

*Reinstating Charges — District Justice — Magisterial District*

1. Rule 143 of the Pennsylvania Rules of Criminal Procedure requires that previously dismissed or withdrawn charges may be reinstated only after a Commonwealth attorney files his or her written approval of same with the issuing authority who presided over the matter earlier.
2. Rule 23 of the Pennsylvania Rules of Criminal Procedure provides that the Commonwealth may re-file charges with an alternate issuing authority under Rule 143(B) only after first filing a motion requesting temporary assignment with the Clerk of Courts. Such a motion may be granted by the Court of Common Pleas upon a showing of clear error or bias.
3. When an issuing authority first presides over a matter outside of her magisterial district merely because she was the only on-call district justice available at the time, the dismissed or withdrawn charges may then be refiled pursuant to Rule 143(A) within the magisterial district that would have been the proper venue under normal circumstances.
4. One of the apparent goals of Rule 143(B) is to prevent the Commonwealth from forum shopping for a more favorable district justice without proper venue after the charges were dismissed for lack of a prima facie case in the proper magisterial district.

Appearances:

*John M. Lisko*, Assistant District Attorney  
*Stephen D. Kulla, Esq.*

OPINION

Walker, P.J., March 5, 2001

Factual and Procedural History

On February 19, 2000, Trooper Christian D. Fow filed a criminal complaint against Defendant Jason L. Patterson, charging him with (1) possession with intent to deliver a controlled substance, (2) possession with intent to use drug paraphernalia and (3) resisting arrest. The events giving rise to the complaint allegedly took place in Greene Township in Franklin County, thus proper venue under normal circumstances would have been before District Justice Larry Meminger. However, given the hour, the complaint was necessarily filed with the on-call magistrate, District Justice Shirley M. Shatzer, located in Greencastle, Pennsylvania. Defendant was incarcerated at the time the complaint was filed, pending a preliminary hearing scheduled for March 17, 2000, before District Justice Shatzer. Having worked through the previous night on a York County drug case, however, affiant Trooper Fow did not appear at defendant's March 17, 2000, preliminary hearing. Hence, as no evidence was presented by the

Commonwealth, District Justice Shatzer appropriately dismissed the charges and defendant was released from incarceration.

Trooper Fow subsequently re-filed the charges before District Justice Larry Meminger on June 7, 2000. At that time, defendant was not incarcerated on the charges, which were re-filed pursuant to Assistant District Attorney Jill A. McCracken's verbal approval. Despite the Commonwealth's approval, the charges were dismissed by District Justice Meminger at the preliminary hearing because the Commonwealth's approval was not in writing, thus violating Rule 143(A) of the Pennsylvania Rules of Criminal Procedure.

Trooper Fow then filed the instant charges a third time on December 27, 2000, again before District Justice Meminger, and including the necessary written approval from Assistant District Attorney Angela R. Krom. Defendant thereafter filed the instant motion for dismissal on January 11, 2001, and a hearing was held before this court on February 12, 2001, thus precluding attendance at the preliminary hearing previously scheduled for February 6, 2001. Both defendant and the Commonwealth have subsequently provided the court with briefs, and the matter is now ripe for disposition.

Discussion

Instantly, defendant requests that the charges be dismissed because the Commonwealth did not comply with the requirements set forth by Rule 143 and Rule 23 of the Pennsylvania Rules of Criminal Procedure, which provide the following:

**Rule 143. Reinstating Charges Following Withdrawal or Dismissal**

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, the attorney for the Commonwealth may reinstate the charges by approving, in writing, the refiling of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

(B) Following the refiling of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 23 motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth

the reasons for requesting a different issuing authority.  
Pa.R.Crim.P. 143.

**Rule 23. Continuous Availability and Temporary Assignment of Issuing Authorities**

(A) Continuous Availability.

(1) The president judge of each judicial district shall be responsible for insuring the availability at all times within the judicial district of at least one issuing authority.

(2) The issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter 4000, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.

(B) Temporary Assignment.

(1) The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed:

- (a) to satisfy the requirements of paragraph (A)(1);
- (b) to insure fair and impartial proceedings;
- (c) to conduct a preliminary hearing pursuant to Rule 143(B); or
- (d) otherwise for the efficient administration of justice.

One or more issuing authorities may be so assigned to serve one or more magisterial districts.

(2) Whenever a temporary assignment is made under this rule, notice of such assignment shall be filed with the clerk of courts where it shall be available for police agencies and other interested persons.

(3) A motion may be filed requesting a temporary assignment under paragraph (B)(1) on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

(4) A motion shall be filed requesting a temporary assignment under paragraph (B)(1)(c) whenever the

attorney for the Commonwealth elects to proceed under Rule 143(B) following the refiling of a complaint.

Pa.R.Crim.P. 23.

Specifically, defendant now contends that the instant charges are inoperable because the Commonwealth has not complied with the procedures set forth in Rule 143(B), inasmuch as it did not file a Rule 23(B)(4) request for a different issuing authority before re-filing with District Justice Meminger. Contrarily, the Commonwealth maintains that Rule 143(B) and Rule 23 are inapplicable instantly because District Justice Shatzer was “temporarily assigned” to this case at the time the first charges were filed, and was thereafter without proper venue/jurisdiction to continue to preside over the matter when the second and third set of charges were filed.

