IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STEVEN D. HUMES,	)	
Defendant-Below/Appellant,	)	
v.	)	I.D. # 0402006855
STATE OF DELAWARE.	)	

Submitted: May 12, 2006
Decided: August 1, 2006

Upon Appeal from a Criminal Conviction in the Court of Common Pleas.
AFFIRMED.

ORDER

Steven D. Humes, Wilmington, Delaware, *pro se*.

Shawn E. Martyniak, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, Attorney for the State.

COOCH, J.

This 1st day of August, 2006, upon consideration of an appeal from a criminal conviction in the Court of Common Pleas filed by Appellant Steven D. Humes ("Appellant"), it appears to the Court that:

1. On February 11, 2004, Appellant was charged with Misuse of Computer Information, a misdemeanor, under 11 *Del. C.* § 935. On October

27, 2004, after a jury trial in the Court of Common Pleas, Appellant was found guilty of the charged offense. Appellant takes the instant appeal from that conviction.[1]

2. In support of his appeal, Appellant sets forth, through various motions,[2] seven grounds upon which he argues that the lower court erred. Those seven grounds are as follows: (1) that Appellant was denied his right to a speedy trial;[3] (2) that Appellant was prejudiced by the lower court's limitation of the number of defense witnesses;[4] (3) that Appellant was

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[1] 11 *Del. C.* § 5301(c) provides, in pertinent part: "From any order, rule, decision, judgment or sentence of the Court [of Common Pleas] in a criminal action, the accused shall have the right of appeal to the Superior Court … Such appeal to the Superior Court shall be reviewed on the record and shall not be tried de novo." *See also* CCP Crim. R. 37.

[2] An opening brief was filed in this appeal by Andrew J. Witherell, Esquire, who had been appointed to represent Appellant until Mr. Witherell was allowed to be discharged from his duties by this Court in response to a direct request by Appellant for Mr. Witherell's "remov[al]." Letter to the Court from Steven D. Humes, D.I. 47 (April 3, 2006); Letter from the Court to Steven D. Humes and Shawn E. Martyniak, Esq., D.I. 50 (April 13, 2006). The Court then stated that "in light of Mr. Humes' unequivocal desire to discharge Mr. Witherell this Court will consider only the previous submissions of Mr. Humes himself in connection with this appeal, and will not consider the arguments set forth in Mr. Witherell's Opening Brief." Letter from the Court to Steven D. Humes and Shawn E. Martyniak, Esq., D.I. 50 (April 13, 2006). The Court also gave Appellant a chance to rely on his former counsel's brief, which he did. The Court again expresses its appreciation to Mr. Witherell for his service to the Court.

It is not clear from the various motions and legal issues submitted by Appellant exactly what the discrete contentions in support of the appeal are. However, in its response, the State set forth seven issues that Appellant has raised at one time before this appeal. This Court finds that, because of the myriad motions filed by Appellant, analyzing the issues as laid out by the State is the most accurate way to proceed.

[3] Motions Hr'g Tr. 17-18, Oct. 8, 2004; Appellant's Reply Br. 5-7.

[4] *Id.* at 27-28.

prejudiced by the lower court's denial of Appellant's motion for judicial notice;[5] (4) that Appellant was denied his right to counsel when the lower court refused to assign counsel after the initially-assigned public defender had withdrawn;[6] (5) that the State failed to prove that the criminal acts with which Appellant was charged were committed in Delaware;[7] (6) that Appellant's actions were not criminal, but instead were governed by Article 2 of the Delaware version of the Uniform Commercial Code;[8] and (7) that Appellant was denied his right to a fair trial due to prosecutorial and judicial misconduct.[9]

3. In response to each of Appellant's respective claims, the State argues (1) that "Appellant did not suffer any [excessive delay or] prejudice" as he was "never incarcerated … suffered no excess anxiety, other than normal, waiting for trial … [and] had ample time to prepare a defense given that the State and Appellant picked an agreed upon date for trial[,]";[10] (2) that based on the repetitive nature of Appellant's proposed 60 witnesses, the trial judge

[5] Def.'s Mot. for Judicial Notice (July 16, 2004), *den'd*, (Oct. 22, 2004); Appellant's Reply Br. 9-10.

