

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, )  
 )  
 v. ) ID No. 1501012432 WLW  
 ) In and for Kent County  
CORTEZ HAMILTON, )  
 )  
 Defendant. )

ORDER

The issue before the Court is whether to grant Defendant’s Motions to File Out of Time and accept Defendant’s untimely filed Motions to Suppress. In addition, this is the Court’s decision with respect to granting Defendant’s Motion for Continuance of the Trial. For the reasons set forth below, Defendant’s motions are **GRANTED**.

FACTS

On January 10, 2015, Keisha Hamilton was reported missing by her sister. The sister was concerned because she was unable to contact Keisha, or her husband, Cortez Hamilton (“Defendant”), after receiving “alarming messages” from Keisha the night before. The sister informed police that Keisha told her that the Defendant was acting strangely. Keisha reportedly feared for her safety and requested that her sister contact police if anything happened to her. Keisha also failed to appear for her shift at work. In addition, Keisha’s sister informed police that the Defendant had “travel arrangements to leave the region in the next couple of days.”

Pursuant to the missing person report filed by Keisha’s sister, Delaware State Police responded to the residence shared by Keisha and the Defendant (hereinafter, referred to as, the “Residence”), as Keisha was reportedly last seen at the Residence the night before. Police knocked on the door and rang the doorbell multiple times, but no one responded. As a result, police entered the Residence after Keisha’s

brother unlocked the door with a key that he possessed. Police were unable to locate Keisha, the Defendant, or their children. However, as police were searching the Residence for Keisha, police discovered large pools of blood, blood stains, and blood spatter. Police determined the blood was human through the use of a Blood Kit but were not able to determine from whom the blood came. Thereafter, police continued their search for Keisha and her children.

One of the methods used to locate the children included what is known as, an “AMBER Alert.” Indiana State Police, responding to the alert, discovered the children traveling with the Defendant. The Defendant was driving a red 2005 Chevrolet Suburban. Indiana police subsequently held the Defendant as a result of the Delaware investigation.

In the meantime, Delaware police obtained search warrants based on the information provided by Keisha’s sister, the blood evidence already discovered at the Residence, and information that Keisha had obtained Protection From Abuse Orders (“PFAs”) against the Defendant in the past. The first warrant permitted Delaware police to search the Residence. Police seized a clothing zipper, a black handle butcher knife, an empty plastic bottle, a white blanket, two bathroom containers, swabs containing suspected blood, five towels, an HP laptop, and two carpet samples. The second warrant permitted Delaware police to search Keisha’s 2007 Toyota Matrix. The vehicle was discovered by police in a parking lot within close proximity to the Residence, apparently abandoned. Police seized soil samples, DNA swabs, two rolls of duct tape, a Coach bag containing miscellaneous ID, and a gear shift knob.

On January 11, 2015, Indiana police obtained a search warrant for the 2005 Chevrolet Suburban driven by the Defendant. The warrant was based on information provided by Keisha's sister to Delaware police, the blood evidence discovered in the Residence, and the fact that Keisha's vehicle was found abandoned in a parking lot. Indiana police seized a bloody hammer, bloody clothing belonging to Keisha, clothing and shoes belonging to the Defendant, which were partially covered with mud and stained blood, and various personal items belonging to Keisha, including her wedding ring, a lock of her hair, her purse, and a cell phone.

On January 15, 2015, Delaware police obtained a second warrant to search the Residence. In addition to information already provided in the previous warrant for the Residence, the affiant stated that an additional search was required because the evidence seized by Indiana police indicated that Keisha may have been murdered. The additional evidence also indicated, according to the affiant, how Keisha's body may have been disposed of. Thus, the affiant requested an additional opportunity to search the Residence. Police seized molding from a hallway bathroom door, swabbing from a bathroom door, a fitted sheet from the master bedroom, lower trim of a dresser, drywall in the hallway, the fronts of three dresser drawers, and a box containing trash bags.

On February 13, 2015, Delaware police obtained a third warrant to search the Residence, as well as the 2005 Chevrolet Suburban. Delaware police were particularly interested in searching any GPS device located within the vehicle in order to determine where the vehicle had traveled prior to the Defendant's arrest. As

Keisha had not been located, police thought the GPS might lead to the discovery of her body. In addition, police requested an opportunity to remove additional carpet samples, carpet padding, and subflooring from the Residence in order to conduct a “blood volume examination.” Police seized a section of carpet from the Residence, a section of carpet padding from the Residence, a section of subfloor containing suspected blood in the second floor hallway, and a Kenwood stereo system from the 2005 Chevrolet Suburban.

### **PARTIES ARGUMENTS**

On August 24, 2017, Defendant filed his first motion to suppress (the “Defendant’s First Motion”) in this matter. The Defendant’s First Motion contests the investigatory stop conducted by Indiana police because, according to the Defendant, police lacked a reasonable articulable suspicion or probable cause to believe that the Defendant committed any criminal or traffic violation within Indiana. Second, Defendant contends that the warrant issued to search the 2005 Chevrolet Suburban was unsupported by probable cause. Third, the Defendant contends that the search of the 2005 Chevrolet Suburban exceeded the scope of the warrant.

