

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE :  
 : I.D. No. 0310004348  
v. :  
 :  
WILLIAM J. DEVONSHIRE, :  
 :  
Defendant. :

Submitted: May 21, 2004  
Decided: June 15, 2004

**ORDER**

Upon Defendant's Second Motion to Stay Proceedings.  
Denied.

Robert J. O'Neill, Jr., Esquire and Kenneth M. Haltom, Esquire, Department of Justice, Dover, Delaware; attorneys for the State of Delaware.

Paul S. Swierzbinski, Esquire, Office of the Public Defender, Dover, Delaware; attorneys for Defendant.

WITHAM, J.

### **Introduction**

Before this Court is Defendant's second motion to stay the trial on attempted robbery first degree and other misdemeanor charges until after his trial for first degree murder. The State opposes the motion. For the reasons that follow, Defendant's motion is *denied*.

### **Background**

On November 3, 2003, William Devonshire was charged by indictment with numerous offenses, including Attempted Robbery First Degree, which allegedly occurred on October 1, 2003. On January 5, 2004, Defendant was charged by Indictment with Murder First Degree and Possession of a Deadly Weapon During the Commission of a Felony, as a result of an incident which allegedly occurred on April 3, 2003. On January 21, 2004, Defendant filed his first motion to stay the proceedings contending that he would be prejudiced if the attempted robbery trial was conducted prior to the murder trial. On March 3, 2004, this Court denied Defendant's motion.

Defendant is now requesting for a second time that the trial on the attempted robbery charge be postponed until after the trial on the murder charge.<sup>1</sup> Defendant contends that because the victim in the attempted robbery case is the same as the key witness in the murder case, the cases are not independent and he may be prejudiced.

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<sup>1</sup> In his first motion to stay the proceedings, Defendant waived his right to a speedy trial on the attempted robbery charge, as well as the other charges in connection with it, in the event that the murder trial is held first.

Specifically Defendant argues that he will be unable to cross-examine the victim of the attempted robbery on her alleged bias arising from statements made during the course of the murder investigation. The State opposes the motion.

### **Discussion**

In its decision on Defendant's first motion to stay the proceedings, this Court compared issuing such a stay to Superior Court Criminal Rule 14 which allows the Court to grant relief from prejudicial joinder. In that decision, this Court concluded that the decision to delay the trial on the attempted robbery charge until after the trial on the murder charge would be within the discretion of the Court. Accordingly, the Court must weigh the competing interests of the State and the Defendant, as well as the Court's interest in promoting judicial economy and efficiency. The Defendant must establish that there is a reasonable probability that substantial injustice may result if the attempted robbery trial is conducted prior to the murder trial.<sup>2</sup> It is not sufficient for the Defendant to establish mere hypothetical prejudice.<sup>3</sup>

The Defendant now claims that he will suffer prejudice if the attempted robbery trial is held first because he will be unable to cross-examine the attempted robbery victim about allegedly false statements she made during the course of the murder investigation. Defendant contends that Kimberly M. Susi, the Defendant's former girlfriend/paramour and the alleged victim of the attempted robbery, was also a

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<sup>2</sup> *Bates v. State*, 386 A.2d 1139, 1141 (Del. 1978).

<sup>3</sup> *Id.* at 1142 (defendant bears the burden of persuasion when seeking relief under Super. Ct. Crim. R. 14).

cooperating individual during the murder investigation and will presumably be a key witness in the murder trial. Defendant asserts that Susi provided false or inaccurate information to the police during the course of the murder investigation leading to the arrest of Defendant. On this basis, the Defendant believes that there are questions with respect to Susi's credibility and her potential bias in matters dealing with the Defendant. However, Defendant argues that conducting the trial on the attempted robbery charge prior to the murder trial may preclude the Defendant from cross-examining Susi and other common witnesses for bias.

In making his argument, Defendant relies upon the decision of the Delaware Supreme Court in *Weber v. State*.<sup>4</sup> In *Weber*, the victim's family gave the State's witnesses money to purchase clothes prior to testifying. The trial court did not permit the defendant to question the witnesses regarding the payment or to present extrinsic evidence to establish their bias. On appeal, the Supreme Court reversed the trial court's decision, concluding that the payments would have been a proper subject for cross-examination.

*Weber* does not appear to be relevant to the present issue as it addressed the Court limiting a defendant's ability to cross-examine a witness regarding his or her alleged bias. In this case, Susi, as the alleged victim, will presumably testify at the attempted robbery trial. The Defendant will have the opportunity to cross-examine her about anything relevant to the case, including any issue with respect to her alleged bias. At this point, the Court has not limited the Defendant's ability to question Susi

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<sup>4</sup> 457 A.2d 674 (Del. 1983).

*State v. William J. Devonshire*

I.D. No. 0310004348

June 15, 2004

regarding her statements to the police. Further, Defendant has failed to establish how he would be prejudiced by having the attempted robbery trial proceed first. Whether the attempted robbery trial is held first or second, the Defendant may cross-examine Susi regarding any statements she made which may be relevant to the case. The same will be true during the murder trial.

The Defendant's only argument is that if the attempted robbery trial is held first, he may be precluded from cross-examining Susi regarding her alleged bias. However, Defendant has not adequately demonstrated to the Court that this would be the case. The Defendant will have an opportunity to cross-examine Susi during the course of the attempted robbery trial regarding information relevant to the attempted robbery. Therefore, this Court concludes that the Defendant has failed to meet his burden of establishing to a reasonable probability that substantial prejudice will result if the attempted robbery trial is held prior to the murder trial.

### **Conclusion**

Because Defendant has not established that actual prejudice would result, Defendant's motion to stay the attempted robbery trial is *denied*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution