

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

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|--------------------|---|--------------------|
| STATE OF DELAWARE, |) | |
| |) | |
| v. |) | ID. No. 1002002758 |
| |) | |
| CORNELL HESTER. |) | |
| |) | |

ORDER

AND NOW, TO WIT, this 3rd day of February, 2011, **IT IS HEREBY**

ORDERED as follows:

Background

On or about December 16, 2009, Cornell Hester (“Defendant”) is alleged to have committed the crime of Stalking. On or about February 4, 2010, the Defendant is alleged to have committed the crimes of Carjacking in the First Degree, Kidnapping in the First Degree, Assault Second Degree, Carrying a Concealed Deadly Weapon, Terroristic Threatening, and Criminal Mischief Under \$1,000 Damage Property. On or about March 8, 2010, the Defendant is alleged to have committed the crime of Non-Compliance with Bond Conditions. On or about April 23, 2010, the Defendant is alleged to have committed the crimes of Non-Compliance with Bond Conditions and Criminal Contempt of a Domestic Violence Protective Order. On or about April 26, 2010, the Defendant is alleged to have

committed two counts of Non-Compliance with Bond Conditions and two counts of Criminal Contempt of a Domestic Violence Protective Order.

On February 5, 2010, the Defendant was arrested and bail was set at \$31,000 cash for case number 1002003075¹ and \$41,500 for case number 1002002758.²

On May 4, 2010, these two cases were consolidated (lead case number 1002002758 and secondary case number 1002003075). On May 18, 2010 the Defendant bail was set at \$40,500 cash.³ On June 1, 2010, the State requested a continuance to consolidate case number 1005001480 into the lead case number 1002002758 by indictment. The trial date was continued from August 17, 2010 until September 14, 2010. On June 21, 2010 the cases were consolidated.⁴ On June 29, 2010, the secured bail was set in the amount of \$113,000 for all charges.⁵

During the August 9, 2010, final case review it was brought to the court's attention that the Defendant was refusing to cooperate with his counsel regarding

¹ \$30,000 for the possession of a deadly weapon charge and \$1,000 for the carrying a concealed weapon charge.

² \$25,000 for kidnapping in the first degree, \$10,000 for carjacking in the first degree, \$5,000 for assault in the second degree, \$1,000 for terroristic threatening, and \$500 for criminal mischief under \$1,000 property damage.

³ \$5,000 on the non-compliance with bond charge, \$10,000 for carjacking in the first degree, \$10,000 for kidnapping in the first degree, \$10,000 for assault second, \$5,000 for carrying a concealed deadly weapon, \$1,000 for terroristic threatening, and \$500 for criminal mischief under \$1,000 property damage.

⁴ This is the second time the cases were consolidated. All three case numbers (1005001480, 1003010938, and 1002002758) were to be tried at once.

⁵ \$30,000 carjacking in the first degree, \$10,000 for assault second, \$10,000 for carrying a concealed deadly weapon, \$5,000 for terroristic threatening, \$1,000 for criminal mischief under \$1,000 property damage, \$5,000 for each of the four counts of non-compliance with bond, \$30,000 for kidnapping in the first degree, \$5,000 for the three counts of criminal contempt of a domestic violence protective order, and \$2,000 for stalking.

this case and a question arose as to the Defendant's competency to stand trial.⁶ On September 7, 2010, the State requested a second continuance because the Deputy Attorney General was scheduled to appear in a civil case from September 13, 2010 through September 17, 2010. On October 11, 2010, this Court ordered the Defendant to undergo a mental health evaluation to determine whether he was competent to stand trial. On November 30, 2010, this Court received the mental health evaluation report. The report indicates the Defendant is competent to stand trial and trial is scheduled to begin on February 15, 2011. At this time, the Defendant is currently serving a twelve year sentence.

The Defendant filed two motions to dismiss on January 28, 2011 alleging violations of his right to a speedy trial, excessive bail, ineffective counsel, and that he has suffered extreme prejudice because he underwent three separate mental health evaluations.⁷ Since this Court has only ordered one mental health evaluation based on his refusal to assist counsel in preparation for his defense, this Court will not consider any prejudice Defendant may have suffered as a result of *his* requesting the other two mental health evaluations. The ineffective counsel

⁶ Case Review Hearing Trans. 3:23-4:2; 30:16-31:8.

⁷ This Court only ordered one mental health evaluation based on his refusal to assist counsel in preparing his defense. However, the November 30, 2010 mental health evaluation report indicates the Defendant did see mental health staff on March 3, 2010 and was diagnosed with Bereavement. On May 11, 2010, the Defendant wrote to the Classification Department in prison and requested his own mental health evaluation.

claims were dismissed on August 9, 2010 at the final case review by the presiding judge as having no merit.⁸ This Court will not reconsider those findings.

Discussion

The Defendant Has Not Suffered A Speedy Trial Violation.

The Sixth Amendment to the United States Constitution and Article I, Section 7 of the Delaware Constitution guarantees the defendant in a criminal case the right to a speedy trial. The right to a speedy trial attaches when the defendant is either arrested or indicted for the crimes charged, whichever occurs first.⁹ Whether a defendant's right to a speedy trial has been violated depends upon: "(1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right;¹⁰ and (4) prejudice to the defendant."¹¹ "The length of delay is the trigger that necessitates the consideration of the other three *Barker* factors."¹² When analyzing the prejudice to the defendant, the court is to consider the protections of the right to a speedy trial, namely "(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3)

⁸ Case Review Hearing Trans. 24:8-9.

