

FACTUAL AND PROCEDURAL SUMMARY

On October 14, 2007, Tyrone Crummel was shot in the back while walking in the area of Sixth and North Clayton Streets in Wilmington, Delaware. As a result of his injuries, Crummel suffered permanent paralysis.

On October 19, 2007, a confidential informant told the Wilmington Police that he had information about a shooting that occurred on October 14, 2007. Specifically, the informant told the police that he witnessed Corey Wilson exit the passenger side of a car, produce a black handgun, and begin firing. Additionally, the informant described the shooter's clothing and vehicle.

The police recorded the interview with the confidential informant. The interview was preserved in digital video format. The interviewing officer also prepared a police report detailing the information provided by the informant. The police report did not include the confidential informant's name, but noted that the interview had been preserved on DVD. Ultimately, the police determined the informant's information was not credible, and continued their investigation.

On January 7, 2008, Sironne Deshields was arrested for the shooting of Crummel. Deshields was charged with Assault First Degree, Possession of a Firearm During the Commission of a Felony, and Possession of a Weapon by a Person Prohibited. On February 4, 2008, the Grand Jury indicted Deshields.

On February 1, 2008, defense counsel submitted the initial written discovery request. Defense counsel specifically requested all materials which would be material to the defense, copies of all audio relating to the incident, and all *Brady* material. The State provided "Automatic Discovery" to the Prothonotary's Office on February 4, 2008. On February 7, 2008, defense counsel received the discovery materials. The State did not provide video or audio tape recordings of any individuals interviewed, photographs of the crime scene, or a witness list for trial.

On March 6, 2008, the Superior Court issued a Scheduling Order that provided: (1) initial case review on March 24, 2008; (2) final case review on June 23, 2008; and (3) trial beginning July 1, 2008. Deshields pled not guilty. At both case reviews, Deshields rejected the State's plea offers.

By email dated June 23, 2008, defense counsel requested audio-taped and/or videotaped statements of the State's witnesses and the identified victim. On June 25, 2008, the State provided defense counsel with the victim's medical records. On June 27, 2008, the State produced the recorded statements of two of the prosecution's witnesses and photos of the crime scene. The State did not include the confidential informant's taped recorded interview. The confidential informant was not going to be called as a witness for the State.

On July 1, 2008, the State requested a two-week trial continuance because of the absence of one of its material witnesses. The State explained to the Court that

the witness was material and important to the State's case because she was present near the scene of the crime and Deshields admitted to her that he shot the victim. The State elaborated that the witness had expressed she did not want to testify and had ignored the State's previous subpoenas and warrants. The State also requested another material witness warrant. The Court granted both motions. Trial was then scheduled for July 22, 2008. A three-week delay was granted – two weeks to enable the State to locate its witness and one week to accommodate defense counsel's unavailability.

Additionally on July 1, defense counsel applied to the Court to order the State to produce a copy of the confidential informant's interview. The Court ordered the State to produce the DVD within one week. The State provided defense counsel with the DVD that day.

By email dated July 2, 2008, defense counsel requested that the State produce the confidential informant's identity. The State agreed to do so. By letter dated July 17, 2008, the State provided the identity of the confidential informant. On July 20, defense counsel emailed the State again requesting the information. The State replied, explaining the information already had been sent and providing the information again within the email. Defense counsel received the State's July 17 letter on July 21.

At trial on July 22, 2008, defense counsel made an oral Motion to Dismiss on *Brady* and speedy trial grounds. Defense counsel alleged the State violated *Brady* by not providing the DVD or the identity of the confidential informant in a timely manner. Also, defense counsel asserted the State violated Deshields' speedy trial rights by not going forward with his trial on July 1, 2008. Finally, defense counsel represented that additional time was needed to further investigate the confidential informant. The State asserts it was ready to go forth with trial on July 22, even though the material witness still was unavailable. Ultimately, the Court postponed the trial and ordered briefing on the issues.

