

**IN THE SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III
ASSOCIATE JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET
WILMINGTON, DELAWARE 19801
(302) 255-0656

Date Decided: May 21, 2004
Date Submitted: May 17, 2004

Natalie Woloshin, Deputy Attorney General
Department of Justice
Office of the Attorney General
820 N. French Street,
Wilmington, DE 19801

Joseph A. Hurley, Esquire
1215 King Street
Wilmington, DE 19801

Re: *State v. Jerome Perkins*
Def. I.D.: 0312011109

Dear Counsel,

As you know, the Grand Jury has indicted the defendant, Jerome Perkins, on multiple violent felonies, including, *inter alia*, Attempted Murder First Degree, Possession of a Firearm During the Commission of a Felony, Kidnapping First Degree and Carjacking First Degree. Mr. Perkins has filed a Motion Pursuant to Rule 46 and 48 of the Superior Court Criminal Rules which, in essence, seeks a speedy trial and a review of bail, currently set at \$1,115,000.00 cash. The Court has since scheduled the matter for a September, 2004 trial and Mr. Perkins, in turn, has

withdrawn his motion as it relates to his request for a speedy trial.¹ The only matter for decision, therefore, is whether the bail set for Mr. Perkins is excessive and should be modified.

Before reaching the merits of the motion, the Court must address a procedural issue that directly affects the standard of review. Mr. Perkins' bail has been reviewed by this Court once before. A Superior Court commissioner conducted a hearing in February of this year, heard argument from the State and defense counsel, and ultimately concluded that the cash bail set by the magistrate was appropriate. Mr. Perkins filed a motion for reconsideration of the commissioner's order but then withdrew the motion. The motion *sub judice*, filed by a new attorney for Mr. Perkins, comes nearly three months after the commissioner's decision. Given the time that has elapsed since arrest and indictment, the nearly three months that have passed since the last bail hearing, and the fact that trial will not convene for another four months, the defendant's motion is timely and appropriate.²

¹Obviously, the request to review arguably excessive bail implicates the right to a speedy trial to the extent that a defendant, presumed to be innocent of all charges, is held in default of bail pending trial. In this instance, the Court is satisfied that trial has been scheduled well within the time frame envisioned by the Sixth Amendment of the United States Constitution and Art. I, §7 of the Delaware Constitution of 1897, and that the analysis here may properly be confined to bail-specific aspects of our constitutional and statutory law.

²The instant motion was filed on May 6, 2004 and noticed for presentation on May 10. The State did not file a written response. At the May 10 hearing, the State appropriately requested a postponement so that it could assemble a cast of witnesses to testify regarding the issues implicated by the motion, and otherwise respond to the motion. The Court postponed the hearing for one week to accommodate the State's request even though Mr. Perkins had been transported to the courthouse by the Department of Corrections specifically for the hearing on the bail motion. During the week following the May 10 hearing, the State filed no response to the motion. Instead, at the May 17 hearing, in the midst of the defendant (who again had been transported to the courthouse by the Department of Corrections solely for the bail hearing), and a courtroom full of witnesses assembled for the hearing, the State opened its presentation with a request that the court "dismiss" the motion as untimely. The Court declined to consider the State's application on the merits given the resources that had been expended thus far by the Court to accommodate the State and the lack of any written response to the motion from the State.

That the Court has agreed to consider the matter of bail again does not mean that it will ignore the commissioner's prior decision on this issue. Superior Court commissioners are specifically authorized by court rule to set and review bail in this court,³ and they regularly address such matters in weekly motion calendars. Accordingly, our court commissioners have developed not only a unique expertise in bail and bail related issues, but also, as important, a global perspective and sense of proportion in the highly subjective realm of determining appropriate bail amounts and conditions of release for particular crimes. The commissioners' decisions on bail are not subject to review under Rule 62(a)(4). Accordingly, like any other judicial decision rendered during the life of a case, a commissioner's decision on a motion to modify bail is entitled to deference under the law of the case doctrine.⁴ As the law of the case, the commissioner's decision with respect to bail "must stand unless th[e] ruling w[as] clearly in error or there has been an important change in circumstance."⁵

Individuals charged with a non-capital crime in Delaware enjoy a constitutional right to bail.⁶ The process by which bail should be set by the Court is governed by statute.⁷ The Court's mandate in setting bail is to balance the accused's rights to be presumed innocent of criminal charges and to be at liberty until the matter is adjudicated at trial against the State's interests to ensure the accused's presence at trial (and pretrial matters) and to protect the community at large and identifiable

³See Del. Super. Ct. Crim. R. 62(a)(1).

⁴*Cf. Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998)(law of the case doctrine applies in criminal cases).

⁵*Bailey v. State*, 521 A.2d 1069, 1093 (Del. 1987).

