

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In the interest of AMCommonwealth of  
Pennsylvania

JUVENILE DIVISION

In The Interest Of:

JV – 146 - 2017

*JUVENILE*, A Minor  
DOB: XXXX

**OPINION AND ORDER**

This matter comes before the Court on the Juvenile’s motion to dismiss the charge of possession of a weapon on school property<sup>1</sup> for a violation of double jeopardy and 18 Pa. C.S.A. § 110. After careful consideration, the Court concludes that the instant petition alleging delinquency violates double jeopardy as codified in 18 Pa. C.S.A. § 110 (“§ 110”) and should be dismissed.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

This matter stems from an allegation that on April 26, 2017 JUVENILE brought a BB /soft air gun to school and rode home with it on the bus. Upon exiting the bus, JUVENILE pulled out the BB /soft air gun and shot a mailbox one time and then directed one shot toward a fellow student, striking the student’s sister in the face near her eye. The Pennsylvania State Police responded to the incident that day. The next morning, the Assistant Principal of JUVENILE’s school called Officer Marc Storms and reported what happened the previous day. In addition, the Assistant Principal reported that JUVENILE admitted having the BB gun with him all day in school and that the Pennsylvania State Police were on the scene and handled the incident.

On April 27, 2017, the Pennsylvania State Police charged JUVENILE with the summary offense of harassment<sup>2</sup> and issued a non-traffic citation/summons in Magisterial District Court

---

<sup>1</sup> 18 Pa. C.S.A. § 912(B).

<sup>2</sup> 18 Pa. C.S.A. § 2709(a)(1).

within the 29<sup>th</sup> Judicial District, Number 29-3-02. On May 11, 2017, aware of the summary charge,<sup>3</sup> Officer Storms charged JUVENILE with possession of a weapon on school property, a misdemeanor of the first degree. Storms filed a petition alleging delinquency for that offense in the Juvenile Division of the Court of Common Pleas of Lycoming County, the 29<sup>th</sup> Judicial District on May 23, 2017. On June 1, 2017, JUVENILE pled guilty to the summary offense at the Magistrate Court. On July 5, 2017, at the time scheduled for a preliminary hearing in the Juvenile Division of the court of Common Pleas, JUVENILE requested an evidentiary hearing that was scheduled for August 23, 2017. On August 9, 2017, JUVENILE filed the instant motion which was briefed and then argued on August 23, 2017.

#### DISCUSSION

At issue is whether double jeopardy bars the charge of possession of a weapon on school property following a plea to a summary charge of harassment for striking a student with the BB gun. This Court concludes that double jeopardy bars the charge in the instant matter.

“It is well settled that the constitutional prohibition against double jeopardy is applicable to juvenile proceedings.” In re Huff, 399 Pa. Super. 574, 579, 582 A.2d 1093, 1095 (Pa. Super. 1990). “In Campana, our “Supreme Court held that ‘the Double Jeopardy Clause requires a prosecutor to bring, in a single proceeding, all known charges against a defendant arising from a single criminal episode. Commonwealth v. Perfetto, 2017 PA Super 281, No. 2479 EDA 2015 (August 30, 2017). The Campana cases<sup>4</sup> and § 110<sup>5</sup> essentially “designed a rule of compulsory

---

<sup>3</sup> See the affidavit of probable cause where Storms references the State Police involvement.

<sup>4</sup>Commonwealth v. Campana, 452 Pa. 233, 304 A.2d 432, vacated and remanded, 414 U.S. 808, 94 S.Ct. 73, 38 L.Ed.2d 44 (1973) (Campana I); Commonwealth v. Campana, 455 Pa. 622, 314 A.2d 854, cert. denied, 417 U.S. 969, 94 S.Ct. 3172, 41 L.Ed.2d 1139 (1974) (Campana II). Hude, n. 9-10. “In the interim between Campana I and Campana II, the legislature promulgated section 110 which set forth when prosecution would be barred by former prosecution for a different offense.” Hude, 458 A.2d at 180.

