

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1809-2017
 :
 AUSTIN GROSSNICKLE, II, : Opinion and Order Re
 Defendant : Defendant's Motion to Dismiss for Violation of
 : 18 Pa. C.S. §110

OPINION AND ORDER

Before the court is the motion to dismiss for violation of 18 Pa. C.S. §110 filed by Defendant, Austin Grossnickle, II (hereinafter Grossnickle). The relevant facts follow.

At approximately 8:40 a.m. on October 17, 2017, Sergeant Brian Fioretti of the Tiadaghton Valley Regional Police Department was dispatched to an apartment in Jersey Shore, Pennsylvania for a reported "domestic in progress" between Grossnickle and his ex-girlfriend (hereinafter "the complainant"). Prior to his arrival at the residence, Sgt. Fioretti received notice that Grossnickle had left the residence headed east in a maroon vehicle. Sgt. Fioretti located the complainant at a neighbor's residence. The complainant reported that Grossnickle broken into her apartment, choked and assaulted her, prevented her from leaving the residence, and then ultimately fled in his vehicle. Sgt. Fioretti requested County Communications to issue a BOLO (be on look out) for Grossnickle and his maroon Chrysler Sebring. The complainant could not locate her cell phone, and Sgt. Fioretti suggested calling her cell phone number. When the number was called, Grossnickle answered the phone.

At approximately 9:10 a.m., Trooper Kurtis Killian of the Pennsylvania State

Police (PSP) in Montoursville, Pennsylvania, observed Grossnickle's maroon Chrysler Sebring. Tpr. Killian attempted to pull over the vehicle by activating his emergency lights and sirens. Instead of stopping his vehicle, however, Grossnickle fled from the trooper at a high rate of speed, which at times approximated 113 miles per hour. During the high speed chase, Grossnickle discarded white tissues out of the vehicle's window on two occasions. Eventually, Grossnickle lost control of his vehicle, crashed onto a bike path, and fled on foot. Grossnickle was apprehended by Trooper Killian and another trooper. Grossnickle admitted to the troopers that he ate a marijuana roach. A search of the vehicle yielded a pill identified, but not tested, as oxycodone. Grossnickle was transported to a hospital where he refused chemical testing of his blood.

Sgt. Fioretti heard radio communications that the troopers were in pursuit of Grossnickle's vehicle and then that "they had one in custody." Sgt. Fioretti went to the scene of the stop and retrieved the complainant's cell phone.

Grossnickle was charged in two separate criminal complaints. Under Information 1759-2017, Grossnickle was charged with fleeing and attempting to elude a police officer, possession of a controlled substance, possession of a small amount of marijuana, possession of drug paraphernalia, driving under the influence of a controlled substance (DUI), recklessly endangering another person (REAP), tampering with physical evidence, resisting arrest, disorderly conduct, scattering rubbish, and several traffic summaries related to the high speed chase. Under Information 1809-2017, Grossnickle was charged with burglary, criminal trespass, unlawful restraint, simple assault and strangulation

related to the occurrence at the complainant's residence.

On September 28, 2018, Grossnickle entered a guilty plea to numerous charges under Information 1759-2017. On November 13, 2018, the court sentenced Grossnickle to an aggregate term of three to eight years' incarceration in a state correctional institution, consisting of one to five years for fleeing and eluding a police officer, three to six months for DUI, one to two years for REAP, and three to six months for resisting arrest.

On January 7, 2019, Grossnickle filed a motion to dismiss the charges under Information 1809-2017 due to a violation of the compulsory joinder statute, 18 Pa. C.S.A. §110.

On March 1, 2019, the court held a hearing and argument on Grossnickle's motion. In his brief and arguments, Grossnickle asserted that the prosecution in this case was barred by his conviction for fleeing and eluding under Information 1759-2017. Defendant asserted that he met every element of section 110(1)(ii) and, as a result, the charges under 1809-2017 must be dismissed. The prosecutor argued that the charges should not be dismissed because the current charges are not based on the same criminal conduct and do not arise from the same criminal episode.

Section 110(1)(ii) states:

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:

(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).

The Commonwealth concedes that the former prosecution resulted in an acquittal or conviction, the offenses were known to the appropriate prosecuting officer before the first trial or disposition, and all the charges occurred within the same judicial district. The sole issue is whether the prosecutions were based on the same criminal conduct or arose from the same criminal episode.

A single criminal episode is determined based on the totality of the circumstances analysis. *Commonwealth v. 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*; see also *Commonwealth v. Hude*, 458 A.2d 177, 183 (Pa. 1983).


Although the offenses in both cases are temporally related in that they occurred from 8:40 a.m. to 10:47 a.m. on October 17, 2017, they are not logically related. They do not share common issues of law or fact, and do not involve substantial duplication. The issues under Information 1809-2017 are whether Defendant broke into his ex-girlfriend's residence, attacked her, and unlawfully restrained her. The primary witnesses for the

Commonwealth will be Defendant's ex-girlfriend and Sgt. Fioretti. Had Defendant gone to trial under Information 1759-2017 the issues would have been whether Defendant drove his vehicle at high rates of speed and/or while under the influence of controlled substances, whether he placed in danger the state troopers and the general public, and whether he possessed controlled substances and drug paraphernalia. The primary witnesses likely would have been the troopers. While some limited evidence of Defendant's flight from the troopers may be admissible as consciousness of guilt in this case, such does not make these two case a single criminal episode. *Commonwealth v. Spotz*, 756 A.2d 1139, 1158 (Pa. 2000) ("Initially, we reject appellant's suggest that, merely because certain evidence of appellant's previous crimes was relevant and admissible in this prosecution, the crimes must be part of the same criminal episode. Other crimes evidence may be admissible, as it was here, for a wide variety of purposes; but that fact alone does not prove such a logical connection between the acts so as to constitute a single criminal episode."). Quite simply, the prosecutions do not depend on the same evidence or the credibility of one witness. Therefore, the court finds that they are not based on the same criminal conduct nor arise from the same criminal episode.

ORDER

AND NOW, this 25 day of March 2019, the court DENIES Defendant's motion to dismiss pursuant to 18 Pa. C.S.A. §110.

By The Court,



Marc F. Lovecchio, Judge

cc: Aaron Gallogly, Esquire (ADA)
Nicole Spring, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File