

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID # 0107019703
)	
RAYVON CARTER,)	
)	
Defendant.)	

Date Submitted: April 22, 2002
Date Decided: May 15, 2002

ORDER

UPON DEFENDANT’S MOTION TO DISMISS

GRANTED

Ralph David Wilkinson, IV, Esq., Assistant Public Defender, Wilmington, Delaware,
Attorney for Defendant.

Andrew Vella, Esq., Deputy Attorney General, Wilmington, Delaware, Attorney for the
State.

ALFORD, J.

On this 15th day of May 2002, upon consideration of Defendant's Motion to Dismiss the Possession of Heroin charge and the record in this case, it appears to the Court that:

(1) Defendant had a jury trial on April 11-12, 2002 on the charges of Possession with Intent to Deliver Heroin, Possession of a Controlled Substance within 300 Feet of a Park, Recreation Area or Place of Worship, Loitering and Resisting Arrest.

(2) Following the trial, the jury convicted Defendant of Possession of Heroin, Possession of Heroin within 300 Feet of a Park and Resisting Arrest. Possession of Heroin is a lesser included offense of Possession with Intent to Deliver Heroin.

(3) Defendant now moves this Court to dismiss the conviction for Possession of Heroin as it merges with the conviction of Possession of Heroin within 300 Feet of a Park. The State does not oppose this motion.

(4) Pursuant to *Blockburger v. United States*, 284 U.S. 299, 304 (1932), "[t]he applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not." Here, each offense does not require an element of proof not required in the other. Thus, Defendant's convictions of Possession of Heroin and Possession of Heroin within 300 Feet of a Park violate Defendant's rights under the Double Jeopardy

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Clause of the United States and Delaware Constitutions.

For the aforementioned reasons, Defendant's Motion is **GRANTED**. The conviction for Possession of Heroin (IN # 01080673) is hereby vacated.

IT IS SO ORDERED.

ALFORD, J.

ORIGINAL: PROTHONOTARY'S OFFICE - CRIMINAL DIV.