

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 99-10,964

VS :

ROBERT MARICHAK :

OPINION AND ORDER

This matter is before the Court for Defendant's Petition to Transfer to Proper Jurisdiction. A preliminary conference was held on July 30, 1999 after which, the Court determined that more time was needed to hear testimony and argument with regard to the issues in the Defendant's Petition. A hearing was held on September 28, 1999. After review of the materials, the Court finds the following facts.

From October, 1996 through April 1997, Agent Gordon Mincer, of the Pennsylvania State Attorney General's Office, Bureau of Narcotic Investigation and Drug Control, investigated the Defendant and several others for drug related activities. It is alleged that Williamsport residents Brian Swingle and John Burns were trafficking drugs supplied by the Defendant. On July 21, 1998, after Grand Jury proceedings on the matter, the Defendant was arrested and charged with violations of the Controlled Substance, Drug, Device and Cosmetic Act, and Conspiracy to commit violations of the Act.

By Order dated July 21, 1998, G. Thomas Gates, Senior Judge of the Court of Common Pleas of Lebanon County, and Supervising Judge for the Twelfth Statewide Investigating Grand Jury, accepted the presentment of the Grand Jury, and Ordered that Lycoming County be the County for conducting the trial for all charges. The

Defendant now argues that the Supervising Judge erred in placing venue<sup>1</sup> in Lycoming County, as all of the alleged acts of the Defendant occurred in Lackawanna County.

It is well settled in Pennsylvania that as a general rule, absent some new evidence, it is improper for a trial judge to overrule an interlocutory order entered by another judge of the same court involving the same issue. The policy underlying this rule is that there must be some finality to the determination of all pretrial applications so that judicial economy and efficiency can be maintained. Farber v. Engle, 106 Pa.Commonwealth Ct. 173, 177, 525 A.2d 864, 866 (1987). Instantly, the Court finds that it would be improper to overrule Judge Gates' Order placing venue in Lycoming County. Although we are not of the same court, we are both Judges of the Court of Common Pleas. The Court would find that it would logically follow, in the interest of finality and judicial economy, that the principle would apply in this situation as well.

Additionally, even if it were found that this Court had the ability to overrule Judge Gates' determination, this Court would not. Under common law rules, a criminal court would lack jurisdiction to try an offense that did not occur in the county. Holding a trial in a county other than the one where the offense occurred is not, however, constitutionally prohibited, but is a mechanism that must be used sparingly, "to prohibit dragging the accused all over the commonwealth and burdening him with an expensive trial at the whim of the prosecution." Commonwealth v. McPhail, 429 Pa.Super 103, 631 A.2d 1305, (1993), reversed, 547 Pa. 519,\_\_\_\_\_, 692 A.2d 139, 145, (1997). The McPhail Court held that there was no constitutional deprivation by joining all charges

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<sup>1</sup> Although Defense counsel has referred to the issue as one of jurisdiction, whether the trial should be held within or outside the county where the alleged offense has occurred is a matter of venue, not jurisdiction. See *Commonwealth v. McPhail*, 429 Pa.Super 103, 631 A.2d 1305 (1993), reversed, 547 Pa. 519, 692 A.2d 139 (1997).

stemming from a *single criminal episode* for trial in one county despite the fact that some of the charges arose in a different county. A single criminal episode exists when multiple charges bear a logical and temporal relationship.

Instantly, the Defendant was charged with conspiracy, in addition to other controlled substance charges. The Defendant made numerous telephone contacts over several months with Williamsport residents in order to arrange drug deals. During these conversations, the Defendant would discuss quantities and sources for marijuana purchases. During this time, the Defendant lived in State College -- Centre County (N.T. 4/20/98, p.15), he purchased his drugs from sources in Philadelphia -- Philadelphia County (Id., p. 17), and delivered the drugs while in Scranton -- Lackawanna County (Ibid.) The Court would find that the possession and delivery of the drugs in Lackawanna County was only the consummation of the criminal conspiracy, which had the most logical relationship with Lycoming County. See Commonwealth v. Kirkland, 700 A.2d 482 (Pa. Super., 1997). The Court therefore finds that venue is proper in Lycoming County.

ORDER

AND NOW, this 10th day of December, 1999, it is ORDERED and DIRECTED that the Defendant's Petition to Transfer to Proper Jurisdiction is DENIED. Preliminary Hearing is scheduled before District Justice James Sortman on December 29, 1999, at 1:00 p.m.

By The Court,

Nancy L. Butts, Judge

cc: CA

Michael Madeira, Deputy Attorney General  
Joseph R. D'Andrea, Esquire  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire