

This 10th day of May 2006, upon consideration of the briefs of the parties and their contentions at oral argument, it appears to the Court that:

(1) On July 1, 2002, Damon Bailey (“Defendant”) was charged in an eight (8) count indictment with Carrying a Concealed Deadly Weapon in violation of Title 11, § 1442 of the Delaware Code; Possession of a Deadly Weapon by a Person Prohibited in violation of Title 11, § 1448(a)(1) of the Delaware Code; Driving During Suspension in violation of Title 21, § 2756(a) of the Delaware Code; Reckless Driving in violation of Title 21, § 4175(a) of the Delaware Code; Drinking While Driving in violation of Title 21, § 4177J(a) of the Delaware Code; Failure to Stop at a Red Light in violation of Title 21, § 4108(a)(3) of the Delaware Code; Failure to Signal in violation of Title 21, §4155(a) of the Delaware Code; and Unreasonable Speed in violation of Title 21, §4168(a) of the Delaware Code.

(2) On August 12, 2002, Defendant failed to appear for a scheduled case review and a capias was issued for his arrest. The capias was returned in March of 2003, at which time a case review was again scheduled for March 17, 2003. On March 17, 2003, a final case review was scheduled for April 14, 2003. Defendant, again, failed to appear at the case review. On February 10, 2006, the Defendant returned the capias. A case review was

held on February 21, 2006, at which time a final case review was scheduled for May 15, 2006.

(3) On March 9, 2006, the Defendant filed a Motion to Suppress. A hearing was held on this Motion on April 21, 2006, at which time the Defendant admitted that he had failed to appear for the scheduled case review on August 12, 2002. He did not, however, provide the Court with any reason for his nonappearance. The Defendant also indicated that he was in Federal custody on February 12, 2003 and was not released until February 5, 2006. The Court requested that counsel submit letter memoranda as clarification to support their positions regarding the timeliness of this motion.

(4) As noted in *Pennewell v. State*,¹ under the Superior Court Rules of Criminal Procedure and the Court's Case Management Plan, motions to suppress evidence must be filed no later than ten days after the date of the initial case review.² The initial case review in this case was held on August 12, 2002, but the motion to suppress was not filed until March 9, 2006. Untimely motions to suppress evidence need not be considered in the absence of exceptional circumstances.³ At the suppression hearing, the

¹ 2003 WL 2008197 (Del. Supr.).

² *Id.* at *1.

³ *Id.* (citing *Barnett v. State*, 691 A.2d 614, 616 (1997)).

Defendant admitted that he failed to appear for his initial case review scheduled on August 12, 2002, and was unable to provide a reason for his nonappearance. The Defendant has not presented, nor can the Court find, any exceptional circumstances. Therefore, Defendant's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.