

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-579-2014  
 :  
 VANESSA M. MARTIN, :  
 Defendant : Motion to Dismiss Pursuant to Rule 110

**OPINION AND ORDER**

This opinion addresses the application of 18 Pa. C.S.A. § 110, commonly known as the Compulsory Joinder Statute.

The facts of this case are not in dispute. On November 12, 2013, at approximately 1:39 a.m., Officer Chad Aldenderfer of the Tiadaghton Valley Regional Police Department was dispatched for a report of a disturbance in progress at the J & M Sub Shop on Allegheny Street in Jersey Shore.

While responding to the alleged disturbance, Officer Aldenderfer drove by Tina Fisher’s Hair Salon located at 1126 Allegheny Street. A pick-up truck was parked in front of the salon. Officer Aldenderfer witnessed Defendant ducking behind the pick-up truck and then start walking.

Officer Aldenderfer responded to the sub shop which was approximately 150 to 200 yards from the salon on the same side of Allegheny Street. At the sub shop, Officer Aldenderfer learned that Defendant may have been involved in a disturbance involving two other females. Soon after the disturbance, Defendant walked from the scene west on Allegheny Street toward the hair salon.

Accordingly, Officer Aldenderfer started walking toward the salon in an

attempt to locate Defendant. He eventually made contact with Defendant who was walking on Harris Street approximately a half a block from the sub shop.

Defendant was highly intoxicated. As a result, Officer Aldenderfer took Defendant into custody, issued Defendant two citations (one for underage drinking and one for public drunkenness) and then drove Defendant to her grandparents where he released her into their custody.

On November 13, 2013, at approximately 8:00 in the evening, the owner of the property where the salon is located contacted the Tiadaghton Valley Regional Police Department reporting damage to a metal sign, porch and porch light at the address. According to Office Aldenderfer, the call was received by another officer and eventually “given to Chief Jeirles.” Officer Aldenderfer was not involved in the call nor was he made aware of any alleged criminal activity by Defendant in connection with the salon. Chief Jeirles did ask Officer Aldenderfer at some point where he first saw Defendant in the early morning hours of November 12.

In connection with the underage drinking and public drunkenness citations, Defendant did not request a hearing and none was scheduled. She pled guilty apparently by appearing at the Magisterial District Judge’s office, signing the citations and paying the fines. She pled guilty on January 23, 2014 and February 14, 2014.

On March 11, 2014, Chief Jeirles filed a criminal complaint against Defendant charging her with one count of criminal mischief. The criminal complaint alleges that on November 12, 2013, while Defendant was in a highly intoxicated state and after being

involved in the fight with the other females, she walked from the sub shop to the salon where she damaged the sign, porch and porch light of the salon.

Officer Aldenderfer became aware of the criminal mischief complaint against Defendant “after the fact.”

The Information charging Defendant with criminal mischief was filed on April 25, 2014. For several months, the parties attempted to reach a satisfactory resolution disposing of the charge. The parties were unable to do so. In an Order dated August 12, 2015, the court permitted Defendant to file any pretrial motion within thirty (30) days thereafter.

On August 12, 2015, Defendant filed a motion to dismiss alleging that the present prosecution was barred pursuant to 18 Pa. C.S.A. § 110. More specifically, Defendant contends that pursuant to 18 Pa. C.S.A. § 110 (1) (ii), the present prosecution for criminal mischief is barred by the former prosecution of Defendant for underage drinking and public drunkenness because: (1) the former prosecution resulted in a conviction; (2) the current prosecution is based on the same conduct or arises from the same criminal episode as the former prosecution; (3) the offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial; and (4) the current charges and the former charges were within the jurisdiction of a single judicial district.

The Court held a hearing and argument on the motion on October 13, 2015. At the hearing in this matter, the Commonwealth did not dispute that Defendant was convicted in the former prosecution or that both sets of charges were within the jurisdiction

of a single judicial district. At issue was whether the prosecutions were based on the same criminal conduct or arose from the same criminal episode and whether the prosecuting officer was aware of the current charges before the commencement of the trial for the former charges.

