

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-11,094
	:
	:
vs.	: CRIMINAL DIVISION
	: Motion to Dismiss
JACOB L. SNYDER, JR.,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss, filed October 25, 2000. A hearing on the Motion was held March 2, 2001.

Defendant contends the charges of DUI filed to the instant matter must be dismissed as a violation of Section 110 of the Crimes Code. That Section provides, in pertinent 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, but is barred by such former prosecution under the following circumstances:

- (1) The former prosecution resulted in ... a conviction ... 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 was within the jurisdiction of a single court ... .

18 Pa. C.S. Section 110.

There is no disagreement as to the underlying factual basis for the charges involved in the instant matter as well as the charge involved in the "former prosecution." On April 9, 2000 Defendant

was discovered by a police officer stumbling around in a parking lot at approximately 3:00 a.m. The officer made contact with Defendant and observed that he was extremely intoxicated. Defendant was arrested and cited for public drunkenness. In connection with that arrest, and after having been advised of his Miranda rights, Defendant informed the officer that he had consumed two (2) 40 ounce beers and then drove his vehicle until it became stuck in a parking lot, that he had left the vehicle where it was stuck and had been walking for approximately one (1) hour in an attempt to go home. Defendant was then arrested for DUI and transported to the hospital for a blood test to determine his blood alcohol content. Defendant entered a guilty plea with the magistrate on the following day, April 10, 2000, to the summary charge of public drunkenness. Thereafter, on April 26, 2000, the arresting officer filed a complaint charging Defendant with two (2) counts of driving under the influence of alcohol and two (2) summary charges related to the vehicle accident.<sup>1</sup> In the instant motion, Defendant contends the charges of DUI arise from the same criminal episode as the charge of public drunkenness and therefore must be dismissed as a violation of Section 110. The Court does not agree.

Defendant contends that the consumption of alcohol is the “criminal episode” and that such consumption led to both sets of charges. The Court does not believe that the consumption of alcohol is a criminal episode, however, as consumption of alcohol in and of itself is not criminal in nature. Appearing in public in an intoxicated state is the actual episode as is driving a vehicle while under the influence of alcohol. The Court considers such to be two (2) separate episodes.

In any event, even were the Court to conclude that both sets of charges arose from the same criminal episode, the charges of DUI are not barred by Defendant’s guilty plea to the prior summary offense for the simple reason that all charges are not within the jurisdiction of a single court. The counts of DUI are misdemeanors, not within the jurisdiction of the District Justice who took Defendant’s plea to the summary offense of public drunkenness. See Commonwealth v Beatty, 455 A.2d 1194 (Pa. 1983); Commonwealth v Taylor, 522 A.2d 37 (Pa. 1987); Commonwealth v Cauffman, 662 A.2d 1050 (Pa. 1995). Defendant’s prosecution for DUI is thus not barred by his

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<sup>1</sup>Both summary charges were dismissed at the preliminary hearing.

conviction for public drunkenness.

ORDER

AND NOW, this        day of March, 2001, for the foregoing reasons, Defendant's Motion to Dismiss is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc:    DA  
      Scott Gardner, Esq.  
      Gary Weber, Esq.  
      Hon. Dudley N. Anderson