⁹ *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002).

¹⁰ The Defendant has asserted his right to a speedy trial. The Defendant has objected several times to the delay in these proceedings, but part of the delay was for his own protection and the other part was for judicial economy.

¹¹ *Johnson v. State*, 305 A.2d 622, 623 (Del. 1973) (adopting the test articulated by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972)).

¹² *Dabney v. State*, 953 A.2d 159, 164 (Del. 2008).

limiting the possibility that the defense will be impaired.”¹³ If a violation of the right to speedy trial occurs, the only remedy available is dismissal of the indictment.¹⁴

The Delaware Supreme Court set forth in Administrative Directive 130 (July 11, 2001) a guideline for the length of time a case should be adjudicated in the criminal justice system. The pertinent part of the directive states “[a]t least 90% of all criminal cases shall be adjudicated as to guilt or innocence or otherwise disposed of within 120 days from the date of indictment/information, 98% within 180 days, and 100% within one year.” When a court orders a mental health evaluation of the defendant, the number of days between the court order and the receipt of the mental health evaluation report are excluded from the time frame.¹⁵

The Defendant has not suffered a speedy trial violation due to a delay in his trial date. The Defendant had three cases consolidated into one by indictment. The last indictment occurred on June 21, 2010, which is when the time for the Defendant’s right to a speedy trial began for the fourteen charges against him. The time for speedy trial purposes was stopped on October 11, 2010 when this Court ordered a mental health evaluation of Defendant in order to determine his competency to stand trial. Only 112 days lapsed between those two dates. This

¹³ *Page v. State*, 934 A.2d 891, 898 (Del. 2007) (citation omitted).

¹⁴ *Middlebrook*, 802 A.2d at 270 (Del. 2002) (citing *Barker*, 407 U.S. at 522 (1972)).

¹⁵ Supreme Court of Delaware Administrative Directive 130.

Court received the Defendant's mental health evaluation report on November 30, 2010. The time resumed, for speedy trial purposes, on December 1, 2010. The Defendant's trial is set to begin on February 15, 2011. An additional 76 days will have lapsed by the time Defendant goes to trial. On February 15, 2011 the Defendant will have waited 188 days for his trial to begin. While that time falls just outside the guideline for ninety-eight percent of criminal cases, it is still within the one year deadline for non-capital criminal cases. The delay in this case is a result of three cases being consolidated into one and the Defendant's lack of cooperation with counsel.

The Defendant has not been prejudiced by a delay in his trial. The Defendant is currently serving a twelve year sentence for a different case, so he is unable to claim oppressive pretrial incarceration. Even if these charges were not pending, he would be incarcerated. As far as minimizing anxiety and concern, the Defendant has not expressed any anxiety or concern in his incarceration pending the outcome of this case. Since this case is going to be heard 188 days after the time of indictment the defense will not be impaired by any delay in having this case begin trial. Therefore, the Defendant has not suffered prejudice in this case; his motions to dismiss the indictment based on a speedy trial violation are denied.

The Defendant Was Not Given Excessive Bail.

The Eighth Amendment to the United States Constitution and Article I, Section 11 of the Delaware Constitution prohibit excessive bail. “Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant.”¹⁶ In Delaware, the courts are encouraged to “utilize a system of personal recognizance or an unsecured personal appearance bond to be used *whenever feasible*”¹⁷ when deciding bail. An additional consideration is “the safety of the community in connection with the release of persons accused of crime pending a final determination of the court as to the guilt of such persons.”¹⁸

Excessive bail was not imposed on the Defendant. The safety of the community is an issue in this case, but it should also be noted that the Defendant is currently serving a twelve year sentence on other charges so even if bail was reduced he could not be released. The original incident giving rise to the first set of charges is alleged to have occurred on or about December 16, 2009. The next incident is alleged to have occurred on or about February 4, 2010. The Defendant is alleged to have committed a third offense on or about March 8, 2010. The Defendant is alleged to have committed two more offenses in April, on or about April 23, 2010 and April 26, 2010. Each alleged incident involves the same

¹⁶ *Stack v. Boyle*, 342 U.S. 1, 5-6 (1951).

¹⁷ 11 Del. C. § 2101 (emphasis added).

¹⁸ *Id.*

victim. All the charges in those cases have been consolidated into the lead case and the Defendant is currently facing fourteen charges, nine of which are felonies. Given the number of felonies charged and that the Defendant is alleged to have committed acts of physical violence,¹⁹ bail in the amount of \$113,000 secured is not excessive. Therefore, the Defendant's motions to dismiss based on excessive bail are denied.

Conclusion

Based on the forgoing, Defendant's Motions to Dismiss are **DENIED**.

IT IS SO ORDERED.

/S/ CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.

¹⁹ The Defendant is currently facing charges of carjacking in the first degree, assault in the second degree, carrying a concealed deadly weapon, terroristic threatening, criminal mischief under \$1,000 property damage, four counts of non-compliance with bond, kidnapping in the first degree, three counts of criminal contempt of a domestic violence protective order, and stalking.