ANALYSIS

Brady Material

Deshields asserts the State committed a *Brady* violation when it failed to provide the defense, in a timely manner, with the DVD containing exculpatory statements made by a confidential informant, and the identity of that informant. A *Brady* violation occurs when: (1) favorable exculpatory or impeaching evidence exists; (2) that evidence is suppressed by the government; and (3) its suppression prejudices the defendant.¹ “The prosecutor is not required to deliver his entire file

¹ *Starling v. State*, 882 A.2d 747, 756 (Del. 2005), *cert. denied*, 546 U.S. 1216 (2006).

to defense counsel but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial.”²

Generally, the *Brady* rule only applies to the complete failure to disclose exculpatory or impeachment evidence.³ However, the Rule applies to the delayed disclosure of exculpatory or impeachment evidence when the State fails to provide that material within enough time for the defense to make effective use of it.⁴ The determination of when material information must be provided depends upon the characterization of the evidence as either exculpatory or impeaching.⁵ When the evidence is exculpatory, *Brady* is not violated by a delayed disclosure if the “exculpatory evidence can be effectively presented at trial and the defendant is not prevented by lack of time to make needed investigation.”⁶

The information at issue is exculpatory. The confidential informant explicitly names a different individual as the perpetrator. However, the State did not suppress that information from Deshields. On February 4, 2008, as a part of automatic discovery, the State provided Deshields’ counsel with a police report that detailed the confidential informant’s statements and indicated that “the interview was preserved in digital video format.”

² *Michael v. State*, 529 A.2d 752, 755 (Del. 1987) (citing *United States v. Bagley*, 473 U.S. 667 (1985)).

³ *White v. Carroll*, 416 F. Supp. 2d 270, 277 (D. Del. 2006).

⁴ *See id.*

⁵ *See United States v. Higgs*, 713 F.2d 39, 43-44 (3d Cir. 1983).

⁶ *Syme v. United States*, 2006 WL 3091336, at *7 (D. Del.) (quoting *Higgs*, 713 F.2d at 43-44).

The Delaware Supreme Court specifically has held that the summary disclosure of information within a redacted police report, which does not include the witness's identity, is sufficient to meet the State's disclosure obligations under *Brady*.⁷ Thus, on February 4, 2008, when the State provided the defense with the police report that contained a summary of the confidential informant's statements, the State fulfilled its disclosure obligations under *Brady*.

Even assuming the police report was insufficient disclosure, Deshields was not prejudiced by the later full disclosure. On July 1, 2008, defense counsel specifically requested the DVD containing the confidential informant's statement. The State delivered the DVD to the defense that same day. On July 2, 2008, the defense requested the identity of the confidential informant. By letter dated July 17, 2008, the State provided the defense with the confidential informant's name and date of birth. Deshields possessed both the DVD and the informant's name the day before the scheduled trial. On July 22, 2008, the re-scheduled trial was suspended to allow for briefing on the defense's oral motion to dismiss on *Brady* and speedy trial grounds and to allow the defense an opportunity to locate and interview the confidential informant. As of today, the trial has yet to begin. Deshields has had over two additional months to make any necessary

⁷ See *Gibson v. State*, 1996 WL 69804, at *4 (Del.).

investigations. Therefore, Deshields has failed to demonstrate prejudice sufficient to establish a *Brady* violation.

Speedy Trial

Deshields asserts the State's delay in trying his case violates his right to a speedy trial under both the United States Constitution and the Delaware Constitution. Deshields has been awaiting trial a little more than nine months. The Sixth Amendment of the United States Constitution provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." Article 1, Section 7 of the Delaware Constitution provides the same speedy trial protections.⁸ Thus, the same analysis applies to both provisions.

A defendant's speedy trial rights are determined on a case-by-case basis.⁹ In *Barker v. Wingo*, the United States Supreme Court fashioned a four-factor balancing test that weighs the conduct of the prosecution against that of the defendant.¹⁰ The four factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right to a speedy trial; and (4) the prejudice to the defendant.¹¹ None of the four factors is dispositive of the issue.¹²

⁸ *Skinner v. State*, 575 A.2d 1108, 1115 (Del. 1990).

⁹ *See id.*

¹⁰ 407 U.S. 514, 530 (1972).

¹¹ *Id.* *See also Fensterer v. State*, 493 A.2d 959, 965 (Del. 1985), *rev'd on other grounds*, 474 U.S. 15 (1985).

