



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

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LEGAL MEMORANDUM 19-299

TO: JUSTICES OF THE PEACE

FROM: ALAN G. DAVIS *AD*
CHIEF MAGISTRATE

RE: MULTIPLICITY DOCTRINE

DATE: APRIL 9, 2019

SCOPE

This legal memorandum addresses the multiplicity doctrine and the limited instances in which it would be applied in the Justice of the Peace Court.

LEGAL MEMORANDA AFFECTED

No other legal memoranda address the issue of the multiplicity doctrine, therefore, none are affected.

DISCUSSION

Both the United States Constitution and the Delaware Constitution provide explicit protection against double jeopardy.¹ This protection is intended to do three specific things: protect a defendant from successive prosecutions for the same crime, protect a defendant from

¹ U.S. Const. Amend. V; Del. Const. Art. I, §8.

multiple charges under separate statutes requiring proof of the same factual events and protect a defendant from multiple charges under the same statute. This last protection is referred to as the multiplicity doctrine, which asserts that the state may not, "...split a single offense into more than one count by dividing the crime into a series of temporal or spatial units."²

The Supreme Court of Delaware has held that a defendant may be convicted of more than one count of a crime without violating the multiplicity doctrine if the defendant's actions are, "...sufficiently separate in time and location to constitute distinct acts."³ The Court further noted that this is a fact-intensive determination, rather than a bright line rule regarding the amount of time elapsed between events or how much spatial separation must exist. Most significant in the determination, according to the Delaware Supreme Court is a finding that the temporal and spatial separation between acts supports a factual finding that the defendant formed a separate intent to commit each criminal act.⁴

The multiplicity doctrine has been argued in several notable Delaware cases. In *Williams v. State*, for example, the defendant was charged with two counts of possession of cocaine with intent to deliver after police found drugs in both his apartment and in the car parked outside the apartment. Although charged with multiple counts, the court held that this was barred by the multiplicity doctrine because he possessed all the drugs at the same time, in the same location and there was no evidence to demonstrate that he had more than a single intent to distribute the drugs.

In contrast, in *Washington v. State*, the Delaware Supreme Court held that there was sufficient evidence that the defendant had formed two separate intents to rob the victim and, therefore, his multiple charges did not violate the multiplicity doctrine. In this instance, the defendant stole the victim's silver chain and car keys, however, there was a 20 to 30 second gap in time between taking the first item and the second. Additionally, during that time, the defendant told the victim to leave the premises, but then changed his mind and demanded that the victim give him the keys to the victim's car. This evidence indicated two separate, intentional decisions to rob the victim, rather than one continuous event.⁵

² *Spencer v. State*, 868 A.2d 821 (2005) at 823.

³ *Washington v. State*, 836 A.2d 485, 487 (Del. 2003).

⁴ *Supra*, note 2.

⁵ *Supra*, note 3.

Recently, the Delaware Supreme Court has issued two decisions related to the multiplicity doctrine. In *Mills v. State*, the Court held that the multiplicity doctrine precluded separate charges for resisting arrest for each law enforcement officer involved in the arrest. Only one charge is appropriate for the singular arrest attempt. In this case, two police officers responded to an anonymous call and encountered the Defendant. The defendant attempted to flee and tried to push past the officers. He struck one of the officers with an elbow and continued to struggle, being subdued when back-up arrived. Among other charges, Mills was convicted of two counts of resisting arrest because there were two officers originally attempting to arrest him. On appeal, Mills argued that he was improperly subjected to multiple convictions for a single offense. The Court agreed, asserting that the legislative intent in enacting the resisting arrest statute was to allow prosecution for the resisting of arrest itself, rather than the officer that the defendant resists. As a result, the Court held that a defendant can only be subject to one count of resisting arrest, not one count per officer.⁶

Similarly, the Delaware Supreme Court recently decided *Parker v. State of Delaware*, in which the Court vacated defendant's sentence because it constituted a double jeopardy violation. In *Parker*, the defendant was sentenced for theft of a motor vehicle, felony theft and two counts of possession of a firearm during the commission of a felony. Parker argued that the conviction for theft of a motor vehicle and felony theft constituted double jeopardy because the vehicles were stolen on the same occasion and were part of one course of action. The Court held that theft of a motor vehicle was the same as felony theft for double jeopardy purposes; the legislature intended that theft of a motor vehicle was an included offense and the general assembly intended to make the punishment for stealing a car the same as any other item worth \$1,500 or more. Additionally, all of the items were stolen from the same lot within less than two hours and all stolen items were found in the same truck. Because of this, the Court held that the thefts were committed at the same time, at the same location and with the same criminal intent, therefore, multiple charges violated the double jeopardy clause, specifically the multiplicity doctrine.⁷

On a practical level, the multiplicity doctrine does not play a significant part in the work of the Justice of the Peace Court as our judges do not play a role in the charging decision, but

⁶ *Mills v. State*, DEFAX Case No. D68440 (Del. Jan. 14, 2019).

⁷ *Parker v. State of Delaware*, DEFAX Case No. D68442 (Del. Jan. 14, 2019).

instead focus on whether probable cause exists for the charge(s) selected. As such, this is an issue largely left to be argued by defense counsel and prosecution at the court in which jurisdiction ultimately lies. Because of this, it would rarely be encouraged for a Justice of the Peace Court judge to raise the issue. However, based upon the factual nature of a particular case, if it appears that there is an egregious concern regarding temporal and spatial separation between criminal acts, this issue may be raised at the time of the issuance of a warrant.

CONCLUSION

The multiplicity doctrine asserts that when the state wishes to bring multiple iterations of the same charge against a defendant, there must exist temporal and spatial separation between acts supporting a factual finding that the defendant formed a separate intent to commit each criminal act. Because charging decisions are squarely within the prosecution's discretion, a Justice of the Peace Court judge should only raise this issue if it appears egregious.

cc: The Honorable Leo E. Strine, Jr.
The Honorable Andre Bouchard
The Honorable Jan Jurden
The Honorable Alex J. Smalls
The Honorable Michael K. Newell
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