<sup>5</sup> § 110 provides the following in relevant part:

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:

joinder which required the criminal offenses arising from the same criminal episode to be disposed of in one prosecution.” Commonwealth v. Hude, 500 Pa. 482, 487-88, 458 A.2d 177, 179-80 (Pa. 1983). Furthermore, the Juvenile Act requires joinder of summary offenses arising out of the same episode or transaction.<sup>6</sup>

The compulsory joinder rule serves two distinct policy considerations: (1) to protect a person accused of crimes from governmental harassment of being forced to undergo successive trials for offenses stemming from the same criminal episode; and (2) as a matter of judicial administration and economy, to assure finality without unduly burdening the judicial process by repetitious litigation. Hude, 458 A.2d at, 180.

In the present case, the Court concludes that the instant delinquency petition arises from the same criminal episode as the harassment charge.<sup>7</sup> They are temporally, logically, and factually related. The conduct underlying the summary charge occurred moments after JUVENILE allegedly exited the school bus in possession of the BB /soft air gun. Possession of the BB /soft air gun on the school bus is conduct that violates 18 Pa. C.S.A. § 2709(a)(1). Possession at school and on the bus facilitated the timing and location of the summary offense

- 
- (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 the 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 prosecuting 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). (emphasis added).

<sup>6</sup> The “Juvenile Act” applies exclusively to summary offenses “arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed under this chapter and requires that the summary offense “shall be included in any petition regarding the accompanying delinquent act.” 42 Pa.C.S. § 6303(a)(5).

<sup>7</sup> The Commonwealth contends the charges do not stem from the same criminal episode, *citing*, Commonwealth v. Wittenburg, 710 A.2d. 69 (Pa. Super. 1998). This Court is not persuaded. Wittenburg involved two different counties. Moreover, at the time of Wittenburg, § 110 used the language: “within the jurisdiction of a single court” rather than “same judicial district.” “[T]he phrase “judicial district” means the geographical area established by the General Assembly in which a court of common pleas is located.” Commonwealth v. Fithian, 599 Pa. 180, 196, 961 A.2d 66, 75 (Pa. 2008). The Commonwealth also contends that § 110 does not apply to summary offenses and cites cases in support. However, those cases interpreted the former language of § 110 when looking at summary offenses. “The Pennsylvania Supreme Court in Commonwealth v. Geyer, 546 Pa. 586, 687 A.2d 815, 818 (Pa. 1996) examined its holdings in Beatty, Breitegan, and Taylor, and clarified that summary offenses were also subject to a compulsory joinder analysis provided that there were multiple summary offenses at issue within a single court.” Pefetto, *supra*. Lastly, the *Blockburger* – element test cited by the Commonwealth more aptly applies to § 110 (1)(iii) not §110 (1)(ii) as to when prosecution is barred as the same conduct is barred as a lesser included offense.

upon exiting the bus at the bus stop. Officer Storms was aware of the summary charge when filing the instant petition. The summary charge was filed in the same judicial district and same county as the instant petition. Most of the witnesses and evidence would be the same. The protection against double jeopardy and the purposes sought to be achieved by the compulsory joinder rule in the Campana cases, § 110, and the Juvenile Act apply here. The Court concludes that the failure to include the summary offense with the instant petition violates double jeopardy and requires dismissal.

**ORDER**

*AND NOW* this 1<sup>st</sup> day of **September 2017**, upon consideration of the motion to dismiss juvenile complaint due to violation of double jeopardy and 18 Pa. C.S.A. § 110, filed on August 9, 2017, it is ORDERED AND DIRECTED that the Motion is GRANTED. Accordingly, the Juvenile Complaint filed on May 24, 2017 is DISMISSED.

BY THE COURT,

September 1, 2017  
Date

\_\_\_\_\_  
Richard A. Gray, J.

cc: JPO (4)  
ADA / W. Jeffrey Yates, Esquire (for the Commonwealth)  
Donald F. Martino, Esquire (for the Juvenile)