IN THE SUPREME COURT OF THE STATE OF DELAWARE

JONATH CHAPMAN,	§	
	§	No. 98, 2008
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	Case ID. No. 0701012454A
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 20, 2008
Decided: October 30, 2008

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

O R D E R

This 30th day of October, on consideration of the briefs of the parties, it appears to the Court that:

1) Jonath Chapman appeals from his convictions, following a jury trial, of second degree carjacking, unlawful imprisonment, third degree assault, and malicious interference with emergency communications. He argues that the trial court erred in: 1) imposing a long prison sentence despite the fact that the jury acquitted him of the most serious charges; and 2) accepting his Waiver of Appearance for Jury Verdict without establishing, through Chapman's testimony or that of his attending physicians, that Chapman's waiver was knowing and voluntary. We find no merit to these

arguments and affirm.

2) For some time before January 6, 2007, Chapman had been living with his girlfriend, Michele Melvin, and her son, in Dover, Delaware. On that day, the two argued, and Melvin told Chapman to move out. The next day, Chapman repeatedly called and text-messaged Melvin. On January 16, 2007, Chapman confronted Melvin as she was in the apartment parking lot, approaching her car. Melvin told Chapman that she had to get to work and could not talk.

3) The two gave different versions of what happened next. According to Melvin, Chapman forced her into the passenger side of the car, after threatening her with what turned out to be a fake gun. Chapman then took Melvin's cell phone, and drove off with Melvin in the car. When the car stopped at a red light, Melvin tried to get out of the car, but Chapman held onto her. Finally, she broke free and fell onto the street. Chapman's version was less confrontational. He testified that he wanted to take Melvin to a place where they could talk; that he never threatened her; and that he only held onto her as she tried to get out of the car until another car went by.

4) Chapman was charged with first degree kidnaping, first degree carjacking, third degree assault, and malicious interference with emergency communications. He was convicted on the lesser included offenses of unlawful imprisonment and second degree carjacking, as well as the other two charges. Chapman was not present in the

courthouse when the trial court was prepared to take the jury's verdict. Chapman's counsel explained that Chapman had been lethargic and non-responsive earlier in the day, and that the Department of Correction had taken him back to prison for medical attention.

5) The trial court eventually excused the jury until the following morning. At that time, Chapman's counsel advised that Chapman had been admitted to Kent General Hospital for a heart-related condition. After a discussion with the trial court about Chapman's availability, Chapman's counsel went to the hospital and obtained from Chapman a Waiver of Appearance for Jury Verdict. In presenting the Waiver to the trial court, Chapman's counsel advised that Chapman was alert, lucid, and that he understood his right to be present for the verdict reading. The trial court then accepted the waiver, and the jury announced its verdict. The trial court sentenced Chapman to an aggregate term of 8 years imprisonment at Level V, suspended after 37 months for two years at Level III probation and 6 months at Level II probation.

6) Chapman first complains that his sentence was excessive in light of the fact that he was acquitted of the most serious charges. While it is true that the trial court exceeded the SENTAC guidelines, the sentence was within statutory limits and the court explained the aggravating factors that motivated the sentence. This Court has

repeatedly held that the SENTAC guidelines are non-binding.[1] We find no abuse of discretion.

7) Chapman also contends that his Waiver of Appearance for Jury Verdict was not knowing and voluntary. He attached to his brief a copy of his letter, dated April 18, 2008, stating that he was misled by his attorney and did not know what he was signing. That letter, however, was not part of the record in the trial court and is not properly before this Court.[2] What is before this Court is the transcript of the colloquy between Chapman's counsel and the trial court concerning the waiver.

8) Chapman's counsel explained that Chapman was alert and lucid; that he reviewed the waiver with Chapman; answered his questions; and told him what the alternatives were (likely a mistrial). In addition, Chapman told his counsel that he was not taking any pain relief, or mind-altering, medications. Counsel advised the trial court that a nurse, who was present during the conversation, confirmed what Chapman said about his medications. Chapman's counsel concluded that he was satisfied that Chapman had made a knowing and voluntary waiver. In addition, counsel stated, "[Chapman] did make that clear to me that this was what he wanted to do."

9) We agree with the trial court's determination that Chapman knowingly and

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[1]*See, e.g.: Wilson v. State*, 2006 WL 1291369 (Del. Supr.), *Benge v. State*, 2004 WL 2743431 (Del. Supr.); *Siple v. State*, 701 A.2d 79 (Del. 1997).

[2]*See:* Supr. Ct. R. 9.

voluntarily waived his right to be present at the return of the verdict. The signed waiver expressly so states, and Chapman's counsel, an officer of the Court, reported on the circumstances surrounding Chapman's execution of the waiver.[3] There was no evidence to suggest that Chapman's waiver was less than knowing or voluntary, and the trial court was not required, under those circumstances, to conduct a hearing on the matter.

NOW, THEREFORE, IT IS ORDERED, that the judgments of the Superior Court be, and the same hereby are, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[3] *See: Shaw v. State*, 282 A.2d 608 (Del. 1971).