

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Weigle

606 Pa. 234 (Pa. 2010) · No. No. 63 EAP 2008 · Decided March 24, 2010

SUMMARY

The Supreme Court of Pennsylvania held that the Commonwealth could not use Pennsylvania Rule of Criminal Procedure 560(B)(5) to refile robbery charges in a criminal information after those charges had been dismissed at a preliminary hearing and the dismissal was not appealed. The Court concluded that such use of the cognate-offense provision would improperly collaterally attack the prior judicial determination and undermine the function of the preliminary hearing.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Chief Justice Castille; Justice Saylor; Justice Eakin; Justice Baer; Justice Todd; Justice McCaffery; Former Justice Greenspan
JURISDICTION	Pennsylvania
DECIDED	March 24, 2010
DOCKET	No. 63 EAP 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Commonwealth appealed under Pennsylvania Rule of Appellate Procedure 311(d) from an order quashing criminal informations charging robbery. The Superior Court affirmed, and the Supreme Court of Pennsylvania granted allowance of appeal.
STANDARD OF REVIEW	The procedural and substantive questions were questions of law reviewed under a plenary scope and de novo standard.
PRECEDENTIAL VALUE	precedential
PARTIES	Commonwealth of Pennsylvania v. Justin Weigle

TOPICS

[criminal procedure](#)[preliminary hearing](#)[appellate procedure](#)[statutory interpretation](#)

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Commonwealth may invoke Pennsylvania Rule of Criminal Procedure 560(B)(5) to include robbery charges in a criminal information when robbery was charged in the complaint, dismissed at a rearrest preliminary hearing for lack of a prima facie case, and the Commonwealth failed to appeal the dismissal.
2. Whether the cognate-offense provision of Rule 560(B)(5) permits the Commonwealth to reinstate previously dismissed robbery charges on the theory that robbery is cognate to retail theft.

HOLDINGS

1. The Commonwealth may not use Rule 560(B)(5) as a self-help remedy to include in a criminal information charges that were expressly charged, judicially dismissed at a rearrest preliminary hearing for lack of a prima facie case, and not appealed. Such an attempt is an improper collateral attack on the preliminary-hearing determination and violates the purpose of the preliminary-hearing procedure.

KEY QUOTATIONS

“Rule 560(B)(5) obviously was not adopted or intended to serve as a prosecutorial avoidance of an adverse preliminary hearing decision involving charges that were actually forwarded in a criminal complaint, only to be dismissed by a judicial officer for want of a prima facie case.” (315-316)

“There is simply no avoiding the fact that resort to Rule 560(B)(5) in a circumstance like this one serves as an improper collateral attack upon a judicial determination.” (316)

FACTUAL BACKGROUND

A Wal-Mart loss-prevention officer observed Justin Weigle remove merchandise from a computer box and leave the store with stolen items. When store personnel confronted him outside the store, Weigle elbowed an officer, displayed a handgun, pointed it at an assistant manager and the officer, and fled. He was apprehended nearby, and a handgun and the stolen items were recovered. Robbery charges were dismissed at two preliminary hearings, after which the Commonwealth attempted to include robbery in the criminal information despite not appealing the second dismissal.

PROCEDURAL HISTORY

Weigle was initially charged with robbery and other offenses, but the robbery charges were dismissed at a preliminary hearing. After the Commonwealth withdrew and refiled the charges, a rearrest preliminary hearing again resulted in the robbery charges being dismissed. The Commonwealth did not appeal that second dismissal, instead filing informations that included robbery. The trial court quashed the robbery charges, and the Superior Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The court referred consideration of the proper scope and definition of the cognate-offense restriction in Rule 560(B)(5) to the Criminal Procedural Rules Committee. No remand to the lower court was ordered.

CASES CITED

- Commonwealth v. Weigle, 949 A.2d 899 (Pa. Super. Ct. 2008)
- Commonwealth ex rel. Tanner v. Ashe, 365 Pa. 419, 76 A.2d 210 (1950)
- Maginnis's Case, 269 Pa. 186, 112 A. 555 (1921)
- Stilp v. Commonwealth, 588 Pa. 539, 905 A.2d 918 (2006)
- Commonwealth v. McBride, 528 Pa. 153, 595 A.2d 589 (1991)
- Commonwealth v. Karetny, 583 Pa. 514, 880 A.2d 505 (2005)
- Commonwealth v. Sims, 591 Pa. 506, 919 A.2d 931 (2007)
- Commonwealth v. Williams, 521 Pa. 556, 559 A.2d 25 (1989)
- Commonwealth v. Baldwin, 985 A.2d 830 (Pa. 2009)
- Commonwealth v. Chmiel, 585 Pa. 547, 889 A.2d 501 (2005)
- Commonwealth v. Epps, 260 Pa. Super. 57, 393 A.2d 1010 (1978)
- Commonwealth v. Slingerland, 358 Pa. Super. 531, 518 A.2d 266 (1986)
- Commonwealth v. McCurdy, 558 Pa. 65, 735 A.2d 681 (1999)
- Commonwealth v. Hetherington, 460 Pa. 17, 331 A.2d 205 (1975)
- Commonwealth v. Prado, 481 Pa. 485, 393 A.2d 8 (1978)