[6] Motions Hr'g Tr. 2, July 14, 2004; Appellant's Reply Br. 11.

[7] Appellant's Op. Br. 11-12; Appellant's Reply Br. 12-14.

[8] State's Resp. 22; Appellant's Reply Br. 15-16.

[9] *Id.* at 23; Appellant's Reply Br. 17-18.

[10] *Id.* at 11.

was "well within his discretion [in limiting] the number of duplicate witnesses as well as the number of witnesses that were irrelevant to the case[,]";[11] (3) that the trial court did not abuse its discretion when it denied Appellant's motion to take judicial notice that Appellant owned the computer system at issue;[12] (4) that the trial court did not abuse its discretion in not appointing new counsel after Appellant had fired his counsel, which was effectively a waiver or forfeiture of appointed counsel;[13] (5) that the State did satisfy the burden of proving jurisdiction as the computer system at issue was located in Bear, Delaware at the time the crime was committed;[14] (6) that Appellant's claim that Article 2 of the UCC exclusively applies here is meritless;[15] and (7) that the "record does not reflect any misconduct by the prosecutor of the presiding judge … [and that the] claim is vague and has absolutely no merit."[16]

4. This Court agrees with the State that all of Appellant's claims are without merit. Thus, this Court finds that the Court of Common Pleas

[11] *Id.* at 13.

[12] *Id.* at 15.

[13] *Id.* at 16-17.

[14] *Id.* at 20-21.

[15] *Id.* at 22.

[16] *Id.* at 23.

committed no reversible error of law and because the findings of the jury are supported by the evidence, especially when the evidence is viewed in a light most favorable to the State. For those reasons, the October 27, 2004, criminal conviction in the Court of Common Pleas is **AFFIRMED.**

5. In reviewing appeals from criminal convictions in the Court of Common Pleas, this Court assumes the role of an intermediate appellate court and functions in much the same way as the Delaware Supreme Court.[17] However, on appeal, the standard of review is "on the record and … not … de novo."[18] Therefore, "[i]n addition to correcting errors of law, this Court's scope of review extends to whether the factual findings made by the jury[,] [when] viewed in a light most favorable to the State[,] are supported by the evidence."[19] If supported by the evidence, the findings of the jury "shall be conclusive."[20]

6. First, as to Appellant's speedy trial claim, "[t]he standard of review for a legal determination that a defendant did not establish a violation of his

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[17] *DiSabatino v. State*, 808 A.2d 1216, 1220 (Del. Super. Ct. 2002), *aff'd*, 810 A.2d 349 (Del. 2002); *Shipkowski v. State*, 1989 WL 89667, * 1 (Del. Super.) (citing *Baker v. Connell*, 488 A.2d 1303 (Del. 1985)).

[18] 11 *Del. C.* § 5301(c); *State v. Akala*, 2003 WL 21085381, * 3 (Del. Super.).

[19] *Shipkowski*, at * 1 (citing *Henry v. State*, 298 A.2d 327 (Del. 1972)).

[20] *Id.* (citing DEL. CONST. art IV, § 11(1)(a)).

right to a speedy trial is *de novo*."[21] This Court will look at the four *Barker* factors to determine whether Appellant's right to a speedy trial was violated; those factors are: (1) the length of the delay, (2) the reason for the delay, (3) the [appellant's] assertion of the right, and (4) prejudice to the defendant.[22] Here, there was a period of nine months between Appellant's arrest and the trial. The initial trial date was August 2, 2004, but that date was continued by the Court due to a heavy docket. Both the State and the Appellant were ready for trial in August. Although such a length of time may be normal given the crowded docket in the Court of Common Pleas, nine months might be considered presumptively prejudicial in certain situations not applicable here.[23] However, regardless of the length of any delay coupled with Appellant's assertion of his right to a speedy trial before the trial court, two arguments made by the State militate in favor of the trial court's denial of Appellant's claim that his right to a speedy trial had been violated. First, the reason for the delay was a neutral one as the trial judge merely referred to a heavy docket and, thus, should not be attributable to the State. Second,

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[21] *Boo'ze v. State*, 2004 WL 691903, * 4 (Del. Supr.) (quoting *Burkett v. Fulcomer*, 951 F.2d 1431, 1437 (3d. Cir. 1991) ("[T]he factual underpinnings of these legal conclusions are reviewed for clear error.")).

