

VERIFIED MOTION TO DISMISS

Comes now the Defendant, [name] by counsel, and pursuant to I.C. 35-34-1-8 moves the Court to dismiss the charges pending under the above-referenced cause pursuant to I.C. 35-41-4-4(a), I.C. 35-34-1-10(c), I.C. 35-34-1-9, and **State v. Wiggins**, 661 N.E.2d 878 (Ind. Ct. App.1996). In support hereof the Defendant says:

1. That the charge filed against the Defendant in this matter alleges that the Defendant exerted unauthorized control over prescription medications that were stolen from the Martin's Grocery pharmacy on or about January 5, 2017. The Information was filed by the State on May 2, 2017.

2. That the Defendant was previously charged (on January 28, 2017) and convicted (on May 24, 2017) of the offense of possession of the same stolen items after his arrest in County on January 25, 2017 under Cause No.: after charges were filed therein based upon acts that were performed by the Defendant as part of the same investigation that ultimately resulted in the instant charges. Attached hereto are copies of the Information, Probable Cause Affidavit and referenced police incident reports as well as the Plea Agreement and Sentencing Order pertaining to that Tippecanoe County matter.

3. The charges filed in the Tippecanoe County case alleged that the Defendant illegally possessed the items stolen in the instant case when he was arrested by Purdue Police. The police reports (highlighted) specifically refer to the fact that the investigating officer contacted Martin's loss prevention officer about the Defendant's arrest and possession of the pills stolen from that store as alleged in the instant case and that the loss prevention officer, after conducting his investigation on February 8, 2017, was going to contact the Elkhart County Prosecutor's office.

4. That because of the factually related nature of the instant charge to the Tippecanoe County case they constitute a series of acts connected together and/or constitute part of a single scheme or plan and could, as well as should, have be joined pursuant to I.C. 35-34-1-9 for prosecution in a single case under I.C. 35-34-1-10(a) (permissive joinder) and I.C. 35-34-1-10(b) (mandatory joinder). In fact,

the very charge pending in this matter could have been charged outright in Tippecanoe County pursuant to I.C. 35-32-2-2 which provides that “(a) A person may be tried for theft or conversion in any county in which he exerted unauthorized control over the property” and that “(b) A person may be tried for receiving stolen property in any county in which he receives, retains, or disposes of the property.”

5. That because the instant charge against the Defendant could, and should, have been joined in one prosecution in Tippecanoe County and that particular prosecution has been concluded by the entry of a conviction pursuant to a guilty plea, the Defendant is entitled to dismissal pursuant to I.C. 35-41-4-4(a). I.C. 35-41-4-4(a) provides, in part, that where there was a former prosecution of the defendant for a different offense and the former prosecution resulted in a conviction of the defendant, and the instant prosecution is for an offense with which the defendant should have been charged in the former prosecution, the instant prosecution is barred. (See **State v. Wiggins**, 661 N.E.2d 878, 879-80 (Ind. Ct. App.1996)).

6. That pursuant to I.C. 35-34-1-10(c), the Court is also authorized to dismiss the instant charge as it could have been joined in the earlier prosecution. (See **State v. Wiggins**, 661 N.E.2d 878, 880 (Ind. Ct. App.1996)).¹

7. That in order to comply with the requirements of I.C. 35-34-1-8(a) regarding a motion to dismiss based upon the existence of certain facts, the Defendant, by counsel, has sworn to the existence of those facts based upon his receipt of the attached exhibits in the course of his representation of the Defendant.

VERIFICATION

I affirm, under the penalties for perjury, that the factual allegations regarding the nature of the investigation of the Defendant made in the foregoing Verified Motion to Dismiss are based upon my receipt and review of discovery as counsel for the Defendant in Tippecanoe County and in the instant case as well as the public records pertaining to the Tippecanoe County case.

¹ The **Wiggins** decision established that the language in I.C. 35-34-1-10(c) referring to offenses being barred by a former prosecution could not be interpreted as requiring the conditions of I.C. 35-41-4-4 be met as that would make I.C. 35-34-1-10(c) superfluous.

Wherefore, the Defendant moves to dismiss the charges pending herein,
and for all other relief.

Respectfully submitted,
