SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DE 19801-3733
TELEPHONE (302) 255-0670

October 14, 2015

Julie Finocchiaro, Esquire
Department of Justice
820 N. French Street
Wilmington, DE 19801

Kathryn van Amerongen, Esquire
Public Defender's Office
820 N. French Street
Wilmington, DE 19801

RE: State v. Jamil Biddle
ID No. 1411015832

On Defendant's Motion to Dismiss - DENIED

Dear Counsel:

The Court has before it a Motion to Dismiss the above-captioned case in which the defendant asserts that dismissal is warranted "for failure to provide the DNA evidence under Superior Court Criminal Rule 16 and *Dabney v. State*."[1] For the following reasons, the Motion will be denied.

Unfortunately, when this case was initially forwarded to the Superior Court, it was placed into the Court's "fast track" process. The intent of fast track was to allow a quick resolution of the defendant's case where he was already serving a probation sentence from our court. While conceptually a good idea, the reality of not having sufficient discovery, the reduced burden of proof for probation violation, the less than favorable resolution of cases in the process and the consequences of a violation of probation sentence if the plea offer was rejected eventually led the Court to abandon the program earlier this year.

[1] 953 A.2d 159 (Del. 2008).

The concerns relating to the fast track program are evidenced by the numerous continuances that have taken place in this case while it was in the "fast track" process. But what is most critical to the issue before the Court is that the five preindictment continuances between December 30, 2014 and May of 2015 were, according to the docket, ones requested by the defense. Also noted in these docket entries is the reference to the fact that defense was awaiting the DNA results before deciding whether to resolve the case. So at least the first five months of the delay in the prosecution of this case can be attributable to defense's preference to have the results of the DNA testing since those results may be favorable to the defendant and would be helpful in deciding how to resolve the case.

By May, with still no DNA results being provided, it had become clear to the parties that the resolution of the case seemed unlikely and as a result, the matter was indicted on June 8, 2015. On June 25, 2015 a trial scheduling order was issued by the Court setting October 20, 2015 as the trial date. There has been no continuance of the trial, and the State has indicated in briefing that it is prepared to proceed forward on the scheduled trial date.

In July of 2015, the defendant did file a Motion to Compel asking the Court to require the State to produce the DNA test results. The Court ordered that those results be provided by September 7, 2015. While the docket reflects the Motion to Compel was passed several times, there is no reason set forth in the docket for such action. However, from the briefing filed it does appear that the State believed the gun had been sent to the Bureau of Alcohol, Tobacco and Firearms lab for testing and had been told that the DNA report would be completed by the deadline established by the Court. Unfortunately, that testing was not completed and certainly was not provided to the defense by the deadline established.

Under the facts of this case, the Court believes the situation here is easily distinguishable from that in the *Dabney* case cited by the defense.[2] First, Mr. Biddle was arrested on November 20, 2014, so less than one year will have passed at the time he proceeds to trial on October 20, 2015. Second, at least five months of the delay here was at the request of the defendant. In fairness to counsel, it would obviously have been helpful to have the DNA results before deciding how to best resolve the case. As such, the Court believes the requests for continuance of the fast track hearings were certainly reasonable conduct by counsel. But it is also unfair to lay the delay contributable to these continuances on the State when it did not ask for them. Third, there has only been one trial date in this matter.

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[2] *See Dabney*, 953 A.2d at 159.

Within weeks of the defendant being indicted, the Court issued a trial scheduling order that has remained in place. So this is not a situation where the State has continually asked for continuances of the trial because of the DNA testing.

Finally, while the defendant did reflect his desire for the DNA results, there is nothing to suggest a specific action was taken to pursue his speedy trial rights until this Motion. In fact, his trial rights have not been affected by the conduct of the State and the delay associated with the indictment can reasonably be attributed to the offer to resolve this case prior to indictment. Clearly the State will not be allowed to introduce the DNA testing if it is ever performed. The State failed to meet the Court's deadline for production and the remedy here is the exclusion of that evidence from the trial. But under the facts of this case, dismissal would be an improper and unjust remedy.

Using the factors established by the United States Supreme Court in *Barker v. Wingo*,[3] and adopted by this Court in *Johnson v. State*,[4] the Court finds (1) the length of delay not to be unreasonable; (2) while the reason for the delay in DNA testing can be attributable to the State, it was compounded by the multiple gun offenses that involved the defendant; (3) the defendant has not actively asserted his speedy trial rights obviously hoping the DNA results would be favorable to him; and (4) because the trial date has remained without continuances the defendant has not been prejudiced by the delay.

Therefore, based upon the above, the defendant's Motion to Dismiss is hereby DENIED. The matter will remain on the trial calendar for October 20, 2015. In addition, because of the assertions made in this Motion, no continuances will be granted.

Sincerely yours,

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Prothonotary

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[3] 407 U.S. 514, 530-32 (1972).

[4] 305 A.2d 622 (Del. 1973); *See also* e.g., *Hughey v. State*, 522 A.2d 335 (Del. 1987); *Middlebrook v. State*, 802 A.2d 268 (Del. 2002).