

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

ANDREA L. ROCANELLI
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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March 21, 2016

Ipek Medford, Esq., and Jamie McCloskey, Esq., Deputy Attorney Generals, Department of Justice, Wilmington, DE, Attorneys for the State of Delaware

David Fragale, Esq., James Haley, Esq., Jeremy Engle, Esq., and Steven Brose, Esq., Steptoe & Johnson, LLP, Washington, DC, Attorneys for Defendant

Re: *State of Delaware v. Chauncey Starling*; I.D. No. 0104015882

Dear Counsel:

On December 14, 2015, the Delaware Supreme Court reversed and remanded Defendant's convictions, granting Defendant a new trial. *See Starling v. State*, 2015 WL 8758197, at *15 (Del. Dec. 14, 2015). On January 21, 2016, the Court ordered that Defendant's bail remain as set by Order dated March 15, 2002 in which the Trial Court, following a proof positive hearing, ordered that Defendant be held in custody without bail pending Defendant's trial. The Court has received a letter from Defense Counsel requesting a new proof positive hearing in light of Defendant's overturned convictions. The Court has also received the State's letter in opposition.

The Delaware Constitution provides that: "All prisoners shall be bailable by sufficient sureties, unless for capital offenses when the proof is positive or the presumption great. . . ." Del. Const. art. I, § 12; *see also In re Steigler*, 250 A.2d 379, 381 (Del. 1969). The burden is on the State to produce facts that warrant the denial of bail. *See In re Steigler*, 250 A.2d at 382-83 ("Since the general rule is admission to bail, the State, if it seeks to invoke the exception to the rule, must bear the burden of going forward with evidence to produce facts to warrant the invocation of the exception."). Only when there is "good ground to doubt" the truth of the accusation will bail be considered" for those charged with capital offenses. *State v. Keyser*, 2012 WL 2898833, at *7 (Del. Super. June 29, 2012) *aff'd*, 89 A.3d 477 (Del. 2014) (citing 11 Del. C. § 2103(b)).

The State contends that the law of the case doctrine ("Doctrine") bars reconsideration of a new proof positive hearing. The Doctrine prohibits courts from revisiting previously decided issues and provides that a "trial court's previous decision in

a case will form the law of the case for the issue decided.” *State v. Wright*, 2016 WL 125297, at *8, 9 (Del. Jan. 11, 2016). The Doctrine is only applicable to issues that the court explicitly or implicitly decided in prior proceedings. *See id.* at 9. Nevertheless, the Doctrine is not an absolute restriction. *Id.* at 8. Instead, this Court can reexamine issues that are “clearly wrong, produce[] an injustice or should be revisited because of changed circumstances.” *Id.* (internal citations omitted).

On March 15, 2002, the Trial Court explicitly determined that the State met its burden in demonstrating that the proof was positive and presumption great such that Defendant was not entitled to bail. Accordingly, the Doctrine applies unless Defendant can establish an exception that warrants reconsideration. Defendant has not alleged that the Trial Court’s ruling from Defendant’s first proof positive hearing on March 5, 2002 was clearly wrong or otherwise produced an injustice. Therefore, Defendant is only entitled to a second proof positive hearing if Defendant can establish he should be granted a new hearing because of changed circumstances.

Defendant argues that he is entitled to a new hearing because of the passage of time and because the Delaware Supreme Court is presently considering the constitutionality of Delaware’s death penalty statute. *See State v. Rauf*, No. 39, 2016 (Del. Jan. 28, 2016) (accepting questions certified by the Superior Court in 2016 WL 320094, at *1 (Del. Super. Jan. 25, 2016)). First, although over a decade has passed since Defendant’s first proof positive hearing, Defendant has not alleged changed circumstances. The mere passage of time, albeit substantial, does not reflect the type of “changed circumstances” reflected in Delaware Supreme Court case law that warrants reconsideration under the Doctrine. Second, the fact that the State *may* not be able to proceed on capital charges against Defendant at *some point in the future*—pending the Supreme Court’s determination on the constitutionality of the death penalty—is too speculative to warrant a new proof positive hearing at this point in the proceedings.

Accordingly, Defendant’s request for a new proof positive hearing is hereby **DENIED. IT IS SO ORDERED.**

Sincerely,

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

ALR/kd

cc: Original to Prothonotary