A single criminal episode is determined based on a totality of circumstances analysis. *Schmidt*, 919 A.2d 241, 246 (Pa. Super. 2007); *Commonwealth v. M.D.P.*, 831 A.2d 714, 719 n. 3 (Pa. Super. 2003). The courts consider the logical and/or temporal relationship between the charges, whether the charges share common issues of law, whether the charges share common issues of fact, whether separate trials would involve substantial duplication and whether separate trials would be a waste of scarce judicial resources. *Schmidt*, supra.

Considering all of these factors, the court questions whether the charges arise from the same criminal episode. While the charges appear to be temporally related, they do not appear to be logically related. The charges generally do not involve common issues of law or fact. The issues of law and fact for the public drunkenness and underage drinking charges involve Defendant's age, consumption of alcohol, intoxication, and whether her alcohol consumption or intoxication was to a degree that she may endanger herself, others, or property or annoy persons in her vicinity. The incident at the sub shop involved a disturbance or fight with other females; it did not involve damage to property.

In comparison, the issues in Defendant's criminal mischief charge involve whether she caused damage to the porch, porch light and sign outside of the hair salon and

the nature and extent of that damage. Although this alleged property damage could have been relevant and admissible at a hearing on the public drunkenness charge if Officer Aldenderfer had been aware of it and Defendant had not entered a guilty plea, Defendant's age and intoxication are not issues with respect to the criminal mischief charge.

Furthermore, it appears that the only likely witness for both incidents is Officer Aldenderfer, who saw Defendant ducking behind a truck in front of the salon, as the other witnesses did not see Defendant at or near the salon but only saw her leave the sub shop walking in that general direction. Separate witnesses for the criminal mischief would include the property owner and Chief Jierles. Similarly, the witnesses from the sub shop would be separate witnesses for the underage drinking and public drunkenness charges.

Even if all of the charges were part of the same criminal episode, however, the court has no doubt that at the time of the commencement of the "first trial" the criminal mischief offense was not known to the appropriate prosecuting officer.

In fact, at the time Officer Aldenderfer filed the citations against the Defendant for public drunkenness and underage drinking, he had no clue let alone any information regarding Defendant's role in vandalizing the salon. When the call came in almost a day and a half later, he did not receive it nor did he handle any aspect of the investigation. In fact, he was not even aware of the criminal complaint filed against the Defendant for criminal mischief until after it was filed. The filing of the criminal complaint came after Defendant pled guilty to the citations.

The "Compulsory Joinder Rule" set forth in § 110 of the Crimes Code has a

dual purpose. First, it protects a person accused of crimes from governmental harassment by being forced to undergo successive trials stemming from the same criminal episode. Second, it ensures judicial economy. *Commonwealth v. Spotts*, 563 Pa. 269, 759 A.2d 1280, 1285 (2000); *Commonwealth v. Hude*, 500 Pa. 482, 458 A.2d 177, 180 (1983).

This is not a situation in which Defendant must be protected from governmental harassment or vexatious litigation. In the early morning hours of November 12, Officer Aldenderfer cited Defendant for public drunkenness and underage drinking. He had no knowledge whatsoever of any criminal mischief by Defendant. The purpose of § 110 which essentially is a codification of the double jeopardy rule announced by our Supreme Court in *Commonwealth v. Campana*, 452 Pa. 233, 304 A.2d 432 (Pa. 1973), (vacated and remanded, 414 U.S. 808, 94 S. Ct. 73 (1973), reinstated, 455 Pa. 622, 314 A.2d 854 (1974), cert. denied, 417 U.S. 969, 94 S. Ct. 3172 (1974) is to require a prosecutor to bring “in a single proceeding, all known charges against the defendant arising from a single criminal episode.” *Id.* at 441. Obviously, Officer Aldenderfer brought all known charges against Defendant. The unknown charges were brought at a later date. See also, *Commonwealth v. Miller*, 278 Pa. Super. 103, 419 A.2d 1378 (1980) (where, at time of first prosecution for theft of police scanner, Commonwealth was not in possession of information connecting defendant with theft of stereo console occurring on same premises and against same victim, provisions of this section would not preclude Commonwealth from instituting second prosecution for theft of stereo console, notwithstanding the first prosecution had resulted in directed verdict in defendant’s favor).

**ORDER**

**AND NOW**, this \_\_\_ day of November 2015, following a hearing and argument, Defendant's motion to dismiss pursuant to Rule 110 is denied.

By The Court,

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Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)  
Jeffrey Frankenburger, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file