

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Fithian; Commonwealth v. Borzelleca

599 Pa. 180 (Pa. 2008) · No. Nos. 10 MAP 2008, 11 MAP 2008 · Decided December 17, 2008

SUMMARY

The Supreme Court of Pennsylvania interprets the 2002 amendments to Pennsylvania's compulsory joinder statute, 18 Pa.C.S.A. § 110. The court holds that a subsequent conspiracy prosecution is barred when the offense occurred in more than one judicial district, including the district of the former prosecution, but that offenses occurring wholly outside that district are not barred. The court therefore affirms in part and reverses in part the Superior Court's order.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Todd; Chief Justice Castille; Justice Saylor; Justice Eakin; Justice Baer; Justice McCaffery
JURISDICTION	Pennsylvania
DECIDED	December 17, 2008
DOCKET	Nos. 10 MAP 2008, 11 MAP 2008
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Commonwealth appealed by allowance from the Superior Court's order affirming dismissal of Delaware County criminal charges under Pennsylvania's compulsory joinder statute. The Supreme Court granted review to interpret the 2002 amendment to 18 Pa.C.S.A. § 110(1)(ii), specifically the requirement that the subsequent offense occur within the same judicial district as the former prosecution.
STANDARD OF REVIEW	De novo review and plenary scope of review applied to the question of statutory interpretation.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Commonwealth of Pennsylvania v. Michael Fithian, Edward Borzelleca

TOPICS

- criminal procedure
- statutory interpretation
- appellate procedure
- double jeopardy
- conspiracy

PRACTICE AREAS

criminal law

criminal procedure

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. What does the phrase "occurred within the same judicial district as the former prosecution" mean in 18 Pa.C.S.A. § 110(1)(ii), as amended in 2002?
2. Does the compulsory joinder statute bar a subsequent prosecution for conspiracy when the conspiracy offense occurred in multiple judicial districts, including the district of the former prosecution?
3. Does the statute bar subsequent prosecutions for possession, possession with intent to deliver, and possession of drug paraphernalia when those offenses occurred wholly outside the judicial district of the former prosecution?

HOLDINGS

1. For purposes of the compulsory joinder statute, an offense occurs within the same judicial district as the former prosecution when the offense occurred in more than one judicial district and one of those districts was the district in which the former prosecution was brought. The statute does not require the offense to occur wholly within that district.
2. The Delaware County prosecution for conspiracy to deliver cocaine was barred by 18 Pa.C.S.A. § 110(1)(ii) because the conspiracy occurred in Montgomery, Delaware, and Philadelphia Counties, including Montgomery County, where the former prosecution occurred.
3. The Delaware County prosecutions for possession of a controlled substance, possession with intent to deliver, and possession of drug paraphernalia were not barred because those offenses occurred wholly in Philadelphia County, outside the Montgomery County judicial district of the former prosecution.

KEY QUOTATIONS

"We hold the General Assembly intended to preclude from the reach of the compulsory joinder statute those current offenses that occurred wholly outside of the geographic boundaries of the judicial district in which the former prosecution was brought, even though part of a single criminal episode." (77)

"We also find, however, that the compulsory joinder statute extends to those offenses which occurred in more than one judicial district, when one of those judicial districts was where the former prosecution was brought." (77)

"Section 110 is a statute of preclusion due to a former prosecution." (79)

FACTUAL BACKGROUND

Police investigated a planned cocaine transaction involving Fithian, Borzelleca, and an undercover detective. The investigation and related conduct occurred across Montgomery, Delaware, and Philadelphia Counties: the defendants communicated and met in Montgomery County, traveled to a meeting in Delaware County, and completed the cocaine transaction in Philadelphia County. After returning to Montgomery County, they were

arrested and cocaine was recovered from their vehicle; they later pleaded guilty in Montgomery County to offenses concerning that cocaine.

PROCEDURAL HISTORY

Fithian and Borzelleca pleaded guilty in Montgomery County to possession with intent to deliver and criminal conspiracy arising from cocaine recovered after their arrest. While the Montgomery County proceedings were pending, Delaware County charged them with conspiracy, possession, possession with intent to deliver, and related offenses arising from a multi-county cocaine transaction. The Delaware County trial court dismissed the charges under Section 110, and the Superior Court affirmed. After an initial remand for consideration of *Commonwealth v. Nolan*, the Superior Court again affirmed, and the Supreme Court affirmed in part and reversed in part.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded to the Superior Court for proceedings consistent with the opinion. The Supreme Court relinquished jurisdiction.

CASES CITED

- *Commonwealth v. Nolan*, 579 Pa. 300, 855 A.2d 834 (2004)
- *Commonwealth v. Hockenbury*, 549 Pa. 527, 701 A.2d 1334 (1997)
- *Commonwealth v. McPhail*, 547 Pa. 519, 692 A.2d 139 (1997)
- *Commonwealth v. Failor*, 564 Pa. 642, 770 A.2d 310 (2001)
- *Commonwealth v. Hude*, 500 Pa. 482, 458 A.2d 177 (1983)
- *Commonwealth v. Thomas*, 410 Pa. 160, 189 A.2d 255 (1963)
- *Commonwealth v. Cromwell*, 329 Pa. Super. 329, 478 A.2d 813 (1984)
- *Commonwealth v. Nicholson*, 294 Pa. Super. 438, 440 A.2d 545 (1982)
- *Commonwealth v. Harris*, 275 Pa. Super. 18, 418 A.2d 589 (1980)
- *Commonwealth v. Pries*, 861 A.2d 951 (Pa. Super. 2004)
- *Martin v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 588 Pa. 429, 905 A.2d 438 (2006)
- *Commonwealth v. Conklin*, 587 Pa. 140, 897 A.2d 1168 (2006)
- *Koken v. Reliance Insurance Co.*, 586 Pa. 269, 893 A.2d 70 (2006)
- *Commonwealth v. Booth*, 564 Pa. 228, 766 A.2d 843 (2001)
- *Commonwealth v. Wooten*, 519 Pa. 45, 545 A.2d 876 (1988)
- *Commonwealth v. Gordon*, 511 Pa. 481, 515 A.2d 558 (1986)
- *Commonwealth v. Allsup*, 481 Pa. 313, 392 A.2d 1309 (1978)

- Buffalo Township v. Jones, 571 Pa. 637, 813 A.2d 659 (2002)
- Commonwealth v. Fithian, 909 A.2d 870 (Pa. Super. 2006)
- Commonwealth v. Fithian, 591 Pa. 655, 921 A.2d 1182 (2007)
- Commonwealth v. Fithian, 932 A.2d 232 (Pa. Super. 2007)
- Commonwealth v. Fithian, 596 Pa. 260, 942 A.2d 894 (2008)

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