⁶Art. I, §12 (Del. Const. of 1897).

⁷DEL. CODE ANN., tit. 11, §2101, *et. seq.* (2001).

victims from potentially dangerous defendants.⁸ The General Assembly has codified certain criteria the Court should consider when setting the amount of bail and establishing conditions for release.⁹ The courts have also established non-binding guidelines that are meant to “foster a uniform approach” to the process of setting bail.¹⁰ These sources provide the road map for setting bail initially and for reviewing bail after it has been set.

Although the commissioner did not identify statutory factors by chapter and verse, he did reveal in his decision a thought process that tracks the statutory road map. Specifically, he considered the likelihood that Mr. Perkins would appear for court by considering his prior *capias* history (25 *capiases* have been issued for Mr. Perkins’ failure to appear) and his track record for compliance (or lack thereof) while on probation.¹¹ He also considered the fact that Mr. Perkins had no stable address.¹²

In addition to his consideration of the flight risk, the commissioner also recognized that, unlike the bail scheme in some states, Delaware’s statutory bail scheme specifically embraces the notion of “preventive detention,” i.e., pretrial detention for the sake of preventing the accused from posing a danger to the

⁸*Id.* (“It is the purpose of this chapter ... to empower and equip the courts to utilize a system [of bail] to be used wherever feasible consistent with a reasonable assurance of the appearance of the accused and the safety of the community in connection with the release of persons accused of a crime pending a final determination of the court as to the guilt of such persons.”).

⁹*Id.* at §§ 2107, 2108.

¹⁰The Courts of the Justices of the Peace, Legal Memorandum No. 92-191, at 1 (July 13, 1992).

¹¹Transcript of February 24, 2004 hearing, at 15-17 (hereinafter Tr. ___).

¹²*Id.* at 17.

community.¹³ In this regard, the commissioner considered Mr. Perkins' criminal history and, particularly, his multiple past convictions for violent crimes.¹⁴ He also considered the State's proffer of evidence suggesting that Mr. Perkins had threatened harm to the alleged victim in this case.¹⁵ And, of course, although not specifically stated, it is clear that the commissioner was operating from a baseline threshold that took into account the serious and violent nature of the charges Mr. Perkins is currently facing.¹⁶

Neither the transcript of the February 24 hearing nor the evidence presented at the May 17 hearing compel the Court to conclude that the commissioner's ruling on the prior motion to modify bail was "clearly in error." To the contrary, the commissioner considered appropriate information and acted well within his discretion in determining that he should depart from the applicable bail guidelines by upholding the high cash bail set by the magistrate.¹⁷ Moreover, none of the evidence presented at the May 17 hearing has convinced the Court that there has been "an important change in circumstances" that would justify a reversal or modification of the

¹³*Compare Martin v. State*, 517 P.2d 1389 (Alaska 1974)(holding that denial of bail to forgery defendant on ground that he was a "danger to society" violated state bail scheme) with *Eaton v. State*, 703 A.2d 637, 641-42 (Del. 1997)(noting that public safety was an appropriate consideration when setting conditions of bail). See generally 3 LaFave, Israel & King, *Criminal Procedure*, §12.3(b) (West 2d Ed. 1999)(discussing the concept of preventive detention).

¹⁴Tr. at 16.

¹⁵*Id.* at 17.

¹⁶*Id.* at 16.

¹⁷The Court notes, as an aside, that several "aggravating factors" identified in the bail guidelines apply to Mr. Perkins: (1) he had two prior felony findings of delinquency (both Robbery 1st Degree) and more than four adult misdemeanor convictions; (2) he had multiple violations of probation; and (3) two or more capiases have been issued for his failure to appear in court within the past three years.

commissioner's decision.¹⁸ If anything, the evidence presented at the hearing amplified and accented the proffer of evidence submitted to the commissioner on February 24.

Mr. Perkins is facing a charge that carries with it a minimum sentence of life imprisonment if convicted. It is, of course, difficult to quantify the requisite monetary incentive that would cause someone facing the penultimate criminal sanction to appear in court to defend himself. The task is complicated even more when the accused has a demonstrated track record of attempting to avoid the potential consequences of his conduct by failing to appear for court appearances. Add to this mix evidence that the defendant may pose a threat to the community and/or the alleged victim and it is easy to understand why the commissioner sanctioned the extraordinary bail that has been set in this case. This is the law of the case and it will not be disturbed.

Based on the foregoing, the motion to modify bail is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

Joseph R. Slights, III

Original to Prothonotary

¹⁸The hearing lasted approximately two hours. The Court heard testimony from several witnesses, including Mr. Perkins. There was ample opportunity for the defendant to reveal "an important change" in circumstances from February 24 but, in the Court's view, he did not do so.