[22] *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)).

[23] *See Boo'ze*, 2004 WL 691903, * 4 (finding that a 10-month delay could be "considered presumptively prejudicial in some circumstances").

Appellant has failed to show that he was prejudiced by the delay.[24] This Court agrees with the findings made by the trial court that Appellant's right to a speedy trial was not violated.

7. Second, as to the trial judge's exclusion of a large number of Appellant's witnesses, which the State claims were duplicative and irrelevant, this Court will review the lower court's ruling to determine whether the trial judge abused his discretion.[25] "A court commits an abuse of discretion if it has 'exceeded the bounds of reason in view of the circumstances, [or] ··· so ignored the rules of law or practice so as to produce injustice.'"[26] Here, the trial judge did not abuse his discretion by limiting the number of Appellant's witnesses. The Delaware Supreme Court has stated that a trial court is "obligated to exercise reasonable control over the trial proceedings"[27] and that where a defendant requested to call a large number of witnesses for which the defendant was "unable to articulate a

[24] Appellant does claim that he was prejudiced by the delay because he lost almost all of the 60 witnesses he had planned to call to testify. Appellant's Reply at 6-7. However, that does not amount to prejudice as the trial court properly exercised its discretion by significantly limiting the amount of witnesses that Appellant was allowed to call, as shown below.

[25] *See Graves v. State*, 2006 WL 496140, * 1 (Del. Super.) ("The question of admissibility of evidence is reviewed on appeal under an abuse of discretion standard.") (citing *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994)).

[26] *Id.* (quoting Firestone Tire & Rubber Co. v. Adams, 541 A.2d 567, 570 (Del.1988)).

[27] *Thomas v. State*, 2004 WL 300444, * 2 (Del. Supr.) (citing D.R.E. 611(a)).

factual basis for calling[,] … [the trial court] was within its discretion to exclude witnesses who had no personal knowledge of the facts of the case."[28] The 60 witnesses that Appellant wanted to call appear to have been former customers of Appellant and did not appear to have personal knowledge of the facts of the case. Therefore, the trial judge properly exercised his discretion by limiting the number of defense witnesses to 10.

8. Third, as to the trial judge's denial of Appellant's motion for judicial notice, this Court finds that the trial judge did not abuse its discretion in refusing to take judicial notice of the alleged fact that Appellant was the owner of the computer system at issue below. Delaware Uniform Rule of Evidence 201(b) provides that "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." The doctrine of judicial notice is not appropriate in this circumstance as the Appellant's ownership of the computer system is, in fact, in dispute as the State submits that the computer system is owned by

[28] *Id.* at 2-3 (citing D.R.E. 403).

the victim.[29] Therefore, the trial court did not abuse its discretion by denying Appellant's motion for judicial notice.

9. Fourth, this Court finds that Appellant's claim that the trial court violated his right to counsel by not appointing counsel after the Appellant had informed the trial court that he did not want his court-appointed attorney to represent him is meritless. "Delaware case law has consistently emphasized that the decision to appoint standby counsel rests within the discretion of the trial court."[30] Thus, here, the trial court properly exercised its discretion in its denial to appoint other counsel after Appellant had requested his court-appointed counsel to withdraw. As the *Bultron* court instructs: "[a]bsent good cause for dismissing court-appointed counsel, a defendant has two options: the defendant may proceed either with his court-appointed counsel, or he may proceed *pro se*."[31] After dismissing his court-appointed counsel, Appellant was left only to proceed *pro se* and the trial judge did abuse his discretion by refusing to appoint counsel of Appellant's choice.

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[29] State's Resp. at 15.

[30] *Thomas*, 2004 WL 300444, at * 2 n.5. *See also Bultron v. State*, 2006 WL 845208 (Del. Supr.) (holding that where defendant was dissatisfied with court-appointed counsel and forces counsel to withdraw, defendant is not then entitled to request an appointment of substitute counsel).