In response to the Defendant’s First Motion, the State contends that the Defendant’s motion to suppress is untimely. The motions untimeliness, according to the State, places a burden on the State because the State’s trial preparations will be seriously interrupted if the Court considers the merits of the Defendant’s First Motion. In addition, the State contends that even if the Court considers the merits of the Defendant’s First Motion, that the motion is without merit. The State alleges that the vehicle stop conducted by Indiana police was permissible as a result of the

“AMBER Alert” issued by Delaware police. The State also contends that the warrant was supported by probable cause. Finally, the State contends that the warrant was properly executed.

On August 28, 2017, the Defendant filed his second (the “Defendant’s Second Motion”) and third motion (the “Defendant’s Third Motion”) to suppress. The Defendant’s Second Motion contests the warrant issued to search the 2007 Toyota Matrix registered to Keisha. The Defendant contends that the warrant was unsupported by probable cause to believe the vehicle contained evidence or instrumentalities of a crime. The Defendant also claims that the search of vehicle “exceeded the authority granted to the Delaware State Police by the issuing magistrate,” because police seized evidence not listed in the warrant.

In response to the Defendant’s Second Motion, the State again challenges the motions timeliness. In the event the Court permits the Defendant to file out of time, the State contends that the Defendant lacks standing to challenge the search of the 2007 Toyota Matrix because the vehicle was abandoned. If the merits of the motion are considered, the State contends the search warrant was sufficiently supported by probable cause. Furthermore, the State alleges that the search of the vehicle did not exceed the scope of the warrant. The seizure of evidence by police was either explicitly permissible pursuant to the warrant or the “plain view” doctrine.

The Defendant’s Third Motion seeks to suppress “any and all evidence” seized from the Residence. According to the Defendant, officers unlawfully entered the home without a warrant on January 10, 2015. The Defendant contends that the

warrantless testing of the blood discovered on that occasion was improper as well. Next, the Defendant alleges that the warrantless search of the Residence exceeded the scope of what was necessary to determine whether or not there were occupants in the Residence. Furthermore, as evidence discovered during the warrantless search of the Residence was relied upon to obtain the subsequently executed warrants, the Defendant contends that evidence obtained based on that information must be suppressed. In addition, the Defendant alleges that the officers exceeded the scope of the search granted by the executed warrants. Finally, the Defendant alleges that officers failed to timely submit inventories for the executed warrants.

In response to the Defendant's Third Motion, the State again challenges the motion's timeliness. In the event that the Court permits the Defendant to file out of time, the State contends that the warrantless search of the Residence was permissible pursuant to the "emergency doctrine." If the emergency doctrine applies, the State contends that any evidence discovered in the Residence is admissible pursuant to the "plain view" doctrine. If the evidence discovered during the warrantless search is admissible, the State contends that the subsequent warrant was supported by probable cause. The State also contends that the warrant was executed properly. Finally, the State asserts that untimely filed "warrant returns" are immaterial to the validity of any search warrant in this case because the Defendant has not alleged any prejudice.

On August 31, 2017, the Defendant filed a Motion to File Out of Time for each of his previously filed motions to suppress. Counsel acknowledges that his motions exceed the Court's deadline but asserts that it is "counsel's duty to file meritorious

motions in this matter notwithstanding that the court scheduling deadline for filing has passed.” In addition, counsel claims that his client specifically requested that he file suppression motions in this case. Counsel contends that the nature of the charges against the Defendant constitute an “exceptional circumstance,” that “outweighs the Court’s interest in controlling its criminal docket.” If the Court denies the Defendant’s motions to suppress, counsel states that he is mandated to pursue an appeal to the Delaware Supreme Court. If the Delaware Supreme Court affirms this Court’s decision, counsel contends that the Defendant will likely be forced to file for postconviction relief pursuant to Superior Court Criminal Rule 61, alleging ineffective assistance of counsel.

At a scheduling conference on this matter, the State conceded that a failure to address the merits of the Defendant’s motions likely would lead to postconviction relief pursuant to Rule 61. However, the State reiterated its concerns that the parties were on the eve of trial. The State informed the Court that it had made extensive preparations for the trial, including purchasing plane tickets for out-of-state witnesses. The State, however, was not opposed to continuing the trial in order to hear the merits of the motions. A continuance would also allow the State to prepare the out-of-state witnesses specifically for the suppression motions, rather than exclusively for trial.