District Justice Shatzer’s magisterial district, because she was the on-call magistrate at the time Trooper Fow filed the original charges against defendant, was the proper venue and she thus carried the attendant authority to begin the criminal proceedings against defendant on February 19, 2000. She appropriately did so, and after the Commonwealth effectively defaulted at the preliminary hearing, she properly dismissed the original charges. It seems that the Commonwealth then erred by thereafter re-filing the charges in a **different** magisterial district on June 7, 2000, without first filing a Rule 23 motion with this court to request a different issuing authority. The language of Rule 143(A) is clear. Should the Commonwealth determine to re-file charges, the charges must be re-filed before “the issuing authority who dismissed...the charges.” Pa.R.Crim.P. 143(A). Rule 143(B) is likewise unambiguous. It demands that, should the Commonwealth’s attorney determine that a new issuing authority should conduct a preliminary hearing, the attorney “shall file a Rule 23 motion with the clerk of courts...” Pa.R.Crim.P. 143(B). Neither option was exercised in the present case. Thus, in a typical situation where the district justice that dismissed the original charges had proper venue, defendant’s argument would be utterly unassailable. But the instant situation was atypical and likely not contemplated by the drafters of Rule 143.

The true query instantly is whether Rule 143(A) mandates that the Commonwealth re-file charges with the issuing authority that dismissed the original charges when her magisterial district was not the proper venue, and she presided over the matter only because she was the sole on-call magistrate at the time the original charges were filed. After careful deliberation, we conclude that it does not. The Commonwealth understandably found it quite logical, convenient and proper to re-file in

District Justice Meminger's district because that is where the alleged events took place, and it was ostensibly under the impression that it was given a mulligan or "do-over" after the original charges were dismissed. We must agree that after defendant's charges were dismissed by District Justice Shatzer, proper venue did not then remain within her magisterial district, due to her on-call status when she received the original charges.

This court must observe that Rule 143(B) appears to be truly intended to apply to situations where an alternate district justice is sought because the Commonwealth believes the original district justice was either biased or had made an error of law in dismissing the charges, rather than for the purpose of filing in the magisterial district with proper venue. See *Comment*, Pa.R.Crim.P. 143. The requirement of a Rule 23 motion to transfer the proceedings was presumably drafted to prevent unchecked forum shopping by the Commonwealth after a district justice had dismissed the charges because the Commonwealth's evidence did not present a prima facie case. In that situation, the Commonwealth may desire to simply present the very same evidence before a more favorable district justice, but Rule 143(B) affords them that opportunity only after the Court of Common Pleas approves the transfer.

Certainly, Rule 143 does not unreasonably demand that the Commonwealth re-file dismissed charges in a magisterial district where the alleged offense did not occur. Instead, Rule 143(A) more appropriately applies when the Commonwealth seeks to transfer the criminal proceedings **outside** the magisterial district that has proper venue. If the Commonwealth wishes to do so, it may, but only after it makes a showing of bias or clear error to the Court of Common Pleas pursuant to a Rule 23 motion for transfer. Instantly, then, the rule is inapplicable because not only has the Commonwealth made no negative assertion concerning District Justice Shatzer's bias or incompetence, it has even yet to present evidence before **any** district justice to establish a prima facie case.

Assuming *arguendo* that our reasoning pertaining to the inapplicability of Rule 143(A) to on-call district justices is in error, the Commonwealth committed a procedural error by re-filing the charges with District Justice Meminger without first filing a Rule 23 motion with this court. However, this court would then have to determine whether the error caused defendant prejudice pursuant to Rule 150 of the Rules, which provides the following:

**Rule 150. Defects in Form, Content, or Procedure — Court Cases**

A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a

complaint, summons, or warrant, or a defect in the procedures of this Chapter, unless the defendant raises the defect before the conclusion of the preliminary hearing and the defect is prejudicial to the rights of the defendant.

Pa.R.Crim.P. 150.

Defendant claims that he suffered prejudice in this case due to the financial expense of hiring an attorney to represent him at the two previous preliminary hearings. While the court is sympathetic to defendant's situation concerning the first preliminary hearing and the Commonwealth's dereliction in prosecuting the case at that time, it remains that he was nonetheless released from prison when the charges were dismissed. When the charges were filed with District Justice Meminger in June 2000, they were subsequently dismissed due to a technical defense which he, through his attorney, raised. It is not as if the charges were dismissed because the Commonwealth did not present a prima facie case. Moreover, he was not incarcerated at that time either.

Now, he has once again raised a technical defense that does not address the substantive merits of the charges. He does not allege that he cannot now present witnesses in his favor, or that any of the evidence is now stale or has been lost in the time since the first preliminary hearing. While the court is displeased that a preliminary hearing on the merits has not yet been held over one year after they were originally filed, we have been offered no reason why defendant cannot now pursue a substantive defense.

ORDER OF COURT

March 5, 2001, the court having considered Defendant Jason L. Patterson's motion to dismiss charges, the evidence presented at the February 12, 2000, hearing, the subsequent briefs and applicable legal standards, it is hereby ordered that the instant motion is denied, as Rule 143 of Pennsylvania Rules of Criminal Procedure does not require the Commonwealth to re-file charges before an issuing authority whose magisterial district was not the proper venue and who had presided only because she happened to be the on-call district justice at the time the original charges were filed. Further, should it be determined by our appellate courts that Rule 143 requires the Commonwealth to file with the on-call district justice that dismissed the original charges, defendant instantly has suffered no prejudice as a result of the Commonwealth's procedural error.