[31] *Bultron*, at * 3.

10. Fifth, Appellant's claim that the State failed to prove jurisdiction by showing that the alleged criminal offenses occurred in Delaware is without merit. "In addition to correcting errors of law, this Court's scope of review extends to whether the factual findings made by the jury[,] [when] viewed in a light most favorable to the State[,] are supported by the evidence."[32] Appellant relies on his former counsel's brief, which argued that the emails were never authenticated and, thus, the location from which they were sent could not be identified.[33] Here, the jury found Appellant guilty of the crime and there was sufficient evidence that the computer system, at all relevant times, was located in Delaware, specifically in Bear, Delaware, which is in New Castle County. Therefore, the findings of the jury are supported by the evidence when that evidence is viewed in the light most favorable to the State, so the jury's findings must be affirmed. Thus, Appellant's claim that the State did not prove jurisdiction is without merit.

11. Sixth, Appellant claims that he was wrongfully charged with a criminal act. Appellant claims that his use of the victim's computer information is sanctioned by Article 2 of the Uniform Commercial Code as it is adopted by Delaware. Appellant has provided no case law in support of

[32] *Shipkowski*, 1989 WL 89667, * 1 (citing *Henry v. State*, 298 A.2d 327 (Del. 1972)).

[33] Appellant's Op. Br. 11.

such a proposition. This Court finds that argument untenable and that Appellant's argument is without merit.

12. Seventh, Appellant makes broad and completely unsubstantiated claims of judicial and prosecutorial misconduct.[34] Thus, Appellant's claim is wholly without merit.

13. Finally, in his *pro se* reply brief, Appellant, relying on the opening brief filed by former counsel,[35] sets forth an eighth ground in support of his appeal: that he, as a *pro se* defendant, was not advised by the trial judge of his right not to testify. The State did not address this particular claim. It is not clear after this Court's review of the extensive trial record whether or not Appellant was advised by the trial judge of any right not to testify to avoid self-incrimination. Therefore, this Court, for purposes of this decision, will assume (but without concluding) that Appellant was not so advised by the trial judge. However, the great majority of jurisdictions have held that "a trial court is not *required* to advise a self-represented defendant of the

[34] To cite only two examples: Appellant alleges that "[b]esides being a habitual liar, [the Deputy Attorney General] is a complete idiot"; Appellant also referred to the trial judge as a "liar and trial fixing scumbag." Appellant's Reply Br. 17-18. The Court, *sua sponte*, hereby strikes all such "impertinent" and/or "scandalous" material from Appellant's briefs. Super. Ct. Civ. R. 12(f), made applicable to criminal cases pursuant to Super. Ct. Crim. R. 57(d).

[35] Appellant's Op. Br. 9-10; Appellant's Reply Br. 19.

privilege against self-incrimination."[36] This rule conforms with the general principle that "the judge ordinarily is not required to assist or advise a defendant who chooses to represent himself on matters of law, evidence or trial practice."[37] This is an issue of apparent first impression in Delaware. Thus, this Court will follow the above holding and its reasoning. Here, although Appellant may not have been advised by the trial judge of his right not to testify when he called himself to testify on his own behalf, the trial judge had no duty to so advise him. Thus, Appellant's final argument is without merit.

14. For all of the foregoing reasons, Appellant's criminal conviction in the Court of Common Pleas is **AFFIRMED.**

IT IS SO ORDERED.

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Richard R. Cooch, J.

oc: Prothonotary
cc: Court of Common Pleas
Andrew J. Witherell, Esquire

[36] *People v. Barnum*, 64 P.3d 788, 799 (Cal. 2003) (rejecting former California rule that required such advice from trial judge to pro se defendant and stating that the old rule did "not have any counterpart in the federal courts or in the courts of about 45 of our 49 sister states"). *See also* Wayne R. LaFave et al., *Criminal Procedure* § 24.5 n.5.1 (2d ed. Supp. 2006) ("No special warnings [by a trial judge to a *pro se* defendant] prior to waiver of the privilege are required.") (citing *Barnum*).

[37] *Id.* at 795 (citation ommited).