¹² *See Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002).

“Rather they ‘are related factors and must be considered together with such other circumstances as may be relevant.’”¹³

Length of Delay

A defendant’s right to a speedy trial attaches at the moment of arrest or indictment, whichever occurs first.¹⁴ “The length of delay is to some extent a triggering mechanism [because u]ntil there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.”¹⁵ There is no precise timing requirement for bringing cases to trial.¹⁶ The more serious and complicated a case is, the more delay is tolerated.¹⁷

Deshields was arrested on January 7, 2008 for Assault in the First Degree and related weapons charges. Under the unique circumstances of this case, the delay is sufficient to provoke inquiry into the other three factors.

Reason for Delay

Some reasons for delay are weighted more heavily than others.¹⁸ Deliberate attempts to delay the trial to prejudice the defense are weighted heavily against the State. More neutral reasons, such as negligence or over-crowded courts, are

¹³ *Id.* (quoting *Barker*, 407 U.S. at 530).

¹⁴ *Id.* (citing *United States v. Marion*, 404 U.S. 307, 320 (1971)).

¹⁵ *Id.* at 273-74 (quoting *Barker*, 407 U.S. at 530).

¹⁶ *Skinner*, 575 A.2d at 1116.

¹⁷ *Id.*

¹⁸ *Middlebrook*, 802 A.2d at 274.

weighted less heavily. “Finally, a valid reason, such as a missing witness, may justify appropriate delay and will not weigh against the State.”¹⁹

The delays experienced by Deshields were justified and appropriate. Deshields’ initial trial date was July 1, 2008. On July 1, the State requested a two-week continuance because it had been unable to secure a material witness. There is no evidence to suggest the State did not exercise due diligence in attempting to locate the witness. The initial two-week delay was appropriate, minimal, and reasonable.

While the State had requested a two-week postponement, an additional one-week delay was necessary due to defense counsel’s unavailability. Thus, the trial then was rescheduled for July 22, 2008. On July 22, defense counsel moved that the case be dismissed on *Brady* and speedy trial grounds. The Court found that briefing on the issue was necessary, and postponed the trial. Additionally, defense counsel represented that the defense needed additional time to further pursue the confidential informant as a defense witness. Because the State was ready to go forward with the trial on July 22, even in the absence of its outstanding material witness, the second delay should not be weighted against the State. The Court finds that both delays were justified.

¹⁹ *Id.*

Defendant's Assertion of the Right to a Speedy Trial

“If and when a defendant asserts his [speedy trial] rights are factors of considerable significance in determining whether there has been a speedy trial violation.”²⁰ Deshields asserted his speedy trial right for the first time on July 22, 2008. At that time, defense counsel contended the July 1 postponement was a violation of Deshields’ speedy trial rights. While Deshields did not raise the issue at the first possible opportunity (July 1), he did raise it within a reasonable time. Therefore, defendant’s assertion of his right to a speedy trial on July 22 will not weigh against him.

Prejudice to the Defendant from the Delay

The right to a speedy trial was designed to protect three important defendant interests: (1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired.²¹ Deshields was not prejudiced by the pre-trial incarceration because he was in jail on other charges. Additionally, there is no evidence to suggest Deshields suffered any extraordinary anxiety as a result of the delay.

“Whether the defense itself was impaired is the most serious interest which must be protected to insure fairness.”²² Deshields’ defense preparation was not impaired.

²⁰ *Id.* at 275 (quoting *Bailey v. State*, 521 A.2d 1069, 1082 (Del. 1987)).

²¹ *Barker*, 407 U.S. at 532; *see also Middlebrook*, 802 A.2d at 276.

²² *Skinner*, 575 A.2d at 1117.

In fact, Deshields has benefited from the delay because it has enabled him to further investigate the confidential informant, a potentially exculpatory witness.

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Therefore, balancing the *Barker* factors, it is clear Deshields' speedy trial rights were not violated. In fact, Deshields benefited from the delay.

CONCLUSION

Deshields has failed to establish prejudice sufficient to warrant dismissal of his case on either *Brady* or speedy trial grounds. **THEREFORE**, Deshields' Motion to Dismiss is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston