

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL D. CHAMBERS,	§
	§ No. 312, 2007
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0311009491A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 25, 2008

Decided: March 5, 2008

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices

ORDER¹

This 5th day of March, 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) On September 26, 2006, the defendant-appellant, Michael D. Chambers, was found guilty by a Superior Court jury of Possession With Intent to Deliver Cocaine, Use of a Dwelling to Keep Controlled Substances, Possession of a Firearm During the Commission of a Felony, and Possession of a Non-Narcotic Controlled Substance. In January 2007, Chambers' motion for a new trial or judgment of acquittal was denied. He was

¹ The appellant was granted leave to proceed pro se at trial on September 21, 2006. The appellant also is proceeding pro se in this appeal.

thereafter sentenced as a habitual offender² to 25 years of Level V incarceration, to be followed by 3 years of decreasing levels of supervision. This is Chambers' direct appeal from the Superior Court's denial of his motion for a new trial or judgment of acquittal.

(2) Chambers raises three issues for this Court's consideration, which may fairly be summarized as follows: The Superior Court should have granted his motion for a new trial or judgment of acquittal on the grounds of a) a violation of his right to a speedy trial; b) newly discovered evidence that exonerated him; and c) a *Batson* violation in jury selection.

(3) Under Superior Court Criminal Rule 29(c), a motion for judgment of acquittal must be made "within 7 days after the jury is discharged." Under Superior Court Criminal Rule 33, a motion for a new trial must be made "within 7 days after verdict," with the exception of a motion based on the ground of newly discovered evidence, which may be made within 2 years after the entry of final judgment.

(4) This Court reviews the Superior Court's denial of a motion for a new trial based on newly discovered evidence for abuse of discretion.³ In order to grant such a motion, the Superior Court must conclude that the evidence a) is of such a nature that it would probably have changed the

² Del. Code Ann. tit. 11, § 4214(a).

³ *Hicks v. State*, 913 A.2d 1189, 1193 (Del. 2006).

result if presented to the jury; b) was discovered since trial and could not have been discovered before trial with due diligence; and c) must not be merely cumulative or impeaching.⁴

(5) Chambers' first claim is that the Superior Court should have granted his motion for a new trial or judgment of acquittal on the ground that his right to a speedy trial was violated. Chambers specifically contends that the State of Delaware violated the provisions of the Interstate Agreement on Detainers by failing to extradite him in a timely manner from Pennsylvania, thereby violating his speedy trial rights. The record reflects that the jury delivered its verdict on September 26, 2006, but that Chambers did not file his motion until November 21, 2006. As such, Chambers' claim clearly was asserted in an untimely manner under the Superior Court Criminal Rules. For that reason, the Superior Court properly declined to consider it.⁵

(6) Chambers' second claim is that the Superior Court should have granted his motion on the ground of newly discovered evidence. According to Chambers, his girlfriend, Jasmine Pruden, wished to recant her statement to police that she and Chambers resided at 1420 N. Clayton Street, where the drugs and a handgun were found. An "affidavit" signed by Pruden states

⁴ Id. at 1193-94.

⁵ In the absence of any evidence that Chambers' trial was delayed in a manner prejudicial to his rights, this claim is without merit in any case. *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)).

that she was coerced by the police into making the statement. The record reflects that the evidence would not have affected the outcome of the trial, however, since the connection between Chambers and the drugs was based on evidence other than Pruden's statement. As such, the Superior Court properly denied this claim as meritless.

(7) Chambers' third, and final, claim is that the Superior Court should have granted his motion on the ground that there was a *Batson* violation during jury selection.⁶ Specifically, Chambers contends that the prosecutor "systematically excluded [a] significant portion of [the] black population" from the jury. Because the record clearly reflects that this claim, too, was asserted in an untimely manner under the Superior Court Criminal Rules, the Superior Court properly declined to consider it.⁷

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ *Batson v. Kentucky*, 476 U.S. 79, 86 (1986).

⁷ In the absence of any evidence that the jury selection process was racially discriminatory, Chambers' claim is without merit in any case. *Castaneda v. Partida*, 430 U.S. 482, 494-95 (1977).