### **LEGAL STANDARD**

Pursuant to Superior Court Criminal Rule 12(c), the Court is vested with the authority to set the time for pretrial motions, either at the time of arraignment or “as

soon thereafter as practicable . . . .”<sup>1</sup> Accordingly, pursuant to this Court’s criminal case management plan, pretrial motions including motions to suppress must be filed within 10 days of the initial case review unless otherwise ordered by the Court.<sup>2</sup> The Court “has broad discretion to enforce its rules of procedure and pre-trial orders.”<sup>3</sup>

The Court will not consider untimely motions to suppress unless the defendant provides the court with evidence of “exceptional circumstances” to justify the late filing.<sup>4</sup> Exceptional circumstances exist when there are circumstances that warrant the Court’s consideration of the untimely motion, and those circumstances “outweigh the countervailing interest in ensuring the timely and orderly processing of the Superior Court’s criminal docket.”<sup>5</sup> Exceptional circumstances will not be found when a defendant’s attorney possesses “all the relevant information necessary to support filing the motion.”<sup>6</sup>

## DISCUSSION

The deadline to file pre-trial motions in this case expired on September 12,

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<sup>1</sup> Del. Super. Ct. Crim. R. 12(c).

<sup>2</sup> Kent County Criminal Case Management Plan at 5.

<sup>3</sup> *Carney v. State*, 931 A.2d 436, 2007 WL 2254543, at \*2 (Del. Aug. 7, 2007) (TABLE) (citing *Barnett v. State*, 691 A.2d 614, 616 (Del. 1997)).

<sup>4</sup> *See id.*

<sup>5</sup> *Miller v. State*, 3 A.3d 1098, 2010 WL 3328004, at \*2 (Del. Aug. 24, 2010) (TABLE).

<sup>6</sup> *Davis v. State*, 38 A.3d 278, 281 (Del. 2012) (citing *Pennewell v. State*, 2003 WL 2008197, at \*2 (Del. Apr. 29, 2003) (TABLE)).



2016.<sup>7</sup> As the Defendant's motions were filed nearly a year after the deadline, on August 24, 2017, and August 28, 2017, the Defendant's motions are clearly untimely. The failure of the Defendant to file the Motions to Suppress in a timely manner pursuant to scheduling orders where the pertinent information was available to the Defendant before the trial is inexcusable.

The Defendant's counsel has also failed to allege an "exceptional circumstance" to justify the late filing. Counsel claims that the nature of the charges against the Defendant constitute "exceptional circumstances." Generally, "exceptional circumstances" means, the information is not readily available from sources that the Defendant would have access to, such as search warrants. Exceptional circumstances could also mean unforeseeable equipment failures, acts of nature, or an unanticipated circumstance that rarely and temporarily prevents one party to act. However, counsel has not cited any relevant case law to support his position. Nor is the Court aware of any precedent that supports counsel's position. The Court is aware, however, of the Delaware Supreme Court's decision explaining that exceptional circumstances will not be found when a defendant's attorney possesses "all the relevant information necessary to support filing the motion."<sup>8</sup>

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<sup>7</sup> The deadline was originally set for February 15, 2016. However, the Court extended the deadline at the office conference held on November 9, 2015.

<sup>8</sup> *Davis*, 38 A.3d at 281 (citing *Pennewell*, 2003 WL 2008197 at \*2). See also *Carney*, 931 A.2d 436, 2007 WL 2254543 at \*2 (holding change of counsel was not an "exceptional circumstance" where motion to suppress was filed three months after due date and information necessary for motion had been available to original counsel when motion due).

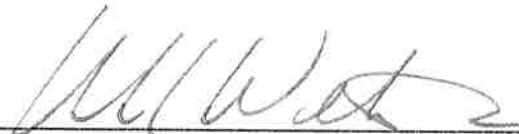
Counsel entered his appearance on April 21, 2015. Therefore, counsel has had more than two years to apprise himself of the facts of this case.

Notwithstanding the foregoing, in light of the State's willingness to continue the trial, and its position that the motions need to be heard, the Court will grant the Defendant's Motions to File Out of Time, as well as the Defendant's Motion to Continue the Trial Date. The Court, therefore, will hear the merits of the Defendant's Motions to Suppress on September 14 and 15, 2017. In addition, in order for the parties to adequately prepare for the suppression hearing, trial is continued to a date to be agreed upon. The parties are to discuss in advance, and schedule an office conference to set a new trial date. Finally, this Court reserves the right to issue sanctions for Defense Counsel's egregious violation of the standing scheduling order. Any determination of sanctions will be made after the scheduled suppression hearing.

### **CONCLUSION**

In sum, the Defendant's Motions to File Out of Time are **GRANTED** under these unusual facts and conditions. The three motions for suppression are set for hearing on September 14, 2017, at 10:00 a.m. and September 15, 2017, at 1:30 p.m. Defendant's Motion for Continuance of Trial is also **GRANTED**

**IT IS SO ORDERED** this 7<sup>th</sup> day of September, 2017,



Resident Judge

*State v. Cortez Hamilton*  
ID No. 1501012432 WLW  
September 7, 2017

RJWJr./jb

oc: Prothonotary  
cc: Stephen R. Welch, Jr., Esquire  
Lindsay A. Taylor, Esquire  
John R. Garey, Esquire