

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

v.

ROMIE D. BISHOP

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C.A. No. 0402011836

**DECISION ON DEFENDANT’S MOTIONS TO DISMISS FOR LACK OF
SPEEDY TRIAL AND DENIAL OF DUE PROCESS**

Submitted April 8, 2005

Decided April 13, 2005

Mr. Eric Zarychta
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Pro Se Defendant

Following oral arguments on April 8, 2005, the Court reserved decision on defendant's motions. This is the Court's decision on the defendant's motion to dismiss the pending criminal charges for lack of speedy trial and denial of due process.

These charges stem from an incident at Howard High School on February 19, 2004, involving the defendant's learning disabled son. The defendant was charged with offensive touching, third degree trespassing, and two counts of third degree assault. All four charges were filed in Family Court by the Attorney Generals Office (hereinafter "State") on February 20, 2004, and the defendant was arraigned in Family Court on all four charges on March 3, 2004. According to the record before the Court, defense counsel was retained and the first trial was scheduled for May 4, 2004. Discovery was requested by defense counsel on two separate dates prior to the first trial. The trial on May 4, 2004 trial was then continued at the request of the State, and the second trial date on July 4, 2004 was also continued at the request of the State. The record reflects defense counsel requested discovery from the State two more times prior to the third trial date on August 18, 2004. On August 18, 2004, the trial was again continued, at which time Family Court ordered the State to comply with the discovery request of the defense.

On September 8, 2004, defense counsel requested, for the sixth time, that discovery be completed by the State. Defense counsel also wrote a letter to assure that discovery would be provided so that trial could go forward on October 6, 2004. Trial took place in Family Court on October 6, 2004 on only one of the four charges originally filed in Family Court and the defendant was acquitted of one assault 3rd charge.

It is important to note that the State delayed for nine months after the initial filing of all four charges mentioned above in Family Court before transferring the remaining

three charges to Court of Common Pleas.¹ Trial on the remaining three charges was scheduled for December 16, 2004 in this Court. However, this December trial was again postponed to April 11, 2005 because it was not able to be commenced until late in the morning.

Defendant argues that the multiple appearances in both Family Court and Court of Common Pleas have violated his due process rights and the multiple delays have prejudiced his defense. Specifically, the defendant claims that these multiple appearances caused him to lose his job, made his family a “nervous wreck”², caused him to not be able to participate in his son’s education process, and forced him to proceed without legal counsel because he can no longer afford representation. Defendant also states he and counsel were prepared to go forward on December 16, 2004 with his witnesses, but the State was not prepared for trial and needed time to speak to its witnesses. Due to these delays the defendant is now asking that the three remaining charges in this Court be dismissed due to a denial of due process and lack of speedy trial.

The State presented no evidence to dispute the multiple continuances, the failure to comply with discovery requests, and the unnecessary delay as asserted by the defendant in his motions. The State concedes that it may have addressed this case at the end of the December 16, 2004 jury trial calendar because it did need time to speak with its witnesses on the morning of the trial, and this delay prevented the trial from going forward on that date. Further, the State admits that the three charges originally filed in Family Court on February 19, 2004 were not transferred to this Court until October 5,

¹ The case was accepted in Court of Common Pleas on October 5, 2004 and a Deputy Attorney General filed informations on October 20, 2004.

² See April 8, 2005 Motion to Dismiss on the Criminal Motion Calendar.

2004 and the informations setting forth these charges were not filed in this Court until October 20, 2004.

It is settled Delaware law that the State has a duty to disclose evidence that is favorable to the defendant, upon request of the defense counsel, if the evidence is material to either the guilt or punishment of the defendant. *Brady v. Maryland*, 373 U.S. 83 (1963). Further, *C.C.P. Crim. R.* 16(b)(3)(B) requires:

“The party upon whom a [discovery] request is served shall serve a response within ten days after service of the request or at such time as ordered by the Court. The response shall comply with the request or specify any objection to it.”

The United States Supreme Court identified four factors to be considered in assessing whether a defendant's right to a speedy trial has been violated. These are: the length of the delay; the reason for the delay; the defendant's assertion of his right; and the prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 3 L. Ed. 2d 101 (1972). This Court is given discretion to dismiss proceedings under *C.C.P. Crim. R.* 48(b) which provides in part:

“If there is unnecessary delay in the filing of an information against a person held to answer, the Court may dismiss all proceedings in that action and release the accused If there is unnecessary delay in bringing the defendant to trial, the Court may dismiss the information.”

Superior Court Criminal Rule 48(b) contains similar language to Court of Common Pleas Rule 48(b) and has been the topic of several opinions interpreting this

rule. In *Hughey v. State*, Del. Supr., 522 A.2d 335 (1987) the Delaware Supreme Court noted that Rule 48(b) served a broader purpose than the Sixth Amendment of the U.S. Constitution,³ which applies to the states through the Due Process clause of the Fourteenth Amendment, and the rule is not governed by established concepts of the speedy trial clause. The Delaware Supreme Court held there are other types of prejudice which may be sufficient to allow the Court to exercise its discretion under Rule 48(b). These other prejudices are: the unexplained commencement of a new prosecution long after a dismissal by the State of the same charge in another court; the anxieties suffered by a defendant as the result of delay and uncertainty in duplicative prosecutions against him; the notoriety suffered by a defendant and his family as the result of repeated commencement of prosecutions for the same offense; the expenses, legal and otherwise, attendant upon a subsequent renewal in another court of a dismissed prosecution. *State v. Fischer*, Del. Supr., 285 A.2d 417 (1971).

The Court finds that the defendant's counsel requested discovery five times before the December 16, 2004 trial date. The Defendant appeared in Court nine times, and was arraigned on charges in Family Court which should have been filed by the State in this Court. During this time period, the defendant has not been able to coordinate his learning disabled son's education, has suffered the financial burden of losing his job, and has exhausted household funds to continue representation by legal counsel due to the multiple proceedings and prosecutorial delay. These issues have placed a strain on the defendant and his family, as defendant's family is a "nervous wreck" over the incident and the judicial process.⁴ Further, despite these unnecessary delays the State put forth no

³ Also see Delaware Constitution, Article 1 Section 7.

⁴ See transcript of April 8, 2005 Motion to Dismiss on the Criminal Motion Calendar, Courtroom 5B.

sufficient argument to dispute the facts as the defendant asserts, and no further explanation has been provided the Court to explain this delay in prosecution. The only reason given by the State is an argument of “mistaken belief” where an “error” was admitted by the prosecutor.⁵ The failure of the State to file the charges in a court which has jurisdiction over the charges, the failure to comply with discovery multiple times even after a court order, and the State’s repeated requests for a continuance demonstrate prosecutorial neglect of this case and unnecessary prejudice to the defendant.

The Court is satisfied that this delay in prosecution is not a result of the defendant’s actions, but a result of the non-action of the State. After considering the impact of the State’s unnecessary delay and neglect of this case, the Court finds prejudice existed against the defendant and his Motion to Dismiss for violation of due process and lack of speedy trial is hereby granted, as being within the discretion of the Court under *C.C.P. Crim. R. 48(b)*.

IT IS SO ORDERED this 18th day of April, 2005.

Judge Jay Paul James
Associate Judge

⁵ See transcript of April 8, 2005 Motion to Dismiss on the Criminal Motion Calendar, Courtroom 5B.