest injustice caused by a prior ruling. *Starr*, 664 A.2d at 1331 (citations omitted).

There are strong policy considerations underlying the principle of coordinate jurisdiction, including the policy in favor of finality of pre-trial determinations, judicial economy and efficiency. *Starr*, 664 A.2d at 1331. In addition to promoting finality and judicial economy, the doctrine of coordinate jurisdiction also promotes the following policy goals:

- (1) to protect the settled expectations of the parties;
- (2) to insure uniformity of decisions;
- (3) to maintain consistency during the course of a single case;
- (4) to effectuate the proper and streamlined administration of justice; and
- (5) to bring litigation to an end. *Starr*, 664 A.2d at 1331.

Our Pennsylvania Supreme Court has balanced these policy considerations with the need for appellate review of pre-trial rulings that bind subsequent cases by articulating the following procedure to promote both interests.

Thus, in those instances where two prosecutions arise out of a single search and/or seizure, a decision by a suppression judge during the first prosecution can, upon the motion of the previous prevailing party, become part of the second prosecution. The party against whom this decision is being offered **may offer any new evidence which was previously unavailable**. See generally Pa.R.Crim.P. 323(j). Absent such new evidence the suppression judge in the second prosecution must adopt the findings and conclusions of the first judge, and incorporate them into the record. Thereupon, the party against whom the first decision is offered may have the validity of the decision reviewed on appeal. *Commonwealth v. Lagana*, 510 Pa. 477, 483 (Pa. 1986) (rev'd on other grounds)(emphasis added).

Commonwealth v. Lagana, *supra*, involved a suppression ruling against the same defendant arising from the same facts but where the cases were not consolidated. The first suppression ruling was not appealed and that case was nol prossed. The Court articulated the above procedure for adopting the suppression ruling in remaining case.

In the present case, this Court believes that it adhered to the above principles. The policy concerns for the coordinate jurisdiction doctrine applied to the present case. The cases were consolidated and involved the same vehicle stop. The complaints against the defendants were virtually identical. The suppression ruling turned on the testimony of the same and only police officer who decided to stop the vehicle. That police officer testified on behalf of the Commonwealth at the suppression hearing. Therefore, this Court concluded that the coordinate jurisdiction doctrine applied. In keeping with *Lagana*, *supra*, this Court adopted the determination of Judge Lovecchio subject to appellate review.

This Court further believes that it would have been an error to allow the Commonwealth to introduce additional evidence because the Commonwealth failed to proffer what specific evidence it wanted to introduce and failed to specifically aver that such evidence was new and unavailable at the time of the suppression hearing or that it was inadvertently omitted. The coordinate jurisdiction and law of the case doctrines notwithstanding, the Commonwealth cited cases where the Commonwealth was permitted to introduce additional evidence. In

Commonwealth v. Branch, 437 A.2d 748 (Pa. Super. 1981), the Superior Court upheld the suppression court's decision to re-open a hearing to receive additional testimony where the Commonwealth alleged the specific facts about a witness that the Commonwealth would present that had been left out "solely due to inadvertence" on the part of the Commonwealth.

Commonwealth v. Branch, *supra*, 437 A.2d at 750 n.3 -751. Under those circumstances, the receipt of additional testimony was within the suppression court's discretion. *Commonwealth v. Branch*, *supra*, 437 A.2d at 751. Similarly, where the Commonwealth's witness was unavailable through no fault of the Commonwealth's, it was within the trial court's discretion to permit the Commonwealth to re-open the case prior to verdict in order "to prevent a failure or a miscarriage of justice." See, *Commonwealth v. Ridgely*, 365 A.2d 1283 (Pa. Super. 1976). Where the Commonwealth erroneously interpreted evolving case-law as shifting the burden of proof to the defendant which was an issue before the trial court, and where the Commonwealth timely requested an opportunity to present evidence should the burden be placed upon it, the interests of justice required that the trial court re-open the suppression hearing. *Commonwealth v. Ryan*, 442 A.2d. 739 (1982).

In the instant case, the Commonwealth failed to state what evidence it sought to introduce or why it was omitted. Instead, the Commonwealth sought to "reopen the door" to present supplemental testimony that might go to the suppression issue. (Transcript of Proceedings, January 6, 2014, Tr. 3, line, 8-11, 14). The Commonwealth never stated what the evidence was or why it was omitted or unavailable at the suppression hearing against Collins. The Commonwealth did not aver that it omitted evidence inadvertently, that a witness was unavailable or that it misapprehended its burden of proof. The suppression ruling in both cases turned on the testimony of the same and only police officer who decided to stop the vehicle. At the closing of the police officer's testimony, the Commonwealth did not seek to re-open the

testimony on May 17, 2013. (See, 5/17/3 Transcript) Nor did the Commonwealth seek to re-open the suppression hearing during argument on defendant Collins's motion for reconsideration. (See, 9/25/13 Transcript). After the Court granted reconsideration and granted suppression, on December 9, 2013, the Commonwealth sought to re-open the record before the suppression Court stating that the same police officer could testify to fill in the holes in his testimony. See, *Motion to Re-Open the Record*, ¶ 59. That motion was denied by Judge Marc F. Lovecchio on December 13, 2013 (docketed December 16, 2013).

This Court respectfully believes that interests of justice are best served by adhering to Judge Lovecchio's ruling and not allowing the Commonwealth to provide additional testimony to seek diverse rulings against co-defendants in consolidated cases involving the legality of the same traffic stop and same facts. The Commonwealth cited case-law in support of providing additional testimony but did not specifically allege what evidence it sought to introduce or why the evidence was not previously presented to the Court. The Commonwealth's only witness was available and testified at the suppression hearing. Accordingly, this Court respectfully submits that it was a proper use of its discretion to adhere to Judge Lovecchio's ruling on the suppression issue without taking any additional testimony.

Conclusion

For these reasons, and for the reasons stated in its decision and Order on January 6, 2014, docketed January 9, 2014, the Opinion and Orders by the Honorable Judge Marc F. Lovecchio entered December 2, 2013, and December 13, 2013 (docketed December 16, 2013), and the Order pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) issued in the consolidated case, this Court respectfully requests that its decision and Order dated January 6, 2014 be affirmed.

BY THE COURT,

Date

Richard A. Gray, J.

cc: District Attorney's Office (MW)
Peter T. Campana, Esq. – Counsel for Appellee
CR – 144-2013
(Superior Court & 1)